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CONSTITUTIONAL JUSTICE: FUNCTIONS AND RELATIONSHIP WITH THE OTHER PUBLIC AUTHORITIES

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of the Conference of European Constitutional Courts by
The Constitutional Court of Georgia*

I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT

- 1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

The role of parliament of Georgia in the procedure of appointing judges to the Constitutional Court is regulated by the Constitution of Georgia and Organic law of Georgia on “Constitutional Court of Georgia”. Article 88.2 of the Constitution of Georgia states: “The Constitutional Court of Georgia shall consist of nine judges – the members of the Constitutional Court. Three members of the Constitutional Court shall be appointed by the President of Georgia, three members shall be elected by the Parliament by not less than three fifths of the number of the members of the Parliament on the current nominal list, three members shall be appointed by the Supreme Court”. The same provision is set forth in art.6.2 of Organic law of Georgia on “Constitutional Court of Georgia”.

Moreover, article 16 of Organic law of Georgia on “Constitutional Court of Georgia” defines the grounds of revocation of Judges of the Constitutional Court of Georgia, which are follows:

- a)** he/she is unable to discharge his/her official duties for six consecutive months, or he/she fails to discharge his/her official duties for three months in a year without a good reason;
- b)** he/she has occupied a post incompatible with the status of a member of the Constitutional Court or engages in the activity prohibited by Article 17 of the present Law;
- c)** he/she has violated the requirement laid down in Article 48 of the present Law;
- d)** he/she has committed an act incompatible with a status of a judge;
- e)** he/she lost the citizenship of Georgia;
- f)** a court has recognized him/her as legally incapable;
- g)** a final judgment of conviction is rendered by a court against him/her;
- h)** he/she has died, or a court recognized him/her to be missing or declared to be dead;
- i)** he/she resigned from the post.

The Georgian legislation does not introduce the possibility for the authorities appointing judges of CCG to revoke them based on any legal ground.

2. To what extent is the Constitutional Court financially autonomous – in the setting up and administration of its own expenditure budget?

It must be noted that, Constitutional Court of Georgia is financially autonomous inasmuch as it is directly prescribed by law. “It shall be obligatory to finance the Constitutional Court in such an amount that secures discharge of its functions and independence of a judge. Financing of the Constitutional Court shall be envisaged by a separate article of the State Budget of Georgia. The expenditure related to the organization and functioning of the Constitutional Court may not be less than that of the previous year. The scopes and structure of the financing shall be determined on the ground of the draft submitted by the President of the Constitutional Court to the Ministry of Finance in accordance with the procedure prescribed by law. Reduction of the statutory budgetary expenditure of the Constitutional Court shall be impermissible. (12.02.02 №1264)” (Art.3.2 of the Organic law of Georgia on “Constitutional Court of Georgia”)

3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?

The following legislative acts regulate the functioning of the CCG: Constitution of Georgia, Organic law of Georgia on “Constitutional Court of Georgia“, Law of Georgia on the Constitutional Legal Proceedings. It is obligatory for the Court to follow the rules set forth in abovementioned acts. Though, the Parliament of Georgia shall amend the acts on organization or functioning of CCG without any consultation with the Court itself.

4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?

5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.

Art.19.1 (a) of the Organic law of Georgia on “Constitutional Court of Georgia” states the following: “On the basis of a constitutional claim or a constitutional submission, the Constitutional Court shall be authorized to consider and adjudicate upon:

- a) conformity with the Constitution of Georgia of a constitutional agreement, laws of Georgia, normative resolutions of the Parliament of Georgia, normative acts of the President of Georgia, the Government of Georgia and those of the higher state bodies of the Autonomous Republics of Abkhazia and Ajara as well as conformity of adoption/enactment, signing, promulgation and entry into force of legislative acts of Georgia and resolutions of the Parliament of Georgia with the Constitution of Georgia. (25.11.04 №599)

It is exhaustive list of legal acts that could be examined by the CCG. Besides that, it is noticeable, that CCG is able to review only the merits of Normative Acts (Art.89 of the Constitution of Georgia.).

- 6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.**

Decision of CCG is final and enters into force instantly after the official announcement of particular judgment. Art.25 of Organic law of Georgia on "Constitutional Court of Georgia" provides: "A judgment of the Constitutional Court shall be final and the failure to observe it shall be punishable by law". This provision sets out that Parliament is obliged to delete unconstitutional provisions and bring the law in compliance with the Constitution. There are no special procedures to amend the unconstitutional provisions. It is regulated with the same provisions as for the new act passing procedures in the Parliament of Georgia.

- 6. b) Parliament can invalidate the constitutional court's decision: specify conditions.**

Herewith, Parliament does not have a competence to invalidate the Constitutional Court's decision.

- 7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?**

Institutionalized cooperation mechanisms between CCG and other bodies are limited only if in the application lodged before the Court particular body has been called as a respondent part of a trial. For example: Parliament of Georgia has a special Department on Constitutional Disputes which is obliged to cooperate with CCG.

II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT

1. **What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?**
2. **Specify whether the Constitutional Court is competent to resolve such litigation.**

It is also noticeable, that CCG has a competence to review legal disputes between public authorities. Art.19.1 (b) of Organic law of Georgia on “Constitutional Court of Georgia’ provides: “On the basis of a constitutional claim or a constitutional submission, the Constitutional Court shall be authorized to consider and adjudicate upon: **dispute on competence between state bodies**. Art.34 of the same law defines exhaustive list of bodies which fall within the scope of the term “State bodies”. This article states: “The President of Georgia shall have the right to lodge a constitutional claim with the Constitutional Court concerning the scope of the competencies between the state bodies, if he/she considers that his/her competence have been infringed upon or the scope of the constitutional powers of state bodies are violated; not less than one fifth of the members of the Parliament of Georgia shall have the right to lodge a constitutional claim with the Constitutional Court, if they believe that the scopes of the constitutional powers of the Parliament of Georgia or another state body are infringed upon; the state bodies listed in Article 89 of the Constitution of Georgia shall also have such a right, if they believe that the scopes of their constitutional powers have been infringed upon.

4. **Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.**

The state body the normative act thereof in the claimant’s opinion led to the infringement upon the claimant’s constitutional competencies shall be the respondent to the cases listed in the first paragraph of the present Article. (12.02.02 №1264).

6. **What procedure is applicable for the adjudication of such dispute?**

Upon the reception of a constitutional claim or a constitutional submission on competencies the Constitutional Court shall send a copy of the constitutional claim or a submission to the President of Georgia, the Government of Georgia, the Parliament of Georgia and the higher representative bodies of Abkhazia and Ajara. If within

fifteen days of delivery of the copy, any of these bodies declares that upholding the constitutional claim or submission would cause infringement upon the scope of its power the Constitutional Court shall be obliged to invite the body as a party to the case. (25.11.04 №1264)''.

7. What choices are there open for the Constitutional Court in making its decision (judgment). Examples.

Unfortunately, CCG does not have a case-law (precedent) concerning legal disputes on competence between state bodies. But if even such kind of decision existed, CCG does not have any particular mechanism of enforcement that kind of judgment.

III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. The Constitutional Court's decisions are:
 - a) final;
 - b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;
 - c) binding *erga omnes*;
 - d) binding *inter partes litigantes*.

“A judgment, a ruling, a recording notice and a conclusion of the Constitutional Court shall be final and shall not be subject to appeal or revision” set forth in art.43.8 of Organic law of Georgia on “Constitutional Court of Georgia”. Furthermore, a normative act or a part thereof recognized as unconstitutional shall cease to have the legal effect from the moment of the promulgation of the relevant judgment of the Constitutional Court, unless other term is provided for by the present Law. A Constitutional Court act shall immediately be enforced after its promulgation, unless other term is provided for by the act” (art.25.2; 25.3 of Organic law).

4. **Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found– as a result of *a posteriori* and/or *a priori* review?**
6. **Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.**

It must be pointed out that Constitutional Court of Georgia does not have a competence to set out the deadlines for the legislative body to eliminate any unconstitutional aspect as may have been found– as a result of *a posteriori* and/or *a priori* review. But after the Constitutional Court recognizes a normative act or a part thereof as unconstitutional it shall be impermissible to adopt/enact such a legal act, which contains the norms analogous to those declared unconstitutional. This provision makes clear, that Decision of CCG is final and Parliament does not have a possibility to enact new act with the same provisions have been recognized unconstitutional.

7. **Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?**

Moreover, Georgian legislation does not introduce any kind of regulation concerning the enforcement of the decision of CCG by other state agencies.