CONSTITUTIONAL COURT OF GEORGIA

Information on Constitutional Justice in Georgia

2019

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Introduction

Aspiration to a democratic, social and legal state is the foundational idea on which the Constitution of Georgia is grounded. Full realization of these values can be achieved only through securing supremacy of the Constitution and adherence to the principles enshrined therein. Upholding supremacy of the Constitution is an unconditional obligation of all the branches of the government, however a special responsibility in this regard rests upon the Constitutional Court, which guarantees the protection of human rights and the principle of separation of powers through interpretation of constitutional provisions.

A significant part of the activities of the Constitutional Court is aimed at examining constitutionality of normative legal acts based on constitutional complaints of natural and legal persons, in order to ensure that the government does not unjustifiably restrict human rights and that the fair balance be ensured between conflicting interests. An effect of judgments of the Constitutional Court is much broader than a mere satisfaction of the interests of individual complainants. In particular, norms declared unconstitutional by virtue of judgments of the Constitutional Court lose their legal force and affect the rights of every member of the society; at the same time, judgments set forth constitutional standards that are binding upon every branch of the government. Therefore, it is of utmost importance that detailed information on the activities and case-law of the Constitutional Court be communicated both to representatives of the government and every interested member of the society.

Under Article 12 (2) of the Organic Law of Georgia "On the Constitutional Court", the President of the Constitutional Court shall, once a year, submit information on constitutional legality in Georgia to the President of Georgia, the Parliament of Georgia and the Supreme Court of Georgia. The present document provides a summary of the activities of the Constitutional Court throughout the year 2019: it includes novelties and changes introduce by case-law of the Constitutional Court, challenges occurred in the process of exercising constitutional court as well as actual directions of affirmation of constitutional legality, communication of which to the society will facilitate efficient protection of the supremacy of the Constitution.

Functioning of the Constitutional Court is limited by the Constitution of Georgia and the values envisaged therein. Hence, from the point of view of development of the case-law of the Court, constitutional amendments' entry into force marked an important moment. As a result of aforesaid amendments, a number of provisions establishing fundamental rights has

been formulated in a different manner, which might point to the necessity of changing the existing practice and reconsidering its analysis. In the light of these amendments, significance of this document increases, insofar as it reflects the standards established by the case-law of the Constitutional Court throughout the previous year, which might be interesting for potential complainants as well as for persons interested in the field and representatives of different branches of the government.

Among the novelties that took place last year, it is important to mention that a new website of the Constitutional Court started functioning. Judgments and the documents of the Constitutional Court are published on the website. According to the existing legislation, publication of the acts of the Constitutional Court on its website is related to important legal consequences. For example, a norm declared unconstitutional ceases to have legal force upon its publication of the website of the Court. It is a task of the Constitutional Court to make its website easily apprehensible so that every interested person can access acts of the Constitutional Court alongside other information.

The present document is comprised of 5 Chapters. Chapter I provides overview of the case-law of 2019. This part of the document addresses in details the requirement of the constitutional complaint/referral to be reasoned as well as the grounds for declaring them inadmissible and various problems occurring at the preliminary stage. Chapter I also includes information with respect to suspension of legal norms and/or respective parts thereof. Namely, general approaches towards suspension of a disputed legal norm as well as acts of last year related to suspension of norms are reviewed. This Chapter also includes brief summaries of the 2019 judgments and rulings related to norms overruling judgments of the Constitutional Court.

Chapter II of the document contains information with respect to international events held by the Constitutional Court during the last year. Chapter III relates to the main directions of strengthening constitutional legality in the country. Chapter IV addresses issues of reinforcement of judgments of the Constitutional Court as well as implementation of the constitutional standards set forth in the judgments.

Finally, Chapter V of this documents presents statistical data related to constitutional complaints registered within the Court in 2019, cases heard by the Court, adopted acts and other topical issues.

Given the contents of this document, it will be of practical importance not only for representatives of legislative and judicial branches, but will also assist the persons willing to bring a constitutional complaint before the Court, representatives of media, academia, non-

governmental organizations, students and other persons interested in the activities of the Constitutional Court.

1. Overview of the Jurisprudence of the Constitutional Court of Georgia

1.1. Court Acts Adopted at the Stage of Preliminary Session

According to the established case-law of the Constitutional Court, a constitutional complaint/referral is not admitted for consideration on merits if it does not meet formal and substantive requirements prescribed by the legislation, e.g.: it is submitted by a person without legal standing, is unsubstantiated, the Constitutional Court lacks jurisdiction over a disputed matter, subsidiarity requirement is not met, etc. The Court does not admit constitutional complaints/referrals that do not meet the mentioned requirements for consideration on merits at a preliminary session. This rule protects the Court from ill-founded and unsubstantiated complaints/referrals and ensures realization of effective constitutional control. It thus follows that informing the public, and particularly, potential complainants, on grounds for non-admission of constitutional complaints/referrals on merits is of great significance in order for them to comprehend and identify with clarity the reasons that render a constitutional complaint/referrals inadmissible.

1.1.1. The Reasoning Requirement of Constitutional Complaints/Referrals

One of the notable preconditions for admission of a constitutional complaint/referral for consideration on merits is the reasoning requirement of constitutional complaints, which consists of several criteria. Under Article 31 (2) of the Organic Law of Georgia "On the Constitutional Court of Georgia", a constitutional complaint shall be reasoned. A complainant has to present evidence, which, in their opinion, demonstrate that the complaint is well-founded.

Under the case-law of the Constitutional Court, in order for the claim to be reasoned, it should meet *inter alia* the following criteria: a) reasoning provided should relate to the content of the disputed norm; and b) it should be substantiated that the disputed legal norm falls within the scope of the constitutional provision, which the disputed norm is allegedly incompatible with.

a) The reasoning provided in the complaint is not in substantive correspondence with the disputed legal norm

One of the most important factors for considering a constitutional claim reasoned is whether or not the complainant understands the substance of the disputed provision correctly. The Constitutional Court can only review and assess the actual content of a normative act. Accordingly, it is essential for the complainant to perceive substance of the disputed provision correctly. Analysis of the case-law of the Constitutional Court demonstrates that complainants' incorrect perception of the content of disputed norms is a recurring issue. Specific constitutional complaints that were not admitted for consideration on merits precisely on the mentioned basis will be discussed below.

For instance, in the case of "Grigol Abuladze v. The Parliament of Georgia" (constitutional complaint №1417)[1] the claimant was disputing constitutionality of Articles 118 (4) and 118 (5) of the Law of Georgia "On Public Service". The disputed provisions were regulating relationships related to unlawful dismissal of an officer and provided that, besides reinstatement, an officer should have received missed official salary and class-based salary as well as length-of-service increment and rank salary. In addition, under the disputed provisions, if it was impossible to reinstate an officer to work, he/she should have been transferred to the reserve of officers, and, in addition to aforesaid financial compensation, should have received compensation in the full amount of the last official salary for six months.

The complainant argued that the payment of missed official salary and other compensations were dependent upon reinstatement of an official or his/her transfer to the reserve. Accordingly, it was argued that the disputed provisions deprived the claimant an opportunity to claim damages without demanding reinstatement. The claimant also pointed out that legal prerequisites for receiving missed official salary, reinstatement and transfer to the reserve unjustifiably delayed payment of damages to the unlawfully dismissed officer.

The Constitutional Court noted that the disputed provisions of the Law "On Public Service" granted unlawfully dismissed officers the right to demand reinstatement, receive missed official salary, class-based salary and compensation. However, disputed provisions did not relate to problems identified by the complainant. In particular, the disputed provisions

[1] Ruling of the Constitutional Court of Georgia №2/20/1417 dated 17 December 2019 in the case of "Grigol Abuladze v. The Parliament of Georgia".

did not regulate procedures as to the type or scope of the claim that an unlawfully dismissed official might have had, and neither did they specify rules and the timeframe for enforcement of the court's decision regarding invalidity of the act based on which an official had been dismissed. Moreover, disputed provisions did not contain any prohibitions with respect to claiming damages for unlawful dismissal independently. Accordingly, the Constitutional Court ruled that the complainant did not have a correct understanding of the content of the disputed provisions and did not find the claim admissible for consideration on merits as it was not reasoned.

In the case of "Davit Toradze and LLC 'Todardze and Partners' v. The Parliament of Georgia" (constitutional complaint №1393),[2] the complainant disputed norms of the Law of Georgia "On Funded Pensions", according to which the scheme of funded pensions was mandatory for all employees with respect to income received in form of salary. In addition, an employee was bound to join the pension scheme upon the receipt of the first salary. The complainant argued that the disputed provision was in breach of the right to property and freedom of entrepreneurship, given the fact that the pension scheme created the employee's and the employer's obligation to pay pension contributions.

The Constitutional Court noted that the disputed provisions envisaged the employee's obligation to join the pension scheme as well as respective timeframes, however they did not stipulate the employee's obligation to make any type of contribution. In the view of the Constitutional Court, the obligation to join the pension scheme did not itself imply imposition of any sort of financial burden. Accordingly, the argumentation presented by the complainant was applicable not to disputed provisions, but rather to those provisions of the Law "On Funded Pensions", which set forth the employee's/employer's obligation to pay contributions. Taking into account the foregoing, the Constitutional Court ruled that the constitutional complaint was not reasoned and found it inadmissible for consideration on merits.

b) It is not substantiated that the disputed rule falls within the ambit of the constitutional provision, which the disputed rule is allegedly incompatible with

[2] Ruling of the Constitutional Court of Georgia №2/14/1393 dated 24 October 2019 in the case of "Davit Toradze and LLC 'Toradze and Partners' v. The Parliament of Georgia".

Another important precondition for admission of a constitutional complaint/referral for consideration on merits is demonstrating the clear relation of a disputed provision to the fundamental right enshrined in the Constitution. Fundamental rights set forth in the Constitution significantly differ from each other from the point of view of their scope, grounds for interference within them and other features. For instance, the state has a broader margin of appreciation with regard to particular rights, whereas certain rights are of absolute nature and their restriction is impermissible under any circumstances. Such a constitutional order leads to the necessity of correct interpretation of the content and scope of every specific right. Correct interpretation of fundamental rights will become difficult in cases where restrictions to the right are not assessed with respect to the relevant constitutional provision.

In this regard, accurate demonstration of restrictions stemming from the disputed norm as well as identification of the respective constitutional provision by a complainant is of utmost importance. The case-law of the Constitutional Court demonstrates that complainants' incorrect perception of the content and the scope of a specific constitutional right remains a problem.

For instance, in the case of "LLC 'Epicenter' v. The Government of Georgia and the Parliament of Georgia" (constitutional complaint №1437),[3] the complainant disputed, *inter alia*, provisions of norms which prescribed, the requirements - frequency and fees applicable to periodic technical inspections, were to be determined by a normative act of the Government of Georgia. The complainant argued that, under the disputed provisions, the Government was given a possibility to set fees applicable to periodic technical inspections, which deprived parties to the relationship of the opportunity to reach a different agreement regarding a price of the service. In the view of the complainant, the said relationship was a civil law relationship and hence respective fees were to be determined not by the Government, but by the parties to this relationship. Accordingly, the complainant argued that the Government's interference within determination of the price of the service constituted a restriction to freedom of entrepreneurship and competition

The Constitutional Court ruled that determination of a price of the service by the Government limits the parties' free expression of will and their possibility to agree on a different price. The right of parties to determine the price of a given service is protected under the right to property. The Constitutional Court noted that restriction of business entities' right to property does not in itself constitute a restriction to freedom of

[3] Recording notice of the Constitutional Court of Georgia №1/10/1437 dated 7 November 2019 in the case of "'Epicenter Ltd.' v. The Government of Georgia and the Parliament of Georgia".

entrepreneurship. According to the Constitutional Court, the purpose of the freedom of entrepreneurship is not the protection of the right to property of business entities. In order to demonstrate restrictions to freedom of entrepreneurship, restrictions to the relationship outside the sphere protected under the right to property should have been shown. Besides the restrictions to the right to property, the complainant has not presented other argumentation that would have demonstrated restrictions to the freedom of entrepreneurship. Accordingly, the Constitutional Court ruled that there was to relation as to the content between the disputed provision and the right protected under Article 26 (4) of the Constitution of Georgia, and the claim was thus declared inadmissible in this regard.

In the case of "S. M. v. The Parliament of Georgia" (constitutional complaint №1354)[4] the complainant disputed constitutionality of the norm of Administrative Offences Code of Georgia, which established administrative liability for prostitution. The complainant argued that a person involved in prostitution could not address law enforcement bodies in case of violence against him/her given the threat of imposition of an administrative liability envisaged by the disputed provision. Accordingly, in the view of the complainant, the State did not comply with its positive obligation to protect a victim of violence, which constituted a breach of the right to dignity.

The Constitutional Court noted that within the scope of its positive obligations, the State has to take adequate measures to cease, prevent and investigate any crime committed against a person, regardless of whether or not he/she had committed an offence. The Constitutional Court pointed out that the complainant's argumentation amounted in principle to the request to discharge an offender from the liability by referring to the fact that he/she had been subjected to violence and was unable to refer to law enforcement bodies under the threat of imposition of liability for the committed offence. The Constitutional Court ruled that this claim of the complainant was not reasoned, given that they did not present a proper argumentation demonstrating that the right to dignity requires discharging an offender from liability. Accordingly, the Constitutional Court ruled that a relation of the disputed provision to the right to dignity content-wise was not demonstrated.

The case-law of the Constitutional Court also revealed the problem of reasoning the relation as to the content between the disputed provisions and the right to a fair trial protected under Article 31 of the Constitution of Georgia. Throughout the last year, complainants

[4] Recording notice of the Constitutional Court of Georgia №1/12/1354 dated 24 October 2019 in the case of "S.M. v. The Parliament of Georgia".

requested assessment of restrictions to material rights with respect to the right to a fair trial on several occasions, and their perception of the scope of the right to appeal was also incorrect.

b.a.) Challenging restrictions to material rights with respect to the right to a fair trial

According to the case-law of the Constitutional Court of Georgia, the right to a fair trial creates procedural guarantees for protecting rights or legal interests recognized by the Constitution or law before the court. Efficacy of the right to a fair trial does not suggest the Court's authority to create or broaden the scope of a material right, - it merely refers to the possibility of effective protection of rights that already exist. According to this definition, restriction of the right to a fair trial is at hand when a disputed provision restricts the possibility to protect rights/legal interests as recognized by the Constitution or law through the judiciary. However, if the disputed provision implies restriction and/or abolition of a material right or a legal interest, then restriction applies not to procedural mechanisms of the protection of the right, but to regulation of the material content of the right in itself, and it cannot be assessed with respect to the right to a fair trial.

For example, under provisions disputed in the case of "Tengiz Orjonikidze v. The Parliament of Georgia" (constitutional complaint №1382),[5] a person who had not previously referred to the court with an application regarding acknowledgement as a victim of political repression had the right to bring a respective application before the court within 1 year after entry into force of the 19 April 2011 amendments to the Law of Georgia "On the Acknowledgement of Citizens of Georgia as Victims of Political Repression and Social Protection of Repressed Persons". According to the argumentation presented in the constitutional complaint, the complainant regarded himself as a victim of political repression; and setting time limits for the possibility to refer to the court with the request to grant the said status prevented him from restoration of the violated right. Accordingly, the complainant argued that the disputed provision was in breach of the right to a fair trial as guaranteed under Article 31 of the Constitution of Georgia.

The Constitutional Court of Georgia noted that under the Georgian legislation, referring to the court was the only way to be acknowledged as a victim of political repression. Thus, this procedure related not to the assessment of the legality of a decision taken by a specific organ, but to the decision on granting this status as such. Accordingly, the disputed

[5] Ruling of the Constitutional Court of Georgia N2/19/1382 dated 17 December 2019 in the case of "Tengiz Orjonikidze v. The Parliament of Georgia".

provision, which merely established the timeframe for referring to the court, automatically imposed time limits for the possibility to request acknowledgement as a victim of repression, which in itself constitutes a restriction to the material right. Given the foregoing, the Constitutional Court ruled that limiting the possibility to request acknowledgement as a victim of political repression for 1 year represented a regulation of the material right rather than a procedural rule. Hence, there was no restriction to the procedural right to refer to the court in order to protect the right/legal interest, and the claim was deemed to be unreasoned in this regard.

b.b.) Challenging norms that do not restrict the right to access the court

According to the Constitutional Court, the right to a fair trial, first and foremost, implies the possibility to appeal any restrictive decisions (acts) of the government before the court. At the same time, the Constitution not only recognizes and protects human rights and liberties, but also defines their content and scope. Accordingly, constitutional rights exist even if they are not recognized by law, and they continue to exist even if the law does not specify the grounds for exercising such rights. The Constitutional Court has on several occasions ruled that the content and scope of the right to a fair trial are established by the Constitution itself, and its exercise is possible even if a legislative act does not confirm the existence of the right to appeal. Nevertheless, complainants frequently argue that if legislative acts do not explicitly refer to the possibility to appeal a decision, they are deprived of the possibility to exercise this right and thus the violation of the right to a fair trial is at hand.

For example, in the case of "Zviad Devdariani v. The Parliament of Georgia" (constitutional complaint №1378)[6] the complainant disputed constitutionality of Article 3 (2) of the General Administrative Code of Georgia. Under the disputed provision, the Administrative Code does not apply to the Public Defender of Georgia. The complainant argued that the disputed norm deprived them of the possibility to appeal recommendations issued by the Public Defender before the court.

The Constitutional Court noted that Article 31 (1) of the Constitution of Georgia guarantees the possibility to appeal before the court regardless of whether or not there is a direct legislative provision regarding the possibility to appeal decisions of state organs that

[6] Ruling of the Constitutional Court of Georgia №2/10/1378 dated 28 May 2019 in the case of "Zviad Devdariani v. The Parliament of Georgia".

restrict rights. At the same time, the Constitutional Court referred to Article 59 of the Constitution, according to which common courts have the competence to administer justice, which, among others, includes judicial review of the legality of rights-restricting acts/actions. Taking into account the aforesaid, the Constitutional Court ruled that, in order to demonstrate a restriction to the right to a fair trial, the complainant had to indicate a legislative act, which deprived them of the possibility to appeal the rights-restricting decision (act) that applied to him or her. In the absence of such an act, a person was entitled to refer to the court in order to protect his/her rights/legal interests based on Article 31 (1) of the Constitution of Georgia.

The Constitutional Court noted that, under the disputed provision, the General Administrative Code did not regulate activities of the Public Defender of Georgia. At the same time, the norm did not have any other content, especially one that would prohibit exercise of specific legal actions. In the view of the Constitutional Court, the fact that activities of the Public Defender of Georgia were not subjected to the rules and appeal procedures contained in the General Administrative Code of Georgia did not automatically result in restriction to the right to a fair trial. Taking into account all of the aforesaid, the Constitutional Court ruled that the disputed provision did not limit the possibility to appeal acts adopted by the Public Defender before the court and, in this regard, there was no relation content-wise between the disputed provision and the right to a fair trial as guaranteed under Article 31 (1) of the Constitution of Georgia.

1.1.2. Submission of Constitutional Complaint by a Person with Standing

Under Article 31^3 (1) (b) of the Organic Law of Georgia "On the Constitutional Court", a constitutional complaint shall be submitted by a person who has a legal standing to do so. The same law enumerates subjects to constitutional proceedings with respect to competencies of the Court. In 2019, the case-law of the Constitutional Court demonstrated that the correct identification of subjects entitled to submit a constitutional complaint is related to several problematic issues. These issues are addressed in detail herein.

a) The disputed provision does not apply to a person

In order for a natural or legal person to have standing for bringing a constitutional complaint, he/she has to substantiate that the disputed provision applies to them or there is an actual probability that the provision will apply. Hypothetical assumption alone that the disputed norm will someday apply to a complainant is not sufficient for being acknowledged as a person with standing.

In the case of "Eduard Marikashvili and 'Georgian Democracy Initiative, Non-commercial Legal Entity' v. The Parliament of Georgia",[7] the complainant – a natural person – disputed constitutionality of the provision of the Law of Georgia "On Funded Pensions", which prescribed the amount of contributions to be made by the State to the benefit of an individual participating in the pension scheme. Under the disputed provision, the State's contributions were determined based on the amount of the employee's taxable salary was respectively 1 or 2 percent, or in case of existence of a specified amount of salary/income, the State was not bound to make any contributions.

The complainant argued that, upon reaching the retirement age, they might be among the socially disadvantaged and might receive the pension equal or less than those that are well-off, which constitutes equal treatment of persons who are not substantially equal.

The Constitutional Court noted that the complainant has not presented evidence that would demonstrate grounds for reasonable suspicion that they might be under social hardship upon reaching the retirement age. According to the Court, there are no grounds for assuming that after 37 years, when the complainant reaches the retirement age, they will be in the category of comparators, whose right to equality is allegedly breached according to the complaint. Hence, in the context of such a hypothetical threat of violation of the right, the Court deemed that the complainant lacked legal standing to present a constitutional claim.

In the case of "Fatman Kvaratskhelia and Kakha Ekhvaia v. The Parliament of Georgia",[8] complainants disputed constitutionality of the regulation, which prescribed that a water and air means of transportation owned by a natural person, or another natural person may not be used as security for a claim proceeding from a loan/credit agreement to be granted/granted to the natural person.

The Constitutional Court emphasized the fact that the complainants have not presented any evidence demonstrating that they possessed either water or air means of

[7] Recording notice of the Constitutional Court of Georgia №2/13/1384 dated 24 October 2019 in the case of "Eduard Marikashvili and 'Georgian Democracy Initiative, Non-commercial Legal Entity' v. the Parliament of Georgia".

[8] Recording notice of the Constitutional Court of Georgia №1/7/1380 dated 2 August 2019 in the case of "Fatman Kvaratskhelia and Kakha Ekhvaia v. The Parliament of Georgia".

transportation and they were deprived of the possibility to use the said property as a security. In addition, no evidence was presented to demonstrate that the complainants were going to purchase the said property in the foreseeable future, or to demonstrate existence of a person who possessed this property and was willing to consent to its use as a security. Accordingly, the Court ruled that the disputed norm did not apply to the complainants and thus lacked the legal standing.

In the case of "LLC 'Takveri' v. The Parliament of Georgia",[9] the complainant disputed constitutionality of the norm establishing fees for recognizing the right to property on the land in possession (use) by a legal entity under private law within the legally prescribed time. The Constitutional Court noted that in order for the said provision to have effects for a given legal entity, it was necessary for the latter to demonstrate the legal grounds for recognition of the right to property over the land in its lawful possession (use). The complainant has not presented a document certifying recognition of the right to property to the relevant administrative organ within the timeframe prescribed by law. Accordingly, the disputed norm was not applied to it. In addition, time limits applied to the disputed provision, and thus all the resources for application of this norm to the complainant had been exhausted. Accordingly, the Constitutional Court referred to non-applicability of the disputed provision to the complainant and ruled that the latter did not have the legal standing to present such a constitutional complaint.

In the case of "Grigol Abuladze v. The Parliament of Georgia",[10] the complainant disputed constitutionality of the norm of the Law of Georgia "On Public Service" which prescribed that a female officer may not have been dismissed during the period of pregnancy or the period of raising a child aged up to 3 years old due to the reorganization and/or merger of the public institution with another public institution, or due to the results of the officer's evaluation. The complainant argued that application of the said regulation only to female officers was in breach of the right to equality.

Invoking the analysis of legislative norms, the Constitutional Court ruled that the complainant, as an officer employed in border police, was subject to special legislation, which regulated the disputed issue. Accordingly, the Court found that the complainant was outside the scope of application of the Law of Georgia "On Public Service" and the *locus standi* requirement was not met.

[9] Ruling of the Constitutional Court of Georgia №2/11/1390 dated 28 May 2019 in the case of "LLC 'Takveri' v. The Parliament of Georgia"

[10] Ruling of the Constitutional Court of Georgia №1/8/1338 dated 2 August 2019 in the case of "Grigol Abuladze v. The Parliament of Georgia".

b) Actio popularis

Natural and legal persons are entitled to bring the complaint only in case, if they believe, that their own rights and freedoms have been violated or may be violated.[11] Organic Law of Georgia "On the Constitutional Court of Georgia" does not entitle natural and legal persons with the right to refer to the Court with *actio popularis*. Only special actors can bring a claim before the Court in order to protect the rights of others.[12]

In the case of "LLC 'KB Logistics', LLC 'Fortuna', LLC 'Chirina' LLC 'Poultry Georgi', LLC 'Kumisi XXI', and LLC 'Nutrimax' v. The Minister of Finance of Georgia",[13] the complainants disputed a regulation which prohibited vehicle drivers from delivering grains specified in the disputed regulation inside or outside the Georgian customs territory. The complainants argued that the disputed provision was in breach of freedom of entrepreneurship.

The Constitutional Court of Georgia emphasized the fact that part of the complainants was engaged into import/export of the said product, whereas the remaining part was engaged in various type of activities, for which they used products described in the disputed norm. Accordingly, none of the complainants were importing/exporting respective products within the scope of a service contract while using a vehicle, and none of them was a driver of a vehicle. Thus, complainants were referring to possible violation of the rights of others, which made the claim "*actio popularis*".

Similar circumstances arose in the case of "Fatman Kvaratskhelia and Kakha Ekhvaia v. The Parliament of Georgia",[14] where the complainants disputed constitutionality of provisions of the Civil Code of Georgia, which granted commercial banks, microfinance organizations, non-bank depository institutionს, credit unions, and loan-holding entities the right to request that immovable property and means of transportation in the ownership of a natural person be used as a security for a claim proceeding from a loan/credit agreement to be

[11] Organic Law of Georgia "On the Constitutional Court", Article 39, clause 1 (a).
[12] See e.g. Organic Law of Georgia "On the Constitutional Court", Article 39, clause 1 (b).
[13] Ruling of the Constitutional Court of Georgia №1/5/1402 dated 5 July 2019 in the case of "LLC 'KB Logistics', LLC 'Fortuna', LLC 'Chirina' LLC 'Poultry Georgia', LLC 'Kumisi XXI', and LLC 'Nutrimax' v. The Minister of Finance of Georgia".
[14] Recording notice of the Constitutional Court of Georgia №1/7/1380 dated 2 August 2019 in the case of "Fatman Kvaratskhelia and Kakha Ekhvaia v. The Parliament of Goeriga".

granted/granted to the natural person. Complainants argued that the disputed provisions were putting the aforesaid subjects in the privileged position as compared to the loan-holding natural persons and was therefore in breach of the right to equality.

The Constitutional Court noted that the disputed provisions granter aforesaid subjects the possibility to use pledge and mortgage on immovable property and means of transportation in the ownership of a natural person as a security for a claim proceeding from a loan or credit agreement granted to this person. Complainants were intending to take a loan from a natural person, as opposed to granting a loan as a natural person. Accordingly, they were referring not to their own rights, but rather to violation of others' rights, for which they lacked legal standing.

In the case of "LLC 'Stereo+', Luca Severini, Lasha Zilpimiani, Robert Khakhalevi and Davit Zilpimiani v. The Parliament of Georgia and the Minister of Justice of Georgia",[15] the complainants requested to declare provisions regulating the ways of conducting enforcement proceedings over shares of broadcasting companies unconstitutional. They argued that legislation did not provide any guarantees during enforcement proceedings and was in breach of the right of property of the complainant legal entity and its partners, as well as freedom of expression of "Stereo+" and televisions receiving its services.

The Constitutional Court noted that claim of the complainant Davit Zilpimiani was related not to unconstitutionality of losing property rights over the share of "Stereo+", but rather – to legal effects that enforced alienation had on the legal entity as such as well as on other partners. He did not argue that losing the right to property over his share in accordance with the rules contained in the disputed norm was unconstitutional. Accordingly, complainant Davit Zilpimiani was arguing that rights of others have allegedly been violated and, in this regard, lacked legal standing.

Based on identical grounds, the Constitutional Court deemed that complainants in the case of "'Association of Veterans, Persons with Disabilities, National Minorities, Refugees (IDPs) - Gushagi, Non-commercial Legal Entity' v. The Government of Georgia"[16] did not have legal standing to bring a constitutional complaint in question. The complainant disputed constitutionality of the rule established by the ordinance of the Government, based

[15] Recording of the Constitutional Court №2/1/1311 dated 7 February 2019 in the case of "LLC 'Stereo+', Luca Severini, Lasha Zilpimiani, Robert Khakhalevi and Davit Zilpimiani v. The Parliament of Georgia and the Minister of Justice of Georgia".

[16] Ruling of the Constitutional Court of Georgia №2/6/1381 dated 31 March 2019 in the case of "'Association of Veterans, Persons with Disabilities, National Minorities, Refugees (IDPs) - Gushagi, Non-commercial Legal Entity' v. The Government of Georgia".

on which, in their view, the circle of natural persons receiving certain social benefits had been narrowed. Accordingly, the complainant – a legal entity – argued for the protection of rights of natural persons, which were deprived of the possibility to receive specific social benefits. Again, in this case, "*actio popularis*" complaint was at hand and, therefore, it was declared inadmissible for consideration on merits.

c) Complainant's right to apply to the Court within the scope of appropriate competence

According to the legislation on constitutional proceedings, natural and legal persons are entitled to challenge a normative act only with respect to constitutional rights and freedoms guaranteed under Chapter 2 of the Constitution. However, complainants often bring a case before the Constitutional Court, disputing constitutionality of the norms with respect to the provisions of the Constitution, which are not encompassed in Chapter 2.

In this regard, it should be pointed out that in 2019, the Constitutional Court noted on several occasions that natural and legal persons do not have a legal standing to bring constitutional claims regarding incompatibility with constitutional provisions that are not within Chapter 2 of the Constitution.[17]

1.1.3. Jurisdiction of the Constitutional Court of Georgia

Under Article 31^3 (1) (c) of the Organic Law of Georgia "On the Constitutional Court of Georgia", constitutional complaint or referral will not be admitted for consideration, if none of the raised issues fall within the jurisdiction of the Constitutional Court. Article 60 (4) of the Constitution on Georgia and Article 19 of the Organic Law of Georgia "On the Constitutional Court" list subjects within the competence of the Constitutional Court. Last year, the Constitutional Court faced the necessity to define its competence on several occasions. Constitutional complaints submitted in breach of the rules on jurisdiction were

[17] Ruling of the Constitutional Court of Georgia №2/1/1322 dated 7 February 2019 in the case of "Nikoloz Lomidze v. The Parliament of Georgia"; Ruling of the Constitutional Court of Georgia №2/6/1381 dated 31 March 2019 in the case of "'Association of Veterans, Persons with Disabilities, National Minorities, Refugees (IDPs) - Gushagi, Non-commercial Legal Entity' v. The Government of Georgia"; Recording notice of the Constitutional Court of Georgia №1/4/1350 dated 24 May 2019 in the case of "Levan Baramia v. The Parliament of Georgia"; Recording notice of the Constitutional Court of Georgia №2/9/1351 dated 28 May 2019 in the case of "Tsiala Pertia v. The Parliament of Georgia"; Recording notice of the Constitutional Court of Georgia №2/8/1317 dated 28 May 2019 in the case of "Givi Kapanadze v. The Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia".

predominantly related to those cases, where claimants had an incorrect perception of the competence of the Court, as a negative legislator. In some cases, disputed acts were not normative in nature or complainants did not dispute constitutionality of a normative act that was in force.

a) Constitutional Court, as a negative legislator

According to the case-law of the Constitutional Court, "[t]he Court is only authorized to invalidate a disputed norm fully and/or its part/normative content, however it cannot establish a new order, broaden the scope of the disputed provision etc. Hence, judgments of the Constitutional Court can only declare unconstitutional and invalidate certain normative content of the disputed norm".[18]

The Constitutional Court of Georgia, by nature, "exercises functions of a negative legislator, affects the process of law-making – when a constitutional complaint is upheld, norm(s) regulating certain relationships cease to have a legal effect. Moreover, oftentimes, the legislature has to enact new norms that are in compliance with the Constitution, however, it should be emphasized that the Constitutional Court does not serve the purpose of establishing (creating) a new order in the county, - rather, it ensures efficacy of the Constitution and promotes adherence to it both by the State and the people".[19] "The Constitutional Court only has the authority to invalidate legal effects of unconstitutional regulations and rules, and to deprive them of the resource to violate human rights and liberties. Establishing new, even constitutional rules instead invalidated legal norms is beyond the mandate of the Constitutional Court".[20]

In the case of "Mels Bdoyan v. The Parliament of Georgia" (constitutional complaint №1308),[21] the complainant disputed constitutionality of Article 206 (1) (v) of the Tax Code of Georgia with respect to Article 11 (1) (right to equality). The disputed provision prescribed tax exemption for a parcel of land owned by a person who has the status of a person

[18] Judgment of the Constitutional Court of Georgia №3/6/642 dated 10 November 2017 in the case of "Citizen of Georgia Lali Lazarashvili v. The Parliament of Georgia", para. II-22.
[19] Judgment of the Constitutional Court of Georgia №1/466 dated 28 June 2010 in the case of "Public Defender of Georgia v. The Parliament of Georgia", para. II-18.
[20] Judgment of the Constitutional Court of Georgia №3/6/642 dated 10 November 2017 in the case of "Citizen of Georgia Lali Lazarashvili v. The Parliament of Georgia", para. II-20.
[21] Ruling of the Constitutional Court of Georgia 2019 №2/4/1308 dated 21 March 2019 in the case of "Mels Bdoyan v. The Parliament of Georgia".

permanently residing in a high-mountain settlement if the parcel of land is located in the same high-mountain settlement. The complainant argued that the said regulation envisaged discriminatory differentiation, given that it provided relief only for persons who owned a parcel of land in a high-mountain settlement where they permanently resided. At the same time, the complainant requested to declare the disputed norm unconstitutional in such a way that would provide tax exemption for such parcels of land that were located on the territory of other high-mountain settlements.

The Constitutional Court pointed out that the complainant's request concerned not invalidation of a specific content of the disputed norm, but the creation of a new normative content. The complainant requested broadening the scope of the disputed provision and introduction of a tax relief. The Constitutional Court ruled that such a request amounted to requesting positive introduction of the provision, which is part of the law-making process rather than an issue falling within the scope of negative legislation. Accordingly, the Court ruled that the disputed issue did not fall within its jurisdiction and found constitutional complaint №1308 inadmissible for consideration on merits.

b) Constitutionality of acts that are not normative in nature

Under Article 60 (4) (a) of the Constitution of Georgia, it is the competence of the Constitutional Court to review the constitutionality of a normative act with respect to the fundamental human rights enshrined in Chapter 2 of the Constitution on the basis of a complaint submitted by a person. At the same time, Article 39 (1) (a) of the Organic Law of Georgia "On the Constitutional Court of Georgia" provides that natural and legal persons have the right to lodge a constitutional claim with the Constitutional Court on the constitutionality of a normative act or its individual provisions, if they believe that their rights and freedoms recognized under Chapter 2 of the Constitution of Georgia have been violated or may be directly violated.

For the purposes of constitutional procedure, the content of a "normative act" is not limited by the definition provided in the Organic Law of Georgia "On Normative Acts". According to the Constitutional Court, when identifying normative nature of the act, addressees and the subject of regulation of the act shall be taken into account. Namely, "a normative act claims to be universal, it addresses an indefinite group of persons and maintains its nature even when the kind of such a group is identified. An individual legal act concerns a specific person as well as a group of people defined or definable upon its

adoption. A normative act is abstract by nature and is related not to a specific occurrence or event, but preserves its juridical significance in a number of analogous cases. An indefinite amount of specific cases can result from a normative act. This is what points to the fact that a normative act, by nature, can be applied multiple times. Thus, a normative act, as a general rule of conduct, is directed towards an indefinite amount of persons participating in relations the amount of which is not defined upon its adoption. As opposed to the normative act, an individual administrative act is characterized by specificity of its content. It concerns specific relations (events).[22]

Last year, the Constitutional Court adopted a ruling regarding the case of "Otar Jikia v. The Government of Georgia" (constitutional complaint №1339)[23] based precisely on these grounds. The complainant disputed constitutionality of Section (1) (y) of the Decision №37/10 of 18 May 1999 of the Minister of State's National Commission on the Use and Protection of the Georgian Land regarding "Allocation of Areas to Organizations and Enterprises for Non-agricultural Purposes". The Constitutional Court ruled that the disputed acted could not have been deemed a normative act for the purposes of constitutional proceedings. Accordingly, the Court found the complaint inadmissible for consideration on merits.

c) Normative act which is in force

According to the case-law of the Constitutional Court, the Court has the authority to assess risks of violation of a constitutional right only where a normative act restricting rights is in force. Thus, the complainant has to indicate existence of the normative act, which, in their view, is unconstitutional.

In the case of "Remzi Sharadze v. The Minister of Justice of Georgia" (constitutional complaint №1340),[24] the complainant was disputing constitutionality of Articles 2 (b), 5, and 2 (6) of the Annex 1 to the Ordinance №21 of 31 January 2011 of the Minister of Justice of Georgia regarding "Adoption of Forms, Rules and Procedure for Conduction of Compulsory

[22] Ruling of the Constitutional Court of Georgia 1/7/436 dated 9 November 2007 in the case of "LLC 'Caucasus Online' v. Georgian National Communications Commission", para. II-5.
[23] Ruling of the Constitutional Court of Georgia №2/3/1339 dated 7 March 2019 in the case of "Otar Jikia v. The Government of Georgia".
[24] Ruling of the Constitutional Court of Georgia №1/3/1340 dated 29 March 2019 in the case of "Remzi Sharadze v. The Parliament of Georgia and the Minister of Justice of Georgia".

Actions", as well as Articles 6 (2), 8 (1) and 8 (6) of Annex 2 to the same Ordinance with respect to Article 19 (2) and 19 (3) of the Constitution of Georgia.

By the time of registration (submission) of the constitutional complaint in the Constitutional Court (13 August 2018), norms disputed by the complainant were not operating anymore, i.e. there was no normative act having legal effects. Accordingly, in this regard, the constitutional complaint was declared inadmissible for its consideration on merits.

1.1.4. All the Issues raised in the Constitutional Complaint or Referral are already decided by the Constitutional Court

Under Article 31^3 (d) of the Organic Law of Georgia "On the Constitutional Court of Georgia", a constitutional complaint or referral will not be admitted for consideration on merits, if "all the issues raised therein are already decided by the Constitutional Court except for the cases provided in Article 21^1 of the Organic Law of Georgia on the Constitutional Court of Georgia".

This legislative provision serves the goal of cost-effectiveness of litigation and authorizes the Constitutional Court not to consider those issues, which have already been decided once. At the same time, the above cited provision allows for reconsideration of the case-law of the Court in the case envisaged under Article 21^1 of the Organic Law of Georgia "On the Constitutional Court of Georgia", - when the Board of the Constitutional Court or a member of the Board decides, that their position with regard to the pending case differs from the legal position provided in the previously adopted judgment (judgments) of the Court, the case can be referred to the Plenum of the Constitutional Court.

In the case of "LLC 'Takveri' v. The Parliament of Georgia (constitutional complaint №1390),[25] the complainant was disputing, *inter alia*, constitutionality of Article 7^4 of the Law of Georgia "On Recognition of the Right to Property on Parcels of Land under Possession (use) of Natural and Legal Persons under Private Law" with respect to Article 11 (1) of the Constitution of Georgia. The complainant argued that, under the disputed provision, after 1 January 2012 legal entities under private law were losing the right to recognition of

[25] Ruling of the Constitutional Court of Georgia №2/11/1390 dated 28 May 2019 in the case of "LLC 'Takveri' v. The Parliament of Georgia".

property over the land in their possession (use). The same regulation was not applicable to natural persons, which, in the view of the complainant, was in breach of the right to equality.

The Constitutional Court deemed that all the problematic issues identified in the constitutional complaint with respect to the disputed provision had already been assessed in the judgment №2/3/522,553 of 27 December 2013 in the case of "GP 'Grisha Ashordia' v. The Parliament of Georgia". With the said decision, the Constitutional Court deemed the disputed norm compatible with the right to equality. At the same time, while considering constitutional complaint №1390, the Constitutional Court shared its legal view expressed in the judgment №2/3/522,553 of 27 December 2013 and noted that under Article 21^1 of the Organic Law of Georgia "On the Constitutional Court of Georgia", there were no grounds for referring the case to the Plenum. Accordingly, in this regard, the constitutional complaint was deemed inadmissible for consideration on merits.

In the case of "Gevorg Babayan v. The Parliament of Georgia" (constitutional complaint №1287),[26] the complainant disputed, *inter alia*, constitutionality of the normative content of Article 426 (4) of the Civil Procedure Code of Georgia, according to which an action for retrial may not be filed on grounds prescribed by Article 423 (a)-(c) of the Code after five years have elapsed after the decision entered into force with respect to disputes arising from civil and labor relations envisaged under Article 11 (1) (a) of the Civil Procedure Code of Georgia. The complainant argued that the disputed normative content was in breach of the right to a fair trial protected under the Constitution of Georgia.

According to the Constitutional Court of Georgia, the issue of constitutionality of the disputed norm had already been decided by virtue of the judgment №1/3/161 of 30 April 2003 in the case of "Citizens of Georgia Olga Sumbatashvili and Igor Khaprov v. The Parliament of Georgia". In the said judgment, the Constitutional Court addressed the content of Article 426 (4) of the Civil Procedure Code concerning civil cases, including disputes arising from civil and labor relationships and concluded that with respect to civil law relationships, Article 426 (4) of the Civil Procedure Code of Georgia was not incompatible with the right to a fair trial. At the same time, the Constitutional Court shared the legal view expressed in judgment №1/3/161 of 30 April 2003. Taking into account the foregoing, constitutional complaint №1287 was not admitted for consideration on merits in this regard.

[26] Recording notice of the Constitutional Court of Georgia №1/8/1287 dated 10 October 2019 in the case of "Gevorg Babayan v. The Parliament of Georgia".

In the case of "Vasil Saganelidze v. The Parliament of Georgia" (constitutional complaint №1237),[27] the complainant disputed, *inter alia*, constitutionality of Article 114 (10) of the Criminal Procedure Code of Georgia with respect to Article 31 (1) of the Constitution of Georgia. Under the disputed provision, the Defense could not attend the process of interrogation of a witness before a magistrate judge.

According to the Constitutional Court, the issue of constitutionality of the disputed provision had already been examined in the judgment №2/13/1234,1235 of 14 December 2018 on the case of "Citizens of Georgia – Roin Mikeladze and Giorgi Burjanadze v. The Parliament of Georgia". It his case, the Court assessed constitutionality of regulations of 20 February 1998 Criminal Procedure Code of Georgia, which excluded the possibility for the Defense to attend the process of interrogation of the witness in investigative organs as well as the possibility to conduct cross-examination. The Constitutional Court ruled that the disputed provision did not violate the right to a fair trial. Accordingly, the issue identified in constitutional complaint №1237 had already been decided by the Constitutional Court. At the same time, the Court shared the legal point of view expressed in the judgment №2/13/1234,1235 of 14 December 2018, and, as a result, declared this part of the constitutional complaint inadmissible for consideration on merits.

In the case of "Davit Zilpimiani v. The Parliament of Georgia" (constitutional complaint №1366),[28] the complainant disputed, *inter alia*, constitutionality of Article 408 (3) of the Civil Procedue Code of Georgia with respect to the right to a fair trial guaranteed under Article 31 (1) of the Constitution. The disputed provision granted the court of cassation a discretionary power to adopt a judgment without conducting an oral hearing on the case.

According to the Constitutional Court of Georgia, the Court had already examined constitutionality of the disputed provision. In particular, the Constitutional Court assessed constitutionality of Article 408 (3) of the Civil Procedure Code of Georgia in its judgment №2/6/205,232 of 3 July 2003 and deemed it compatible with the Constitution. Accordingly, the issue identified in constitutional complaint №1366 had already been decided by the Constitutional Court. At the same time, the Court upheld its views expressed in the judgment №2/6/205,232 of 3 July 2003. Thus, in this regard, constitutional complaint №1366 was declared inadmissible for consideration on merits.

[27] Ruling of the Constitutional Court of Georgia №2/12/1237 dated 24 October 2019 in the case of "Vasil Saganelidze v. The Parliament of Georgia".
[28] Ruling of the Constitutional Court of Georgia №1/4/1366 dated 7 November 2019 in the case of "Davit Zilfinian v. The Parliament of Georgia".

1.2. Suspension of the norm

Article 25 (5) of the Organic Law of Georgia "On the Constitutional Court of Georgia" gives the Court an authority to suspend operation of the disputed provision until adoption of the final judgment in cases where it considers that operation of a norm may entail irreparable consequences to one of the parties. Suspension of the operation of a norm is a crucial preventive mechanism for the protection of human rights and public interests. In certain cases, there might be such a threat of violation of complainant's fundamental rights of other interests that cannot be repaired even after declaration of the norm unconstitutional. Accordingly, suspension of the operation of a disputed norm is often the only effective way for the protection of human rights and other significant interests.

At the same time, suspension of the operation of a disputed provision, as a rule, affects rights of third parties and important public interests. Hence, the Constitutional Court invokes the said mechanism only in exceptional cases, where certain prerequisites are met cumulatively.

According to standards established by the case-law of the Constitutional Court of Georgia, operation of a disputed norm is suspended if (a) there is a threat of an irreparable to the interests of a party; (b) avoiding irreparable results might be possible through suspension of the operation of a norm; and (c) suspension of the operation of the disputed norm will not create a risk of unjust restriction of third parties' rights and/or public interests. In 2019, the Constitutional Court of Georgia used the mechanism of suspension of norms with respect to two cases.

LLC "Stereo+", Luca Severini, Lasha Zilpimiani, Robert Khakhalevi v. The Parliament of Georgia And The Minister of Justice of Georgia

In the case of "LLC "Stereo+", Luca Severini, Lasha Zilpimiani, Robert Khakhalevi v. The Parliament of Georgia and The Minister of Justice of Georgia" (constitutional complaint №1311),[29] complainants disputed rules regarding acquisition of ownership with respect to property purchased on compulsory auction. Under the disputed provisions, in case of compulsory alienation of shares of a person holing license/authorized in the field of

[29] Recording of the Constitutional Court of Georgia №2/1/1311 dated 17 February 2019 in the case of "LLC 'Stereo+', Luca Severini, Lasha Zilpimiani, Robert Khakhalevi v. The Parliament of Georgia and the Minister of Justice of Georgia".

broadcasting, any person was able to purchase said shares, including companies registered in the off-shore zone. At the same time, under the Georgian legislation, possession of said shares by an off-shore company resulted in invalidation of the license/authorization held by the person licensed/authorized in the field of broadcasting. In addition, under the disputed provisions, alienation of shares of entities authorized in the field of electronic communications was permitted without prior notification of the Georgian National Communications Commission. As a result, an authorized person might have involuntarily obtained significant market power over the relevant segment of the service market, which, under Georgian legislation, would have resulted on imposition of specific obligations in the field of electronic communications.

The Constitutional Court of Georgia noted that there was no threat of revocation of authorization and/or other irreparable results even in cases of non-compliance with obligations in the field of electronic communications. Accordingly, the Court did not grant the complainant's motion regarding suspension of the normative content of the disputed provision under which participation in the auction on compulsory alienation of shares of a person authorized in the field of electronic communications without prior notification and consent of the Commission,

The Constitutional Court noted that an off-shore company's direct or indirect possession of shares of a person holding license/authorized in the field of broadcasting was incompatible with the Georgian legislation and consequently resulted in revocation of the license/authorization as a form of sanction. In this case, a company operating in the field of broadcasting would have lost the right to operate, which might have caused significant economic damage to the complainant and obstructed the possibility of dissemination of information by LLC "Stereo+".

In addition, the Constitutional Court noted that, in case of declaration of disputed norms unconstitutional, Georgian legislation envisaged no viable mechanisms for overruling a decision regarding revocation of the broadcaster's license. Accordingly, the Court ruled that operation of the disputed provisions might have resulted in irreversible violation of the complainant's right to property, which could not have been repaired even in case of declaring the norms unconstitutional. In addition, the legislation did not seem to establish any other alternative mechanisms, through which the complainant could have avoided this threat.

The Constitutional Court observed that the suspension of the operation of the disputed provisions might have resulted in restrictions to third parties' interest, - namely the interest to satisfy claims of the creditors of partners of a company holding license/authorized to

broadcast, *inter alia,* through alienation of the said company's shares on a compulsory auction to persons registered in the off-shore zone. At the same time, the said interest would have been limited only temporarily – until adoption of the final judgment or revision of the decision regarding suspension of the operation of disputed norms; at the same time, the said interest was partial and applied to alienation of shares of persons holding the license/authorized in the field of broadcasting to persons registered in off-shore zones. Accordingly, the Constitutional Court ruled that temporary and partial limitation of third parties' interest could not outweigh the complainant's interest to protect its right to property and freedom of expression from an irreparable damage. In the light of the foregoing, the Constitutional Court of Georgia granted the complainant's motion regarding the suspension of the operation of a disputed norm.

Nana Sepashvili and Ia Rekhviashvili v. The Parliament of Georgia and the Minister of Justice of Georgia"

In the case of "Nana Sepashvili and Ia Rekhviashvili v. The Parliament of Georgia and the Minister of Justice of Georgia" (constitutional complaint 1404),[30] the complainants disputed, *inter alia*, rules regulating issuance of the ID cards, which did not provide the possibility for ID cards to be issued/received non-electronically, without electronic information carriers (so-called "chips").

The complainants argued that ID cards containing chips were means for the total control of persons and were related to biblical prophecy regarding the apocalypse. Accordingly, they refused to receive such a document based on their belief.

The Constitutional Court noted that an ID card of citizens of Georgia represents a way of identifying a person, - confirming his or her citizenship, identity and the place of residence. Accordingly, persons who, based on their religious beliefs, refused to obtain an ID card with an electronic information carrier were deprived of the opportunity to participate, or were facing obstacles during their participation in a wide spectrum of relationships, which required person's identification. For instance, restrictions existed to such persons' right to vote, to receive medical treatment, an opportunity to be employed, receive education, have relations with government bodies, use a number of means of transportation, to conclude any significant agreement, enter into relationship with banks and financial entities, etc. Taking

[30] Recording notice of the Constitutional Court of Georgia №1/12/1404 dated 26 December 2019 in the case of Nana Sepashvili and Ia Rekhviashvili v. The Parliament of Georgia and the Minister of Justice of Georgia"

the foregoing into account, the Constitutional Court ruled that disputed provisions created a risk of irreparable damage to complainants, which could not have been repaired even in case of declaring disputed norms unconstitutional.

The Constitutional Court of Georgia noted that suspension of the operation of disputed norms would be an effective mechanism for eliminating irreparable results for the complainant, given that there would be no grounds for refusing issuance of an ID card without an electronic information carrier to a person who, due to their beliefs, refused to accept a document containing an electronic information carrier. At the same time, issuance of ID cards of citizens of Georgia without an electronic information carrier was envisaged by the Georgian legislation, and the State had relevant institutional and administrative resources for issuing such a document.

In addition, the Constitutional Court of Georgia noted that the respondent has not presented solid arguments to demonstrate that the risk of falsification of ID cards would not have been avoided in case of issuing ID cards without an electronic information carrier; neither did they demonstrate that there is no reasonable possibility to create an ID card without an electronic information carrier while at the same time preserving minimal safeguards against falsification. Thus, the Court did not share the respondent's view that suspension of operation of disputed provisions would have resulted restrictions of private and public interests balanced against the risk of irreparable damages to the complainants.

Taking into account the foregoing, the Constitutional Court of Georgia granted the motion of the complainants and, provisions until adoption of the final judgment, suspended operation of the normative content of the disputed provision, which excluded the possibility of issuing an ID card without an electronic information carrier to persons who, due to their beliefs, refused to be issued such an ID card.

1.3. Disputed Legal Norm(s) Overruling Judgements

Vasil Saganelidze v. The Parliament of Georgia

On 24 October 2019, the Second Board of the Constitutional Court of Georgia adopted a ruling in the case of "Vasil Saganelidze v. The Parliament of Georgia

(constitutional complaint №1237)[31] and partly granted the complainant's motion to declare Article 144 (2) of the Criminal Procedure Code of Georgia unconstitutional at the stage of the preliminary session. The disputed provision granted the right to interrogate witnesses before a magistrate judge only to the Prosecution.

The complainant argued that at the stage of investigation, the Defense, just like the Prosecution, should have an opportunity to interrogate an interviewee before the magistrate judge. Granting the said right only to Prosecution gave the latter a procedural advantage, which was in breach of the equality of arms in criminal proceedings (Article 31 (4) of the Constitution of Georgia). The complainant argued that the said regulation had the content identical to the norms that were declared unconstitutional in the judgment №2/13/1234,1235[32] of 14 December 2018.

According to the respondent, in contrast to the norm declared unconstitutional in the judgment №2/13/1234,1235 of 14 December 2018, within the scope of the existing system, in certain cases, at the stage of investigation, the Defense was given an opportunity to mandatorily interrogate a person before a magistrate judge. For instance, at the stage of investigation, the Defense could have requested interrogation of a person when it was uncertain whether or not a witness would appear during consideration of the case on merits. Thus, according to the respondent's argumentation, the disputed provision limited party's rights only in part. At the same time, giving all the accused an opportunity to mandatorily interrogate witnesses would have resulted in overload of the court and creations of risks as to its unobstructed functioning.

The Constitutional Court shared the argumentation of the complainant and deemed that provisions disputed in constitutional complaint №1237 were content-wise identical to the norm declared unconstitutional in the judgment №2/13/1234,1235 of 14 December 2018. In particular, under the disputed regulation, the right to mandatorily interrogate a person before a magistrate judge was only granted to the Prosecutor, even in cases where no exceptional grounds enumerated in Article 114 (1) of the Criminal Procedure Code existed. In contrast, the Defense was not given the same opportunity, *inter alia*, in cases where information provided by an interviewee could have been decisive for the purposes of obtaining other evidence and preparation of the position for the hearing on merits. As a result, the Constitutional Court deemed that the Prosecution was given a significant procedural

[31] Ruling of the Constitutional Court of Georgia №2/12/1237 dated 24 October 2019 in the case of Vasil Saganelidze v. The Parliament of Georgia.
[32] Judgment of the Constitutional Court of Georgia №2/13/1234,1235 dated 14 December 2018 in the case of "Citizens of Georgia – Roin Mikeladze and Giorgi Burjanadze v. The Parliament of Georgia".

advantage in that it had an opportunity to prepare for the hearing on merits better. At the same time, the said inequality was not balanced by the accused's opportunity to interrogate witnesses during a hearing on merits.

The Constitutional Court of Georgia emphasized the fact that the respondent has not presented tangible evidence to demonstrate potential overload of the court and it merely appealed to the number of the accused hypothetically, claiming that this is the factor affecting the court overload in itself. At the same time, restriction of complainant's constitutional right had a blanket character and did not take into account interests of the accused or other individual characteristics.

In the light of the foregoing, the Constitutional Court deemed that the disputed provision was overruling the judgement №2/13/1234,1235 of 14 December 2018 and was declared invalid. At the same time, the Court postponed invalidation of the norm until 31 March 2020, in order to ensure that no risks were created as to effective investigation and that justice was carried out in criminal cases.

Gocha Gabodze and Levan Berianidze v. The Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia

On 17 December 2019, the First Board of the Constitutional Court upheld the claim of Gocha Gabodze and Levan Berianidze (constitutional complaint №1346)[33] and declared invalid Article 65^1 (e) of Annex №1 to the Ordinance №241/ნ of 5 December 2000 of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia on "Determination of Indicators against Donation of Blood and Its Components". The disputed provision restricted the right to be a donor of blood and its components for men having sexual intercourse with men (MSM persons) for 10 years after the last sexual act of this sort.

The complainants argued that sexual acts both of MSM and heterosexual nature could have been regarded as risky from the point of view of developing blood-borne diseases. Nevertheless, the disputed provision restricted the right to donate blood for 10 years in a discriminatory manner for men having sexual relations with men, whereas in other cases restriction was limited to 12 months from the last unsafe act. The complainants also pointed

[33] Ruling of the Constitutional Court of Georgia №2/16/1346 dated 17 December 2019 in the case of Gocha Gabodze and Levan Berianidze v. The Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia".

out that the time period during which detection of the virus in blood is impossible constituted 1 year (window period). Accordingly, MSM persons were deprived of the right to be a donor for a much longer period of time, than it was objectively necessary for the safety of the donation process, which was in breach of the constitutional rights to equality and free personal development. In addition, the disputed provision was overruling the Constitutional Court's judgment №2/1/536 of 4 February 2014[34] and the complainants requested to declare it unconstitutional through a simplified procedure, without consideration of the case on merits.

The respondent pointed out that sexual relationship of two men contains high risk of developing diseases transmitted through blood. In addition, there is no scientific evidence that the "window period" ends after 1 year in all cases. Accordingly, the respondent found restriction of MSM persons' right to be a donor for a longer period of time justified. The respondent did not share the view of the complainant with respect to declaration of disputed norms unconstitutional through a simplified procedure and pointed out that, unlike the norm declared by the Constitutional Court unconstitutional, the disputed regulation prescribed restrictions to the right to donate not indefinitely, but only for the period of 10 years, which is a less restrictive measure.

The Constitutional Court of Georgia found that, similar to the norm declared unconstitutional in the judgment №2/1/536 of 4 February 2014, the disputed provision restricted MSM persons' right to be donors of blood and its components. At the same time, the legitimate aims of such a restriction were identical – protection of the right and health of the recipient. The Constitutional Court referred to the standard established by virtue of the judgment №2/1/536 and pointed out that during the "window period", the risk of "false negative" answer persisted, and there was a possibility that HIV virus would not be detected. At the same time, after expiration of the "window period", it would have been possible to detect HIV virus by using new blood-testing technologies. Accordingly, in the said judgment, the Court ruled that the right to donate blood and its components can only be restricted for the duration of the time which is necessary for eliminating the possibility of "false negative" answers.

As for the "window period", - the Constitutional Court observed that, according to statements of witnesses and experts, this period constituted 1 year. After expiration of this

[34] Judgment of the Constitutional Court of Georgia №2/1/536 dated 4 February 2014 in the case of "Citizens of Georgia Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze v. The Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia".

period, it was possible to discover various viruses existing in blood. Accordingly, the Constitutional Court ruled that the restriction for 10 years did again extend beyond the "window period" and for the purposes of constitutionality of the norm, it would make no difference whether the restrictions are imposed indefinitely or for such a long period of time, during which the risk of infected blood ending up in a blood bank as a result of so-called "false negative" response is virtually unreal.

The Constitutional Court upheld its position expressed in the judgment №2/1/536 of 4 February 2014 and ruled that there was no need to overrule the practice of the Constitutional Court. Taking into account the aforesaid, the Constitutional Court granted the motion of the complainants and declared the disputed norm unconstitutional without consideration of the case on merits.

The Constitutional Court postponed invalidation of the disputed provision until 31 March 2020 in order to protect life and health of recipients, as well as in order to secure safety in the process of blood donation.

1.4. Judgments

1.4.1. The First Board

LLC SKS v. The Parliament of Georgia

On 18 April 2019, the First Board of the Constitutional Court of Georgia rendered a decision on the case of "LLC 'SKS' v. the Parliament of Georgia" (constitutional complaint №655).

In this case, the subject of dispute was the constitutionality of the subparagraph "r" of the Paragraph 3^1 of Article 1 of the law of Georgia "On Public Procurement" with respect to first and second sentences of the article 30(2) of version of the Constitution of Georgia that was in force until 16 December 2018.

Pursuant to the disputed regulation, it was established that the Law of Georgia "On Public Procurement" may not apply to the public procurement by a contracting authority of postal and courier services of the LLC Georgian Post.

According to the complainant, the disputed provision allowed public agencies to procure postal and courier services through direct contract from LLC Georgian Post. Therefore, it excluded the ability of other economic agents operating in the same market to participate in the state procurement process. Under the aforementioned circumstances, LLC Georgian Post was granted the exclusive authority to provide postal and courier services and created a legal precondition for establishing it as a monopolist on the postal and courier service market. Given the above-mentioned argumentation, the complainant considered that disputed regulation was contrary to the constitutional right of the entrepreneurship and the freedom of competition.

The respondent, the representative of the Parliament of Georgia, explained that the measure envisaged by the impugned regulation served the legitimate aim of providing postal and courier services for an affordable price throughout the whole territory of Georgia. In line with the respondent's argument, the standards of postal and courier services provided by LLC Georgian Post was in accordance with qualitative and tariff requirements established by international documents in this field. At the same time, under the disputed provision, procuring entities had the right - not an obligation - to conclude a direct contract with LLC Georgia Post. Accordingly, they were fully entitled to declare tender in which case economic agents operating in the postal and courier market would have the opportunity to participate in it. Based on provided arguments, the respondent considered that the disputed regulation was not in contradiction with the requirements of the Constitution of Georgia and constitutional complaint should not be upheld.

In the present judgment, the Constitutional Court of Georgia held that public agencies and other entities funded from the state budget had the ability to purchase postal and courier services solely from the LLC Georgian Post, by evasion procedural requirements for public procurement so, as not to take into account the offers of other economic agents provided the same services. Under these conditions, the LLC Georgian Post was given a significant market advantage, as far as, unlike other economic agents operating on the same market, it has already served a significant number of guaranteed purchasers, in the form of public procurement organizations. Accordingly, the Constitutional Court of Georgia indicated that under the disputed regulation LLC Georgian Post was granted such a benefit, through State resources on a selective basis, which improved its market position and created risks for freedom of entrepreneurship and competition. Thereby, it was established that the contested regulation restricted the constitutional right to freedom of entrepreneurship and competition.

The Constitutional Court of Georgia shared the position of the Parliament of Georgia and indicated that providing population with access to the postal and courier services throughout the whole territory of the country was an important legitimate aim. At the same time, The Constitutional Court of Georgia accepted the respondent's position that the delivering of postal and courier services in less populated and hardly accessible areas of the country may not be commercially attractive. Therefore, followed that in order to ensure affordable prices for postal and courier services on the whole territory of the country, the interference in the relevant market would be justified *inter alia* by establishing a preferential treatment for the LLC Georgian Post. Nevertheless, the Constitutional Court of Georgia indicated that any such benefits granted to the LLC Georgian Post should be proportional to the services rendered.

Finally, the Constitutional Court of Georgia concluded that the Georgian legislation in the field of the public procurement failed (a) to clearly define the obligation of the LLC Georgian Post to provide postal and courier services with affordable price on the whole territory of the country; (b) to establish transparent and objective criteria for calculation of economic expenses necessary for providing of postal and courier services with affordable price on the whole territory of the country; and, (c) to incorporate a mechanism that would prevent LLC Georgian Post from abusing their market power by receiving benefits, which exceed adequate commercial expenses and reasonable profit. In view of the above mentioned arguments, the Constitutional Court of Georgia established that disputed legal provision unduly restricted the freedom of entrepreneurship and competition and contradicted first and second sentences of the article 26(4) of the Constitution of Georgia.

Furthermore, the Constitutional Court of Georgia indicated that in case of an immediate invalidation of the impugned legal provision LLC Georgian Post would lose granted economic benefits. This may have hindered the process of providing postal and courier services throughout the whole territory of the country at an affordable price and may negatively affect the interests of the postal and courier services customers. For this reason, the Constitutional Court granted the legislature, the Parliament of Georgia, with the reasonable time to address the said regulatory noncompliance with the Constitution of Georgia until 1 May 2020, after which the disputed legal provision will be invalidated.

Irakli Khvedelidze v. The Parliament of Georgia

On 18 April 2019, the Constitutional Court rendered its judgment on the case of "Irakli Khvedelidze v. The Parliament of Georgia" (constitutional complaint №1263). The disputed provision envisaged the possibility of appealing an order issued in the case of an administrative offence within 10 days after the order was issued.

The claimant pointed out that the time prescribed for appealing the order commenced to run after announcing the resolution of the judgment, and not from the moment when one received a reasoned ruling. Accordingly, the claimant was forced to present an appeal within 10 days, even in cases where due to the court overload or other reasons, a ruling had not been delivered to a person concerned. The claimant argued that such a regulation of appealing a ruling reduced efficacy of protecting one's rights through the appellation procedure and was in breach of the right to a fair trial.

According to the respondent's position, not delivering a ruling before the expiration of the appeal timeframe did not negatively affect the right to appeal, given that in case of presenting an appeal within the 10 days, insufficient argumentation would not have been considered as one of the grounds for inadmissibility of the appeal and the appellant would have had the right to present an argumentation later. In addition, the responded referred to prevention of administrative offences and timely and rapid reaction to administrative offences as legitimate aims.

Referring to the Georgian legislation and the jurisprudence of common courts, the Constitutional Court noted that in case of non-timely delivery of the ruling, a person willing to appeal would have had the right to present an appeal within 10 days without proper argumentation, and after receiving a reasoned order, he/she would have had the right to present respective argumentation regarding its unlawfulness. Thus, a person was forced to bring an appeal without being aware of legal and factual grounds of the ruling. Under these circumstances, efficiency of the right to appeal, as well as the possibility of the higher instance court to assess legality of the ruling was being significantly reduced. The Court pointed out that in cases of non-compliance with the timeframe of delivering a ruling to a person concerned, the latter was forced to appeal formally, and only later present a substantiated/reasoned version of the appeal to the court, which in part precluded efficient realization of the right to appeal and created additional obstacles for exercising the right to a fair trial. .

The Constitutional Court noted that while examining an appeal, the Court of Appeals had to assess legality and reasoning of the appealed ruling. Hence, the Court of Appeals could not have adjudicated upon the case without a reasoned claim for appeal and reasoned ruling of the court. According to the Constitutional Court, forcing a person concerned to bring an appeal within a 10-day limit in all cases could not have accelerated the process of adjudicating upon the claim and rendering a relevant judgment. This process was objectively linked not to the deadline for bringing an appeal, but to the adoption of a reasoned ruling by the first instance court. Taking into account all the aforementioned, the Constitutional Court ruled that the disputed provision could not guarantee achieve of legitimate aims – rendering a judgment in a case of administrative offences rapidly/timely reaction to administrative offences - and that it disproportionately limit the right to a fair trial.

The Constitutional Court noted that in case of declaring a disputed provision void immediately, there would be no time limit prescribed for appealing a ruling of the Court, which in certain cases is related to important issues such as entry into a force of the resolutin of the court, its legal effects, etc. and thus in order to avoid harming important legitimate interests, the Constitutional Court postponed invalidation of the disputed provision until 1 July 2019.

LLC "Tiflis 777" v. The Parliament of Georgia

On 18 April 2019, the First Board of the Constitutional Court of Georgia rendered its judgment on the Case of "LLC. 'Tiflis 777' v. The Parliament of Georgia" (constitutional complaint №1250). A disputed provision was related to a rule for realization of trusted property in insolvency cases. Namely, according to the disputed norm, in cases where property or its part could not have been realized as a result of three auctions, creditors would have been offered to hold the said property under common ownership, and in case such an offer was rejected, the property would have been transmitted to the state ownership.

The claimant pointed out that the disputed rule unjustifiably limited the right to property, since there was no objective necessity to transmit property into government ownership. At the same time, limitation of the right was aggravated by vagueness regarding whether or not the creditor's claim would have been deemed satisfied in cases where property was being transmitted to the state in accordance with the disputed provision.

According to the respondent, the disputed provision was serving a legitimate aim of preventing cases of corruption and fraud, as well as that of eliminating non-marketable subjects from the market and compensation of the service provided by the State. In addition, the representative of the respondent noted that the State was obtaining ownership over such a property the market price of which was insignificant, which indicated the lack of interest. At the same time, a debtor had the possibility to purchase the said property for a symbolic price, which indicated its less restrictive nature.

With respect to preventing cases of corruption and fraud through transmitting unsold property to the state ownership, the Court noted that the respondent has not referred to a tangible and specific link between the measures prescribed by the disputed provision and stated public good. From this point of view, the Court could not see a threat that might have been caused by leaving the property in the debtor's ownership.

With respect using the disputed measures for the purposes of eliminating non-marketable subjects from the market, the Court noted, in the light of the analysis of legal norms, that transmission of debtor's property into state ownership is not linked to insolvency of the debtor and annulment of registration neither procedurally, nor formally. Transmission of the debtor's property into state ownership did not result in annulment of registration and did in no way impact the termination of this process. Thus, the Constitutional Court deemed that there was no logical link between the restrictions imposed by the disputed provision and the said legitimate aim.

With respect to compensating for services provided by the government, the Court noted that the National Bureau of Enforcement does indeed provide services during insolvency proceedings such as acting as a trustee in insolvency case proceedings and, on separate occasions, acting as a bankruptcy manager, as well as holding an auction with the intent to sell the debtor's property. Moreover, the analysis of legislation showed that for these services, the National Bureau of Enforcement was compensated from the debtor's property and at the same time, its claim is the first to be satisfied as the Bureau is the creditor ranking before other creditors.

Besides, the Constitutional Court emphasized the fact that as a creditor, the National Bureau of Enforcement, could have expressed its interest to have the property transmitted into the ownership as soon as the property was not realized after three auctions. At the same time, according to the disputed provision, costs of the service and value of the property as well as the issue of proportions thereof were not being taken into account, and the property was being transmitted into state ownership entirely. The Court emphasized the fact that it

might have been potentially impossible to realize only part of the trusted property at the auction, and that the National Bureau of Enforcement could have entirely have its claim satisfied. Nevertheless, the part of the property that had been realized was being transmitted into state ownership. According to the Court, transmitting a non-realized part of the property into state ownership did not have an impact on the claim of the National Bureau of Enforcement which once again indicated that the measure prescribed by the disputed provision by its nature and purpose was not linked to the issue of compensating services provided by the National Bureau of Enforcement.

Considering all the above-mentioned, the Constitutional Court deemed that there was no logical link between the limitation of the right and stated legitimate interests and declared the disputed regulation unconstitutional.

N(N)LE Media Development Foundation and N(N)LE Institute For Development of Freedom of Information v. The Parliament of Georgia

On 7 June 2019, the First Board of the Constitutional Court of Georgia adopted the judgment in the case of "N(N)LE Media Development Foundation" and "N(N)LE Institute For Development of Freedom of Information" v. The Parliament of Georgia (constitutional complaints N693 and N857). Constitutionality of several provisions[35] of the Administrative Code of Georgia and the Law of Georgia "On Personal Data Protection" were challenged. The disputed norms regulated granting freedom of information (FoI) request regarding the public information, which contained personal data. The disputed provisions restricted the disclosure of any type of personal data in response to public information requests. If the personal data fell under the special category, disclosure or granting access of that data as FoI without the consent of the data subject was prohibited under any circumstances.

According to the complainants, accessing the full text of the judgments (without depersonalization of the text) of the court is vital for judicial transparence and it is protected under the right to access public information. The complainants indicated that, due to the disputed provision, they were unable to acquire full text of the judicial acts adopted by

[35] Disputed provisions within the N693 constitutional complaint – Article 44 (1) of the Administrative Code of Georgia (effective until 16 December 2018) and Article 6(3) of the Law of Georgia "on personal data protection with respect to Article 41(1) of the Constitution of Georgia (effective until 16 December 2018).
Disputed provisions within the N857 constitutional complaint – Article 28(1) and 44 (1) of the Administrative Code of Georgia (effective until 16 December 2018) and articles 5, 6(1) and 6(3) of the Law of Georgia "on personal data protection with respect to Article 41(1) of the Constitution of Georgia (effective until 16 December 2018).

common courts of Georgia after open/public hearing. Namely, courts refused to disclose judicial acts in order to protect the personal data contained therein on the one hand, and, on the other hand, if the act was requested in a redacted form, they indicated that it was impossible to depersonalize the requested document and they did not grant the requests. The complainants claimed that such a regulation contradicted the right to access the information existing in public institutions (Article 18 (2) of the Constitution of Georgia).

The respondent disagreed with the complainants' position and argued that the disputed provisions were aiming to protect personal data of the parties and other participants to cases. The respondent indicated that the legislation allowed disclosure of the personal data within the document whereby the balance of interests was protected. In the view of the Parliament of Georgia, personal data under the special category was extremely sensitive and the prohibition of disclosure of such information without the consent of the data subject was justified. Consequently, the respondent concluded that the disputed provisions were in accordance with the requirements of the Constitution of Georgia.

The Constitutional Court of Georgia noted that Article 18 (2) of the Constitution of Georgia protected the right of the members of the society to be informed on the issues they deemed important, and to be actively engaged in discussions surrounding them, as well as the process of implementation thereof. All of this serves the aim of making information existing in public institutions accessible, which is to facilitate public control and to engage the society in decision making process. The Constitutional Court noted that the disputed provisions regulated, in general, the issue of access to public information containing personal data that existed in any public institution. Considering the constitutional claim, the Constitutional Court assessed constitutionality of the disputed norms only with respect to accessibility of judicial acts delivered at an open hearing by the common courts of Georgia.

The Constitutional Court noted that the freedom to access judicial acts was protected under the right to receive information from public institutions. The Court interpreted that the disputed provisions restricted access to judicial acts that contained personal data and, in cases where depersonalization was not possible, respective acts were not being disclosed. Therefore, the Court found that there was interference within the protected scope of Article 18 (2) of the Constitution of Georgia.

The Constitutional Court agreed with the respondent position in that the legitimate aim of the disputed provisions was the protection of personal data. In addition, disclosing

personal data during the open court hearing has an instant effect, whereas disclosing the same information in response of the requests increases the publicity level and in certain circumstances, it may restrict right to privacy more intensively in comparison to open court hearing. Therefore, the Constitutional Court did not exclude the interest of data subject to prevent the further spread of instantly revealed information and the considered that the disputed provisions were adequate/suitable for achieving the said legitimate aim.

When discussing the issue of necessity, the Constitutional Court put an emphasis on the will of the personal data subject to keep his/her personal data confidential. The Court noted that the legislation does not contain flexible measures that would ensure the right of an adult person with full legal capacity to waive his/her right on personal data protection within the scope of the respective judicial act. The legislation requires the consent of the data subject in every separate occasion, on a case by case basis, while in most cases, the identity of the data subject is usually unknown for the person seeking a copy of the judgment. According to the assessment of the Constitutional Court, within the existing legal framework, it was almost impossible to gain access to full texts of the judicial acts even in cases where data subjects have no interest in protecting their personal data, or, moreover – they want the public to be acquainted with such information. The Constitutional Court ruled that such a regulation restricted the access to information existing in public institutions with the intensity and the scope much broader than it was necessary for achieving the legitimate aim and, hence, the necessity requirement was not met.

According to the Constitutional Court, the will of the data subject to keeping their personal data confidential should not automatically provide grounds for restricting accessibility to such data. The Constitutional Court noted that, under such circumstances, there was a collision between two competing constitutional rights and it decided upon the balance between these competing interests at the stage of proportionality (*stricto sensu*) assessment.

The Constitutional Court noted that not all information existing in public institutions as well as public accessibility thereof is of the same significance. A higher public interest might exist with respect to specific type of information. The Court deemed judicial transparency to be the first and foremost interest from the point of view of accessibility of the common courts' judgments. The Court noted that the Constitution of Georgia places judicial transparency among the matters of special importance insofar as the Constitution regards transparency as a principle for exercising the judicial power.

The Court emphasized that public oversight over the exercise of the judicial power and judicial acts in particular was of crucial importance in a democratic society. In this manner, every individual enjoys the possibility to carry out public control of the judicial system. People shall have the opportunity to evaluate every judicial act and place every judgment, order or interpretation under the broad public scrutiny. The Court noted that it is important for the interested persons to have access to full texts of judicial acts, given that, under certain circumstances, it is impossible to fully assess whether or not a given judgment was rendered by an impartial and unbiased court.

The Constitutional Court pointed out that judicial transparency forms part of the right to a fair trial and legal safety. Under the Court's assessment, every person has the right to inform the public on judicial acts adopted within the scope of judicial proceedings where he/she is involved, as well as to have public scrutiny exercised over such proceedings. At the same time, legislation only gains its real effect upon application in the jurisprudence. Within the architecture of government branches established by the Constitution, the judiciary the branch that has the final say with respect to interpretation and application of the law. Thus, accessibility of judicial decisions ensures the opportunity of individuals to know the content of the law, how specific provisions are applied by the courts, and what does a normative regulation requires from them. Based on mentioned arguments the Constitutional Court considered that there was a heightened public interest toward accessibility of the judicial acts.

The Constitutional Court underlined the importance of the personal data protection and noted that confidentiality of personal data existing in public institutions aims to ensure the protection of one's private life. The level of the protection varies based on the importance of the information and its potential to have a negatively impact on one's private life. The intensity of such a negative impact and thus a stronger interest in the protection of information might be stemming from the category of information, as well as circumstances pertaining to gaining access to such an information, making it publicly available and other important factors.

The Constitutional Court put a strong emphasis on the fact that the disputed norms restrict access to judicial acts that were delivered as a result of an open/public hearing. The Court ruled that the level of confidentiality of the personal data contained within such acts is usually low and that it shall not outweigh the heightened public interest in the accessibility of the judicial acts. However, the Court noted that, in some cases, it might be necessary to conceal the personal data contained in the acts adopted as a result of a public hearing. In such

cases, it should be assessed whether the necessity to protect the personal data can outweigh a heightened constitutional interest of accessibility of judicial acts.

The Court indicated that the disputed norms by default established the balance in favor of the personal data protection and deemed that such an outcome contradicted the value-order established by the Constitution. The Court noted that the disputed norms undermined the public oversight of the judiciary and consequently reduces trust toward it. The requirement to substantiate the heightened interest in openness of information with respect to personal information contained in every judicial act virtually eliminates the possibility of exercising random control and conducting effective oversight of bias tendencies or selective justice. According to the Constitutional Court, the intensity of the restriction increases even more in cases where it is impossible to obtain a depersonalized version of a judicial act, thus making in inaccessible for interested parties, which not only excludes the possibility of random control, but also undermines the requirement of legal safety that the reasoning of the court – as an authoritative definition of the existing legislation - be publicly available.

The Constitutional Court also noted that certain circumstances might require reversing the balance in favor of personal data protection, when disclosure of the data has an intensively negative effect on one's privacy, considering the content and subject of the data, time and form of exposure and other conditions. In order to demonstrate such exceptional circumstances, the Court invoked the interests of minors and issues related to intimacy. However, the Court noted that even under such exceptional circumstances, there should be a possibility of making the court's judgment publicly available in case a particularly heightened public interest exists with respect to the matter.

Based on the foregoing argumentation, the Constitutional Court ruled that the disputed provisions established an unconstitutional balance between the personal data protection and the right to access the information kept in public institutions, which resulted in breach of Article 18 (2) of the Constitution of Georgia. In addition, the Court noted that enforcing its judgment immediately would cause legislative absence. Namely, there would be no legislative grounds for denying freedom of information requests in order to protecting personal data within the judicial acts, which could cause the violation of the right to privacy. In addition, for the purposes of ensuring necessity of restrictions both with respect to current and finalized judicial proceedings, the Court pointed to the necessity of creating a mechanisms, that would ensure that the restriction of the access to judicial acts for the

purposes of protecting personal data be possible only in cases where a person concerned voluntarily and consciously expresses his/her interest to protect confidentiality of such an information. Accordingly, the Constitutional Court postponed invalidation of the disputed provisions until 1 May 2020.

Besik Katamadze, Davit Mzhavanadze and Ilia Malazonia v. The Parliament of Georgia

On 4 June 2019, the Constitutional Court of Georgia delivered its judgment on the case of "Besik Katamadze, Davit Mzhavanadze and Ilia Malazonia v. The Parliament of Georgia" (constitutional complaint №1271).

Under the constitutional complaint №1271, the claimant argued that the provision of the Code of Administrative Offences imposing penalty for making various types of inscriptions, drawings or symbols on building facades, shop windows, fences, columns, trees or other plantings without authorization - also putting up placards, slogans, banners at places not allocated for this purpose, or leaving fences and buildings unpainted - was unconstitutional.

The complainant argued that the disputed provision unjustifiably restricted the freedom of expression and prohibited putting up placards, slogans, banners spontaneously for a short period of time on one hand with the permission or by the owner on an object in private property and on the other hand – by a member of a self-governing unit in the space allocated to him/her for work. Considering the aforesaid, the claimant argued that in the context of a spontaneous protest, the disputed provision disproportionally limited the freedom of expression.

The respondent disagreed with the position of the claimant and noted that persons did not have an unconditional and unlimited right to use public spaces. Appearance of the city consists of objects both under public and private ownership, and defacing the façade of private property could have had an important impact on the appearance of the city, which excluded the possibility of the application of special rules to it. The respondent argued that such risks equally existed in cases of spontaneous expression as well, given that spontaneous and temporary measures could have generated a threat of high intensity to the appearance of the public space. In addition, the disputed provision was only applicable to one form of expression, and did not apply to alternative forms of communication.

The Constitutional Court stated that a façade of a building is a public space which can be used for the purposes of expressing one's opinion. At the same time, freedom of expression as guaranteed under the Constitution of Georgia, consists of non-verbal communication as well, including communicating expression or information in a written form, through technological means or spreading visual images, and that from this point of view, expressing one's opinion through placards, slogans, banners is one of the most important and widespread forms of communication.

The Constitutional Court of Georgia had previously noted that the prohibition of placing placates, slogans and banners on objects under private property with the consent of the owner or by the owner was serving a legitimate aim of protecting the appearance of a municipality. The Court explained that preserving appearance of the municipality is of an important value. Ignoring this virtue might threaten the private space of others, and result in decreasing of the value of residential/touristic zones, as well as diminish the quality of living of persons who use this specific space. At the same time, in the context of expressing one's opinion on pressing issues, timeliness and imminence is of utmost importance, and sometimes, expressing an opinion in an extreme way is the only or the most important manner of gaining attention of the government and/or the society.

The Constitutional Court noted that in case of the normal use of placates, slogans and banners, in general, they do not leave a long-lasting and permanent trace on the façade of the building and do not need a solid construction. Taking into account the aforesaid, in cases of spontaneous protest, appearance of buildings and that of the municipality changes only for a short period of time, for the duration of a spontaneous protest and it goes back to its initial state after the protest. Hence, the Constitutional Court considered that such an intensive limitation of the freedom of expression in a democratic society could not be justified by the interest to protect buildings and constructions from a short-term, temporary change of their appearance. Therefore, the Constitutional Court deemed unconstitutional the content of the disputed provision, which prohibited temporary placement of banners, slogans and placates on objects by the owner or with the consent of the owner, in the context of a spontaneous protest.

With respect to placing placates, slogans and banners on buildings of self-governing units, the Court noted that the restriction of freedom of expression was related to the specific object and specificity of the local assembly as the organ of local government should have been taken into account. The Court reasoned that members of the local assembly, being representatives of the people, are not only subjects of the freedom of expression, but rather

the standard of the protection of their expression are very high. In addition, their protest might relate to extremely critical social issues of political, local or countrywide significance.

Notwithstanding the aforementioned, the Court noted that unlike the use of a private building by its owner, members of the assembly did not have the consent of respective municipal authorities to place objects on the façade of the building of the assembly. Giving up a space for work-related purposes could not have been assessed as consent to place any objects on the façade of the property. Municipality had a special interest that its authorized organs be utilizing public resources with a proper purpose, and not give other persons the opportunity to use these resources arbitrarily. Thus, the interest to protect the freedom of expression of the member of the local assembly could not override a special interest of the local self-governing unit for its property not to be used without the permission. Given the aforesaid, the Constitutional Court concluded that the limitation envisaged by the disputed provision in this regard did not contradict the freedom of expression as guaranteed under Article 17 of the Constitution.

Alexandre Mdzinarashvili v. the Georgian National Communications Commission

On 2 August 2019, the Constitutional Court of Georgia adopted the judgment in the case of "Alexandre Mdzinarashvili v. The Georgian National Communications Commission" (constitutional complaint №1275). The subject of dispute in this case were the norms of the regulation adopted by the Ordinance №3 of March 17 of 2006 of the Georgian National Communications Commission "On Providing Services and Protection of Users' Rights in the Field of Electronic Communications". On one hand, the disputed provisions established the obligation of the internet domain issuer to block the website in order to prevent dissemination of inadmissible products and, on the other hand, it gave the service provider the opportunity to adopt appropriate measures in order to prevent dissemination of the message containing inadmissible products via network[36] (according to the disputed Resolution, inadmissible products encompassed products depicting particularly severe forms of hatred and violence, degrading the personal life, also products that were defamatory, abusive, violating the presumption of innocence and inaccurate).

[36] The subject of the dispute fully: Constitutionality with regard to Article 24(1) of the Constitution of Georgia (version in force until December 16, 2018) of Article 10^3 (2) (b), Article 25(4) (g) and Article 25(5)(b) of the regulation adopted by the Ordinance №3 of March 17 of 2006 of the Georgian National Communications Commission on Providing Services and Protection of Users' Rights in the Field of Electronic Communications.

According to the complainant's position, the contested Resolution of the National Communications Commission itself defined the notion of inadmissible products and regulated the issues related to the prohibition of the dissemination of such products. As explained by the complainant, interference within the freedom of expression by disputed norms was carried out without delegation of powers. Instead of the law, the restriction was based on the Resolution of the Georgian National Communications Commission. The complainant considered that it was formally in contradiction with the constitutional requirements.

The respondent, the Georgian National Communications Commission, emphasized that disputed provisions did not violate the formal requirement of the Constitution to restrict freedom of expression. In particular, the respondent indicated that the authority had been delegated to the National Communications Commission by the relevant provisions of the law on Electronic Communications and the law on National Regulatory Bodies and based on this delegation, the Georgian National Communications Commission was given the authority to draft legal acts on any matter that would be aimed at protecting of users' rights in the field of electronic communications.

According to the Constitutional Court of Georgia, the freedom of expression protects the right to freely receive and disseminate opinion/information, which includes the exchange of information in a desirable manner and means, without any content filtering. Based on the disputed norms, the Georgian National Communications Commission prohibited the transmission of messages depicting particularly severe forms of hatred and violence, degrading the personal life, defamatory, abusive, violating the presumption of innocence or inaccurate. In the Court's view, regulating the issue in such a manner meant the content regulation of expression and the restriction of the dissemination of opinion/information because of its content, which constituted one of the most severe forms of interference in this right.

According to the Constitutional Court, the freedom of expression is not an absolute right and the Constitution of Georgia allows its restriction. The Court indicated that the constitutional norm establishing freedom of expression requires that the restriction of this right may be allowed only in accordance with law. The failure to comply with the aforementioned formal requirement, despite the content of the regulation, leads to the unconstitutional restricting of the fundamental right.

The Constitutional Court elucidated that the constitutional guarantees for the restriction of the fundamental right by law serve the realization of the principle of separation of powers, thereby avoiding the risk of concentration and abuse of state power. At the same time, such an order additionally ensures that the right is restricted only by the decision of state authority which is the highest representative body with the proper legitimacy granted by the people. The Parliament of Georgia is the constitutional body that resolves the issues based on a transparent legislative process, as a result of political debates and in this way, creates an additional filter to reduce the risks of unjustified interference in the right.

However, the Court considered that the formal requirement of the Constitution does not imply that the right can be restricted only by the Parliament of Georgia. In some cases, the Parliament of Georgia is authorized to delegate the competence of the regulation of some issue to another state body, as the imposing the obligation to regulate on all issues related to the restriction of the rights on the Parliament of Georgia may paralyze the legislative authority and delay the legislative process. The mechanism of the delegation of powers greatly simplifies the law-making process and gives the legislature the ability to make decisions on principal political-legal issues, while passing the details necessary for their implementation to other state bodies.

According to the Constitutional Court, the delegation of powers by the Parliament may violate the Constitution in cases where the Constitution of Georgia expressly prohibits delegation and/or when it is determined that by delegation of certain powers the Parliament of Georgia refuses to exercise its constitutional authority. The court considered that this occurs, for example, when the Parliament of Georgia delegates a fundamentally important part of its power.

According to the Constitutional Court, by the disputed regulation, the Georgian National Communications Commission determined what type of opinion and information is inadmissible. Accordingly, the content regulation of expression was established, which implies a restriction of the dissemination of opinion/information due to its content. The Constitutional Court noted that freedom of expression is a fundamental and functional element of a democratic society. It forms the necessary foundation for the development of society and for the protection of human rights. The equal and full enjoyment of this right determines the degree of openness and democracy of society. Thus, the content-based regulation of freedom of expression and determination of its aspects is the issue of high political and public interest. Therefore, according to the Court, the determination of this issue

was a fundamentally important power of the Parliament of Georgia and delegation of this power to the Georgian National Communications Commission was inadmissible. Consequently, even if there were a legislative provision delegating the power of content regulation of freedom of expression, such a will of the Parliament would be unconstitutional.

At the same time, the Court indicated that the impugned provisions beyond the content regulation of expression also regulated the procedure for technical enforcement of the restraint establishing the content regulation. The Constitutional Court noted that the Constitution of Georgia does not exclude the power of Parliament of Georgia to delegate to another state body authority to adopt the regulation of technical, content-related issues related to the restriction of freedom of expression. However, based on an analysis of the relevant legislative norms, the Court found that the Parliament of Georgia had not delegated the power to the Georgian National Communications Commission to regulate freedom of expression regarding the disputed matter.

In view of the foregoing, the Constitutional Court of Georgia held that the formal requirements for the restriction of freedom of expression had not been complied with. Therefore, the disputed provisions were found unconstitutional with respect to the first sentence of Article 17 (1) and Article 17 (2) of the Constitution of Georgia.

The Public Defender of Georgia v. The Parliament of Georgia

On 2 August, 2019 the Constitutional Court of Georgia adopted the judgment in the case of "The Public Defender of Georgia v. The Parliament of Georgia" (constitutional complaint №770). The subject of the dispute was constitutionality of the wording "if the application of this measure is considered insufficient after taking into account the circumstances of the case and the person of the offender – administrative detention for up to 15 days" of section 2 of Article 45 of the Administrative Offences Code of Georgia (version of provision that was in force until 28 July 2017) and the wording "or by imprisonment for up to one year" of Article 273 of the Criminal Code of Georgia (version of provision that was in force until 28 July, 2017) with regard to paragraphs (1) and (2) of Article 17 of the Constitution of Georgia (version of provision that was in force until 16 December 2018).

The Public Defender of Georgia claimed that the sanctions of administrative detention and imprisonment, respectively, for illegal production, purchase, storage and/or use without a doctor's prescription of a narcotic drug, its analogue or a precursor in small quantity contradicted the Constitution of Georgia. The complainant indicated that, according to the disputed norms, prison sentence was equally applicable for illegal use of soft and hard narcotic drugs. Furthermore, in some cases, the punishable quantity of narcotic drugs was such small that the public threat derived from this action could not justify the prison sentence. The complainant further stated that the main purpose of above-mentioned sanctions was repression and general prevention of prohibited action. The complainant thereby considered the sanctions of administrative detention and imprisonment, as established by the disputed norms, were clearly disproportional punishment.

The respondent indicated the protection of public health, prevention of distribution of drugs and drug addiction as legitimate aims of the disputed law. Further, the respondent emphasized that the law in question prescribed alternative sanctions, which allowed courts and law enforcement bodies to take into account the factual circumstances of the case and interpret the law in each individual case.

In the present case, the Constitutional Court had to assess, in general, the constitutionality of the sanctions of administrative detention and imprisonment for illegal production, purchase, storage and/or use without a doctor's prescription of a narcotic drug, its analogue or a precursor in small quantity. The Constitutional Court explained that the subject of disputed norms were multiple type of narcotic substances, which had various effects and contained different degree of treat for society. Further, “small quantity”, indicated in the impugned norms, may had been quantity enough for a single use or quantity that exceed the amount of one-time use. Therefore, the Constitutional Court assessed separately, on the one hand, the punishment for production, purchase, storage of a narcotic drug, its analogue or a precursor for a clearly personal use (quantity enough for a single use) and, on the other hand, production, purchase and storage thereof that exceeds the amount of a single-use.

The Constitutional Court noted that every person who was involved in illegal turnover of drugs (drug users, manufacturers, retailers, etc.), to some extent, contributed to illicit traffic of prohibited substances and created a “market demand”. Illegal turnover of narcotic drugs was a threat to public health and safety and preventing these threats was the legitimate aims of the disputed norms.

The Constitutional Court drew the distinction between criminalization of illegal production, purchase, storage and/or use without a doctor's prescription of narcotic drugs, which cause rapid addiction and/or aggressive behavior and prohibited substances, which did not have mentioned side effects. The Constitutional Court stated that the potential risk of violation public order carries the illegal use of only those prohibited substances, which establishing a state of abstinence, causing fast addiction, aggressive behavior or high risk of committing crime. Accordingly, the Constitutional Court noted that the sanctions of administrative detention and imprisonment for illegal production, purchase, storage and/or use without a doctor's prescription of a narcotic drugs for a clearly personal use that do not cause fast addiction and/or aggressive behavior in their user did not serve the legitimate aim of protection of public order and security and it was limited only by the protection of public health.

The Constitutional Court noted, that the sanction for illegal production, purchase, storage and/or use without a doctor's prescription of a narcotic drugs for a personal use had deterrent and preventive effects and was reducing illegal turnover of prohibited substances. Therefore, the impugned provisions protected the health of a consumer of narcotic drug and the health of the entire society. With respect to these legitimate aims, the Constitutional Court stated that imposition of the punishment to prevent an adult person from harming his or her own health was the form of paternalism demonstrated by the state, which was not compatible with the free society and contradicted the requirements of the Constitution. In relation to protection of public health, the Constitutional Court pointed out that the importance of an individual drug user in the process of illegal turnover of prohibited substances was insignificant and by this reason, using prison sentence for drug users had non-essential consequences for reducing illicit traffic. The Constitutional Court further explained that production, purchase, storage of a narcotic drug for personal/single-use generated minimal, hypothetic risk of its distribution and danger of public health emanating from this action was significantly low. Taking the afore-mentioned arguments into account, the Court concluded that the sanctions of administrative detention and imprisonment for production, purchase, storage of a narcotic drug for personal/single-use (prohibited substances which did not cause fast addiction and/or aggressive behavior in their user) was clearly disproportional punishment and contradicted the Constitution.

The Constitutional Court separately addressed the constitutionality of applying imprisonment for narcotic substances which cause fast addiction and/or aggressive behavior

in their user and pointed out, that even a single use of these type of drugs, as well as, production, purchase or storage for a clearly personal use contained a high risk of violating public order and safety. According to the Constitutional Court, being under the influence of such drugs or in the condition of abstinence, heightening the risks of committing a crime and/or violating public order. Therefore, the Constitutional Court concluded that applying the sanctions of administrative detention and imprisonment was justified for the prevention of the above-mentioned threats.

Furthermore, the Constitutional Court found constitutional a prison sentence for production, purchase, storage of drugs that exceed the amount of one-time use. The Constitutional Court indicated that production, purchase, storage of narcotic substance that exceed the amount of single use did not necessarily referring to the purpose of distribution. Nevertheless, along with an increase in the amount of drug heightening public (including, adolescents) access to narcotic substances, which, consequently, increases the illegal circulation of drugs. According to all the above mentioned, the Constitutional court concluded that production, purchase, storage of drugs that exceed the amount of one-time use contained significant treat for the society and for this action applying the sanctions of administrative detention and imprisonment could not be considered as an apparent disproportional punishment.

1.4.2. The Second Board

Remzi Sharadze v. The Ministry of Justice of Georgia

On 28 May 2019, the Second Board of the Constitutional Court rendered its judgment in the case of "Remzi Sharadze v. The Minister of Justice of Georgia" (constitutional complaint №867). Under the disputed provision, in enforcement proceedings, in case the property was not realized on the first two auctions, the price of the property would be 0 GEL. The claimant argued that the possibility of realizing property in exchange for an inappropriately low price was in breach of the debtor's right to property.

In the view of the respondent, the lack of possibility to determine 0 GEL as the initial price of the property in the compulsory auction would result in endless auctions, would

complicate enforcement of decisions and would harm the interests of creditors. Accordingly, the disputed provision was balancing interests of creditors on one hand, and those of the property owner on the other.

According to the Constitutional Court, the disputed provision envisaged mandatory alienation of the property against the will of the owner. At the same time, the owner did not participate in determination of the initial price. The Court noted that the issue of managing the property and, among others, determining price of the property was part of the owner's constitutional right. Thus, from this point of view, the disputed provision restricted the right to property.

The Court agreed with the respondent in that the legitimate aim of the disputed provision was to secure satisfaction of the creditors' claims. The Court noted that in a legal state, it is important that all persons are protected in cases of non-performance of civil-law obligations. Persons should apprehend that in a civil-law relationship, in case of non-performance of duties by other party, there are effective legal measures that can protect their interests. Thus, the Court ruled that satisfying the creditors' recognized lawful claims is a legitimate aim of such a value, the achievement of which could justify restriction of the right to property.

While examining the balance of interests envisaged by the disputed provision, the Constitutional Court noted that the Constitution does not establish an obligation to conduct endless amount of compulsory auctions. Hence, at some point, when the chances of selling a property for a high price are minimal, it might objectively be necessary to determine 0 GEL as an initial price. However, before conducting an auction with such an initial price, the government must undertake all the reasonable measures aiming to ensure realization of the property in a proper price.

The Constitutional Court pointed out that when determining price of the property on first and second auctions, transitional rights (such as mortgage) pertaining to it were not taken into account. In the process of alienation of property, existence of transitional rights implied that it is encumbered by certain property rights, which would pertain to it even after alienation. Existence of such an encumbrance could not have transformed a third party to an addressee of the claim, however, it implied that the said third party had the right to satisfy his or her claims from the property transferred into the ownership of the purchaser. Therefore, the Constitutional Court ruled that transitional rights pertaining to a subject significantly diminished the real value of the property in question. Thus, within the scope of the existing regulations, it was possible for the initial price of the property on first two auctions to be

significantly higher than the real value, which obviously minimized the chances of its realization.

Taking into account all the above-mentioned, the Constitutional Court concluded that before determining 0 as an initial price of the auction, the government was not undertaking all the reasonable measures aiming to sell the property for a relatively high price. Accordingly, the restriction of the right prescribed by the disputed provision was deemed unconstitutional.

The Court found that in case of declaring the disputed norm void upon publication of the judgment, before regulation of the matter in accordance with the Constitution, it would have been impossible to conduct a second auction (including those on the property which would not have been encumbered by transitional property rights in case of realization), which might have harmed the interests of parties to the enforcement proceedings. Hence, the Court postponed invalidation of the disputed norm until 31 August 2019, in order to give the Minister of Justice of Georgia reasonable time for regulating the matter of proceedings regarding mandatory auctions in compliance with the Constitution.

Giorgi Kartvelishvili v. The Parliament of Georgia

On 28 May 2019, the Second Board of the Constitutional Court of Georgia refused to uphold the constitutional complaint of Giorgi Kartvelishvili (registration №704) against the Parliament of Georgia. The disputed provision prohibited long visits for convicted persons serving sentence in high risk penitentiary facilities, which implied prohibition on the possibility to live for up to 23 hours on the territory of the facility with persons from a limited circle of relatives, in accordance with rules established in the facility.

The complainant argued that the possibility of enjoying long visits was part of the convicted person's right to private and family life, which envisages the possibility of having contact with family members and close relatives in an intimate setting. Maintaining contact with family members and close relatives significantly contributes to re-socialization of the convicted person and the process of his or her reintegration in the society after leaving the penitentiary facility. In the view in the complainant, the disputed provision provided a blank prohibition on long visits, and applied to all persons serving sentence in a specific type of facility, regardless of their individual characteristics and was in breach of the claimant's right to private and family life.

The respondent argued that the legitimate aim of the disputed provision was to guarantee security of the penitentiary facility or persons surrounding it, as well as that of the society, state and/or law enforcement bodies, alongside the prevention of crime and disorder. The respondent pointed out that placing persons in high-risk penitentiary facilities and thus preventing them from long visits had to do with high risks related to a given convicted person. These risks are assessed in advance, and in each individual case they are subject to periodical reexamination parallel to changes in the conduct of the convict.

The Constitutional Court emphasized the especial importance of the right to private and family life for the purposes of resocialization of the convicted person and his or her successful reintegration in the society after serving a sentence. The Court noted that this guarantee balances negative effects of physical imprisonment, improves one's way of living, facilitates his or her intellectual and social development and gives them a possibility to maintain contact with the outside world.

Accordingly, the Court ruled that a convicted person has the right to establish and maintain family relations via means of personal or remote communication. At the same time, communication with family members cannot have a permanent character and such a degree of intimacy, which is afforded to those that are not placed in penitentiary facilities. The right of the convicted person envisages the possibility to maintain ties with family members to the degree and extent that is compatible with the use of imprisonment as a form of punishment and does not represent an unreasonable burden for a state.

The Constitutional Court also noted that preventing convicts placed in special risk penitentiary facilities from long visits was serving important legitimate aims including security of the penitentiary facility, society, state and law enforcement bodies. At the same time, people are placed in such facilities based on assessment of risks stemming from them. The legislation also provides for the opportunity to reexamine results of the first assessment of a convict and appeal these results. Accordingly, convicted persons placed in special risk facilities were given an opportunity to have an impact on these results by virtue of good behavior, which would result in replacing him or her to another penitentiary facility and thus giving the latter the opportunity to enjoy long visits.

According to the aforementioned, the Constitutional Court deemed that the restriction of the right to receive long visits as provided under Article 17^2 (6) (edition in force from 2 May 2014 to 20 June 2017) Imprisonment Code was a measure proportionate to legitimate aims and did not contradict the right to private and family life under Article 15 (1) of the Constitution.

Levan Alapishvili and "LP Alapishvili and Kavlashvili – Georgian Bar Group" v. the Government of Georgia

On 5 June 2019, the Second Board of the Constitutional Court of Georgia delivered its judgment in the case of Levan Alapishvili and 'LP Alapishvili and Kavlashvili – Georgian Bar Group' v. The Government of Georgia (constitutional complaint №1279). In this case, the disputed provisions defined the scope of taxes and subjects obliged to pay in exchange for using LEPL "112" of the Ministry of Internal Affairs (hereinafter, the "112").

The complainant argued that subscribers were obliged to pay fees related to the "112" service regardless of their will, without specifying relevant services, which violated the right to property. In addition, the rate of "112" services as well as relevant subjects were prescribed by the government's ordinance, which violated formal requirements of the Constitution. In particular, only the law shall determine the structure and the procedures for introducing taxes and fees, as well as their rates and the scope of those rates. In addition, the complainant argued that the disputed provisions prescribed different rates for physical and legal persons for "112" services without any objective grounds, which violated the right to equality.

In the respondent's view, the "112" service guaranteed coordination of ambulance, police and firefighting services, and the established fee was aiming to compensate expenses of "112" as well as guarantee affordability of this service for each subscriber. The respondent argued that introduction of "112" fees and definition of subjects of these fees by the Government's order was in compliance with formal requirements of the Constitution, given that the legislator delegated the right to legislate to the Government under Article 8 (2) of the Law on "Establishment on LEPL "112". With respect to the right to equality, the respondent noted that establishing different rates for physical and legal entities was due to their different status as well as frequency of referring to "112" from numbers registered under the name of legal entities.

The Constitutional Court established that the fee envisaged under the disputed provision was aiming to compensate expenses of LEPL "112" and was related to securing provision of certain public services to subscribers. Due to this reason, measure envisaged in the disputed provision was to be deemed as fees under Article 67 (1) of the Constitution.

According to definition provided by the Constitutional Court, imposing financial obligation upon an individual by introducing taxes and fees is a specific form of restriction of the right to property. The Constitution of Georgia requires that the structure and the procedures for introducing taxes and fees, as well as their rates and the scope of those rates be determined only by the law, which excludes the possibility of delegating this power to the Government. Contrary to this, subjects of these fees, which is part of the structure of fees, were determined by a normative act of the Government of Georgia. Due to this reason, the disputed norm violated formal requirements set forth by the Constitution and was in breach of Articles 19 (1) and 19 (2) of the Constitution.

With respect to the right to equality, the Constitutional Court noted that, within the scope of a given legal relationship, natural and legal persons were substantially equal subjects. The norm prescribing different "112" rates for physical and legal entities restricted the right to equality and it should have been in accordance with constitutional standards, including those set forth in Article 67 (1). Under the said constitutional provision, structure and the procedures for introducing taxes and fees shall be determined "only by the law". The disputed act, as noted above, was the order of the Government. The latter was not a body having legitimacy to establish rates of fees and the scope of these fees. Thus, a disputed norm which established different "112" rates for physical and legal entities was in breach of formal requirements of the Constitution, and was in breach of the right to equality under Article 11 (1) of the Constitution.

Taking into account the foregoing, the Constitutional Court deemed the disputed norms unconstitutional with respect to Article 11 (1) and 19 (1), 19 (2) of the Constitution. The Court also noted that invalidation of the disputed provisions upon publication of the judgment would result in termination of the main source of funding of "112" – fees – which might have infringed upon normal functioning of "112" services and caused significant threat to important public interests. Due to these reasons, the Court postponed invalidation of the disputed provisions until 31 December 2019.

Badri Bezhanidze v. Parliament of Georgia

On September 20, 2019, the Second Chamber of the Constitutional Court of Georgia rendered its judgement on the case "Badri Bezhanidze v. Parliament of Georgia" (Constitutional Claim №1365). The subject of the dispute was the constitutionality of Article

2 of Law №5196-რს of 4 July 2007 "On the Amendments and Additions to the Criminal Code of Georgia" in terms of Article 11 (1) and the second sentence of Article 31 (9) of the Constitution of Georgia.

Based on the aforementioned legislative act, the notion of repeated crime was newly defined, and prescribed that the repeated crime should mean the commission by a previously convicted person of the crime provided for by the same article of the Criminal Code of Georgia. Prior to the said legislative amendment, qualification of repeated act was carried out without prior conviction for the previously committed crime. The disputed norm stated that its force did not extend to actions committed before the entry into force of the amending law, unless the person had committed the last act after the entry into force of the law.

According to the complainant, they were convicted for two episodes of murder. The conviction was based on criminal law that was in force at the time of the commitment of the crime, and although the claimant had not previously been convicted of murder, his action was qualified as repeated murder and he was sentenced to life imprisonment.

The complainant pointed out, that in the light of the changes made to the disputed law, his action would not qualify as a repeated crime, because he was not previously convicted for the same action. Such a qualification would, in itself, result in the imposition of a less severe sentence, as existence of repeated crime is in any case an aggravating circumstance of the offence and requires a more severe sentence than it does in case of cumulative crimes. Thus, the claimant was of the opinion that the impugned provision was contrary to the constitutional rights of retroactive force of the law reducing or abrogating responsibility and equality before the law.

According to the respondent, the legitimate aims of the restriction established by the impugned norm were to impose adequate sentence for the danger arising from the action and to prevent the retroactive force of the law aggravating responsibility.

The Constitutional Court of Georgia has defined, that the second sentence of Article 31 (9) of the Constitution of Georgia stipulates the obligation to use the law reducing responsibility in cases where the adoption of a new law is dictated by the humanity of society or the absence of need for the penalty before the change. According to the Constitutional Court, repeated crime with a number of offences was defined as an aggravating circumstance and usually resulted in the imposition of a more severe sentence, than qualification of cumulative crimes. In addition, according to the position of the Parliament of Georgia, the

notion of the repeated crime was defined as a result of the amendments responded more adequately to the public and social challenges and there was no need for the use of more severe penalties. Therefore, the disputed provision prohibited retroactive use of the law reducing responsibility and restricted the right protected by the second sentence of Article 31 (9) of the Constitution of Georgia.

The Constitutional Court noted that restricting the right to retroactive use of the law reducing responsibility for the purpose of severely punishing perpetrators of crimes in the past ran counter to the very essence of the same right. Therefore, adequately sentencing a person, imposing severe liability on him may not be a legitimate aim that could justify a restriction on the constitutional right to use the law reducing or abrogating responsibility retroactively.

The Constitutional Court stated that preventing the retroactive use of the law aggravating responsibility is extremely important goodness. The Court did not exclude that in some cases, qualification of cumulative crimes would lead to more severe sentence compared to repeated crimes, however according to Article 3 (1) of the Criminal Code of Georgia, any new norm of the Criminal Code was applicable to the past relations insofar as it reduces or abrogates responsibility. Thus, the risk of aggravating responsibility under the impugned law was excluded and there was no causal link between the disputed provision and legitimate aim mentioned by the respondent. Based on the above, the Constitutional Court held that the impugned provision was contrary to the right guaranteed by the second sentence of Article 31 (9) of the Constitution of Georgia and declared it unconstitutional.

In discussing the constitutionality of the disputed provision with regard to the right to equality, the Court noted that there was no differentiation between non-convicted persons, who committed the same crime two or more times before and after the entry into force of the disputed law. In such a case, the norm did not treat persons unequally, instead it constituted different treatments on the acts depending on the period of its commitment rather than by whom they were committed. Thus, it could not be regarded as different treatment of persons.

The Constitutional Court held that the impugned norm treated unequally, on the one hand, the non-convicted persons, who had committed two or more offences under one article or part of the article of the Criminal Code before the entry into force of the impugned law and no longer committed the offence under the same article after the entry into force of the impugned law and, on the other hand, persons, who had committed the same offence and

committed it again after the entry into force of the disputed law. According to the impugned law, the offence committed by the first category of persons should be qualified as a repeated crime, and the second category of persons, who had committed one or more offences under same article and committed the same offence after the entry into force of the new law, would fall under the new law and their actions would qualify as cumulative crimes instead of repeated crime, which could lead to a less severe sentencing. According to the Constitutional Court, considering that in the present case reducing responsibility was a consequence of committing an additional offence, it was clear that such a distinction had no logical explanation and that it was contrary to the constitutional right to equality before the law.

Zurab Svanidze v. The Parliament of Georgia

On November 14, 2019 the Second Board of the Constitutional Court of Georgia adopted the judgment in the case of "Zurab Svanidze v. The Parliament of Georgia" (constitutional complaint №879). The complainant challenged the provisions, which determine that if any duly held auction (consisting of the first and two repeat auctions) fails and the property is not sold, such property shall be discharged from the attachment effected in favor of the creditor carrying out the compulsory sale.[37] No enforcement proceeding involving the same claim in favor of the same creditor shall be conducted with respect to such property.

In view of the complainant, in case of discharging the property from attachment effected in favor of the creditor carrying out the compulsory sale and returning it to the debtor, the creditor would no longer have the opportunity to effectively enforce a court decision in his favor. Complainant assumed that this regulation was incompatible with the right to a fair trial enshrined in Article 31(1) of the Constitution of Georgia.

The respondent explained, that after the impossibility of sale of the property at three auctions, lifting the attachment from the property served the interests of other creditors involved in enforcement proceedings and ensuring timely and effective enforcement of the court's decision. The respondent indicated that by holding three auctions, the State applied all reasonable measures of realization of the property. Therefore, conducting additional auctions

[37] The subject of the dispute fully: constitutionality with regards to Article 42(1) of the Constitution of Georgia (version in force until December 16, 2018) of the first and second sentences of first paragraph of Article 75(8) of the law of Georgia on Enforcement Proceedings.

would only delay the enforcement process and increase the administrative costs required to conduct the auction.

The Constitutional Court of Georgia did not accept the respondent's argument that the restriction of the right of the creditor carrying out compulsory sale was justified by the interests of other creditors. Particularly, the Court explained that creditors of the same order had an equal constitutional interest in satisfying their claims. Moreover, it has not been demonstrated that the creditor who has continued enforcement on the property discharged from the attachment, had a higher interest. Thus, by referring to the protection of the other creditors' interests, the respondent actually restricted the property interests of one person in favor of another, who had the same position. The Constitutional Court held that in case of the same property interests, the protection of one person's interests would not be a legitimate aim of limiting the interests of another.

The Constitutional Court did not share the respondent's argument with regard to ensuring timely and effective enforcement by the limitation set by the disputed provision. According to the Court, the inability to sell the property at three auctions did not indicate that it had no value. Specifically, the value of the property is determined by its market price and not by the fact whether it could be sold at auction or not. The disputed regulation spread to the property with the market value of GEL 5000 or more. Moreover, the Court indicated that there were many factors affecting the sale of the property through auction. The interest in the item, the market demand for it and/or the likelihood of its sale may vary according to specific time periods or other factors. Thus, the impossibility of sale of the item at the auction in an established manner did not necessarily indicate that the property had no value. Furthermore, the property might not be sold because of its high market value. Accordingly, the Court held that releasing the property from attachment and returning it to the debtor not only did not serve timely and effective enforcement of the judgment in favor of the creditor but also deterred the enforcement of the judgment.

The Constitutional Court also assessed whether the disputed regulation constituted proportional means of achieving the legitimate aim of sparing administrative resources. The Court pointed out that it was possible to create an enforcement model that would equally ensure the interest of sparing administrative resources and the enforcement of a judgment in favor of the creditor. For example, the Court considered that in case the sale of the property at the auction was impossible, it would be possible to transfer the property in kind to the creditor. Thus, there was another, less restrictive way of sparing administrative resources.

The Court also noted that after passing some time since the auction failed, market interest in alienating the property could increase. Consequently, if the auction failed three times, the possibility of alienation should not be excluded forever.

Thus, the Constitutional Court considered that disputed provision disproportionately restricted the right to a fair trial (Article 31 (1) of the Constitution of Georgia) and declared it unconstitutional.

LLC "Stereo+", Luca Severini, Lasha Zilpimiani, Robert Khakhalevi v. The Parliament of Georgia and The Minister of Justice of Georgia

On 17 December 2019, the Second Chamber of the Constitutional Court of Georgia rendered its judgment on the Case of "LLC 'Stereo+', Luca Severini, Lasha Zilpimiani, Robert Khakhalevi and Davit Zilpimiani v. the Parliament of Georgia and the Minister of Justice of Georgia" (the Constitutional Complaint №1311). The complainant contested constitutionality of the regulations governing the procedure for acquiring title to property purchased at compulsory auction. Pursuant to the disputed regulations, any person, including a legal person registered in an off-shore zone could acquire shares or stocks of a license holder and/or authorized person in the field of broadcasting, in case of compulsory auction. At the same time, according to the Georgian legislation, ownership of the aforementioned shares or stocks of a license holder and/or authorized person in the field of broadcasting by a person registered in the off-shore zone would result in revocation of the broadcasting license and/or authorization.

At the same time, on the basis of impugned regulations, acquisition of the ownership interest or shares of an authorized person in the field of electronic communications was allowed without prior notification to the Georgian National Communications Commission (thereafter, the Commission). Under such circumstances, an authorized person may, involuntarily, become an authorized person with significant market power over the relevant segment of the service market. This, in accordance with the Georgian legislation, would result an imposition of one or several specific obligations in the field of electronic communications to an authorized person with significant market power in the relevant segment of the service market. In the light of all the foregoing, the complainant party indicated that the contested regulations disproportionately restricted the right to property and freedom of expression, thereby, contradicted the requirements of the Constitution of Georgia.

The respondents – the representatives of the Parliament of Georgia and the Minister of Justice of Georgia indicated that the disputed provisions served legitimate aims such as satisfying the creditors' lawful claims in a timely and effective manner, as well as the protection of the proprietary interests of the legal persons registered in the offshore zone wanting to acquire property by means of compulsory public auction.

The Constitutional Court of Georgia has clarified the importance of broadcasting licenses or authorizations and indicated that the broadcasting license/authorization is a

prerequisite for doing business in this area and has high economic value. On the basis of the contested regulations, the acquisition of share/stocks of a license holder/authorized person in the field of broadcasting by an entity registered in an off-shore zone may cause the revocation of the company's license and/or authorization. As a result, it would no longer be authorized to carry on broadcasting activities. It would in itself reduce the value of the company and result significant financial losses for its partners/shareholders and deprive them from ability to impart information through broadcasting. In this regard, the Constitutional Court of Georgia held that the impugned provisions restricted applicant company's and its partners' right to property and freedom of expression.

The Constitutional Court of Georgia shared respondents' position and indicated that the creation of proper legal guarantees for the acquisition of property by the auctioneer and the satisfaction of the creditors' recognized claims are valuable constitutional interests and to achieve such legitimate aims it was allowed to restrict complainants' right to property and freedom of expression.

The Constitutional Court of Georgia, further acknowledged that even in the case of restrictions on the acquisition of ownership of a license holder/authorized company in the field of broadcasting by person registered in the off-shore zone, creditors still had a real opportunity to satisfy their claims by selling the mentioned property. In particular, shares/stocks of license holder or an authorized broadcasting company, itself, given the nature of the said property, did not belong to such a category of property, which proprietorship interest solely (significantly) comes from a legal entity registered in an off-shore zone. In contrast, there might exist an unlimited number of other potential buyers who are interested in acquiring such property.

In connection with the ownership interest of legal entities registered in the offshore zone regarding the license holder/authorized entity's stocks/shares, the Constitutional Court of Georgia referred that the acquisition interest could not be related to the economic benefits derived from the broadcasting activities, as far as acquisition of shares/stocks by a person registered in an off-shore zone would cause the Company the loss of the right to operate in the broadcasting field. At the same time, the Constitutional Court of Georgia held that the desire to purchase share/stocks of the company may be related to the interest of acquiring other property of the company and/or earning profits from other areas of business that do not require a broadcasting license/authorization. Nevertheless, mentioned interests are not valid to the extent that justifies such an intense restriction of broadcasting company's and its

partners'/shareholders' rights. Due to all the foregoing, the Constitutional Court of Georgia concluded that such model of balancing the opposing interests did not meet the requirements of the Constitution of Georgia, the interests of the creditors to satisfy their legal claims and proprietary interests of the legal persons registered in the off-shore zone to acquire shares/stocks of the broadcasting company could not outweigh the broadcasting company's and its partners' interests. Accordingly, the Constitutional Court of Georgia held that the impugned regulations violated freedom of expression and the right to property.

Furthermore, the Constitutional Court of Georgia indicated that under the terms of the contested normative content, which allowed acquisition of the ownership interest or shares of an authorized person in the field of electronic communications without prior notification to the Commission, authorized person may, involuntarily, become an authorized person with significant market power over the relevant segment of the service market. All above-mentioned led to imposition of numerous specific obligations in this field. The Constitutional Court of Georgia considered that imposing such burden on the company was a restriction of the ownership rights. At the same time, this burden was not considered as severe to cause the restriction of the freedom of expression.

The Constitutional Court of Georgia stated that it was possible to regulate the process of selling the property at a compulsory public auction in such way to exclude the realization of the shares/interests of company without the control of the Commission. Particularly, it was possible to secure the participation of the Commission in the process of selling of shares/stocks of the authorized person in the field of electronic communication prior to the sale of the shares/stocks. The Constitutional Court of Georgia emphasized the importance of establishing the system of compulsory auction in such manner that the sole parties excluded from the list of potential purchasers of the property at compulsory auction were those, whose purchase of this property led to breach of healthy competition and turned this company into authorized person with significant market power over the relevant segment of the service market.

Under such circumstances, the need to protect the interests of the creditors and the interest of the potential acquirer could not outweigh the interest of the authorized company and its partners to carry on their business without interruption. Accordingly, the impugned provision unjustly established the balance of interests and unnecessarily restricted the company's and its' partners property right.

In the light of all the foregoing, the Constitutional Court of Georgia held that the normative content of the contested regulations, which permitted selling of shares/interests of the authorized person in the field electronic communications at the compulsory auction without the prior notification to the Commission did not contradict the freedom of expression guaranteed by Article 17 of the Constitution of Georgia, but violated the right to property enshrined in Article 19 of the Constitution of Georgia.

2. International Relations and Other Activities

2.1. Public Communication, Publishing and Educational Activities

Throughout the 2019, the Constitutional Court has actively been engaged in communication with representatives of mass media in order to inform the society on cases adjudicated upon and judgments rendered by the Court. At the same time, the Constitutional Court has been cooperating with various non-governmental and educational institutions, which conducted up to 20 visits to the Constitutional Court in 2019.

Following visits are worth mentioning:

5 July – within the scope of the visit of President of Georgia Salome Zourabichvili to the Constitutional Court, a meeting was held between the President of Georgia and the President of the Constitutional Court – Zaza Tavadze, and upon completion of the meeting, Zaza Tavadze presented members of the Constitutional Court to the President. The President of Georgia emphasized the role of the Constitutional Court, as that of the governmental institution of utmost importance, which promotes the supremacy of Constitution and protects fundamental human rights in the country. Salome Zourabichvili expressed their respect towards activities of the Constitutional Court.

22 August – presentation of the book authored by the Professor of University of Texas – Richard Alber – entitled "Constitutional Amendments: Making, Breaking and Changing Constitutions" – was held at the Constitutional Court. The event was held within the scope of the summer school "Constitutional Democracy: Modern Challenges", which was organized by Mykolas Romeris University and Batumi Shota Rustaveli University, in

cooperation with the Constitutional Court of Georgia. Presentation was opened by the President of the Constitutional Court of Georgia Zaza Tavadze, who addressed the guests with a welcome speech. An event was attended by members of the Constitutional Court – Merab Turava and Giorgi Kverenchkhiladze, as well as the Dean of Batumi State Unviersity's Faculty of Legal and Social Sciences and the Associate Professor of the same faculty, – the head of the summer school project – Malkhaz Nakashidze, together with other invited guests, representatives of academia from the USA and the European countries.

Professor of the Department of Government of the University of Texas and Professor of Law at William Stamps Farish – Richard Albert – is an author of a dozen of books and the founding chairperson of the International Forum on the Future of Constitutionalism. He gives lectures in the field of constitutional law, publishes books and articles on the issues of constitutional amendments.

In 2019, the Constitutional Court continued its publishing activities, aiming to promote research in the field of constitutional law. In 2019, two editions of the Journal of Constitutional Law" were published. It was comprised of work of authoritative international authors – András Sajó, Jeremy Waldron, Lieneke Slingenberg, - as well as that of young Georgian Researchers, - Irakli Ksovreli, Mariam Mgeladze, Murman Gorgoshadze, Tamar Baramashvili, Lela Matcharashvili and others.

2.2. Summer Schools

Alongside performing its direct functions, the Constitutional Court is actively engaged in raising legal awareness in the society. In this regard, the Constitutional Court, in cooperation with various universities and donors, organized the following activities:

2.2.1. Summer School on Constitutional and Human Rights Law

Summer School on Constitutional and Human Rights Law, which was first held in 2008, is one of the most successful projects of the Constitutional Court. In 2019, the Court hosted the 12th stream of the summer school. The summer school was organized with the financial support of a USAID-funded program – "Promoting Rule of Law in Georgia" (EWMI/PROLoG) and in cooperation with the Grigol Robakidze University.

In 2019, the summer school was held in Batumi, in the building of the Constitutional Court of Georgia, during 22 July – 1 August.

Throughout these two weeks, participants of the summer school attended lectures on various topical issues in the field of constitutional law, including the specificities of exercising constitutional control in the US and Europe, standards for limitation of human rights, as well as the issues of secret surveillance and personal data protection.

Participants had an opportunity to get familiarized with the case-law of the Constitutional Court of Georgia, Supreme Court of the United States, the European Court of Human Rights and the Court of Justice of the European Union. In addition, they participated in moot courts.

During this summer school, lectures were given by the Deputy President of the Constitutional Court – Teimuraz Tughushi, EU4Justice Program Team Leader - Judge Renate Winter as well as invited professors and experts – Jason C. DeSanto – Northwestern University Law Faculy (USA); Richard Wogler – Sussex Unviersity (UK) Professor; Nóra Ní Loideáin – School of Advanced Study University of London (IALS), Director of Information Law & Policy Centre and University of Cambridge (UK) Professor; Tamar Kaldani – Personal Data Protection Inspector of Georgia (2013-2019); David Gabekhadze – Head of the Legal Support Department of LEPL Operatvie-Technical Agency; Givi Baghdavadze – Head of the Division of the Legal Support Department of the Office of the Chief Prosecutor of Georgia.

The purpose of the summer school of the Constitutional Court is to increase professional knowledge of future jurists in the field of constitutional law and human rights.

28 best applicants were selected from the students of universities' law faculties to participate in the summer school. It is noteworthy that the best participants of the summer school can undertake internships and be further employed at the Constitutional Court.

2.2.2. Summer School "European and Constitutional Standards for the Protection of Human Rights"

Throughout 5-10 August, a joint summer school of the Constitutional Court, Julius Maximilian University of Würzburg University and Grigol Robakidze University on "European and Constitutional Standards for the Protection of Human Rights" was held at the Constitutional Court.

Students received lectures from Georgian and German professors and practicing lawyers. The aim of the summer school was to increase professional knowledge of future jurists in the fields of constitutional law and human rights law.

The summer school was attended by Georgian and German students from Würzburg and Jena Universities, as well as by public servants.

2.2.3. Summer School on "Freedom of Expression in the case-law of the Constitutional Court of Georgia, Common Courts of Georgia and the Supreme Court of the USA"

During 10-14 August the summer school on the "Freedom of Expression in the case-law of the Constitutional Court of Georgia, Common Courts of Georgia and the Supreme Court of the USA" organized by the Constitutional Court and the National Institute for Human Rights of the Free University of Tbilisi was held at the Constitutional Court.

Jurisprudence of the Constitutional Court of Georgia, Tbilisi Court of Appeals and the Supreme of Court of Georgia with respect to freedom of expression was discussed within the scope of the summer school, alongside the comparative analysis of the relevant US Supreme Court case-law. Lectures were given by – Bill Rich, Professor of Law at the University of Washburn, Davit Zedelashvili – Associate Professor at the Free University of Tbilisi, – Keti Meskhishvili – Judge of the Tbilisi Court of Appeals, Professor of the Free University of Tbilisi, Natia Khantadze – Director of the National Institute for Human Rights and other invited lecturers.

The summer school was held with the financial support of USAID-funded program – "Promoting Rule of Law in Georgia" (USAID/PROLoG). The summer school was also supported by the GIZ programme of Legal Approximation towards European Standards in the South Caucasus as well as the Open Society Foundation.

2.3. International Relations

Throughout the 2019, the Constitutional Court was also active at the international level and has held a number of events.

2.3.1. Important Visits Carried out by the President/members of the Constitutional Court in 2019

Within the scope of constitutional law conferences/bilateral meetings, the Constitutional Court was closely cooperating with constitutional courts of other countries as well as with international institutions.

- **25-26 January** – the President of the Constitutional Court Zaza Tavadze and a member of the Court – Eva Gotsiridze visited Strasbourg upon the invitation of the European Court of Human Rights, where they participated in the event related to the opening of the working year of the ECtHR and attended a seminar dedicated to strengthening trust towards justice.

Within the scope of the visit, the President of the Constitutional Court held a meeting with a Georgian Judge at the European Court of Human Rights – Lado Tchanturia. In addition, meetings were held with representatives of the constitutional courts of European countries.

- **18-20 February** – the President of the Constitutional Court Zaza Tavadze was on a business trip in the Kingdom of Spain, where he participated in the World Court Congress. In 2019, the event was held in Madrid.

The 26th Congress war organized by the "World Jurist Association" (WJA), one of the hosts being the Constitutional Court of the Kingdom of Spain. The Congress addressed challenges of constitutions, democracy and the rule of law in the context of achieving 2030 UN sustainable development goals. The event was attended by leading jurists from international organizations as well as by decision-makers from government institutions and judges from highest national courts.

Zaza Tavadze addressed participants of the Congress with a speech and discussed activities of the Constitutional Court of Georgia. He emphasized the role of the Constitutional Court in Georgia in the process of promoting the rule of law. He also moderated a session dedicated to the issues related to the rule of law in continental Europe.

Within the scope of the event, a meeting was held between the participants of the Congress with the Monarch of the Kingdom of Spain and its Prime Minister.

- **8-12 April** – the President of the Constitutional Court of Georgia Zaza and his Deputies – Teimuraz Tughushi and Merab Turava visited the Federal Republic of Germany.

Within the scope of the visit, members of the delegation were familiarized with the German model of covert investigative activities, namely with legal grounds of surveillance of telecommunication and its use in practice, as well as the mechanisms of its control.

Within the scope of the visit, meetings were held at the Ministries of Justice and Internal Affairs of the Federal Republic of Germany, Bureau of the Data Protection and Information Security, Federal Criminal Police Office, Committee of Legal Affairs of the Federal Bundestag and the G10 Commission, as well as the Berlin Constitutional Court.

Meetings of the members of delegation were dedicated to discussing main issues of the German model of the security architecture, including official and branch supervision conducted by the Ministry of Internal Affairs, analysis of legal grounds for telecommunications surveillance (in particular, data access, resolution, dataflow, volume, control, usage and storage, protection, obligations with respect to information and protection rights of interested parties), as well as material-technical characterization of police when conducting telecommunications surveillance.

The visit was conducted with the support of the German Foundation for International Legal Cooperation (IRZ).

- **16-17 May** – the Constitutional Court of Georgia hosted members of the apparatus of the Constitutional Court of Ukraine. Within the scope of the visit, a meeting with the Deputy President of the Constitutional Court of Georgia Teimuraz Tughushi was held.

In the format of a two-day meeting, representatives of the apparatus of the Constitutional Court of Georgia presented a justice system of the Constitutional Court as well as procedural aspects to Ukrainian colleagues. At the same time, parties discussed the case-law of the Constitutional Court of Georgia and the effects of its judgments.

The purpose of the visit was to exchange experiences between the two constitutional courts.

- **30-31 May** – members of the Constitutional Court Giorgi Kverenchkhiladze and Tamaz Tsabutashvili visited Minsk, where they participated in the event related to the 25th anniversary of the Constitutional Court of Belarus. Within the scope of this visit, a conference on “Modern Constitutional Development: the Role of the Constitutional Review in Constitutionalization of Law” was held. Giorgi Kverenchkhiladze addressed participants of

the conference with a speech regarding specificities of choosing a systemic model of constitutional justice.

- **6-7 June** – Irina Khakhutaishvili – Head of the Department of International Relations of the Constitutional Court of Georgia took part in the Superior Court Network Focal Points Forum in Strasbourg upon the invitation of the European Court of Human Rights. Within the scope of the meeting, various topical seminars were held on issues such as "Case-Law of the European Court of Human Rights regarding Terrorism" and "Case-Law of the European Court of Human Rights regarding Migration".

It is noteworthy that this format represents a network of superior courts, created upon the initiative of the European Court of Human Rights. Georgia has been a member of the network since 2017.

The network serves the purpose of exchanging case-law and relate information among its members.

- **26-27 June** – Head of the Bureau of the President of the Constitutional Court Alexander Tchabukiani and Head of the Protocol and Public Relations Department Giorgi Lomtadze were in Kiev, Ukraine, upon the invitation of the Constitutional Court of Ukraine, where they participated in the conference dedicated to 23rd anniversary entitled "Human Rights and National Security: Ensuring Balance between Human Rights and State Interests. Role of the Organs of Constitutional Jurisdiction".

- **12-14 September** – Deputy President of the Constitutional Court of Georgia Teimuraz Tughushi participated in the distinguished meeting of the presidents of the highest instance courts of the CoE countries. The French Republic hosted the event in the rank of the country presiding over the Committee of Ministers of Council of Europe and it was held in Paris, Palace of Justice.

The President of the Court of Cassation of France, President of the Constitutional Council, Ministry of Justice, State Prosecutor, and the Deputy Head of the State Council conducted the opening of the ceremony.

President of the European Court of Justice and Secretary General of the Council of Europe also addressed participants with the speech.

Within the scope of the meeting of judges of CoE member countries, seminars on various topics were also held: „Effective Mechanisms for Judicial Protection", "Relations

between National Courts and the European Court of Human Rights" and "Freedom of Expression vis-à-vis the Right to Private and Family Life".

- **4-5 October** – Secretary of the Constitutional Court of Georgia Manana Kobakhidze visited the Republic of Lithuania, where she participated in the 22nd Congress on European and Comparative Constitutional Law.

The Congress was dedicated to constructing the concept of democracy in constitutional justice and specificities of its interpretation. Event was attended by leading legal experts from international organizations as well as from decision-makers from governmental institutions and judges from superior national courts.

Manana Kobakhidze gave participants a presentation whereby she emphasized the principle of democracy as a fundamental element of the Georgian constitutional system, she reviewed case-law of the Constitutional Court, where the Court interpreted the principle of democracy of the value system established by the Constitution.

It is noteworthy that in fall 2020, the 23rd Congress on European and Comparative Constitutional Law will be held in Batumi and will be hosted by the Constitutional Court of Georgia.

- **17-18 October** – a member of the Constitutional Court Irine Imerlishvili was invited to the Republic of Latvia by the Law Faculty Dean of the University of Latvia, where she participated in 7th International Scientific Conference of the University of Latvia. This event was dedicated to 100th anniversary of the Law Faculty of the University of Latvia.

Topics of the conference included current issues of legal sciences and legal systems. Speeches were given by the President of the Republic of Latvia, the President of the Constitutional Court of Latvia, the President of the Court of Justice of European Union, as well as other leading academicians and practicing lawyers.

- **19-21 October –** the Secretary of the Constitutional Court of Georgia Manana Kobakhidze was invited by the Supreme Constitutional Court of the Arab Republic of Egypt to participate in the event related to 50th anniversary of the Court which was held in Cairo, Arab Republic of Egypt.

- **8-9 November** – the President of the Constitutional Court of Georgia Zaza Tavadze was in Berlin to participate in a distinguished forum dedicated to the 30th anniversary of the fall of Berlin Wall. An event was organized by the Academy of Cultural Diplomacy. The President of the Constitutional Court addressed participants with a speech whereby he put an emphasis on epochal changes taking place in 1990-ies in Central and Eastern Europe, drawing inspiration from the events occurring in Berlin 30 years ago. In his speech, Zaza Tavadze noted that for consolidation of democratic transformation in the region, existence of constitutional control is of utmost importance. In this regard, Zaza Tavadze addressed the role of the Constitutional Court in the process of strengthening the legal state in Georgia. The speech also included a message that the fall of the Berlin wall serves as a symbolic example of the fact that artificial barriers are temporary and that occupation of our country will also come to an end.

Persons holding high positions in different countries as well as various international organizations attended forum.

- **21-22 November** – a delegation of the Constitutional Court comprised of Merab Turava, Teimuraz Tughushi, Eva Gotsiridze and Tamaz Tsabutashvili attended the International Conference of Criminal Justice in Poland. The event was dedicated to 100th anniversary of the Criminal Law Division of the Codification Commission and was organized by the Constitutional Tribunal of the Republic of Poland.

Topics of the conference included a number of current issues in the field of criminal law. Representatives of bodies exercising constitutional control as well as leading scholars from different countries attended an event.

Merab Turava addressed participants of the conference and discussed the criminal law standards established by the Constitutional Court.

2.3.2 Cooperation with Diplomatic Corps Accredited in Georgia and Donor Organizations

The Constitutional Court is also actively cooperating with diplomatic corps accredited in Georgia as well as with international donor organizations. Among them is EU4Justice,

which enabled the Court to engage in different activities in order to promote institutional consolidation and effective exercise of constitutional justice.

During 2019, following activities were undertaken in cooperation with aforementioned partners:

- **8-9 February** – a working meeting was help in Borjomi, which was attended by representatives of the Constitutional Court of Georgia, apparatus of the Public Defender of Georgia, nongovernmental, international donor organizations, media and academia.

Within the scope of the meeting, a 2018 Report on Constitutional Legality was also presented, which addressed, among others, the issues of institutional development of the Court.

The issues of engaging civil society in the process of constitutional decision-making and effective representation were discussed among the representatives of the apparatus of the Public Defender, nongovernmental and international donor organizations. In addition, a meeting was held between members of the Constitutional Court and representatives of media, which aimed at discussing practical problems related to media coverage of the activities of the Constitutional Court.

- **23 April** – the Ambassador of the United States of America to Georgia – Ross Wilson – visited the Constitutional Court and was received by the President of the Court – Zaza Tavadze.

Activities of the Constitutional Court, practical aspects of constitutional procedure and judgments of the Constitutional Court were discussed during the meetings. Ross Wilson expressed his respect towards the activities of the Court and assessed the role of the Constitutional Court in the process of promoting the rule of law in Georgia positively.

- **30 October -** members of the apparatus of the Constitutional Court of Georgia participated in the training on persuasion, public speaking and advocacy, which was led by an expert of the USAID-funded programme EWMI/PROLoG - Jason DeSanto – The event was held in Batumi, - hotel Radisson Blue, with the financial support of EWMI/PROLoG).

Within the scope of the training, the expert addressed topical issues related to persuasiveness and public speaking, including laconic formulation and expression of messages, Q&A etc.

Jason DeSanto is a Professor of Law at the Northwestern University (USA). He specializes in legal communication and teaches the issues of law, advocacy and public persuasion at Northwesten University.

- **7 November** – the ambassador of the Republic of France in Georgia Diego Colas visited the Constitutional Court of Georgia, which was hosted by the President of the Deputy President of the Constitutional Court of Georgia - Teimuraz Tughushi.

Diego Colas expressed his interest in the system of constitutional control in Georgia, its competency and practical aspects of the constitutional procedure. Teimuraz Tughushi provided ambassador with exhaustive information regarding the activities of the Constitutional Court, constitutional procedure and the effectiveness of the Court's judgments.

The Ambassador of the Republic of France has expressed his respect towards the activities of the Constitutional Court and noted the role of the Court in the process of upholding the rule of law in Georgia. A desire to deepen relations between the Constitutional Court and the Embassy of France in Georgia was also expressed during the meeting.

2.3.3. European Commission for Democracy through Law (Venice Commission)

The Constitutional Court of Georgia and Venice Commission have a long-standing history of close cooperation. This cooperation is maintained within the scope of various instruments of the Venice Commission, among which are:

Publication of the Venice Commission's e-Bulletin on Constitutional Case-Law

The Constitutional Court periodically provides information on its judgments to the Venice Commission, as well as to other international, diplomatic and local organizations.

Judgments rendered by the Constitutional Court in 2018 received attention in the periodical publishing of the Venice Commission („European Commission for Democracy through Law"). This publishing (e-Bulletin on Constitutional Case-Law) is comprised of landmark cases of the organs of constitutional justice in Europe and beyond and is aiming to inform judges of international courts and other interested persons on the new tendencies developed in the case-law.

It is noteworthy that in 2019, 5 decisions of the Constitutional Court from 2018 made it to the e-Bulletin, which are also paid due regard in information delivered by the President of the Court - on "Constitutional Legality in Georgia".

18th Meeting of the Joint Council on Constitutional Justice of the Venice Commission

On 23-24 May, upon the invitation of the Venice Commission and the Constitutional Court of Italy, the Head of International Relations Department of the Constitutional Court Irina Khakhutashvili participated in the 18th meeting of Venice Commission liaison officers in Rome. Within the scope of the meeting, on 24 May a conference entitled "Independence of the Judicial Branch, Role of the Constitutional Court". Irine Khakhutashvili is a liaison officer of the Constitutional Court to the Venice Commission since 2011.

3. Major Directions of Strengthening of Constitutional Justice

2019 has been an important year from the point of view of establishing constitutional legal standards as well as events held with the intention of institutional development of the court and increasing effectiveness of constitutional control.

3.1. Constitutional Legal Standards Established in 2019

In 2019, the Court made important interpretations with respect to separate aspects of freedom of enterprise and free competition. In particular, the Constitutional Court established constitutional legal requirements for selectively supporting economic agents. In its judgment №1/1/655 of 18 April 2019 in the case of "Ltd. 'SKS' v. The Parliament of Georgia", the Constitutional Court ruled that, for the purposes of Article 26 clause 4 of the Constitution, the benefit given by the government from the budget selectively to an economic agent or a group of agents would amount to limitation of the freedom of enterprise when such a measure has an impact on free competition or creates this risk.

In the aforesaid case, the Court also established the criteria based on which the government can selectively allocate benefits to respective economic agents providing publicly beneficial services.[38] In particular, (a) an obligation of the economic agent receiving

[38] For instance, providing postal or delivery services to the population country-wide for an affordable price.

benefits to provide publicly beneficial services should be clearly established; (b) transparent and objective parameters for calculating economic costs associated with providing services for the benefit of public should exist; (c) an economic agent will not receive more benefits than is necessary to cover economic costs of providing services for the benefit of public as well as for compensating reasonable amount of revenue.[39] These standards set forth by the Constitutional Court provide a constitutional framework for freedom of entrepreneurship and competition, which will undeniably facilitate the establishment of open economy, free enterprise and competition in the country.

The Constitutional Court has also established important standards with respect to the right to appeal before the court[40] and deemed unconstitutional a regulation establishing that a ruling issued by the court on the case of administrative offence could have only be appealed within the period of 10 days regardless of whether or not it has been received by the addressee. The Court noted that getting acquainted with a reasoned ruling might relate to efficacy and potency of the appeal. In addition, the Court noted that it is important for a person to have the possibility to appeal an act restricting his or her rights after getting acquainted with it, without unjustified, unnecessary barriers.

In one of its judgments delivered in 2019, the Constitutional Court established important standards with respect to enforcement and solvency proceedings. It this judgment, [41] the Constitutional Court deemed unconstitutional a regulation which prescribed that in solvency proceedings, custodial property was transmitted to state ownership if its realization had been impossible after three auctions. The Constitutional Court ruled that this provision violated property rights of the debtor and deemed it unconstitutional. This judgment increased rights of the debtor in the process of solvency cases.

The 2019 judgments also broadened debtor's rights in relations regarding enforcement proceedings. The Court ruled that forced realization of debtor's property during enforcement proceedings should be conducted in a way that a state undertakes all the measures to ensure realization of the property with the price closest to its real value.[42] This standard was not met in cases where 0 GEL was indicated as a price of the property, in the circumstances under

[39] Judgment of the Constitutional Court of Georgia №1/1/655 dated 18 April 2019 in the case of "Ltd. 'SKS' v. The Parliament of Georgia", para.
[40] Judgment of the Constitutional Court of Georgia №1/3/1263 dated 18 April 2019 in the case of "Irakli Khvedelidze v. The Parliament of Georgia".
[41] Judgment of the Constitutional Court of №1/2/1250 dated 18 April 2019 in the case of "Ltd. 'Tiflis 777' v. The Parliament of Georgia".
[42] Judgment of the Constitutional Court of Georgia №2/2/867 dated 28 May 2019 in the case of "Remzi Sharadze v. The Minister of Justice of Georgia".

which during the first and second auctions transitory rights were not taken into account in the process of determination of the market price, and this resulted in setting unreasonably high prices for the first two auctions and significantly reduced the likelihood of realization of the said property.

The Court also ruled that a state had an obligation to pay due regard in the process of enforcement as to what impact does the enforcement have on rights of the company and stakeholders of the company, the shares of which are being alienated in order to satisfy claims of the partners' creditors. In this regard, the Constitutional Court's judgments established specific criteria with respect to alienation of shares of companies operating in the field of broadcasting and electronic communications. In particular, the Court ruled that a state is obliged to take into account broadcasting company's interest to retain its authorization/license, which is protected under the right to property and freedom of expression, as well as the company's and partners' property interests, that while conducting enforcement proceedings, unjustified obligations in the field of electronic communications not be placed upon them contrary to their will.[43]

The rights of creditors in enforcement proceedings have also been improved by virtue of the judgment of the Constitutional Court.[44] In particular, the Court deemed unconstitutional a regulation according to which during the compulsory auction (first and second repetitive auctions), in case the property was not realized, attachment of the property benefiting the creditor was being lifted. In addition, with respect to the same claim regarding the aforesaid property, enforcement proceedings were not being conducted. The Court noted that lifting attachment from the property completely and permanently – without taking into account the possibility of offering transition of the property to the creditor in nature – established an unfair balance and was in breach of the creditor's right to fair trial.

In 2019, the Court also established important standards with respect to the right to private and family life of persons serving a sentence.[45] The Constitutional Court noted that, in general, using imprisonment as a form of punishment results in limitation of the possibility to have ties with family members and the outside world. Accordingly, private and family life does not protect the right of an imprisoned person to have an unlimited access to his or her

[43] Judgment of the Constitutional Court of Georgia №2/6/1311 dated 17 December 2019 in the case of "'LLC 'Stereo+', Luka Severin, Lasha Zilfimian, Robert Khakhalev and Davit Zilminian v. The Parliament of Georgia and Minister of Justice of Georgia".
[44] Judgment of the Constitutional Court №2/5/879 dated 14 November 2019 in the case of "Zurab Svanidze v. The Parliament of Georgia".
[45] Judgment of the Constitutional Court №2/1/704 dated 28 May 2019 in the case of "Giorgi Kartvelishvili v. The Parliament of Georgia".

family members. However, using imprisonment as a form of punishment does not imply an absolute isolation of a person and complete prohibition of maintaining contact with family members. The Court elucidated that the right to private and family life of an imprisoned person implies the possibility of maintaining contact with family members in a manner and with the frequency that is compatible with the nature of the measure of imprisonment and does not represent an unreasonable burden for a state.

In this case, the Court ruled that the prohibition of long visits for inmates serving sentence in high-risk penitentiary facilities constituted a limitation of the right to private and family life. The limitation was imposed for the purposes of maintaining security in a penitentiary facility as well as for protecting interests of inmates and the society, and hence the Court rule that such a limitation did not result in breach of the requirements of the Constitution.

Last year, the Court rendered an important decision with respect to public access to the acts of the court.[46] The Constitutional Court found that it was unjustified to restrict access to such personal data provided in the court's acts, the interest of protection of which had not been expressed by the subject of this personal data. In addition, given the importance for the public to have an access to court judgments, the Constitutional Court ruled that, as a general rule, the courts' acts should be open unless in separate cases spreading information will impact a subject of personal data negatively and for this reason it is necessary to restrict it. As a result, the existing regulation was deemed unconstitutional and in breach of the right to get familiarized with information existing in public institutions (Article 18 cl. 2 of the Constitution of Georgia). Thus, this decision established a high level of transparency for the justice system, which will further facilitate transparency in the courts' activities and will increase the level of public oversight and trust towards the judicial system.

The Constitutional Court established important standards with respect to freedom of expression in the context of spontaneous protest. In particular, the Court deemed unconstitutional a regulation which prohibited spontaneous and temporary placement of banners, slogans and placates by the owner or with the owner's consent on the object.[47] The Court noted the importance of freedom of expression for spontaneous protests and it deemed that protection of buildings from a temporary change of appearance was not a sufficiently

[46] Judgment of the Constitutional Court №1/4/693,857 dated 7 June 2019 in the case of "N(N)LE 'Media Development Foundation' and N(N)LE 'Institute For Development of Freedom of Information' v. The Parliament of Georgia".

[47] Judgment №1/5/1271 dated 4 July 2019 in the case of "Besik Katamadze, Davit Mzhavanadze and Ilia Malazonia v. The Parliament of Georgia".

significant interest that would justify the prohibition to place banners, slogans and placates on the object by the owner or with the owner's consent.

In 2019, the Constitutional Court set forth an important standard with respect to formal requirements of the freedom of expression and delegation of the freedom of expression.[48] It interpreted the requirements of the constitution with respect to limitation of freedom of expression by the law. The Court ruled that freedom of expression shall be regulated by law or other act on grounds of relevant delegation. In addition, it noted that delegation of determining fundamental aspects of the freedom of expression is disallowed. By virtue of this judgment, content-based regulation of free speech was considered to be an issue of fundamental importance. The Court ruled that the content-based regulation of free speech is of high political and public interest and the Parliament cannot delegate such regulation to another body. Hence, last year, important definitions were adopted both with respect to formal and material aspects of limitation of the freedom of expression and a higher standard for the protection of this right was introduced.

In one of its 2019 judgments,[49] the Court also interpreted formal constitutional requirements with respect to provisions prescribing taxes and fees. In particular, the Court had the first opportunity to interpret formal requirements of Article 67 (1) of the Constitution after the new Constitution entered into force. Under the said constitutional provision, only the law shall determine the structure and the procedures for introducing taxes and fees, as well as their rates and the scope of those rates. The Constitutional Court ruled that the Parliament cannot delegate the authority to legislate upon structure of fees and taxes or the rate and the scope of these rates to another body. Referring to this standard, the Court ruled that a regulation of the Government of Georgia imposing fees upon telephone subscribers for utilizing the "112" service unconstitutional. The Court considered that such a fee falls within the ambit of Article 67 of the Constitution and deemed unconstitutional the Government's determination of subjects of to these fees and scope of the rate.

2019, similar to the previous year, has been productive with respect to establishing constitutional legal standards regarding sanctions prescribed for illegal production, purchase, storage and/or use of narcotic drugs. In particular, the Court rendered its judgment based on

[48] Judgment №1/7/1275 dated 2 August 2019 in the case of "Aleksandre Mdzinarashvili v. Georgian National Communications Commission".
[49] Judgment №2/3/1279 dated 5 July 2019 in the case of "Levan Alapishvili and 'LP Alapishvili and Kavlashvili – Georgian Bar Group' v. the Government of Georgia.

the claim of the Public Defender of Georgia,[50] which dealt with constitutionality of punishments prescribed for the production, purchase, storage and/or use of numerous narcotic drugs. According to the criteria established in the judgment, when prescribing imprisonment as a form of punishment for aforesaid offences, legislators shall take into account an amount of narcotic drugs as well as its principal characteristics, such as its addictiveness and/or whether or not it causes aggressive conduct. Guiding principles established by the Constitutional Court will assist the Parliament in adopting constitutionally valid policy.

3.2. Work Aiming to Develop Electronic Resources of the Constitutional Court

In 2019, within the framework of the project undertaken with the financial support of the EU, the Constitutional Court renewed its website, which started operation in a pilot regime. A principal novelty of the website is in the search system for acts of the Court and other documents related to constitutional proceedings. The system unified documents processed within the frame of constitutional proceedings and classifiers thereof. As a result, interested persons will be able to conduct search using 20 main criteria and about 700 sub-criteria. They will also be able to access on-line or download respective documents as well as the data identifying results searched by selected criteria.[51]

Within the framework of the same project, an electronic system for constitutional proceedings has been created, which enables electronic processing of case materials and systematization thereof. Automatic assignation of a reporting judge and the module of researches conducted by the Department of Legal Support and Research have been unified and number of functions have been added, which will increase efficacy of processing of cases. Electronic system of proceedings also envisages creating accounts for parties to cases. By virtue of these accounts, parties will have an opportunity to refer to the Court with electronic motions and maintain other types of communications electronically.[52]

[50] Judgment of the Constitutional Court №1/6/770 dated 2 August 2019 in the case of "Public Defender of Georgia v. The Parliament of Georgia".
[51] Currently, the website operates in a pilot regime, accuracy of the data is being assessed and the website is being improved.
[52] Operation of the electronic system of proceedings is planned in the first quarter of 2020.

We hope that undertaken work is an important step towards institutional development of the Constitutional Court of Georgia and it will enhance transparency, accessibility and efficacy of the constitutional control.

3.3. An Issue of Appointing a Member of the Constitutional Court

5 December 2019 marked the day of expiration of tenure for a member of the Constitutional Court – Maia Kopaleishvili. Throughout the 10 years dedicated to the Court, Maia Kopaleishvili had actively been engaged in consideration and adjudication upon hundreds of cases. The Court rendered a number of decisions with her participation, which set forth important standards for the protection of human rights. Besides judicial functions, Maia Kopaleishvili was also actively engaged in the Court's publishing and educational occupations, national and international conferences, public lectures and other important events.

Under the Georgian legislation, responsible bodies of the government should appoint a new member of the Constitutional Court shall no earlier than one month and not later than 10 days before expiry of the term of office of a member of the Constitutional Court.[53] Notwithstanding the fact the tenure has expired for Maia Kopaleishvili, a new member of the Constitutional Court has not been appointed. For the proper functioning of the Constitutional Court, it is important that respective bodies of government make this appointment within the timeframe prescribed by the legislation. .

4. Enforcement of Judgments of the Constitutional Court and Implementation of Standards Set Forth by the Judgments

For the purposes of reinforcing constitutional legality, complete enforcement of judgments of the Constitutional Court and effective implementation of standards established therein is of utmost importance. Accordingly, this part of the document will review important issues regarding enforcement of judgments of the Constitutional Court.

[53] Organic Law of Georgia "On the Constitutional Court of Georgia", Article 16, clause 5.

4.1. The Need for Systematic Changes for Implementation of Constitutional Standards into Legislation

Under Article 60 (5) of the Constitution, a judgment of the Constitutional Court shall be final. Judgments of the Constitutional Court are mandatory for every branch of the government. An act or a part thereof that has been recognized as unconstitutional shall cease to have legal effect as soon as the respective judgment of the Constitutional Court is made public. Judgments of the Constitutional Court regarding unconstitutionality of a normative act is self-executing, - a norm ceases to have legal effects upon publication and no additional implementation measures are necessary from other bodies of the government. In addition, from the point of view of the supremacy of the Constitution, it is important that not only an unconstitutional norm loses legal effects, but also that problems identified in judgments of the Constitutional Court be eliminated in the entire legal system. Taking into account the aforementioned, for full realization of standards established by judgments of the Constitutional Court, in separate cases, it might be necessary that bodies of government undertake certain measures, make systematic and structural changes.

In this regard, the judgment of the Constitutional Court of Georgia №2/3/1279 dated 5 July 2019 in the case of "Levan Alapishvili and 'LP Alapishvili and Kavlashvili – Georgian Bar Group' v. the Government of Georgia" is to be noted. In this case, the Constitutional Court made important definitions with respect to formal requirements regarding taxes and fees. In particular, the Court had the first opportunity to interpret formal requirements of Article 67 clause 1 of the Constitution after the new Constitution entered into force. Under the said constitutional provision, only the law shall determine the structure and the procedures for introducing taxes and fees, as well as their rates and the scope of those rates. It is noteworthy that an edition of the Constitution that existed before 16 December 2018 did not envisage a requirement that rates of taxes and fees or the scope of these rates be prescribed by law, - such a requirement exists in the Constitution precisely since 16 December 2018. While interpreting a new formulation of Article 67, the Court ruled that only Parliament can adopt laws regarding structure of fees and taxes or the rate and the scope of these rates, and that it cannot delegate the authority to legislate upon these issues to another body.

Taking into account the aforesaid, it is important for the Parliament to enact systemic legislative changes and, according to the current Constitution, establish structure of

taxes/fees, rules of their imposition, their rate and scope of these rates by law, without delegation this authority to another body.

With respect to systemic changes in the legislation, judgment №1/6/770 of 2 August 2019 in the case of "Public Defender of Georgia v. The Parliament of Georgia" should also be mentioned. In this case, the Court established important constitutional standards with respect to prescribing imprisonment as a form of punishment for illegal production, purchase, storage and/or use of narcotic drugs. The Constitutional Court found that the possibility of using imprisonment was unconstitutional when the case was concerning the use or production, purchase, storage in the amount sufficient for use of such drugs, which did not cause addiction rapidly and/or aggressive behavior. It should be pointed out that the Parliament of Georgia has not undertaken relevant legislative changes in this regard. It is important for the Parliament to introduce a systemic reform and regulate the issue in compliance with the criteria established by the judgment of the Constitutional Court.

4.2. Postponing Invalidation of Disputed Norms

As noted, according to a general rule, a norm declared unconstitutional by the Constitutional Court ceases to have legal effects once a respective judgment is published. At the same time, in separate cases, the Constitutional Court notes that invalidating an unconstitutional norm upon publication of the judgment might harm private and public interests. In such cases, the Court declares a normative act void not upon publication of the judgment, but from a later date specified in the judgment. Postponement of invalidation of the disputed norm is aiming not to leave those public relations without regulation which necessitate legal framework at all times. Under such circumstances, it is necessary for the organ who adopted an unconstitutional norm to be proactive, so that relevant legislative changes are enacted within the time determined by the Court and private and public interest not be harmed as a result of declaring an unconstitutional norm void.

Out of all the judgments delivered in 2018, declaration of disputed provisions void was postponed for various periods of 2019 in 5 judgments. In 2019, the Court postponed invalidation of disputed norms in 5 judgments and 2 rulings adopted at the stage of preliminary sessions, where norms having identical substance to those that had been declared

unconstitutional (norms overruling the judgment) were declared void without considering cases on merits.

4.2.1. Cases regarding Which No Legislative Changes Have Been Enacted

a) Judgment of the Constitutional Court №2/7/779 dated 19 October 2018 in the case of "Citizen of Georgia Davit Malania v. The Parliament of Georgia"

On 19 October 2018, the Constitutional Court rendered its judgment in the case of "Citizen of Georgia Davit Malania v. The Parliament of Georgia" (constitutional complaint №779) and declared unconstitutional norms of the Code of Administrative Offences,[54] which prescribed that decisions of the first instance court on certain cases were final and were not subjected to an appeal.

The Constitutional Court found that under the disputed norm, a possibility to bring a claim before the Court of Appeals was excluded also in cases where one was being held responsible for grave offences, including those for which the Code prescribed, *inter alia*, administrative imprisonment as a form of penalty. According to the standard established by the Court, a person who is being held responsible for a grave offence should be able to appeal before the Court of Appeals regardless of whether or not a strict penalty will be imposed upon him or her. The Constitutional Court also held that the restrictions on appealing before the Court of Appeals were unconstitutional in all cases where the case-law was not uniform. The Court noted that the prohibition to appeal in cases were courts of different instances interpret norms differently creates a significant threat to legal security.

The Court noted that disputed provisions served an important legitimate aim of protecting courts from overload. Declaring disputed norms invalid immediately might have resulted in overload of courts of appeals. Hence, invalidation of the norms was postponed until 31 March 2019. The deadline established by the Constitutional Court has expired, however, the Parliament has not enacted respective legal changes and has not regulated the matter.

[54] Code of Administrative Offences of Georgia, Article 272 clause 1 "a", words of the first sentence – "the judgment of which shall be final" and words of the second sentence "the judgment of which shall be final"; clause 1 "c" of the same Article, - words "the judgment of which shall be final" and clause 1 "d", words "the judgment of which shall be final, - were declared unconstitutional with respect to Article 42 clause 2 of the Constitution of Georgia (an edition in force before 16 December 2018).

b) Judgment of the Constitutional Court of Georgia №2/8/765 dated 7 December 2018 in the case of "Citizen of Georgia Davit Dzotsenidze v. The Parliament of Georgia"

On 7 December 2018, the Constitutional Court of Georgia rendered its judgment regarding the case of "Citizen of Georgia Davit Dzotsenidze v. The Parliament of Georgia" (constitutional complaint №765) and deemed unconstitutional normative content of Article 430 clause 3 of the Civil Procedure Code of Georgia, which envisaged the possibility of annulling a final judgment of the Court under Article 423 clause 1 (f) of the Civil Procedure Code.[55] The Court ruled that the said provision was incompatible with Article 42 of the Constitution (an edition in force before 16 December 2018).

The Court noted that under the disputed provision, without any exceptions, in all cases where a motion filed due to newly discovered circumstances was grounded, final judgments having entered into force were becoming entirely void. The Court ruled that newly discovered evidence and circumstances might point not to the necessity of revising all legal effects of the judgment, but only its part. The Court found that a less restrictive measure would be giving a judge the possibility to decide the scope of nullity of a final judgment on a case by case basis, while balancing interests of the parties to the case.

In addition, the Constitutional Court noted that in case of invalidation of the disputed normative content of Article 430 (3) of the Civil Procedure Code of Georgia upon publication of the judgment, before regulation of the matter by the Parliament, no legal prerequisites for nullification of the judgment on grounds of Article 423 (f) of the Civil Procedure Code and reopening of proceedings might have existed. At the same time, the Court noted that in cases of newly discovered circumstances, nullity of the final judgment might have been a requirement of the right to a fair trial. Accordingly, declaring a disputed provision void upon publication of the judgment of the Constitutional Court might have resulted in violation of the right to a fair trial for certain individuals. Therefore, declaring a norm unconstitutional was postponed until 30 April 2019.

Regardless of expiration of the date set for the Parliament by the Constitutional Court, the former has not enacted respective legislative changes. Inaction of the Parliament in cases where the Court explicitly states that such an inaction can result in violation of the right to a fair trial, and is to be considered highly problematic.

[55] A party became aware of such circumstances and evidence which would have led to a favorable judgment had he or she known them before.

c) Judgment of the Constitutional Court №2/13/1234,1235 dated 14 December 2018 in the case of "Citizens of Georgia – Roin Mikeladze and Giorgi Burjanadze v. The Parliament of Georgia"

On 14 December 2018 the Second Board of the Constitutional Court rendered its judgment in the case of "Citizens of Georgia – Roin Mikeladze and Giorgi Burjanadze v. The Parliament of Georgia" (constitutional complaints №1234 and №1235). The Court uphelt constitutional complaints in part and declared that words of Article 94 clause 1 of the 20 February 1998 Criminal Procedure Code "witness appear when summoned by the […] investigator, prosecutor; correctly notify them of everything known to him or her with respect to the case and answer the questions posed" as well as a normative content the same Article, clause 2, envisaging the possibility of imposing a fine upon the witness in case on non-appearance upon the request of the prosecutor/investigator, together with Article 309 clause 1 unconstitutional with respect to Article 42 clause 6 of the Constitution (an edition in force before 16 December 2018).

Said provisions prescribed that with respect to cases regarding Articles 323-323^2 and 325-329 of the Criminal Code of Georgia (offences related to terrorism), the Prosecution could have summoned a witness in a mandatory manner, while the same right was not prescribed to the Defense. The Court noted that the reasons of unconstitutionality of the disputed provisions were stemming from different rights of the parties. Hence, restrictions imposed by disputed provisions would have been entirely eliminated by giving prosecution and defense equal rights in terms of interrogating a witness. This could have been done both by restricting the prosecutor's right to mandatory summoning of witness, as well as by granting the same rights to defense. In order to prevent harm to interests of the investigation, the Court postponed declaration of disputed provisions void until 30 June 2019.

Notably, the date established by the Court has expired by the Parliament of Georgia has not enacted respective legislative changes. Under the given circumstances, inaction of the parliament can be seen as giving preference to eliminate unconstitutionality of the disputed provision by depriving prosecution of the possibility to summon witnesses in a mandatory manner.

4.2.2. Cases regarding Which Legislative Changes Were Enacted after Expiration of the Deadline Set by the Constitutional Court

In the following cases, relevant legislative changes have been enacted after expiration of the deadline established by the Court.

a) Judgment of the Constitutional Court of Georgia №2/11/747 dated 14 December 2018 in the case of "LLC. Gigant Security' and LLC 'Security Company Tigonis' v. The Parliament of Georgia and the Minister of Internal Affairs of Georgia"

On 14 December 2018, the Constitutional Court partially upheld constitutional complaint №747 - LLC 'Gigant Security' and LLC 'Security Company Tigonis' v. The Parliament of Georgia and the Minister of Internal Affairs of Georgia" and declared unconstitutional Article 24 (1) of the Law of Georgia on "Private Security Activities" as well as with respect to Article 30 clause of 2 the Constitution of Georgia (edition in force before 16 December 2018) Article 2 (2) (a) of the Statue of the LEPL Security Police Department, adopted by an order №266 of 23 March 2005 of the Minister of Internal Affairs – "On Approving the Statute of LEPL Security Police".

The Constitutional Court noted that by virtue of being a monitoring body, the Security Police Department had an unlimited access to information regarding activities of private security companies. This was equipping the former with significant powers on the market and included a high risk of restricting free competition. The Court ruled that the legislature is under an obligation to create mechanisms that would exclude the possibility of a private security entity/person having access to commercial information of its competitors. Hence, the Court declared disputed norms unconstitutional.

In addition, the Constitutional Court noted that invalidation of the disputed norms immediately upon publication of the judgment might have had a negative impact on the market of private security as well as on consumers of the respective market. Thus, for the purposes of adopting regulations compatible with the Constitution, invalidation of unconstitutional norms was postponed until 30 June 2019.

On 19 December 2019, the Parliament of Georgia adopted law №5612 regarding "Amendments to the Law of Georgia 'On Public Security Activities'". According to the said legislative changes, Public Safety Management Center "112" was designated as a body conducting oversight over the security sector. These legislative changes entered into force on

31 December 2019. It is to be noted that the changes were enacted after expiration of the deadline (30 June 2019) established by the Court.

b) Judgment of the Constitutional Court of Georgia №1/4/809 dated 14 December 2018 in the case of "Citizen of Georgia Titiko Chorgoliani v. The Parliament of Georgia".

On 14 December 2018, the First Board of the Constitutional Court partially upheld a constitutional complaint of citizen of Georgia – Titiko Chorgoliani (registration №809) v. the Parliament of Georgia. The Court declared Article 120 (10) of the Criminal Procedure Code of Georgia with respect to Article 42 (1) of the Constitution of Georgia (edition in force before 16 December 2018). Under the disputed provision, objects obtained as a result of search and seizure conducted based on motion of the Defense, were first to be examined by the Prosecution.

The Constitutional Court deemed that the norm was violating equality of arms and the principle of adversariality, given that it did not envisage any procedural mechanisms that would protect an accused from withholding or prolongation of the process of transferal of evidence by the Prosecution. In addition, the norm created a risk that that the possibility to assess an object valid only for one-time expertize would be given only the Prosecution, without giving a Defense the possibility to properly examine this object.

According to the Constitutional Court, invalidation of the disputed provision immediately upon publication of the judgment might have precluded the Prosecution from obtaining importance evidence, which might have harmed an important interest. Taking into account the aforesaid, the Constitutional Court postponed declaration of the norm invalid until 30 June 2019.

On 17 October 2019, the Parliament of Georgia adopted a law №5186-Iს regarding "Amendments to the Criminal Procedure Code of Georgia" and new regulation with respect to examining an object obtained during search and seizure conducted upon the motion of the Defense has been enacted. The said amendment entered into force of 23 October 2019, - after expiration of the deadline (30 June 2019) established by the Constitutional Court.

c) Judgment №1/3/1263 dated 18 April 2019 in the case of "Citizen of Georgia Irakli Khvedelidze v. The Parliament of Georgia"

On 18 April 2019, the Constitutional Court rendered its judgment in the case of "Citizen of Georgia Irakli Khvedelidze v. The Parliament of Georgia" (constitutional complaint №1263) and deemed unconstitutional normative content of Article 273 of the Code of Administrative Offences of Georgia, which envisaged that the time for appealing a ruling of the court rendered on administrative case started to run from the moment when it was rendered. A norm was declared unconstitutional with respect to Article 31 (1) of the Constitution of Georgia and it ceased to have legal effects from 1 July 2019.

In this case as well, relevant legislative changes were enacted after expiration of the deadline set by the Constitutional Court In particular, on 16 October 2019, the Parliament of Georgia adopted a law №5127-Iს "On Amendments to the Code of Administrative Offences of Georgia", under which commencement of running of the period prescribed for appealing a ruling adopted in a case of an administrative offence was linked to the moment of the receipt of the ruling by a party. Said legislative changes entered into force of 23 October 2019.

4.2.3. Cases regarding which Relevant Authorities Regulated the Matter within the Timeframe Prescribed by the Constitutional Court and Cases where the Deadline Set by the Constitutional Court has Not Expired

In 2019, the Constitutional Court postponed declaration of unconstitutional norms void in 2 cases (Judgment №2/2/867 28 May 2019 in the case of "Remzi Sharadze v. The Minister of Justice of Georgia"; Judgment №2/3/1279 dated 5 July 2019 in the case of "Levan Alapishvili and "LP Alapishvili and Kavlashvili – Georgian Bar Group" v. The Government of Georgia") where relevant authorities enacted respective legislative changes within the prescribed timeframe.

Moreover, in 2019, the Constitutional Court postponed declaration of unconstitutional norms void by virtue of 4 more acts. The deadline set by said acts has not expired yet. These acts are as follows:

a) Judgment of the Constitutional Court of Georgia №1/1/655 dated 18 April 2019 in the case of "Ltd. SKS v. The Parliament of Georgia" – invalidation of the disputed provision has been postponed until 1 May 2020.

b) Judgment of the Constitutional Court of Georgia №1/4/693,857 dated 7 June 2019 in the case of N(N)LE Media Development Foundation and N(N)LE Institute For

Development of Freedom of Information v. The Parliament of Georgia" - invalidation of the disputed provision has been postponed until 1 May 2020.

c) Judgment of the Constitutional Court of Georgia №2/12/1237 dated 24 October 2019 in the case of "Vasil Saganelidze v. The Parliament of Georgia" - invalidation of the disputed provision has been postponed until 31 March 2020.

d) Ruling of the Constitutional Court of Georgia №2/16/1346 dated 17 December 2019 in the case of "Gocha Gabodze and Levan Berianidze v. The Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia - invalidation of the disputed provision has been postponed until 31 March 2020.

It is important that relevant authorities take all the feasible measures in order to adopt legislative changes within the timeframe established by the Constitutional Court, before voidance of the norms, in order to avoid damaging private and public interests.

4.2.4. Implementation of Constitutional Standards Established by the Constitutional Court by Common Courts

Under the Constitution of Georgia, judicial power shall be exercised by the Constitutional Court and common courts of Georgia. Coordinated action of bodies exercising judicial power is of utmost importance for the purposes of protecting individual rights and liberties. Only by virtue of fruitful cooperation of the Constitutional Court and common courts can efficient protection of human rights and liberties and affirming supremacy of the Constitutional and rule of law be achieved.

The Constitutional Court has noted on a number of occasions that "within the scope of their competency, common courts made final decisions with respect to normative content of laws, their practical use and thus their enforcement. Taking into account the aforesaid, interpretation of common courts has a great significance in determining the real content of the law".[56] It is important for common courts to make interpretations of laws applicable to individual cases while taking into account definitions provided by the Constitutional Court, interpret legislation in accordance with the Constitution and not apply normative acts declared unconstitutional by the Constitutional Court. It is judges of the common courts who

[56] Judgment of the Constitutional Court of Georgia №1/2/552 dated 4 March 2015 in the case of "Liberty Bank v. The Parliament of Georgia", para. II-16.

have the power to breathe life into constitutional legal standards established by judgments of the Constitutional Court.

Analysis of the last years' practice indicates that judges of the common courts have not been using norms and normative contents declared unconstitutional by the Constitutional Court. At the same time, judges of common courts frequently use constitutional standards set forth in judgments of the Constitutional Court while reasoning judgments or interpreting separate legal provisions.[57] In addition, judges of common courts have referred to the Constitutional Court with constitutional referrals in a number of cases in order to examine constitutionality of normative acts. Dialogue and cooperation between organs exercising judicial power in order to protect human rights indisputably serves affirmation of constitutional legality in the country.

At the same time, as noted, occasionally, in cases where invalidation of an unconstitutional norm is postponed, the Parliament of Georgia and other relevant authorities are not enacting respective legislative changes within the timeframe prescribed by the Constitutional Court. In such cases, important relations are left without regulation, which might create obstacles for the common courts in implementing standards established by the Constitutional Court. In this regard, judgment №2/8/765 of 7 December 2018 of the Constitutional Court in the case of "Citizen of Georgia Davit Dzotsenidze v. The Parliament of Georgia" is relevant. As it has been mentioned, the Court deemed unconstitutional normative content of Article 430 clause 3 of the Civil Procedure Code of Georgia, which envisaged the possibility of annulling a final judgment of the Court under Article 423 clause 1 (f) of the Civil Procedure Code.[58] The Constitutional Court postponed declaration of the disputed provision void until 30 April 2019. However, the Parliament of Georgia has not enacted legislative changes within this timeframe whereas the disputed provision has ceased to have legal effects.

[57] See e.g. following judgments/rulings of the Chamber of Administrative Cases of the Supreme Court: Judgment of 17 January 2019 in the case №ბს-809-805(კ-17); Ruling of 17 January 2019 in the case №ბს-847(კ-18); Judgment of 31 January 2019 in the case №ბს-829(კ-18); Judgment of 21 February 2019 in the case №ბს-92-1(გან-19); Judgment of 16 May 2019 in the case №ბს-590-590(კ-18); Judgment of 4 July 2019 in the case №ბს-493(კ-19); Judgment of 15 July 2019 in the case №ბს-866-862(კ-17); Judgment of 12 September 2019 in the case №ბს-1020(კ-18); Judgment of 12 September 2019 in the case №ბს-1104(კ-18); Judgment of 17 October 2019 in the case №ბს-286-286(კ-18); Ruling of 28 October 2019 in the case №ბს-504-501(კ-17). Following rulings of the Chamber of Civil Cases of the Supreme Court of Georgia: Ruling of 5 July 2019 in the case №ას-723-2019; Ruling of 5 July 2019 in the case №ას-452-2019; Ruling of 9 September 2019 in the case №ას-1050-2019. Following rulings of the Chamber of Criminal Cases of the Supreme Court of Georgia: Ruling of 16 January 2019 in the case №კ-448ას.-18; Ruling of 25 March 2019 in the case №კ-560ას.-18.

[58] A party has become aware of such circumstances and evidence which would have resulted in a decision more favorable to that party if they had been previously submitted to the court.

After 30 April 2019, there are cases in practice of the Supreme Court, where the Supreme Court has annulled judgment on grounds of Article 423 clause 1 (f) of the Civil Procedure Code, notwithstanding that a norm envisaging the possibility of annulling a judgment on these grounds ceased to have legal effects.[59] Relevant ruling of the Supreme Court of Georgia do not indicate whether this decision had to with solving an issue in accordance with standards established in the judgment of the Constitutional Court, given the fact that the relation was practically left without any legislative regulation. In such cases, an issue of unimpaired enforcement of standards established by the Constitutional Court is under question.

Taking into account all the aforementioned, leaving the matter without appropriate regulation might have a negative impact on the protection of human rights and liberties through cooperation of the Constitutional Court and common courts. Hence, it is important that the Parliament of Georgia and other relevant authorities enact respective legislative changes within the timeframe set by the Constitutional Court so that the relations are not left without proper regulation and so that common courts encounter no obstacles in the process of effective implementation of standards established by the Constitutional Court.

[59] See e.g. Ruling of the Criminal Chamber of the Supreme Court of Georgia №ა-1225-ა-3-2019 dated 7 May 2019; Ruling of the Criminal Chamber of the Supreme Court of Georgia №ა-1378-ა-4-2019 dated 1 July 2019.

5. Statistical Overview of the Court's Activities

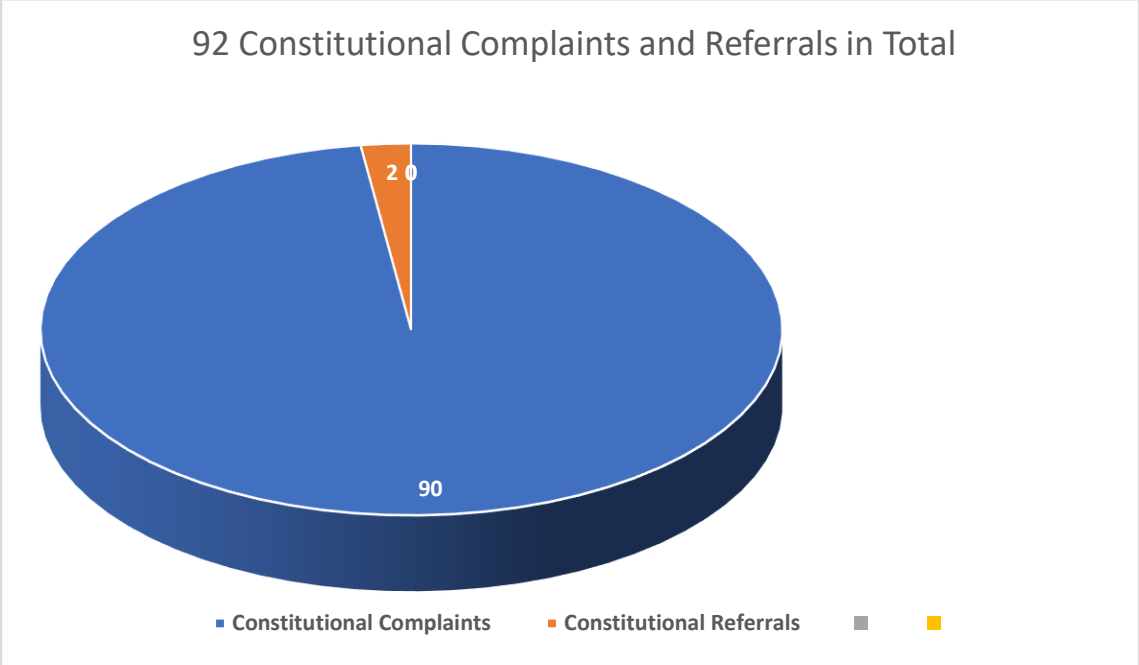
The Statistical data provides important information about the activities of the Constitutional Court of Georgia, the main features of the constitutional adjudication and constitution justice in Georgia. Below you can find the charts, which provide summarized data of the Constitutional Court of 2019, which describe the main areas of the activities undertaken by the Court in 2019.

"Case", "Complaint" and "Act" - certain part of statistical data deals with the finalized complaints and cases. In the process of constitutional adjudication, several constitutional complaints may be joined as one case. In other words, "case" may consist of several constitutional complaints. "Act" refers to the finalized legal documents adopted by the Court. Specifically, acts of the Court include judgments, rulings and recording notices unless indicated otherwise.

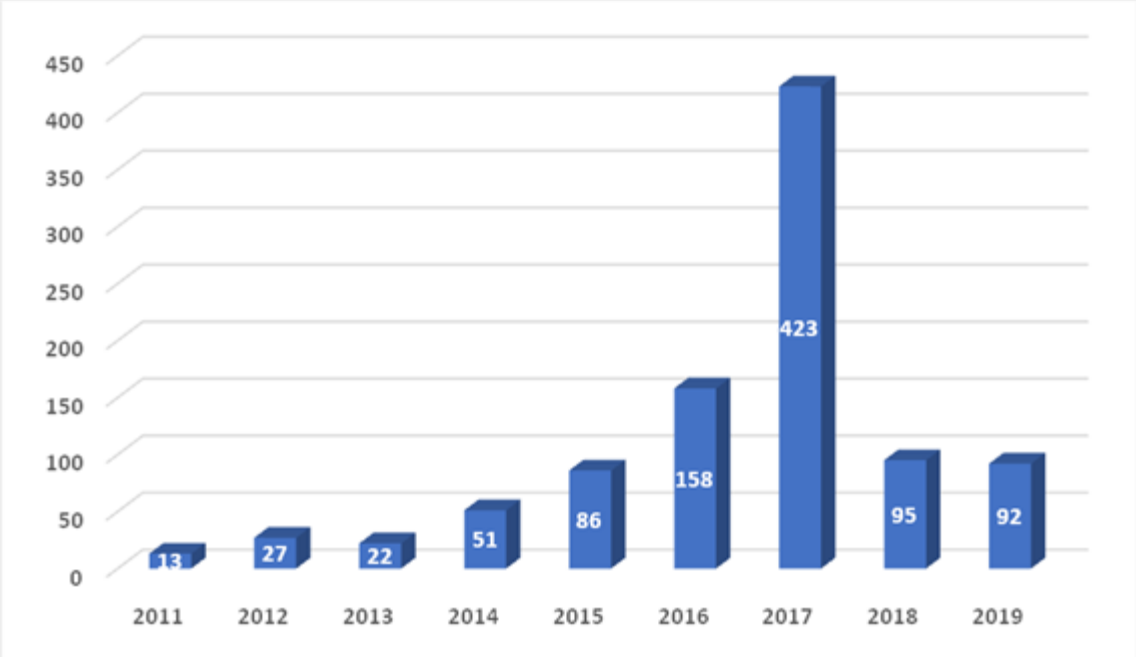
Overruling provision - refers to the cases provided in Article 25 (4^1) of the Organic Law of Georgia on the Constitutional Court of Georgia. More specifically, when the Constitutional Court ascertains at the preliminary session, that the disputed normative legal act or part thereof contains the rules identical to the rules that have been declared unconstitutional by the Constitutional Court, it adopts ruling on non-admissibility of the complaint for consideration on merits and on invalidation of the disputed act or a part thereof.

Grounds for declaring constitutional complaints/referrals inadmissible – this term used for description for Chart N. 7 indicates the grounds for declaring constitutional complaints/referrals inadmissible in accordance with Article 31^3 (1) of the Organic Law "On the Constitutional Court". As for the term "unreasoned complaints/referrals", - it refers to grounds envisaged under clause (1) (a) of the same Article.

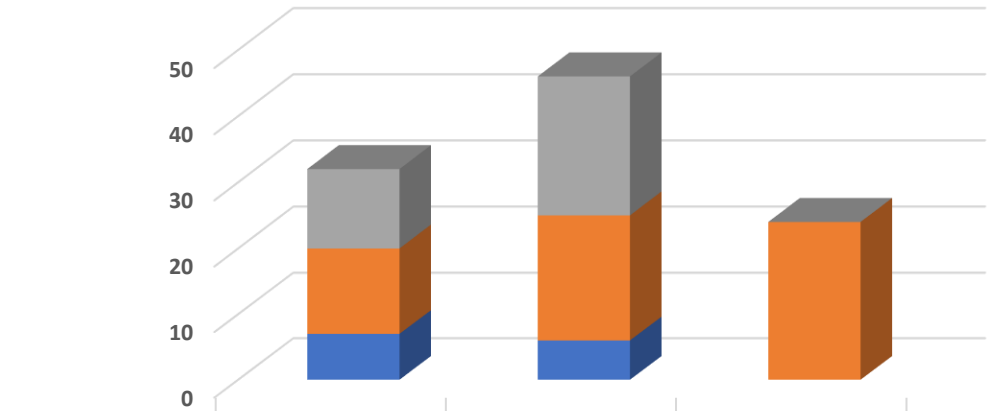
1. Number of Registered Constitutional Complaints and Referrals in 2019



2. Number of Registered Constitutional Complaints and Referrals in 2011-2019

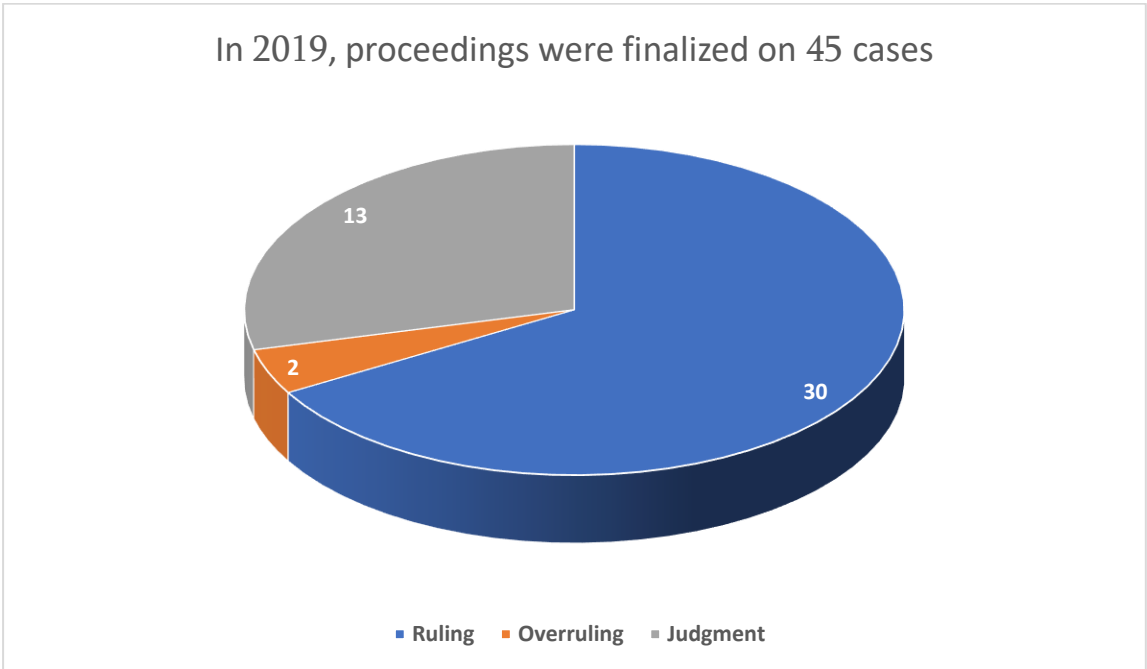


3. Acts of the Court Adopted in 2019 by Boards/Plenary Sessions

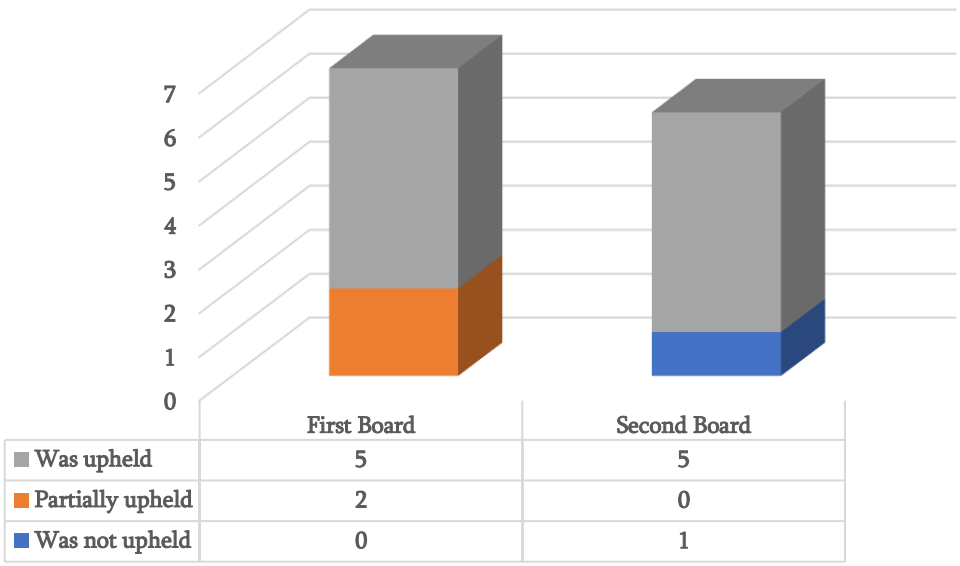


	First Board	Second Board	Plenary Sessions
Ruling	12	21	0
Recording Notice	13	19	24
Judgment	7	6	0

4. A Number of Finalized Cases of the Constitutional Court and Respective Acts

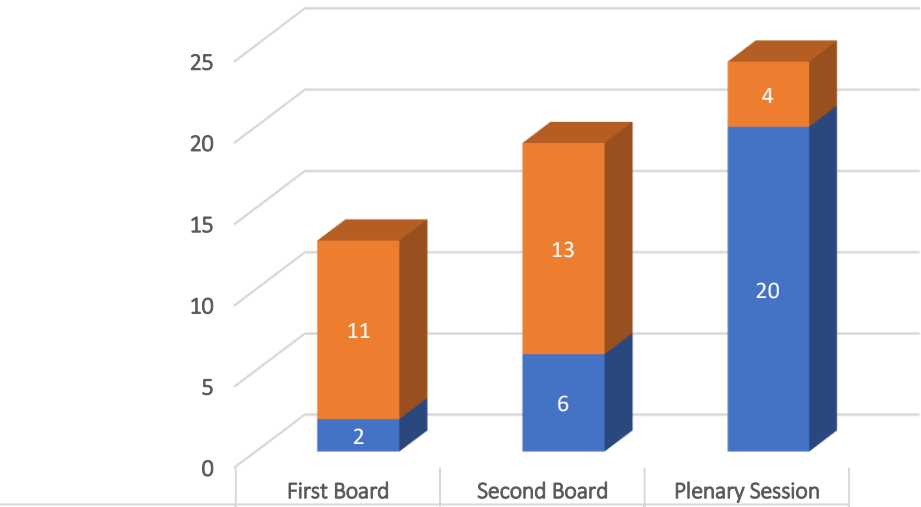


5. Judgments Rendered by the Constitutional Court and Their Results by Boards



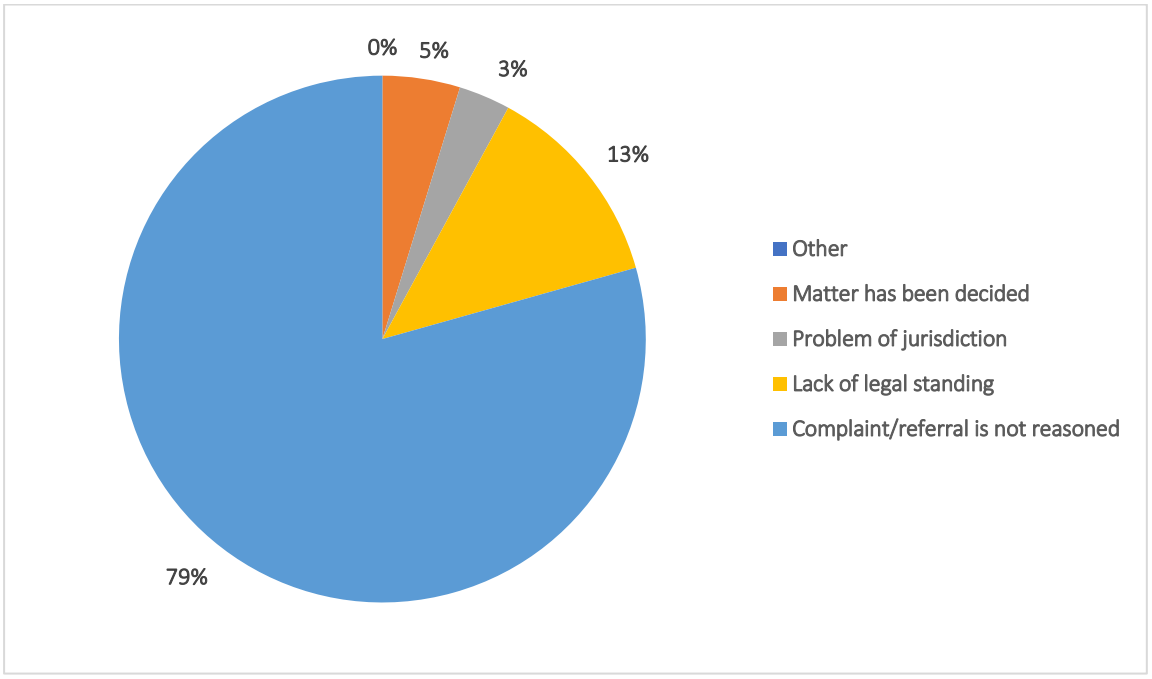
	First Board	Second Board
Was upheld	5	5
Partially upheld	2	0
Was not upheld	0	1

6. Results of the Constitutional Court's Recording Notices

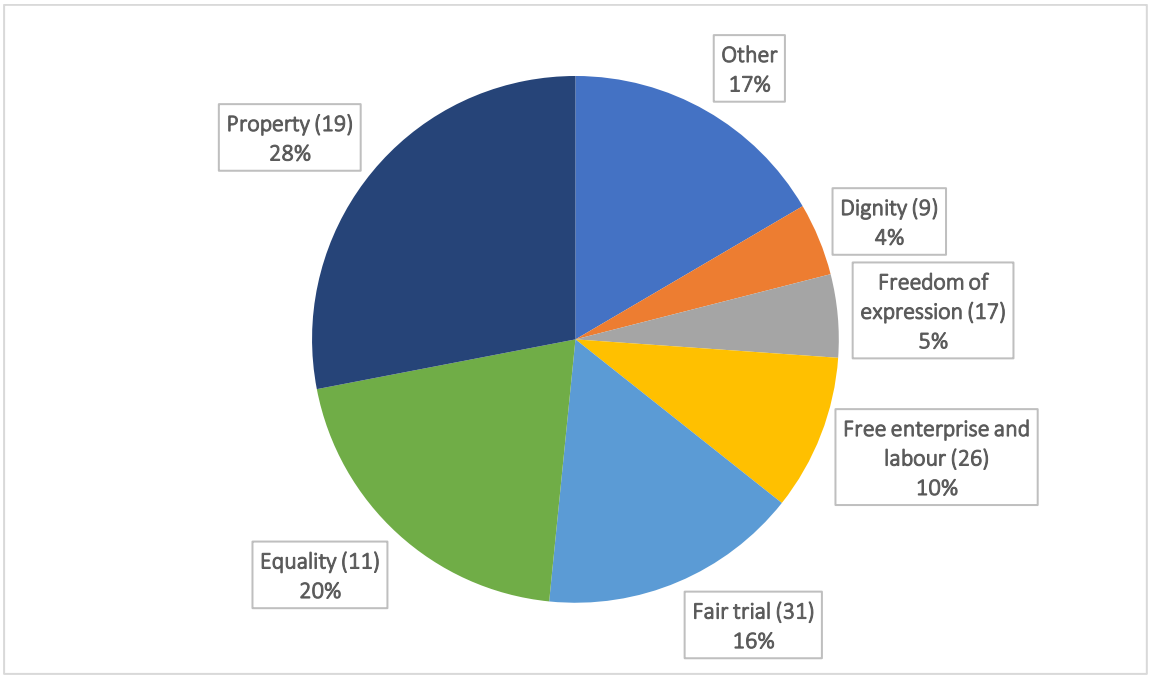


	First Board	Second Board	Plenary Session
Accepted partially	11	13	4
Accepted for consideration on metirs	2	6	20

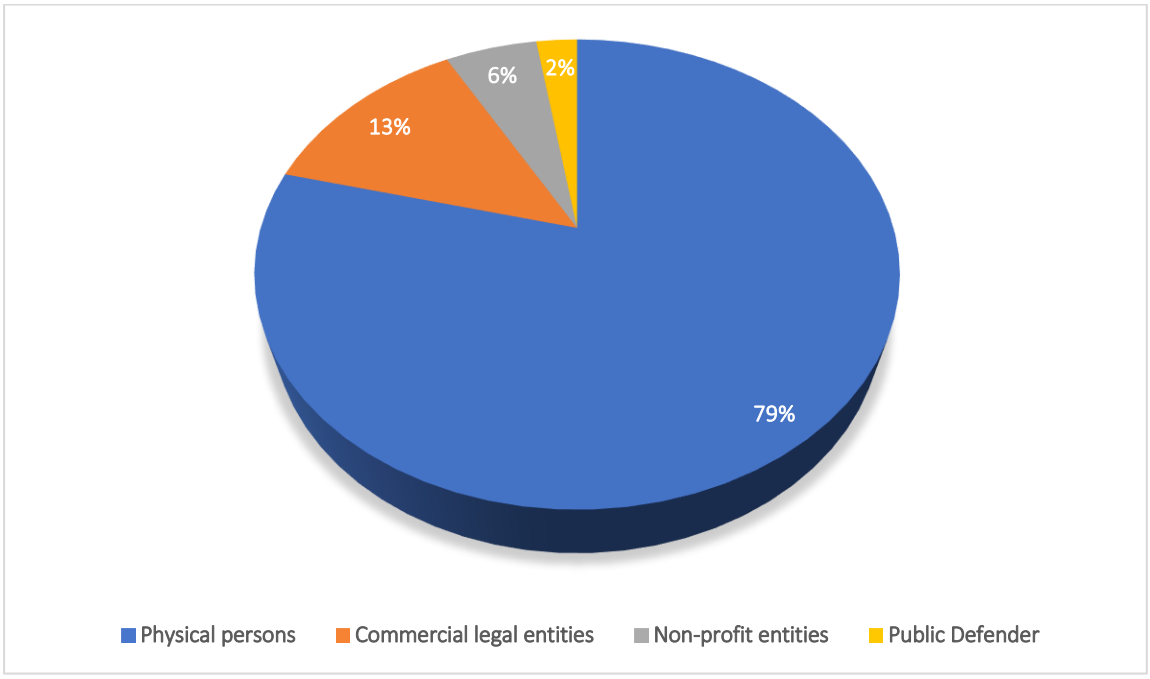
7. Grounds for Declaring Claims Inadmissible for Consideration on Merits



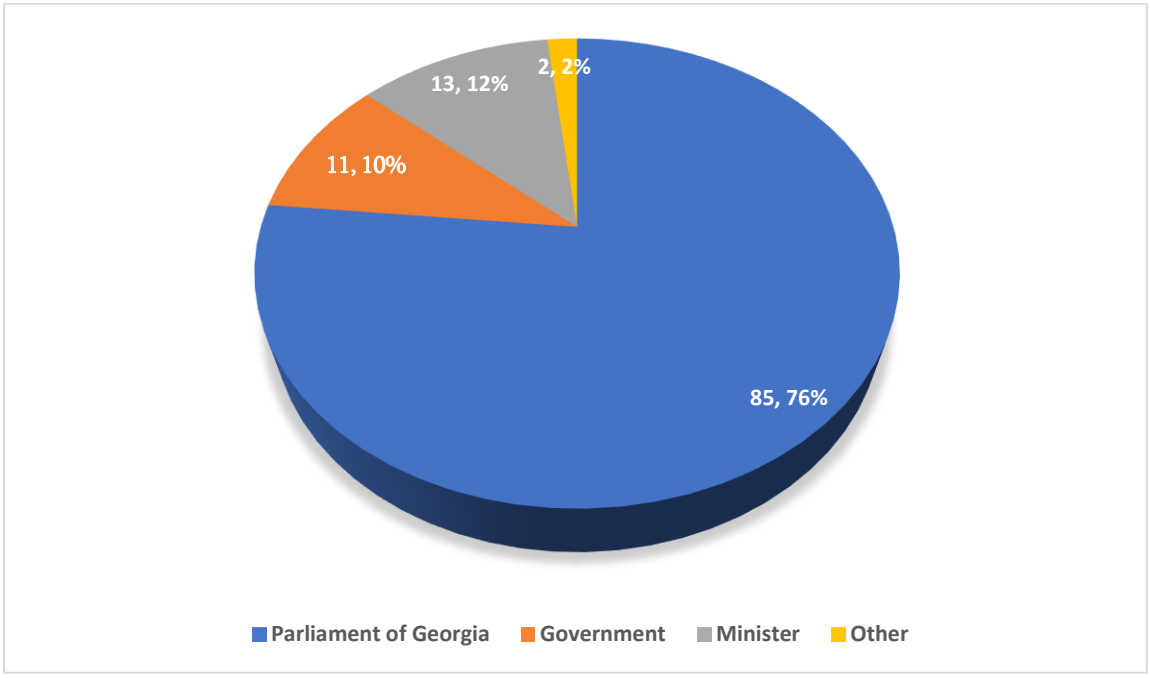
8. Constitutional Provisions Invoked by Complainants in the Acts Adopted in 2019



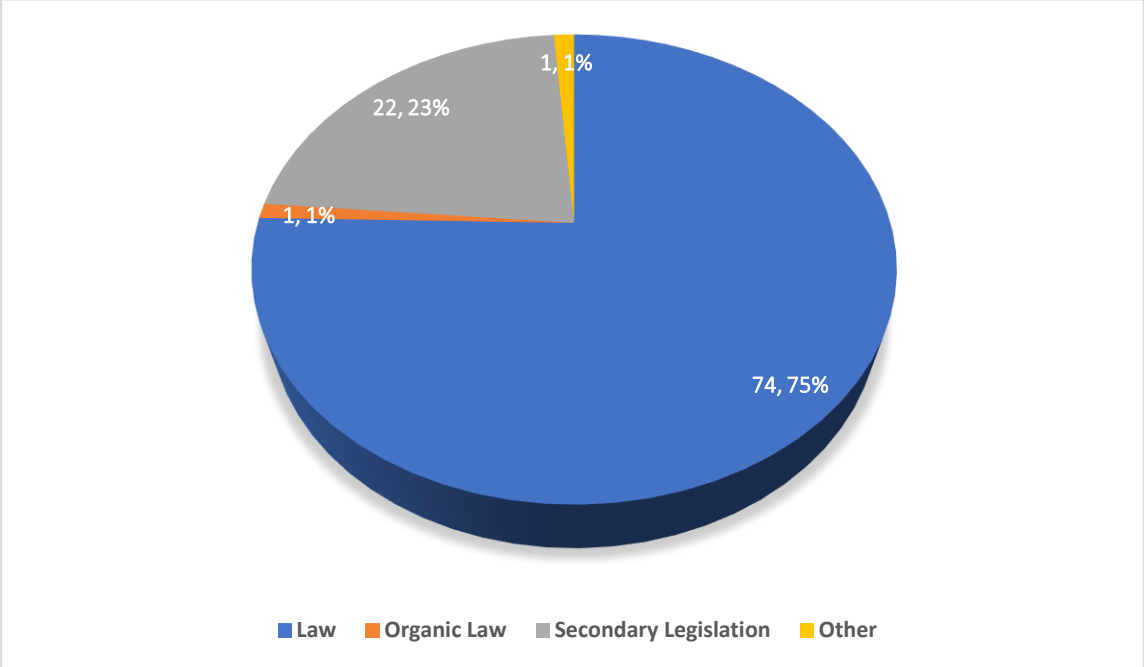
9. Complainant in the Acts of the Court Adopted in 2019



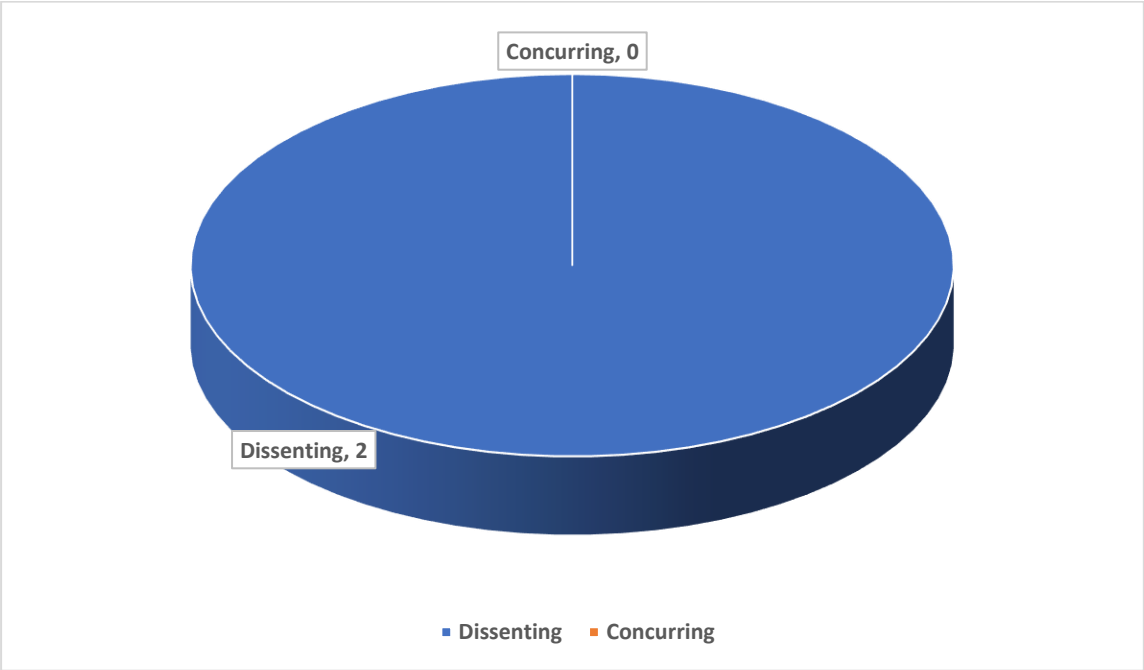
10. Respondent in the Acts of the Court Adopted in 2019



11. Disputed Normative Acts in Acts of the Court Adopted in 2019



12. Dissenting and Concurring Opinions of the Members of the Court



13. Postponing the Invalidation of Disputed Norms Deemed Unconstitutional by the Constitutional Court