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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

CONFERENCE

**On “The jurisdiction of the constitutional court and the
European Court of Human Rights in conflict zones”**

**6-7 July 2007
Batumi, Georgia**

Organised by

THE CONSTITUTIONAL COURT OF GEORGIA

in co-operation with

**THE TECHNICAL CO-OPERATION DEPARTMENT OF
THE DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
OF THE COUNCIL OF EUROPE**

GERMAN SOCIETY FOR TECHNICAL CO-OPERATION

and

THE OSCE MISSION TO GEORGIA

SYNOPSIS

On the occasion of its 10th anniversary, the Constitutional Court of Georgia organised - in co-operation with the Venice Commission and the Technical Co-operation Department of the Directorate General of Human Rights and Legal Affairs of the Council of Europe, the German Society for Technical Co-operation and the OSCE - a Conference on „The jurisdiction of the Constitutional Court and the European Court of Human Rights in conflict zones“, held in Batumi, Georgia (6-7 July 2007).

The Conference gathered together representatives of the constitutional courts of Georgia, Albania, Armenia, Bosnia-Herzegovina, Bulgaria, Greece, Lithuania, Moldova, Slovakia, Slovenia and Turkey; judges of the European Court of Human Rights, representatives of the Supreme Court of Norway, of the Supreme Court of Georgia, including its President Mr Kublashvili, representatives of the Ministry of Justice of Georgia, the Public Defender of Georgia, representatives of the OSCE Mission in Georgia and of NGOs.

Discussions focused on the difficult issue of conflict zones in the 21st century and the jurisdiction of courts in such zones, notably the discrepancy between the *de facto* and *de jure* situations. It was pointed out that whereas the European Court of Human Rights benefits from an uncontested credibility on both sides in a conflict between a country and its breakaway region and can rely on international pressure to enforce its decisions, national constitutional courts face a much more difficult task in trying to impose their decisions in such a situation. Their role is, however, important as they control the actions of governments by ensuring that the latter do not breach the rule of law when striving to seek the settlement of a conflict. In addition, the constitutional court's role is crucial after such a settlement has been reached, in order to ensure that human rights are respected in the country and its former breakaway region.

Participants discussed whether a derogation under the European Convention on Human Rights (ECHR) should be made by states in times of crisis, when a state can no longer effectively guarantee certain human rights in one of its regions. A number of participants underlined that such derogations are important because of the need for scrutiny of the exercise of power during such a crisis.

With respect to separatist regions, the European Court of Human Rights recognises that a state experiencing a conflict on its territory may have reduced responsibility if it loses control of a part of its territory, the loss of which is a question of fact in each case. Participants agreed that it would be useful if “positive obligations” of states and the term “effective control” were further explained and developed in the case-law of the European Court of Human Rights.

The issue of property rights in conflict zones was also discussed as well as the tendency of the European Court of Human Rights to interpret reservations made by states to the ECHR with respect to conflict zones in a restrictive manner. Participants agreed that reservations are an indication that the state concerned has lost effective control over a part of its territory and discussed Georgia's reservation to Article 1 of Protocol 1 of the ECHR on the protection of property, which will not apply to internally displaced persons (IDPs) until the restoration of the territorial integrity of Georgia is achieved. This has resulted in IDPs having lodged a complaint to the Constitutional Court of Georgia, claiming that the reservation made to Protocol 1 was in violation of the Georgian Constitution, a claim that was rejected by the Constitutional Court.