

4th Congress of the World Conference on Constitutional Justice

National report: Georgia

I. The different concept of the rule of law

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?

The principle of the rule of law or more precisely “a rule of law state”¹ is enshrined word in word in the Preamble of the Constitution of Georgia (hereinafter: the ‘Constitution’), according to which: “We, the citizens of Georgia, whose firm will is to establish a democratic social order, economic freedom, **a rule of law and a social state**, to secure universally recognised human rights and freedoms, to enhance state independence and peaceful relations with other peoples, drawing inspiration from centuries-old traditions of statehood of the Georgian nation and the historical-legal legacy of the Constitution of Georgia of 1921, proclaim the present Constitution before God and the nation.”²

Although, there is no further explicit reference of the rule of law in the Constitution, according to the Constitutional Court of Georgia (hereinafter: the ‘Constitutional Court’), the norm-principles from which stems the idea of the rule of law are articles 5 and 7 of the Constitution. “...The significant guarantees are norm-principles that ensure democracy and rule of law and define the scope and substance of relation between the state and the individual. In particular, “The state authority is exercised within the boundaries set by the Constitution” (art.5, Para 1 of the Constitution); “The state shall recognize and protect universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the state shall be bound by these rights and freedoms as directly acting law” (art.7).”³ The elements of the rule of law as well its definition remains open for judicial interpretations. Still, in the process of constitutional

¹ It should be noted that Georgian Constitutionalism is familiar with “rule of law state” or “law state” principle, which is terminologically similar to the German Rechtsstaat principle. However, for the purposes of present questionnaire, the rule of law state will be referred as a rule of law, since it is widely recognized that both concepts have many key points in common.

² The Constitution of Georgia, Official translation is available at following link:

<https://matsne.gov.ge/ka/document/view/30346?impose=translateEn>

³ N1/3/407 judgement of the Constitutional Court, chap. II, para. 2, (December 26, 2007).

adjudication, the Constitutional Court is making steps to define its concept and core elements embodied in it.

2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?

The elements of the rule of law will be broadly discussed in other section, however, here is what the Constitutional Court has held on the essence of the rule of law in general terms: “The main essence, purpose and challenge of the democratic and rule of law based state is to guarantee the freedom of a human being – i.e. guarantee the possibility of free self-realization through entire realization of fundamental rights and freedoms. Also, the State should be guarantor of the whole society, each person, as”⁴ “the idea of freedom will be depreciated if it does not bear the same content and does not be equally accessible for everybody. Recognition of any right will be dwindled, if the equal accessibility is not guaranteed. It is crucial for people to know, that they are equally treated.”⁵

Along with the principle of democracy, the rule of law is recognised as the most significant principle among other constitutional principles, a basis of the constitutional order and effective guarantor of the constitutional rights. “The principles of democracy and rule of law are the most important ones among the constitutional principles. They are the foundation of every other constitutional norm as well as other constitutional principles. The constitutional order is founded on these principles. Apart from this, they oblige the state to be bound by the Constitution, which means that no branch of a government has the right to act only on the basis of expediency, a political necessity or other ground. A Government should act on the basis of the Constitution and the laws. Only in this way can just legal order be produced, without which there is no chance for democratic state under the rule of law.”⁶

The role of the rule of law as the fundamental norm-principle is substantial for constitutional adjudication in Georgia. In fact, the Constitutional Court invokes the principle of rule of law almost in every judgment, highlighting on its significance and interpreting the constitutional norms as well as challenged legislation with the values stemming from it. Along with the principle of democracy, the rule of law is recognised as the main actor in defining the relation between the State and the individual.⁷ That being so, it is utterly important for the Constitutional Court to analyse and interpret the constitutional norms and

⁴ N1/4/557,571,576 judgement of the Constitutional Court, chap. II, para.5, (November 13, 2014).

⁵ N1/3/534 judgment of the Constitutional Court, chap. II, para. 3, (June 11 2013).

⁶ N1/3/407 judgement of the Constitutional Court, chap. II, para. 2, (December 26, 2007).

⁷ See supra note 3.

disputed laws in the context of the rule of law principle, which is considered as the foundation of the Constitution and the guarantor of its well-functioning. “The Constitutional Court, while assessing constitutionality of the disputed norm is not limited by particular provisions of the Constitution. It is true that the constitutional principles do not provide for specific rights, but the disputed norms are also subject to assessment in respect to constitutional principles, together with specific constitutional norms and from this perspective examination should be undertaken in the whole context. The Constitutional Court should establish, whether and to what extent the disputed norm is compatible with the constitutional legal order defined by the Constitution.”⁸ “The fundamental constitutional principles assist in identifying contents of the Constitution and, at the same time, define main direction of the state development. When deciding particular disputes, the Constitutional Court is obliged to analyse the constitutional norm separately as well as in the whole context of the Constitution, so that these norms through interpretation are in line with the value order given in the Constitution. Only through this way can the constitutional norm be interpreted coherently, ensuring right constitutional review of a disputed norm.”⁹

For example, while interpreting Article 30 of the Constitution, which guarantees freedom of labour, the Constitutional Court held: “A narrow interpretation of art. 30. 1 and formal interpretation of art. 30. 4 degrades social character of a right to labour, makes it empty and at the same time violates principle of rule of law, which sets strict constitutional limits on the state authority. Here it is meant not only that the legislature has to satisfy formal requirements of the Constitution and regulate protection of right to labour by legislation, but also that this law in terms of substance be in line with the Constitution. The Constitutional Court will assess the disputed norm from this perspective.”¹⁰

As a matter of the fact, the main guarantors of effective protection and realization of human rights enshrined in the second chapter of the Georgian Constitution are recognized those norm-principles, *inter alia* the rule of law principle, which are the foundation of the Constitution itself. “The legal guarantee of the right to property as well as other fundamental rights is mainly regarded to be the Constitution, in particular, its major principles which determine trends of the development of the state and the very essence of the possible

⁸ N2/2-389 judgement of the Constitutional Court, chap. II, para. 3, (October 26, 2007).

⁹ N1/3/407 judgement of the Constitutional Court, chap. II, para. 2, (December 26, 2007).

¹⁰ N2/2-389 judgement of the Constitutional Court, chap. II, para. 18, (October 26, 2007).

relationship between the state and the individual. These principles are as follows: the democratic public order, the economic freedom, the social and rule of law state.”¹¹

Apart from the effective guaranteeing of the constitutional rights, the rule of law along with other fundamental principles do a lot more in Georgian constitutional order. In particular, with their essence is enshrined entire Bill of Rights, which is easily distinguishable from the judgements of the Constitutional Court. For instance, while interpretation of Article 21 of the Constitution, which guarantees a right to property, the Constitutional Court highlighted on both, liberty component of right to property as the necessary element of its effective realization and on its social function, which directly flows from demands of social state and rule of law. “Property, in parallel of meeting private interests of an owner, bears a social function in the social state. Law cannot be reluctant towards the social function of property as the task, position, role and significance of property can be identified through this function. Therefore, the social and rule of law state equally requires the freedom of private property to be secured and the necessity of its restriction for public purposes.”¹²

On the vital significance of the fundamental norm-principles and the system of values created by them has been emphasized in other judgements of the Constitutional Court as well. For example, on the principle of legal security, which is the part of the rule of law, the Constitutional Court has held: “Prohibition of retroactivity restricts the freedom of legislator to adopt such law, which will make a person responsible for an action, which was not considered as an offence in time of its commitment. Consequently, the Constitution recognizes that the mentioned principle has an absolute character and its infringement is inadmissible. Infringement of this principle would endanger not only constitutional rights of a person, but also would threaten the system of values, legal security, which is the basis of protection of constitutional rights itself. The normative system of values is a measure of determination of behaviour of an individual citizen. Within such system, people have a reasonable expectation that the State will act in accordance with the law and action committed by a person will be assessed within the frames of present normative reality”¹³

It should be highlighted that by subjecting the constitutional norms, as well the challenged legislation to the assessment with the fundamental norm-principles enshrined in the Constitution, the Constitutional Court created fundamental system of values in which all acts of legislation are subjected to the evaluation not only to the particular basic rights

¹¹ N1/2/384 judgement of the Constitutional Court, chap. II, para. 6, (July 2, 2007).

¹² Ibid, 8.

¹³ N1/1/428,447,459 judgment of the Constitutional Court, chap II, para. 1, (May 13, 2009).

provided in the Constitution, but fundamental values stemming from the norm-principles, which are the basis of entire constitutional order in Georgia.¹⁴

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?

The Constitutional Court's ensures respect for the rule of law in all fields of law, since one of its major competence is the control of constitutionality of normative acts. In the process of judicial review, as it was discussed in the section 2, the Constitutional Court relies on the principle of rule of law to decide a case. Thus, respect for the rule of law is obligatory in all areas of law.

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case law.

As already mentioned, in the process of constitutional adjudication the Constitutional Court keeps exploring and/or developing new elements, principles, which constitute the content of the rule of law. In this respect it is important to highlight on the most prominent ones and describe their nature on the light of the judgements of the Constitutional Court.

Several principles stemming from the Constitution are vital for the functioning of the rule of law and constitutional order. According to the Article 6 of the Constitution "The Constitution of Georgia shall be the supreme law of the State. All other legal acts shall comply with the Constitution". This provision represents the notion of the **supremacy of the Constitution**, which subordinates all other legal acts to the supreme law – the Constitution. According to the practice of the Constitutional Court the rule of law requires that "the law of a state has to ensure, in the fullest extent, the recognition of basic human rights and freedoms and creation of all guarantees necessary for their protection. The Constitutional Court plays an immense role in achieving this goal. It, in every specific case, has to manage to correctly and exhaustively construe the contents of the constitutional rights".¹⁵ The Constitutional Court "defines the Constitution and ensures the supremacy of the Constitution and protection of human rights and freedoms within its competences prescribed by the Constitution of

¹⁴ N.B. Subjection of the laws to the fundamental values are considered by some authors in legal academia, as the original and descriptive feature of the concept of Rechtsstaat. For a sophisticated historical analysis of the development of the concept of the Rechtsstaat, see Ernst-Wolfgang Böckenförde, *State Society and Liberty*, New York: Berg Publishers, 47-70, (1991).

¹⁵ N3/1/466 judgement of the Constitutional Court, chap II, para. 2, (June 28, 2010).

Georgia.”¹⁶ Therefore, The Constitutional Court in the process protecting the Supremacy of the Constitution, fulfils the demands of the rule of law, which requires that human rights should be guaranteed to the fullest extent.

One of the core principles of the rule of law is **the principle of legal security**, which can be divided in 3 main sub-principles: **Clarity**, **Reliability** and **Protection of Confidence**. For the purposes of the questionnaire each principle will be discussed separately and in detail in the light the precedents of the Constitutional Court.

Clarity or definiteness of the law are unconditional elements of the rule of law. The purpose is that the person should be able to reach and understand the law, in order to define his or her actions. "Generally, the legislator is obliged to adopt the laws that satisfy criteria of foreseeability and unambiguousness. This obligation of the legislator stems from the principle of the rule of law. A product of the legislator can only be deemed to be the law if it satisfies quality requirements of a law. The latter implies that the law should be compatible with the principle of the rule of law and legal certainty. The quality of a law requires that legislative regulation is so clear that an individual, whose rights are interfered with, could comprehend legal situation and direct its actions accordingly."¹⁷ The Constitutional Court of Georgia has stated regarding clarity and accessibility of a legal act that “the norm should be clear and compatible with the requirements of certainty. An individual should be able to comprehend what the law requires from him/her and adapt his actions to this requirement. The Constitutional Court, while analyzing compatibility of other norms with the constitutional ones, should establish whether violation of a right was a result of uncertainty of a norm”.¹⁸

The principle of reliability stems from the principles of legality and legal security. The stability and reliability of the law are vital elements for the welfare of the individual and well-functioning of state economy. The most significant demand of the principle of reliability is prohibition of retroactivity of the law. There is a specific provision in the Constitution, which directly proscribes the retroactivity of the law. According to paragraph 5 of Article 42 of the Constitution of Georgia, “No one is responsible for an action which did not constitute a criminal offence at the time it was committed. The law that does not mitigate or abrogate responsibility has no retroactive force”. “The mentioned provision of the Constitution of asserts the principle of legality. The mentioned principle, while assuring the safeguard function of justice, is the most important foundation for practical realization of the principle

¹⁶ N3/2/577 judgement of the Constitutional Court, chap II, para.15, (December 24, 2014).

¹⁷ N1/3/407 judgement of the Constitutional Court, chap. II, para. 11, (December 26, 2007).

¹⁸ N2/2-389 judgement of the Constitutional Court, chap. II, para. 11, (October 26, 2007).

of the rule of law based state and thus, it is an essential component that determines the rule of law based state. Consequently, its content, range and frames should be perceived in the light of guaranteeing practical capacity of the rule of law based state.”¹⁹

“The principle of legality (*Nullum crimen, nulla poena sine lege*) assures safeguard functions of law through unconditional binding of the authorities through the measures as follows: to impose responsibility for action, responsibility for this action shall be stipulated by the law in force as unlawful action when the action has been committed. Consequently, this principle prohibits charging person for an action, which was not considered unlawful during its commitment. Exactly from this emanates the obligation to protect the main rule of effectiveness of the law in time – the law, determining responsibility or aggravated responsibility shall not apply to relationship occurred before adoption of this law and which, consequently that time were not be considered as offence and punishable action at all, or stipulated less grave responsibility.”²⁰ “Expression of this principle is prohibition of applying the law retroactively, which is one of main determining circumstances of effectiveness of the law in time. The mentioned paragraph of the Constitution determines that the law does not have retroactive force on the one hand, and on the other hand – determines those exceptions when the law can be applied retroactively. In particular, the first sentence of this paragraph of the Constitution states that the person could not be responsible for an action, which was considered as an offence after the person committed it. Consequently, according to the Constitution, the object of assessment cannot be a dry fact, but the action considered as criminal offence normatively. Hereby the Constitution protects a citizen from negative influence.”²¹

Protection of confidence of persons is intertwined with the reliability requirement, since both notions ensures the confidence in the society towards the state institutions and the laws and construes stability. Along with the prohibition of retroactivity, protection of confidence additionally guarantees the legitimate expectations of individuals. According to the Constitutional Court, “Article 21 of the Constitution, which protects the right to property, should be interpreted with the legal security principle. The legal security principle flows from the demands of the rule of law. Along with the clarity of the laws the principle of legal confidence is another substantial part of the legal security principle.”²² “The principle of legal confidence serves to the strengthening the confidence of the citizens to the current laws. It is

¹⁹ N1/4/557,571,576 judgement of the Constitutional Court, chap. II, para.47, (November 13, 2014).

²⁰ Ibid, 48.

²¹ N1/1/428,447,459 judgment of the Constitutional Court, chap II, para. 1, (May 13, 2009).

²² N2/3/522, 553 judgement of the Constitutional Court, chap II, para. 41, (December 27, 2013).

unacceptable to undermine the confidence of the addressees of the laws by the frequent and unjustified changes of the rights privileged to them. A citizen should have the feeling of confidence with the rights privileged to him/her by the law... Individuals should be able to lead their personal, professional and economic activities in firm legal system. Substantially indefinite and unplanned, distrustful development of the laws breeds the feeling of confusion, which undermines the personal development of the individual. The legal security is the significant part of individual's personal freedom."²³

It should be mentioned that along with the prohibition of retroactivity, the Article 42.5 recognizes **the principle of *lex mitior*** as well, which also stems from the notion of the rule of law. According to the Constitutional Court: "As we already mentioned, prohibition of application of the law determining or aggravating responsibility retroactively proceeds from the principle of rule of law and serves to certainty of law and assurance of legal security. On the contrary, the possibility of application of mitigative/abrogative law retroactively, not only does not serve, but even logically is not related to certainty and foreseeability of the law, because during non-application of the law in such circumstances, and application of the law (graver law) in force during commitment of action, the person is familiar with the criminality of action as well as with concrete responsibility proceeding from it. However, despite the absence of relationship to certainty of the law, application of mitigative/abrogative law retroactively still serves the principle of the rule of law, as it serves to realization of its (the rule of law) two main goals, such as: a) protection of a person from unjustified interference with his/her rights (when interference with a right is carried out without real necessity, without purpose or it is heavier and more intense than it is mandatory in democratic and rule of law state with the object of protection of legitimate interest) and b) promotion of humanity of justice in general. In the rule of law based state, the government is restricted by unconventional obligation to interfere into a person's freedom (in any right) only when it is absolutely necessary and as much as it is objectively necessary. That is how constitutional order of any rule of law state looks. Obviously, the state is specially limited by this obligation during setting and applying of legislation regulating responsibility. Such legislation is characterized with appropriateness of intensive interference into a person's freedom. That's way it is also appropriate that the State is extremely cautious in this process, because justice will lose its function if people are punished without appropriate and indispensable grounds."²⁴ "It is also obvious, that the function of humanity of justice cannot be ignored either, as it

²³ Ibid, 42.

²⁴ N1/4/557,571,576 judgement of the Constitutional Court, chap. II, para.61, (November 13, 2014).

promotes not only justice itself, but also progressive development of the public. Consequently, achievement of humanity of justice and its development through it is a permanent goal, promotion and assurance of which is state's obligation, however, obviously till the point when it comes in conflict with justice and other goals and main function of the law."²⁵

Judicial remedies and judicial independence are the substantial component of the rule of law. It is utterly important for the well-functioning of the rule of law that independent courts decide on conflicts between private individuals and/or individuals and legal bodies. Along with Article 42 of the Constitution, which explicitly stipulates the right to fair trial, the values stemming from the rule of law, strengthens the guarantee of justice in a state.

Pursuant to the first paragraph of Article 42 of the Constitution of Georgia, "everyone has the right to apply to a court for the protection of his/her rights and freedoms". This given norm is of fundamental significance for the functioning of democratic state and rule of law. It is one of the most important constitutional guarantees for the protection of human rights. The Constitutional Court repeatedly stated about its value. In particular, "the right to access to a court is the most important constitutional guarantee for the protection of individual's rights and freedoms, for assuring the rule of law and the principles of separation of powers. It is instrumental right, which... represents the means for the protection of other constitutional rights and interests..."²⁶ The Court has indicated that "the right to fair trial...ensures the effective realization of the constitutional rights and protection from unjustified interference with the rights"²⁷ The right to fair trial, in the first place, means to challenge and secure legal assessment of all those decisions (actions) undertaken by the state authorities which breach human rights before the court. In that sense, exercise of the right to fair trial "is connected with the principle of rule of law and it significantly defies its essence".²⁸ Since primary function of the rule of law is to fully realize human rights and freedoms and secure their adequate protection, the right to fair trial as a certain measure for implementation of the rule of law principle, implies the possibility to protect at a court all those goods representing a right by its essence.²⁹"...the result of definition of the concrete interest as a right may demand is that in case of its infringement or possible infringement, subject of the right may

²⁵ Ibid, 62.

²⁶ N1/3/421 judgement of the Constitutional Court, chap. II, para. 1, (November 10, 2009).

²⁷ N1/1/403,427 judgement of the Constitutional Court, chap. II, para. 1, (December 19, 2008).

²⁸ N1/3/393.397 judgement of the Constitutional Court, chap II. Para. 1 (December 15, 2006).

²⁹ N1/466 judgement of the constitutional Court, chap. II, para. 14, (June 28, 2010).

demand the protection from thereat of infringement or compensation for the damaged inflicted.”³⁰

The demands of the rule of law and the right to fair trial will not be realized if the court will not be impartial and independent. “In general, impartiality of court is crucial in democratic and rule of law based state and this is the criterion on which turns the confidence of public in judiciary. For this reason, article 42.1 and article 6, par. 1 of the European Convention for Protection of Human Rights and Fundamental Freedoms command that the judiciary shall be impartial.”³¹ „Citizen shall get fair and impartial trial in the court, which examines the case on its merits. The legislator is bound to install such a mechanism of trial (decision-making) which ensures that a person concerned is granted possibility to have his rights protected by a normatively flawless court and is provided with relevant procedural guarantees from the very first contact with the system of justice. The historically approved way of implementation of justice from the lowest to the higher instances shall be guaranteed in the manner, that every next instance is to recover bias or error and not to usurp the functions of a lower court which tries a case on its merits, in the present case decides the issue of arrest.“³²

Another substantial component of the rule of law is **proportionality principle**, which was evolved by the Constitutional Court from article 7 of the Constitution. “The Constitutional Court of Georgia, like constitutional courts of several European states (Germany, Austria, Italy, etc.) is guided in the assessment of constitutionality of a normative act by proportionality principle. Case-law of the European Court of Human Rights is also entirely based on this principle. Proportionality principle emanates from the idea of the rule of law and its basic function is to determine the extent to which the human rights may be restricted. It ensures certain balanced, proportional correlation between liberty and its restriction and prohibits restricting human rights severely than it is necessary in a democratic society. Proportionality principle is a constitutional criterion to assess legality of human rights’ restriction. Therefore it is substantial for constitutional control. Pursuant to article 7 of the Constitution of Georgia: “The state shall recognise and protect universally recognised human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the state shall be bound by these rights and freedoms as directly acting law.” This norm may be considered as the general basis for proportionality principle, though it does

³⁰ N1/3/421 judgement of the Constitutional Court, chap. II, para. 1, (November 10, 2009).

³¹ N1/3/393,397 judgment of the Constitutional Court, chap II, para. 3 (December 15, 2006).

³² Ibid, 4.

not exhaustively determine its substance. The specific substance of the principle is identified in the case-law of the Constitutional Court, as proportionality principle presents determining criteria for the Constitutional Court in ascertaining proportionality and thus constitutionality of human right's restriction. The Constitutional Court will assess in given case whether the proportionality principle was met by the impugned norms in restricting the fundamental rights, namely right to personal security and right to fair trial. These rights, *per se*, as well as defining their scope by the State according to the proportionality principle and provision of adequate procedures for their protection, are directly related to the principle of rule of law and in the main determine its substance.”³³

To sum up, the above-mentioned examples (principles) along with others, constitute the substantial part of the rule of law, however as it was noted previously, the concept of the rule of law is broad, indefinite and the Constitutional Court keeps exploring/developing the new elements in the process of constitutional adjudication.

5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.

There have been no changes in the concept of the rule of law in terms of its correction. However, the concept itself has been developing so far and the Constitutional Court keeps exploring new elements of the rule of law in its judgements. The different elements of the rule of law are discussed above.

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

Generally, the Constitutional Court of Georgia is open to the implementation of international standards and when it considers necessary refers to them in its judgments. For example, the Constitutional Court has referred to the standards set by the Strasbourg Court on the assessment of independence of the judiciary, which is considered as one of the substantial component of the rule of law. “To determine the impartiality of national courts, the European court applies subjective and objective impartiality test. (See, inter alia, case of Haushildt v. Denmark, may 24, 1989, par. 46; see also case of Piersack v. Belgium, October 1, 1982, par. 30). The content of both tests were specified in case-law. The subjective test refers to the personal conviction of a particular judge in a given case. Generally, the personal impartiality of a judge must be presumed until there is proof to the contrary. (See, inter alia, Case of Haushildt v. Denmark, may 24, 1989, par. 47) Thus the proof shall be presented, which would

³³ N1/3/393,397 judgment of the Constitutional Court, chap. II, para. 1 (December 15, 2006).

confirm that the judge was biased, acted to disadvantage of the claimant, expressed non-favorable opinions or was involved in the trial for personal purpose”.³⁴

II. New challenges to the rule of law

1. Are there major threats to the rule of law at the national level or have there been such threats in your country?

Since gaining its independence in 1991, Georgia faced many obstacles that substantially hindered the development of the rule of law. In fact, there was no such an idea of rule of law during the soviet regime, so in 1991, Georgia had to rebuild the ideals and principles, which were enshrined in the 1921 Constitution of democratic republic of Georgia. However, shortly after gaining its independence the civil war unleashed in Georgia, which resulted in substantial weakening of the state institutions and the entire society. Nevertheless, during the past decades, Georgia made an outstanding progress in many directions, especially towards fighting the corruption, which is clearly considered as one of the main threats for the rule of law, strengthened the state institutions and rebuilt the confidence of the Georgian society towards the state.

2. Have international events and developments had a repercussion on the interpretation of the rule of law in your country?

No.

3. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African, inter-American or European Courts) or international bodies (notably, the UN human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples?

Article 6 of the Constitution, as already mentioned, stipulates the principle of the Supremacy of the Constitution, which means that all legal acts, including international norms have to be in accordance with the Constitution. Nevertheless, one of the functions of the Constitutional Court is the competence to decide the constitutionality of the international treaties or agreements, there have been no such case, when the international norms collide with the Constitution.

III. The law and the state

³⁴ N1/3/393,397 judgment of the Constitutional Court, chap. II, para. 3, (December 15, 2006).

1. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?

As already mentioned, one of the competence of the Constitutional Court is the judicial review of normative acts of the state. If the Constitutional Court declares a normative act unconstitutional, it abolishes it, which means that the latter is out of force from the publication of the judgement. The issuance of the same norm is not allowed.³⁵ If, for example, the Parliament issues the same norm, which was already declared unconstitutional, the Constitutional Court, on the application of the plaintiff, declares the norm unconstitutional without considering the merits.³⁶ As to what can be considered as a same norm for above-mentioned purposes, the Constitutional Court has held that “formal difference should not be considered as substantial factor of differentiation between the provisions. The court will assess in each occasion, whether disputed provision is similar to provision which is already declared unconstitutional content-wise, considering the objectives of the disputed provision, the intent of legislator and legal instrument preserved in it. Content based similarity will exist not only in case when the disputed provision repeats content of the unconstitutional provision word by word but also when the disputed provision generates substantially similar legal outcome.”³⁷ “Therefore qualification of the disputed provision as “overruling” previous judgment of the Constitutional Court and voiding it without hearing on the merits is possible in case, when substantial content based similarity of the provisions is presented. In cases when the disputed provision restricts the same constitutional right similarly to the provision which is already declared unconstitutional, uses similar legal measure for restriction of the right and provides identical legal outcomes and when other factual or legal circumstances which would create ground/prerequisite for reassessment of the disputed provision on merits do not exist.”³⁸

2. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) Courts?

According the Constitution the competences of the Constitutional Court and ordinary courts are separated. The fifth chapter of the Constitution determines that constitutional control is made by the Constitutional Court and justice is administered by the courts of

³⁵ See article 25.4 of the organic law on the Constitutional Court.

³⁶ See article 25. 4¹ of the organic law on the Constitutional Court.

³⁷ N1/2/563 judgement of the Constitutional Court, chap. II, para. 10, (June 24, 2014).

³⁸ N1/2/563 judgement of the Constitutional Court, chap. II, para. 12, (June 24, 2014).

general jurisdiction.³⁹ Thus, there is no conflict between the Constitutional Court and ordinary courts. As to the binding effect of the judgements of the Constitutional Court, a judgement of the Constitutional Court is final. A normative act or part of it recognized as unconstitutional shall cease to have legal effect as soon as the respective judgement of the Constitutional Court is published.⁴⁰

3. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, non bis in idem, nulla poena sine lege, etc.).

The case-law of the Constitutional Court consists of the interpretation of the Constitutional text, therefore includes development and establishment of important constitutional concepts, such as judicial independence, proportionality, legal clarity, *lex mitior*, *non bis in idem* and etc. (see I. 4). Those concepts do influence the legal system of Georgia. First of all, Constitutional standards developed by the Court has highly important role for the law-making process, because if the legislative acts are not in compliance with the above-mentioned concepts it is highly probable that they will be found as unconstitutional and will be invalidated by the Court. Moreover, the constitutional concepts have guiding role during the application of law. The respective state bodies those are responsible for application of law take into account the above-mentioned concepts to ensure the interpretation and application of the law in question in harmony with the constitution.

4. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?

No.

5. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?

The public officials are accountable for their actions both in law and in practice. There are several positions, including President, Judges, Justices, Public Defender and etc. which are privileged to have the certain degree of immunity. Constitution and the legislation provide the procedures for impeachment and remove of the immunity. Therefore the scope of immunity for those officials have never been problem for effective fight against corruption. Constitutional Court of Georgia has had two cases regarding immunity of public officials. The

³⁹ See article 83.2 of the Constitution.

⁴⁰ See article 89.2 of the Constitution.

cases establish constitutional/human rights standards about impeachment/removing immunity for certain public officials – Head of Elected Self-government Body – Mayor of Tbilisi⁴¹ and Members of Parliament.⁴²

IV. The law and the individual

1. Is there individual access to your Court (direct/indirect) against general acts/individual acts? Please briefly explain the modalities/procedures.

Every person may lodge a complaint in the Constitutional Court against normative acts in terms of fundamental human rights and freedoms enshrined in the second chapter of the Constitution. Individuals only apply to the Constitutional Court if they deem that their rights and freedoms recognized by the second chapter of the Constitution have been breached or may be breached.

Although the text of the Constitution refers to the citizens, the Constitutional Court ruled that “Since applying to the Constitutional Court represents the different [apart from common courts] and moreover, in separate cases the sole possibility for the protection of a right, by prohibiting the subjects with constitutional rights from the right to apply to the Constitutional Court, the right to a fair trial is disproportionately restricted”.⁴³ Accordingly, the Constitutional Court declared unconstitutional the rule, which was restricting foreigners not residing in Georgia and persons without citizenship (apatrides), also foreign legal entities from the right to apply to the Constitutional Court.

Apart from normative acts, legislation of Georgia does not allow complaints in the Constitutional Court against individual acts.

2. Has your Court developed case-law concerning access to ordinary /lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?

Yes. For example, In respect of representation, the Constitutional Court has ruled that “Right to defence is essential part of the right to fair trial and in general it implies that a person is able to defend himself in person or through legal assistance of his choosing”.⁴⁴ The Constitutional Court also held that “a detained or arrested person should have reasonable, sufficient time and possibility to prepare for the defence and meet the defender chosen by him. In the Court’s opinion, one hour restriction for meeting the defender contradicts the

⁴¹ N3/2/574 judgement of the Constitutional Court (May 23, 2014).

⁴² N1/2/379 judgement of the Constitutional Court, (July 13, 2006).

⁴³ N1/466 judgement of the Constitutional Court, chap. II, para. 20, (June 28, 2010)

⁴⁴ N1/3/393,397 judgement of the Constitutional Court, chap. II, para. 2, (December 15, 2006)

above mentioned provisions of the Constitution of Georgia as duration of the meeting should be determined considering the specific nature of each particular criminal case”.⁴⁵

In terms of time limits, the Constitutional Court does not prescribe in its case-law certain terms in which a case must be discussed or considered, but it has certain standards that indicates that “court dispute is effective if it responds to the demands of rapid/timely, fair and efficient justice. Derived from the right to a fair trial, the court judgement has to be delivered within the reasonable time period, without undue delay, since such delay of judgement undermines the trust of society towards it. Simultaneously the period for hearing and deciding the case has to provide the opportunity to objectively research the circumstances. This is why the reasonableness of the proceeding should be assessed based on the specific circumstances of the case”.⁴⁶

3. Has your Court developed case-law on other individual rights related to the rule of law?

As already mentioned, the Constitutional Court interprets the norms in the light of the rule of law principle. Thus, in the process of constitutional adjudication the Court has developed numerous rights in mentioned context, inter alia, the right be convicted only on incontrovertible evidence.

4. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?

The second chapter of the Constitution (Citizenship of Georgia. Fundamental Human Rights and Freedoms) contains the Bill of Rights. Accordingly, the subject of particular legislative act usually challenges the law to the particular human right enshrined in the second chapter of the Constitution. Obviously, not all elements of the rights are expressly displayed in the constitutional text, however, the Constitutional Court evolves them from penumbras of enumerated constitutional rights. For example, Article 42 of the Constitution, guarantees right to fair trial, however, in the provision, there is an absence of some vital judicial rights such as the right to have an adequate time for preparing the defence, the right for free legal assistance in case if the person is unable to pay, the right to be informed promptly in a language which he/she understands and in detail, of the nature and cause of the accusation against him. However, this factor did not become an obstacle for the Constitutional Court to evolve such

⁴⁵ N2/3/182,185,191 judgement of the Constitutional Court, chap. II, para 2, (January 29, 2003)

⁴⁶ N3/2/577 judgement of the Constitutional Court, chap. 2, para. 7, (December 24, 2014)

rights from the Article 42, on the basis of requirements of the rule of law and Article 6 of European Convention on Human Rights.⁴⁷

Furthermore, Article 39 of the Constitution contains the provision, according to which “the Constitution of Georgia shall not deny other universally recognised rights, freedoms, and guarantees of an individual and a citizen that are not expressly referred to herein but stem inherently from the principles of the Constitution.”

In one of its judgments the Constitutional Court has emphasized that “although the claimants’ demands are related to the protection of the social rights of the claimants which are not directly provided for in the Constitution, they are implied in its principles. Under Article 39 of the Constitution “the Constitution of Georgia shall not deny other universally recognised rights, freedoms, and guarantees of an individual and a citizen that are not expressly referred to herein but stem inherently from the principles of the Constitution.” According to the preamble of the Constitution one of the main expression of these principles is that “the firm will of the citizens of Georgia, is to establish a democratic social order, economic freedom, a rule of law based social state, to secure universally recognized human rights and freedoms.” Furthermore, the court highlighted on the Universal Declaration of Human Rights and on the International Pact on Economic Social and Cultural Rights and concluded that “considering the principles of the Constitution of Georgia and of the above mentioned international acts, the stated social rights of the claimants should be considered as the rights envisaged by the content of the Article 39...recognized by the state, for the protection of which the state is obliged to use all reasonable remedies at its disposal in order to create effective security mechanisms.”⁴⁸

⁴⁷ N1/3/393,397 judgment of the Constitutional Court, chap II, para. 2 (December 15, 2006).

⁴⁸ N1/1/126,129,158 judgement of the Constitutional Court, (April 18, 2002).