

## REPORT

### TBILISI SEMINAR ON "CONTEMPORARY PROBLEMS OF CONSTITUTIONAL SUPERVISION" (Georgia, 2-3 December 1996)

A delegation from the European Commission for Democracy through Law (Venice Commission) comprising Messrs Endzins (Latvia), Hajiev (Azerbaijan), Haroutunian (Armenia), Klucka (Slovakia), Mavcic (Slovenia), Pinelli (Italy), Vitruk (Russian Federation), Aidukas (Lithuania), as well as Messrs Giakoumopoulos and Polakiewicz, members of the Secretariat, visited Tbilisi from 30 November to 4 December 1996 to take part in the seminar on "Contemporary Problems of Constitutional Supervision" organised jointly by the Constitutional Court of the Republic of Georgia and the Venice Commission (see programme of the visit in Appendix I).

#### I. The Constitutional Court

The Constitutional Court of the Republic of Georgia was set up on the basis of the new Constitution of 24 August 1995. The Law establishing the Court was adopted on 31 January 1996. It was complemented by a Law on Constitutional Legal Proceedings and a Law on Social Guarantees for the Members of the Constitutional Court.

The attributions of the Court are laid down in the new Constitution (Articles 88 and 89) and implementing legislation. It enjoys wide powers and is in particular called upon to decide whether normative acts are in conformity with the Constitution. In addition, it considers disputes on the competences of State organs, questions relating to the constitutionality of the creation and activity of political parties, disputes connected with the constitutionality of referenda and elections, as well as disputes connected with the question of the constitutionality of international treaties and agreements. The Constitution makes provision for the referral of cases to the Constitutional Court by the President, not less than one fifth of the members of Parliament, the courts, the supreme representative bodies of Abkhazia and Adjara, public defenders or individual citizens.

The President of the Court, Mr Demetrashvili, thanked the Commission for its assistance. In three months of existence, a certain number of cases have already been brought before the Court, almost all originating from individual petitions. There are plans to appoint a liaison officer in the near future who would report regularly on the Court's most important decisions.

#### II. Seminar on "Contemporary Problems of Constitutional Supervision"

The seminar was held at the Krtsanisi governmental residence in Tbilisi. The residence which provided also accommodation for the foreign participants was a most suitable place for the seminar. The conference room was equipped with simultaneous interpretation equipment which could be hired due to a financial contribution of the Commission.

The smooth conduct of the seminar bore witness to the effectiveness of the preparations by both the Georgian Constitutional Court and the Venice Commission.

Around fifty leading personalities took part in the seminar (the Presidents of the Constitutional Courts of Armenia and Georgia, the Presidents of the Supreme Courts of Azerbaijan and Georgia, all the members and the staff of the Georgian Constitutional Court, the General Prosecutor, academics, representatives of the OSCE and NGOs; see list of participants in Appendix II).

The lively and fruitful exchange of views centred on the following subjects:

- the functions and purposes of constitutional control;
- the scope of constitutional review;
- the independence and impartiality of constitutional court judges;
- the relationship between the Constitutional Court, the ordinary courts and other State authorities;
- the right of individual appeal to the Constitutional Court.

The right of individual appeal to the Constitutional Court gave rise to many questions. The regulation contained in the Constitution and the Law on the Constitutional Court leaves certain room for interpretation, in particular in two respects:

- Who is entitled to bring a claim to the Constitutional Court? By referring generally to "applications of citizens", the Constitution appears to be too restrictive and broad at the same time. On the one hand, it does not mention legal persons who might also be affected in their constitutional rights. On the other hand, the right to bring a claim before the Court is not explicitly limited to persons who are directly and personally affected by normative enactments. As the law stands, even an *actio popularis* could be allowed.
- What is the object of constitutional control? The Constitution and the Law on the Constitutional Court only speak of "normative acts" the constitutionality of which shall be examined by the Court. In line with traditional legal thinking, this notion comprises enactments of a general and abstract nature (laws, regulations, decrees, etc.). However, it appears to exclude all individual acts (judgments, administrative acts, etc.). During the discussion, it was suggested that an effective protection of fundamental rights requires examination not only of the enactments themselves, but also of their applications in individual cases.

The Constitutional Court which has already been seized by a certain number of individual applications will have the delicate task to strike a fair balance between respect for the applicable texts and the requirements of an effective protection of fundamental rights. In this respect, the experience of other constitutional courts will be most valuable.

The seminar which was followed by a press conference raised awareness in Georgia of the functions and powers of the Constitutional Court.

#### III. Possibilities for future co-operation

Many participants stressed the importance they attached to close co-operation with the Venice Commission and the Council of Europe in general. The Presidents of the Georgian and Armenian Constitutional Courts welcomed the possibility of organising regular meetings between the members of the constitutional courts that have recently been established in the region. The three Transcaucasian republics have recently set up (Armenia and Georgia) - or, in the case of Azerbaijan, are in the process of setting up - specialised constitutional courts. Given the similarity of the problems

faced by these courts, it was felt that joint meetings of this kind would be most useful. The Georgian Constitutional Court has already indicated its willingness to host such a regional meeting in 1997 (probably in Kutaisi).

**APPENDIX I**  
**Programme of the seminar on**  
**"Contemporary Problems of Constitutional Supervision"**  
**Tbilisi, 2-3 December 1996)**

Sunday 1 December

Cultural Programme

Monday 2 December

- 10:00 Opening of the Seminar by Avtandil Demetrashvili, Chairman of the Constitutional Court, and Christos Giakoumopoulos, Secretariat of the Venice Commission
- 10:30 Report by Mr J?n Klu...ka, Judge, Constitutional Court, Slovakia, "The setting up of Constitutional Court in a period of transition - The example of Slovakia"
- 11:00 Co-report by Avtandil Demetrashvili, Constitutional Court of Georgia, on the "Problems of Constitutional Supervision"
- 11:15-14:00 Discussion
- 14:00-17:00 Lunch
- 17:30 Report by Cesare Pinelli, Italy, on "Functions of a Constitutional Court/Election of Judges"
- 17:30-19:00 Discussion
- 19:00 Reception in embassies accredited in Georgia / Dinner

Tuesday 3 December

- 10:00 Report by Mr Arne Mav...i..., Constitutional Court, Slovenia, "The citizen as an applicant before the Constitutional Court"
- 10:30-14:00 Discussion
- 14:00-16:00 Lunch
- 16:00-17:00 Closing of the Seminar
- 17:00-18:00 Press Conference
- 18:00 Presentation of the new four-language edition of the Constitution and reception in the building of the Constitutional Court.

**APPENDIX II**

**LIST OF PARTICIPANTS**

**Experts of Venice Commission and Staff of the Secretariat**

1. Ian Klu...ka (Slovakia)
2. Cesare Pinelli (Italy)
3. Arne Mav...i... (Slovenia)
4. Darius Aidukas (Lithuania)
5. Ivars Endzins (Latvia)
6. Nicolas Vitruk (Russia)
7. Gagik Arutinian (Armenia)
8. Khanlar I.P. Hajiev (Azerbaijan)
9. J?rg Polakiewicz (Venice Commission)
10. Christos Giakoumopoulos (Venice Commission)
11. Helen Kravchenko (Russia)
12. Stanislav Beliaev (Interpreter)

**The Constitutional Court of Georgia**

Judges:

13. Avtandil Demetrashvili
14. Otar Benidze
15. Jacob Putkaradze
16. Gia Meparishvili
17. Avtandil Abashidze
18. Nicholas Shashkin
19. Nikoloz Cherkezishvili
20. Lamara Chorgolashvili
21. Zaur Jinjolava

Assistants of the Judges.:

22. Gia Getsadze
23. Levan Bodzashvili
24. Zaal Kadagishvili

25. George Inauri
26. Luiza Khitarishvili
27. Valeri Gelbakhiani
28. Nona Tsotsoria
29. Maia Kopaleishvili
30. Zurab Asanashvili
31. Paata Lejava
32. Tamar Demetrashvili
33. Zurab Chanturidze

Invited Persons:

34. Theodor Ninidze (Minister of Justice)
35. Tengiz Liliashvili ( Vice-chair of the Minister of Justice)
36. Mindia Ugrekheldze (Chairman of the Supreme Court)
37. Jimmy Kipiani ( Vice-chair of the Supreme Court)
38. Michael Saakashvili (Chairman of the Committee of the Judicial Constitutional Matters and Legality)
39. Tengiz Sharmanashvili (Member of the Parliament of Georgia)
40. Johny Khetsuriani ( Parliamentary Secretary of President)
41. David Usupashvili (President of Young Lawyers Association)
42. Tinatin Khidasheli ( Young Lawyers Association)
43. Lado Sanikidze ( Young Lawyers Association)
44. Jamlet Babilashvili (Prosecutor General of Georgia)
45. Alexander Shushanashvili (Vice-chair of the Prosecutor General of Georgia)
46. Givi Intskirveli (Dean of the Department of Law of Tbilisi State University)
47. Otar Gamkrelidze (LLM, Professor)
48. Vakhtang Khmaladze ( League of the Constitutional Defence)
49. Soso Bachiashvili (Chairman of the Arbitrary Court)
50. Vladimer Baratashvili (Chairman of Bar Collegium)
51. Paul Tkachuk (First Secretary of the Embassy of Ukraine)
52. Temur Bakradze (Chief of the Department of International Law of the Ministry of Foreign Affairs)
53. Robert La Mont (Liaison of American Bar Association)
54. Shota Gorgodze (Rector of the Police Academy)
55. Gela Nikolaishvili (NGO-"Ex Political Prisoners-For Human Rights")
56. Johanna Stigler (OSCE Mission)

Total number of participants in the Seminar: 65