

International Dimension of Constitutional Justice in the light of Recent Case-law of Constitutional Court of Georgia

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Ladies and Gentlemen, Dear Colleagues,

I am highly honored to be part of this conference on a very momentous occasion, which marks the 20th anniversary of the Constitution of the Republic of Moldova. Let me extend my best wishes to my Moldavian colleagues and congratulate the entire Moldavian nation on this very important date. I would also like to express my keen appreciation for this highly interesting and comprehensive conference, and thank the Constitutional Court of the Republic of Moldova for organising this event.

As the essence of our session is the correlation between globalization and constitutional identity, I will take the opportunity and focus on some of the globally meaningful constitutional developments in Georgia. In this context, I will outline few important aspects in domestic legislation and then overview respective case-law of the Constitutional Court of Georgia.

Under the article 6 of the Georgian Constitution, the Constitution is declared as the supreme law of the state and all other legal acts shall correspond with the Constitution. It is a rather disputable issue whether the provisions of international law have to be used in the constitutional decision-making. Yet, as Georgia is a contracting party of the International Bill of Human Rights¹ along with the European Convention on Human Rights, it is impossible to ignore these instruments and the legal standards deriving from their case-law. Thus, the Constitutional Court of Georgia has adopted an approach whereby the maximum respect has to be given to the requirements of international law, especially the international human rights law, when considering a particular case.

Apart from this, there is a special provision in the Constitution of Georgia which specifies that the Constitution of Georgia shall not deny other universally recognized rights of an individual that are not expressly referred to herein but stem inherently from the principles of the Constitution. This legal norm directly gives the court the right to establish internationally existing human rights' standards.

¹ Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

As for the practice of the Constitutional Court of Georgia, let me first overview two landmark cases related to the foreigners' rights. In both circumstances the court considerably extended the purview of constitutional protection by including aliens therein.

In one recent case the Constitutional Court was asked to recognize unconstitutional norm of "Organic law on the Constitutional Court of Georgia" which defined the subjects who were entitled to apply to the court. It excluded foreigners and stateless persons from the list of potential petitioners. The case was particularly complicated by the fact that the Respondent – representative of Parliament of Georgia, was arguing that the norm of the constitution which sets forth competences of constitutional court did not grant the right to apply to the constitutional court to foreigners and stateless persons. The Constitutional Court declared, that everyone despite their citizenship has right to access to the Constitutional Court. The constitution expresses the will of the citizens that individuals shall have the remedy to protect their rights and this aim may not be achieved through the approach differentiating between citizens and foreigners. Moreover, the Constitutional Court of Georgia held that norm describing competences of the court shall not diminish the right to apply to the Court. Accordingly, the norm of the constitution which omitted foreigners and stateless persons in the list of potential petitioners could not restrict their fundamental right to have access to the court. Hence, the Court rectified legislative deficiency and in accordance with international standards, affirmed the constitutional protection universally.

Lately, in another landmark case, the Constitutional Court of Georgia found unconstitutional and invalidated the provisions of the Law of Georgia "On Ownership of Agricultural Land", whereby a foreigner could become the owner of agricultural land only if the land was inherited or lawfully had been owned by a person who used to be a citizen of Georgia before. At the same time, a foreigner was obligated to sell the land to the citizen of Georgia or/and Georgian legal entity within the period of 6 months after obtaining the ownership of the land. Overall, the disputed legal norm effectively restricted the property rights of the foreigners.

The Constitutional Court clearly stated that one of the characteristics of the human rights is their universal nature. Having human rights is not contingent upon citizenship and equally applies to every person. The recognition of an individual as subject of the right to property is emanated by the simple fact that he/she is a human being, and it is not dependent on his citizenship.

The prohibition on the purchase of agricultural land by a foreigner constitutes restriction of their rights to acquisition of property. Therefore, the reasonable balance between private and public interests is not stricken as it goes beyond the limits of permissible restriction of the right to property.

Hence, the Constitutional Court expanded the scope of protection of property rights by giving it a universal character.

Interestingly, after this case was decided, the Parliament enacted provisions establishing similar prohibition. The only difference between those two cases was that in the first case prohibition had been permanent while in current case it had a temporary character. However, in both instances restrictions imposed were general and the Court declared the norms limiting the property right of foreigners unconstitutional since they lost an opportunity to willingly acquire agricultural land on the free market or inherit it without losing Georgian citizenship.

The other two cases that I am willing to discuss, demonstrates both conformity and contradiction with the international standards. Namely, in the first instance, the Constitutional Court of Georgia upheld the Practice of the European Court of Human Rights while in the other case, it chose to ignore the ECHR and apply the Constitution.

The first case concerned the right to conscientious objection. According to the legislation of Georgia, right to conscientious objection was recognized for ordinary military service, however, law on military reserve service, did not grant such right. The applicant challenged norm of the law on military reserve service before the Constitutional Court with respect to the freedom of religion, thought, conscience and belief. The right to conscientious objection to military service is very disputed and actual in international practice of human rights protection. There is no homogeneous approach on this issue. It has not been a long time since the European Court of Human Rights modified its approach.

The Constitutional Court of Georgia treated the constitution as a living instrument and declared that the freedom of belief is an emanation of human dignity, the right to free development of one's personality. According to the Court, freedom of belief is the basis of personal development and autonomy; meanwhile, this determines the whole architecture of the community and the quality of the democracy, since the pluralism *inter alia* religious pluralism is vitally important for democratic society. Based on this reasoning, Constitutional Court of Georgia declared disputed norm unconstitutional, which in turn resulted in recognition of the right to conscientious objection. This decision greatly reflects the standards of international human rights law as the Constitutional Court of Georgia referred to the upgraded practice of the European Court of Human Rights.

In the other case, the court decided on the applicant who was a prisoner and argued that the legal provision which prohibited him the right to participate in elections was unconstitutional. He has delivered arguments before the court which were based on the provisions of the ECHR case-law. However, article 28 of the Georgian Constitution explicitly stated: "A citizen, who is detained in a

penitentiary institution following a conviction by a court, shall have no right to participate in elections and referendum.” Thus, the court decided that claimant did not have the right to participate in elections under the Constitution of Georgia and did not uphold the claim despite its being based on the ECHR standards. Later, however, the Parliament repealed the Constitution and as of now prisoners are now allowed to vote freely.

To sum up, it seems evident that both the legal framework and the case-law of the Constitutional Court of Georgia is rather flexible and even more willing to embrace some of the best practices of global constitutional development. The Constitution of Georgia directly sets forth the basis for international human rights law to be adopted, while, on the other hand, the Constitutional Court consistently affirms international legal standards provided it does not contradict with the Constitution. Such a development ensures that Georgian State meet its international obligations and also paves the way for the greater global integration.

Thank you for your attention! Now I will gladly take some of your questions.