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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

Description of the Constitutional Court of **Georgia**
as well as précis published in the Bulletin on Constitutional Case-Law

Georgia Constitutional Court

Introduction

Georgia is an independent State with the political system of a democratic republic.

The Constitutional Court of Georgia was founded on 24 July 1996 in accordance with Articles 83, 88 and 89 of the Constitution, adopted on 24 August 1995. Under the terms of Article 9 of the Law on the Constitutional Court of Georgia, the Court's members take an oath before the President, the Speaker of the Parliament and the President of the Supreme Court.

The Constitutional Court began to function on 1 September 1996.

I. Basic texts

- Constitution of Georgia.
- Law on the Constitutional Court of Georgia (adopted on 31 January 1996).
- Law on Constitutional Proceedings (adopted on 21 March 1996).
- Law on social guarantees for members of the Constitutional Court of Georgia (adopted on 25 June 1996).
- Rules of the Constitutional Court of Georgia.

II. Composition and Organisation

1. Composition

The Constitutional Court is an organ of constitutional review.

The Constitutional Court is composed of nine judges. Three members are appointed by the President, three are elected by a three-fifths majority of members of parliament and three are appointed by the Supreme Court. Members of the Constitutional Court serve a ten-year term of office. The Constitutional Court elects its President from among its members for a five-year term. The President may not be re-elected.

In accordance with the Constitution and the Law on
I.the Constitutional Court, members of the Court must:

1. be citizens of Georgia;
2. be at least 35 years of age;
3. have a high level of legal training.

The judges are independent and subject only to the Constitution and the law.

Members of the Constitutional Court enjoy immunity. The judges may be prosecuted or held in detention only with the consent of the Constitutional Court.

2. Structure

The Constitutional Court is composed of a Full Court and two Chambers. The nine judges of the Court form the Full Court, while each Chamber is approved by the Full Court on presentation by the President of the Constitutional Court. According to the Statute of the Constitutional Court, other experts form the Private Office of the President, Vice-President and Secretary of the Constitutional Court, who are responsible for the following departments (situation on 1 September 1998):

- Department of information analysis;
- Drafting and editorial department;
- Staff management group;
- Finance and accounts group;
- Logistics department;
- Advisory group;
- Department of international relations.

III. Powers

Under the provisions of the Constitution and the Law on the Constitutional Court of Georgia, the Court decides:

1. whether the laws of Georgia, the Rules of the Georgian Parliament and statutes issued by the President of Georgia or by the authorities of Adjara or Abkhazia are in conformity with the Constitution;
2. on disputes concerning the distribution of powers between different State bodies;
3. whether political associations and their activities are in conformity with the Constitution;
4. whether referenda and elections have been held in conformity with the Constitution;
5. whether statutes relating to the second chapter of the Constitution are in conformity with the Constitution;
6. whether international treaties and agreements are in conformity with the Constitution;
7. whether the dismissal of an MP before the end of his/her term of office should be recognised;
8. whether the President of Georgia, the President of the Supreme Court, a government minister, the Attorney-General, the Auditor General (Chairman of the Chamber of Control) or board members of the National Bank have breached the provisions of the Constitution.

If, following an application brought in a specific case, an ordinary court finds that the Constitution has been breached by a law or rule to which it has had to refer during that case, the court can suspend proceedings and refer the matter to the Constitutional Court. The proceedings can only be resumed after the Constitutional Court has given its decision.

However, if a law or other statute is found to be unconstitutional, sentences and judgments previously pronounced by the Court on the basis of those acts are not automatically set aside, but, according to the legislation on procedure, enforcement of those decisions may be suspended.

Under the provisions of the Constitution and the Law on the Constitutional Court, the Court deliberates on the basis of an application or action by the President of Georgia, by one-fifth of the members of parliament, by a court, by the supreme representative bodies of Abkhazia and Adjara, by the Defender of the People (Ombudsman) or by the defence counsel of a citizen.

IV. Nature and effects of decisions

The Constitutional Court takes decisions or deliberates (for example on the impeachment of the President of Georgia and government ministers) in the deliberation chamber.

An application or action is allowed if it is supported by more than half of the participants in the sitting.

The Court's decision is signed by all judges present at the meeting, irrespective of their individual opinion. Nevertheless, in adopting a decision, all members reserve the right to a different opinion, which is appended in writing to the minutes of the session. At the judge's request, such an opinion may be published with the decision.

Following its signature, the decision is announced to the chamber by the Chair of the session.

The Court's decisions are final. The statute or the part of it found to be unconstitutional ceases to have effect as soon as the relevant decision of the Constitutional Court is published.

Georgia

Identification: GEO-1999-3-003

Full text: English

a) Georgia / **b)** Constitutional Court / **c)** Second Chamber / **d)** 27/07/1999 / **e)** 2/77/11 / **f)** Malkhaz Mumladze and others v. the President and the Ministry of Public Property Management of Georgia / **g)** *Adamiani da Konstitutsia* (Official Gazette) / **h)** .

Keywords of the Systematic Thesaurus:

- 3.9 **General Principles** - Rule of law.
- 3.12 **General Principles** - Legality.
- 5.1.2.3 **Fundamental Rights** - General questions - Entitlement to rights - Natural persons.
- 5.2.32.4 **Fundamental Rights** - Civil and political rights - Right to property - Privatisation.
- 5.3.3 **Fundamental Rights** - Economic, social and cultural rights - Right to work.

Keywords of the alphabetical index:

Public venture, privatisation / Company shares, purchase by employees / Creativity, intellectual freedom / Decree, annex.

Headnotes:

State ventures are to be privatised by transforming the relevant facilities into joint stock companies. Thereon, state venture employees must be given the right to participate. Privatisation carried out otherwise is unlawful and in breach of the constitutional right to property.

Summary:

A scientific research institute in the form of a joint stock company was included in the list of ventures subject to privatisation at auction in decrees of the President and the Ministry of Public Property Management. According to the law on the Privatisation of public enterprises, public enterprises may be privatised once they are established as joint stock companies.

A general meeting of the institute employees was convened which voted in favour of transforming the institute into a joint stock company. Although the company was never registered, it was privatised at a specialised starting zero price auction without the participation of the institute employees, who were dismissed and left without the benefits envisaged by relevant laws and sub-legislative acts concerning the privatisation of state property.

Former employees of the research institute lodged a complaint with the Constitutional Court seeking a declaration of unconstitutionality of the decrees in question. The applicants argued that their right to the possession and acquisition of property, as well as their right to labour and freedom of intellectual creativity, had been breached.

The Court ruled that the impugned decree was in conflict with the right to property guaranteed by Article 21 of the Constitution. It held that denying the advantages provided by legislation to public venture employees in the course of the privatisation process fell foul of the legitimate interests of the persons in question.

The fact that the institute employees were informed of the public sale of the institute's shares did not alter the circumstance that the privatisation of the facility had been carried out in an unlawful manner.

Privatising the institute before it had been transformed into a joint stock company left the institute employees, who were entitled to certain benefits under valid legislation, without the possibility of participating in the purchase of company shares, since they did not exist, and left them with no other choice than to submit complaints to courts of various instances.

Another issue to be resolved by the Court was whether the complainants' right to labour had been breached. The Court made clear that the Constitution guarantees the freedom of labour, which is distinct from the right to labour as stated by the complainants and implies the individual's right to use his or her physical and mental faculties in work and to choose the area of his or her activities. In addition, under an interpretation of Article 30, the State no longer has an obligation to ensure full employment of its citizens.

The impugned acts did not stipulate for dismissal of the institute employees. The Court concluded that it was not necessary to consider the relevant .

The same reasoning led the Court to disregard the question of a violation of the freedom of intellectual creativity.

The Court did not take the respondent's view that the source of complaint was the annex to the contested Presidential decree, which enumerates the public facilities to be sold at an auction, and that an examination of the constitutionality of the decree itself should therefore be discontinued. The Court held that the annex in question was an inseparable part of the normative act and its conformity with the Constitution had to be reviewed along with the disputed act.

Languages:

Georgian, English (translation by the Court).

Identification: GEO-1999-2-002

Full text: English

a) Georgia / **b)** Constitutional Court / **c)** Second Chamber / **d)** 23/02/1999 / **e)** 2/70-10 / **f)** Citizens Vano Sisauri, Tariman Magradze and Zurab Mchedlishvili v. the President of Georgia / **g)** Official Gazette / **h)** .

Keywords of the Systematic Thesaurus:

- 1.4.10 **Constitutional Justice** - The subject of review - Rules issued by the executive.
- 1.4.13 **Constitutional Justice** - The subject of review - Administrative acts.
- 3.12 **General Principles** - Legality.
- 4.6.2 **Institutions** - Executive bodies - Powers.
- 5.1.2.4.1 **Fundamental Rights** - General questions - Entitlement to rights - Legal persons - Private law.
- 5.2.32 **Fundamental Rights** - Civil and political rights - Right to property.

Keywords of the alphabetical index:

Property, possession / Co-operative, consumers / Constitutional Court, jurisdiction.

Headnotes:

According to Article 21 of the Constitution property may be deprived on the ground of social necessity in circumstances directly determined by law, by a court decision or in case of urgent necessity determined by organic law and if appropriate compensation is made. Thus alienation of property of a public association by a governmental decree without any relevant grounds infringes the universal right to property entrenched in the Constitution since the members of the association are deprived of the possibility to benefit from the facilities established by them over the years.

Summary:

Members of the Central Rural Union lodged a constitutional complaint with the Constitutional Court requesting a declaration of unconstitutionality of a decree issued by the Prime Minister in 1991. The disputed act transferred rural fairs previously owned by the Central Rural Union to the Ministry of Trade, claiming that the facilities were initially owned and managed by the State.

The complainants argued that about 250 000 members of the public association, who are co-owners of the Union property in association with many other members, were deprived of the material gains made by them over the years through rural activities. The fairs were alienated without the complainants' consent and therefore constituted an unlawful deprivation of property which violated their property rights.

The disputed act was not registered in the State Registry of Normative Acts at the Ministry of Justice, which would allow the Constitutional Court to examine the constitutionality of normative acts on an exceptional basis, but the Constitutional Court held that considering the contents of the act and its scope of regulation the constitutionality of the disputed act could be examined.

In 1987 the joint decree of the Central Committee of the Communist Party of Georgia and the Council of Ministers, relying on the corresponding decree of the Soviet Communist Party and the Council of Ministers, which provided guidelines for the promotion of consumer cooperation, transferred the rural fairs previously managed by the Ministry of Trade to the Central Rural Union, thus fulfilling the State's obligation to maintain consumer co-operation ventures.

The Constitutional Court ruled that the Prime Minister was not empowered to invalidate a legal act of the then supreme body by an individual, personal decree.

As for the respondent's assertion that the transfer of facilities had been implemented in an unlawful manner, violating the rules of transfer of state property to public and private entities, the Constitutional Court noted that the later regulations on this matter contained different provisions, which permitted free of charge alienation of state property.

The Constitutional Court held that the sale or free transfer of facilities implies alienation of ownership rights over the property in respect of this particular case. Moreover, since 1987 the Central Rural Union acted as the sole owner of the fairs, executing the operational and financial management of relevant facilities at its charge.

The applicants' request that they be entitled to receive their share of profit from the privatised rural fairs established in the form of joint stock companies was not satisfied however, as consideration of property disputes does not fall under the jurisdiction of the Constitutional Court.

Languages:

Georgian, English (translation by the Court).

Identification: GEO-1999-1-001

Full text: English

a) Georgia / **b)** Constitutional Court / **c)** First Chamber / **d)** 15/07/1998 / **e)** 1/6-58, 60, 62, 67 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

- 2.2.1 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national and non-national sources.
- 2.1.1.14 **Sources of Constitutional Law** - Categories - Written rules - Other international sources.
- 3.9 **General Principles** - Rule of law.
- 3.12 **General Principles** - Legality.
- 3.21 **General Principles** - Prohibition of arbitrariness.

- 5.1.2.4.1 **Fundamental Rights** - General questions - Entitlement to rights - Legal persons - Private law.
- 5.2.32 **Fundamental Rights** - Civil and political rights - Right to property.
- 5.2.32.2 **Fundamental Rights** - Civil and political rights - Right to property - Nationalisation.
- 5.3.9 **Fundamental Rights** - Economic, social and cultural rights - Freedom of trade unions.

Keywords of the alphabetical index:

Property, right to disposal / Trade union, members, contributions / Compensation / Normative act, quality.

Headnotes:

Acts of the executive issued between 1992 and 1994 are unconstitutional since they unlawfully deprive trade unions of their property. Article 21 of the Constitution permits deprivation of property on the grounds of social necessity in circumstances directly determined by law, by a court decision or in case of urgent necessity determined by organic law. If appropriate, compensation is to be given.

Summary:

Members of the Georgian Association of Trade Unions filed a complaint with the Constitutional Court requesting a declaration of unconstitutionality in respect of normative acts issued by the supreme executive bodies of state power which, in their opinion, unlawfully deprived them of their property. The disputed acts of the executive transferred the facilities and enterprises previously owned by the Council of Trade Unions to the Ministry of Defence, the Ministry of Urbanisation and Construction Affairs and a local authority body, on the grounds that the trade unions were unable to operate the facilities.

The complainants argued that as members of a public association - a trade union - they are the co-owners of property of the trade union in association with other members of the organisation. Where the property is owned by a public association, only members of this association are entitled to dispose of the property. The property was alienated without the complainants' consent and this unlawful deprivation of property violated their property rights.

The complainants' representative noted that the disputed normative acts were issued before the adoption of the new Constitution and were not properly brought in line with the Constitution before 25 November 1997, as required by Article 106.2 of the Constitution. The Constitution allows restriction of property rights according to procedure determined by law and only if appropriate compensation is paid, i.e. the Constitution does not permit nationalisation without compensation. In addition, the complainants asserted that the disputed normative acts contradict the Act of Restoration of National Independence which recognises the prevailing force of international law over domestic law on the territory of Georgia. The Universal Declaration of Human Rights is one such international act, Article 17 of which ensures the right to own property alone and in association with others. Property of trade unions is constituted by contributions made by its members. Members of a trade union are co-owners who exercise their property rights through their elected representatives to the congress of a trade union. The complainants are members of the Trade Union and their property rights, particularly the right to own and dispose of property, are violated (according to the Civil Code of Georgia, the issue of ownership has become a matter of fact).

One of the four disputed normative acts was not registered in the State Registry of Normative Acts at the Ministry of Justice, although the Constitutional Court held that considering the contents of the act and its scope of regulation, the constitutionality of the disputed act could be examined.

The Constitutional Court held that the disputed acts are normative and that they violate the complainants' property rights. Accordingly they are contrary to Article 21.1 of the Constitution.

Substantive review of the case indicated that the facilities which were alienated were the property of trade unions and that in violation of valid legislation they were transferred to bodies of State power. The fact of unlawful alienation of property was confirmed by the inter-institutional commission set up in accordance with the Decree of 15 February 1996 of the President of Georgia to examine the legality of the acts of the Cabinet of Ministers of Georgia. Notification of 27 May 1998 of the commission points out that many acts issued between 1992 and 1995 by the Cabinet of Ministers were recognised as unlawful in the process of examination, including those which deal with the transfer of property of trade unions to governmental

structures. On 4 July 1997 the President of Georgia issued a decree on the invalidation of unlawful legal acts issued by the Cabinet of Ministers between 1991 and 1995 and on additional measures to be undertaken for the protection of legality in the executive bodies of State power.

Article 26 of the Law on Trade Unions provides that the State shall protect the rights of trade unions in accordance with legislation. A similar provision is made under the Law of 14 June 1994 on Public Associations of Citizens. In addition, the Cabinet of Ministers adopted a special Decree on the Protection of Property of Trade Unions of the Republic of Georgia which prohibited unlawful actions against trade unions and alienation of their property without due cause. Extraordinary conditions in which the government must adopt non-standard decisions are nonetheless envisaged in respect of the disputed acts.

The Chamber noted that new trade unions are currently being formed. This process started at the time of the collapse of the Soviet Union and is continuing in the conditions of profound changes of the social and economic order in the country. The formation of trade unions is an internal affair of a public entity.

The complainants have been members of Georgian trade unions since the Soviet period and they enjoy property rights over property of the Soviet as well as Georgian trade unions in association with other members, which implies the right to use and alienate property as provided for by Article 170.1 of the Civil Code of Georgia. The right to alienate property is exercised through the representatives of members in the relevant organs of the organisation.

According to Article 5.1 of the Law of 2 April 1997 on Trade Unions, trade unions are independent of state bodies. According to Article 22.1 of the mentioned law, "trade unions and associations of trade unions possess, use and alienate their property and finances in accordance with their statute. Property and financial resources of the trade unions are inalienable. No body shall be empowered to alienate, transfer or deprive the trade union of property without consent of the collegial (elected) organ of the trade union, except for cases determined by law".

The disputed acts deprived the trade unions of property and accordingly property rights of its members were breached. Therefore the property right ensured by Article 21.1 of the Constitution is violated. This constitutional provision specifies that the right to inherit and own property shall be recognised and guaranteed. The universal right to property and its inheritance, acquisition and alienation shall not be abrogated.

Languages:

Georgian, English (translation by the Court).

Identification: GEO-1998-2-002

Full text: English

a) Georgia / **b)** Constitutional Court / **c)** Second Chamber / **d)** 22/05/1998 / **e)** 2/59-8 / **f)** Lutseta Tapliashvili v. the President of Georgia / **g)** Official Gazette / **h)** .

Keywords of the Systematic Thesaurus:

- 1.1.4.3 **Constitutional Justice** - Constitutional jurisdiction - Relations with other institutions - Executive bodies.
- 5.2.27.2 **Fundamental Rights** - Civil and political rights - Right to family life - Succession.
- 5.2.32.1 **Fundamental Rights** - Civil and political rights - Right to property - Expropriation.
- 5.2.32.4 **Fundamental Rights** - Civil and political rights - Right to property - Privatisation.

Keywords of the alphabetical index:

Housing, privatisation / Privatisation, special instructions / Constitutional Court, jurisdiction.

Headnotes:

A normative act by the executive regulating issues of privatisation in favour of tenants does not contradict the constitutional right to property enshrined in Article 21.1 of the Constitution. Privatisation of premises which were registered as public property at the time of privatisation does not constitute a ground for declaring the relevant normative act unconstitutional. The Constitutional Court is not empowered to instruct other State authority bodies to prohibit the privatisation of houses.

Summary:

The Cabinet of Ministers issued a decree which entitled tenants to obtain privatisation of premises owned by the State. An individual lodged a claim with the Constitutional Court and asserted a violation of her constitutional right to property ensured by Article 21.1 of the Constitution, stating that the disputed act empowered tenants to unlawfully obtain privatisation of premises which were previously owned by her grandfather and of which he had been deprived by the Soviet authorities in 1930. The plaintiff also requested the Court to provide the responsible body with special instructions in order to prohibit the privatisation of those premises which are subject to proceedings in courts of ordinary jurisdiction.

The Court held that the disputed normative act deals with only those apartments and premises which were registered as State property at the time of privatisation. Families that paid rent and enjoyed tenancy rights were entitled to have the premises and apartments privatised under the decree. Therefore, if a court of ordinary jurisdiction held that the premises were unlawfully privatised by tenants who were moved into the house in violation of the owners' property rights, the contract of privatisation must be annulled.

Pursuant to the Constitution and organic laws, the Constitutional Court is not competent to instruct any State authority to impose prohibitions.

Languages:

Georgian, English.

Identification: GEO-1998-1-001

Full text: English

a) Georgia / **b)** Constitutional Court / **c)** Second Chamber / **d)** 22/01/1998 / **e)** 2/59-8 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

- 4.7.7 **Institutions** - Jurisdictional bodies - Ordinary courts.
- 5.1.2.4.1 **Fundamental Rights** - General questions - Entitlement to rights - Legal persons - Private law.
- 5.2.32 **Fundamental Rights** - Civil and political rights - Right to property.

Keywords of the alphabetical index:

Entrepreneurship / Limited liability companies / Share withdrawal.

Headnotes:

Contributions of the company partners in the common stock of a limited liability company are the property of the latter, once the company has obtained the status of a legal person. The company partners participate in the management of the property of the company and its activities in proportion to their share in the common stock. A company partner may withdraw his or her share and appeal to court against the partners in the company within the limits of law.

Summary:

Share holders of a limited liability company appealed to the Constitutional Court asserting the unconstitutionality of certain articles of the Entrepreneurship Law, considering that the disputed norms deprived them of the constitutional right to property since they could not withdraw their share from the common company stock. Moreover courts of ordinary jurisdiction rejected their civil law claims against the decisions of the company partners refusing their request on share withdrawal. The claimants contemplated that the courts had unreasonably invoked scientific-practical commentaries of legal scholars while deciding upon their cases.

The Constitutional Court held that contributions of company partners in the common stock of a limited liability company are the property of the company itself once it has obtained the status of a legal entity. A limited liability company is the sole owner of the company capital. The partners participate in the management of the company and receive benefits from it in proportion to their contribution.

The applicants complained that contributions might be withdrawn from the common stock of the company only with the consent of the meeting of partners. However, the Entrepreneurship Law does not allow the company partners to elaborate a statute which would empower the meeting of the company partners to decide upon share withdrawal. Meanwhile Article 15.2 of the Law entitles limited liability company partners to appeal against decisions of the company partners within two months from the date of the drafting of the minutes of the meeting.

As regards the application of scientific-practical commentaries on the Entrepreneurship Law by courts of ordinary jurisdiction, the Constitutional Court held that legislation does not empower it to scrutinise this issue.

Languages:

Georgian.

Identification: GEO-1997-3-004

Full text: English

a) Georgia / **b)** Constitutional Court / **c)** Plenary / **d)** 29/12/1997 / **e)** 2/35 / **f)** 48 members of the Parliament of Georgia v. Parliament of Georgia / **g)** Official Gazette / **h)** .

Keywords of the Systematic Thesaurus:

- 3.1 **General Principles** - Sovereignty.
- 3.4 **General Principles** - Separation of powers.
- 4.5.9 **Institutions** - Legislative bodies - Relations with the executive bodies.
- 4.15 **Institutions** - Transfer of powers to international institutions.
- 5.3.2 **Fundamental Rights** - Economic, social and cultural rights - Right to be taught.

Keywords of the alphabetical index:

Education / Education, free, limits / International organisation, agreement.

Headnotes:

The Law on Education, which defines an examination as the means by which students entitled to free secondary education are to be selected, and charges the Ministry of Education with an obligation to elaborate the conditions under which the examination is to be conducted, does not delegate parliamentary powers to executive bodies. The Ministry of Education determines only the conditions for conducting the selective examination but does not lay down the rules for how to select who is entitled to free secondary education. Thus, this provision of the law is not contrary to the Constitution, which states that everyone has the right to receive free education to the extent defined by the rules of law.

However, the provision of the law that relates the introduction of free education to agreements made with international financial organisations limits the sovereignty of the country.

Summary:

Article 12 of the Law on Education provides that a limited number of free places in secondary schools are to be attributed according to the results of a selective examination. It is the task of the Ministry of Education to define the conditions for conducting the examination. Article 35 of the Constitution states that citizens have the right to receive free education in State secondary, professional and higher educational institutions to the extent defined by the rules of law.

A group of parliamentarians lodged a claim with the Constitutional Court asserting that the aforementioned provisions of the law violated the principle of separation of powers, in contradiction with Article 48 of the Constitution, which specifies that parliamentary powers may not be delegated to other bodies. The plaintiffs also argued that the Law on Education infringes requirements of the Law on Normative Acts as it does not enumerate all the legal acts that lose their effect upon the entry into force of the Law on Education.

The Constitutional Court ruled that of the many possible means of selecting students entitled to receive free secondary education, the provisions of the Law on Education determine one: a selective examination. Article 35.3 of the Constitution does not require that the parameters of the chosen procedure be defined by the legislature, but only that the legislature determine the procedure to be used. The Law on Education obliges the Ministry of Education to determine the conditions of conduct of the examination itself, but not the basic rules governing who is to receive free secondary education. Therefore the legislative powers of the Parliament were not delegated and accordingly, the disputed articles of the Law on Education do not violate the Constitution. Article 89 of the Constitution, which defines the competence of the Constitutional Court, does not envisage consideration of disputes arising from conflicts between normative acts.

The provision of the Law stipulating that free education is to be ensured by agreements with international financial organisations until 2003 confines the sovereignty of the country, as its mandatory nature means that the State cannot introduce free education before 2003 without the consent of international financial organisations. This violates Article 48 of the Constitution, which states that Parliament is the supreme representative body of the country, exercising legislative power, determining the main directions of domestic and foreign policy, exercising general control over government and implementing other functions within the framework defined by the Constitution. It also violates other constitutional provisions guaranteeing the sovereignty of the country.

Languages:

Georgian, English.

Identification: GEO-1997-2-003

Full text: English

a) Georgia / **b)** Constitutional Court / **c)** / **d)** 30/05/1997 / **e)** 1/4/28 / **f)** Citizen Irakli Kordzakhia v. the Parliament of Georgia / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

- 1.7.6 **Constitutional Justice** - Effects - Influence on State organs.
- 4.9.7 **Institutions** - Public finances - Taxation.
- 5.2.26 **Fundamental Rights** - Civil and political rights - Right to private life.
- 5.2.35 **Fundamental Rights** - Civil and political rights - Rights in respect of taxation.

Keywords of the alphabetical index:

Bank account, disclosure to tax inspection / Banking secret, natural persons / Banking secret, legal persons.

Headnotes:

Only the entrepreneurs together with the legal entities are submitted to registration at the State taxation bodies. Physical persons who are not entrepreneurs are not submitted to such registration and accordingly the banks inform the relevant Taxation Inspections about the opening of the accounts of entrepreneurs and legal entities only.

Summary:

The plaintiff, a Georgian citizen, opened a current currency account at a commercial bank, of which the bank informed the Taxation Inspection. The bank acted on the basis of Article 12.1.a of the Law "On the Basics of The Taxation System", which determines that banks, financial-credit organisations and other similar institutions are obliged to inform the State Tax Inspection within a five-day period after the opening of a new account about this fact and about any other existing accounts of the taxpayer.

The claimant is of the opinion that this norm is contrary to Article 17.2 of the Law "On the Activity of Commercial Banks" of 1996 which reads: "information ... about the operations and accounts of individuals are given to Taxation Agencies ... only by decision of the Court". Proceeding from this, the plaintiff considers that his rights guaranteed by Articles 20.1, 39 and 41.2 of the Constitution are violated: "Every individual's private life ... [is] inviolable" (Article 20.1), "the Constitution does not deny other universally recognised rights which are not specifically stated but are the natural outcome of the principles contained within the Constitution" (Article 39), "Information existing in official papers connected with ... finances ... of an individual ... are not available to other individuals without the prior consent of the affected individual, except in cases determined by law ..." (Article 41.2). In the claimant's point of view, the first two points define the right to the banking secret. The plaintiff requested that the disputed norm be annulled.

The Court found that the plaintiff does not belong to the category of entrepreneurs and legal entities and, so, the disputed norm does not extend its application on him and it does not violate his constitutional rights. Therefore, it was clarified that the bank does not inform the Taxation Inspection about the opening of the accounts of physical persons who are not entrepreneurs. The plaintiff in this particular case, had brought forward an artificially created case in order to create a precedent.

The Court did not satisfy the claimant's constitutional claim, but during the consideration of the case, the Court found some imprecision and inconsistency with some norms of valid taxation legislation. Several ways of interpreting these norms have been revealed. Therefore, the Court requested the Parliament of Georgia to take these circumstances into consideration in the process of reviewing the draft Tax Code.

Languages:

Georgian.

Identification: GEO-1997-1-002

Full text: English

a) Georgia / **b)** Constitutional Court / **c)** Second Chamber / **d)** 25/03/1997 / **e)** 2/31-5 / **f)** Citizen L. Purtskhvanidze v. Parliament of Georgia / **g)** Official Gazette / **h)** .

Keywords of the Systematic Thesaurus:

4.7.1 **Institutions** - Jurisdictional bodies - Jurisdiction.
5.2.32 **Fundamental Rights** - Civil and political rights - Right to property.

Keywords of the alphabetical index:

Residence, tenancy contract, eviction.

Headnotes:

Article 154 of the Residential Code of Georgia provides that a tenancy contract may only be terminated on the basis of the owner's demand if a Court determines that the owner or members of his or her family may use the apartment for their personal needs. This provision is unconstitutional since it prevents owners from exercising their right to property, in particular their right to possess, use and dispose of property, which is entrenched in Article 21 of the Constitution of Georgia.

Summary:

The Supreme Court of Georgia had rejected a civil claim by the plaintiff for the eviction of tenants from his private apartment holding that under Article 154 of the Residential Code of Georgia an owner may only suspend a tenancy contract following a court's verification that the premises are urgently required for the personal needs of the owner and members of his family. This requirement was not fulfilled.

Following the rejection of this claim, the plaintiff appealed to the Constitutional Court against the unconstitutionality of Article 154 of the Residential Code as it was in conflict with Article 21 of the Constitution which ensures the universal right to property, and in particular the right to dispose of property freely.

Although Article 21.2 of the Constitution provides that the restriction of the right to property is permissible in cases of public emergency as provided for by the law, in the present case the Constitutional Court held that there was no sufficient social necessity for the restriction of the constitutional right.

Languages:

Georgian, English.

Identification: GEO-1997-1-001

Full text: English

a) Georgia / **b)** Constitutional Court / **c)** First Chamber / **d)** 20/02/1997 / **e)** 1/3/21 / **f)** Citizen O. Zoidze v. President of Georgia / **g)** Official gazette / **h)** .

Keywords of the Systematic Thesaurus:

- 3.4 **General Principles** - Separation of powers.
- 4.6.2 **Institutions** - Executive bodies - Powers.
- 5.2.32 **Fundamental Rights** - Civil and political rights - Right to property.
- 5.2.35 **Fundamental Rights** - Civil and political rights - Rights in respect of taxation.

Keywords of the alphabetical index:

Government, taxation, imposition.

Headnotes:

According to Article 94 of the Constitution taxes and duties must be paid in the amount and order defined by law. Thus the imposition of taxes by the Executive violates the principle of separation of powers and infringes the constitutional right to property since Article 94 of the Constitution empowers only the legislature to impose taxes and duties and to define rules for their payment.

Summary:

The plaintiff, a Georgian citizen, appealed to the Constitutional Court of Georgia against the unconstitutionality of the temporary regulation on Imposition of Tax on Environmental Pollution and Rules of Payment adopted by the Government, and referred to Article 94 of the Constitution which provides that taxes and duties must be paid in the amount and order defined by law. Article 21 of the Constitution ensures the right to property and tacitly empowers the legislature to protect property from illegal encroachment against it. Thus the imposition of unconstitutional taxes breaches the right to property.

The Constitutional Court holds that the adoption of the normative act by the Executive, which defines the amount and rules of payment of a certain tax, is impermissible and in conflict with Article 94 of the Constitution; additionally it violates the principle of separation of powers enshrined in Article 5 of the Constitution.

There to Article 106.2 of the Constitution states that the President and Parliament of Georgia undertake to promulgate and ensure the compliance of normative acts with the Constitution and legislation of Georgia within a two-year term from the Constitution's entry into force. In this respect the Constitutional Court indicated that Article 106 of the Constitution does not provide for the unconditional enforcement of unconstitutional legal acts for two years; this would otherwise prevent the Constitutional Court from considering the constitutionality of such normative acts.

Languages:

Georgian, English.

Identification: GEO-1996-3-001

Full text: English

a) Géorgie / **b)** Constitutional Court / **c)** Second Chamber / **d)** 05/12/1996 / **e)** 2/3-13 / **f)** / **g)** / **h)** .

Keywords of the Systematic Thesaurus:

4.6.11 **Institutions** - Executive bodies - The civil service.

5.2.9.2 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Access to courts.

Keywords of the alphabetical index:

Civil servant, labour disputes / Hierarchical order.

Headnotes:

Article 213 of the Labour Code which provides that certain categories of civil servants are to have labour disputes settled by their superiors and not by the courts is unconstitutional, since it prevents these civil servants from exercising their right to appeal to court, which is provided for in Article 42.1 of the Constitution.

Summary:

The plaintiff, a former detective of the main military prosecutor's office of Georgia, was dismissed from his office. The plaintiff claimed his dismissal to be unlawful and appealed to a district court of Tbilisi. The court did not accept the appeal, holding that under Article 213 of the Labour Code, the claim of a civil servant who has been elected, appointed or designated to a position by a supreme State body relating to his or her dismissal or transfer to another position or the imposition of disciplinary sanctions should be considered by that person's superior. This rule is also applicable to disputes concerning judges, prosecutors, their deputies and assistants and detectives of the prosecutor's office.

Following the rejection of his claim by the district court, the plaintiff appealed to the Constitutional Court about the unconstitutionality of Article 213 of the Labour Code. During the course of the proceedings, the plaintiff increased the scope of his claim and demanded that Article 214 of the Labour Code be declared unconstitutional as well. Article 214 states that where a civil servant is restored to his or her former position, he or she should receive a salary for the period of dismissal, as long as this period does not exceed one year.

The Constitutional Court held that Article 213 of the Labour Code was unconstitutional, since it infringed the right of a person to appeal to court, which contradicted Article 42.1 of the Constitution.

In respect to Article 214 of the Labour Code, the Constitutional Court considered that the claim of unconstitutionality relating to this Article was unjustified.

The Constitutional Court decided that the declaration of Article 213 of the Labour Code as unconstitutional will leave the task of amending Article 214 and other related articles of the Labour Code.

Languages:

Georgian, English (translation by the Court).