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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GEORGIA

DISPUTED NORMS AND RELEVANT LEGISLATION

relevant for the

**AMICUS CURIAE BRIEF
FOR THE CONSTITUTIONAL COURT
ON THE EFFECTS OF CONSTITUTIONAL COURT DECISIONS
ON RES JUDICATA JUDGMENTS
IN CIVIL AND ADMINISTRATIVE CASES**

A. Disputed norms in N678, 719 constitutional complaints

Civil Procedure Code of Georgia

Article 423 - Action for retrial due to newly discovered circumstances

1. A final decision may be reopened by an action for retrial due to newly discovered circumstances, if:

- a) it is discovered that the decision was based on a falsified document;
- b) it has been established that the witness has intentionally given false testimony, the expert has intentionally provided a false report, or the translator intentionally translated incorrectly, which resulted in an unlawful or unjustified decision;
- c) it has been established that the parties and their representatives or the judge have committed an offence in connection with the legal dispute;
- d) a court verdict, decision, judgment or a resolution of another body on which this decision is based, has been reversed;
- e) a party submits to the court a decision delivered in the same complaint and that has entered into force earlier;
- f) a party has become aware of such circumstances and evidence which would have resulted in a decision more favourable to that party if they had been previously submitted to the court;
- g) there is a final decision (judgment) of the European Court of Human Rights establishing that the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or of its additional protocols have been violated with regard to this case, and if the decision to be reviewed is based on this violation.
- f) there exists a decision of the United Nation`s Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee on the rights of the child, Committee against Torture or the Committee on the Elimination of Racial Discrimination (hereinafter referred as Committee), which found a violation of a convention respective to the committee with regards to this case and a decision to be reviewed is based on this violation.

Organic Law of Georgia on the Constitutional Court of Georgia

Article 23

1. Upholding a constitutional claim concerning issues under Article 19(1)(a, e, k) of this Law, as well as declaration of a normative act or its part unconstitutional in the cases identified in paragraph 1(l) and paragraph 2 of the same article, shall result in a declaration of the normative act or its part as void from the promulgation of a respective judgment of the Constitutional Court.

10. In cases described in Article 25(4¹) of this Law, a disputed norm shall become void from the promulgation of a respective ruling of the Constitutional Court.

B. Relevant legislation

The Constitution of Georgia

Article 42

1. Everyone has the right to apply to a court for the protection of his/her rights and freedoms.

Article 83

1. The Constitutional Court of Georgia shall be the judicial body of Constitutional review. Its authority, the procedures of its creation and activity shall be determined by the Constitution and the Organic Law.

2. Justice shall be administered by general courts. Their system shall be determined by an organic law.

Article 89

1. The Constitutional Court of Georgia, on the basis of a constitutional claim or a reference of the President of Georgia, the Government, not less than one fifth of the members of the Parliament, a court, the higher representative bodies the Autonomous Republic of Abkhazia and the Autonomous Republic of Adjara, the Public Defender or a citizen, in accordance with a procedure established by the Organic Law:

- a) adjudicates upon the constitutionality of a Constitutional Agreement, law, normative acts of the President and the Government, the normative acts of the higher state bodies of the Autonomous Republic Abkhazia and the Autonomous Republic of Adjara.
 - b) considers disputes on competence between state bodies;
 - c) considers constitutionality of formation and activity of political associations of citizens;
 - d) considers disputes on constitutionality of provisions regulating referenda and elections as well as disputes on constitutionality of referenda and elections held on the basis of these provisions;
 - e) considers constitutionality of international treaties and agreements;
 - f) considers, on the basis of a complaint of a person, constitutionality of normative acts with regards to fundamental human rights and freedoms enshrined in Chapter 2 of the Constitution;
 - f¹) considers disputes on violation of the Constitutional Law of Georgia on the Status of the Autonomous Republic of Adjara;
 - f³) considers, on the basis of a complaint of a representative body of a self-governing unit – Sakrebulo, constitutionality of normative acts with regards to Chapter 7 of the Constitution.
 - f⁴) considers, on the basis of a submission of a High Council of Justice of Georgia, constitutionality of normative acts with regards to Articles 82, 84, 86, 86¹, 87 and 90 of the Constitution of Georgia.
 - g) exercises other powers determined by the Constitution and the Organic Law.
2. A judgment of the Constitutional Court is final. A normative act or a part thereof recognized unconstitutional shall cease to have legal effect from the moment of the promulgation of the respective judgment of the Constitutional Court.

Organic Law of Georgia on the Constitutional Court of Georgia

Article 19

2. If, while considering a particular case, a court of general jurisdiction concludes, that there is a sufficient ground to deem the law or other normative act, applicable by the court while adjudicating upon the case, fully or partially incompatible with the Constitution, the court shall suspend the consideration of the case and make a reference to the Constitutional Court. The consideration of the case shall be resumed after a judgment on the issue is adopted by the Constitutional Court.

Administrative Procedure Code of Georgia

Article 1 - Scope of the Code

1. This Code determines procedures for consideration and resolution of administrative cases by the general courts of Georgia.
2. The provisions of the Civil Procedure Code of Georgia apply to administrative legal proceedings unless otherwise specified by this Code.

Criminal Procedure Code of Georgia

Article 310 - Grounds for reviewing a final decision due to newly found circumstances

A decision shall be reviewed due to newly found circumstances if:

- d) There exists a judgment of the Constitutional Court of Georgia that has found that a criminal law applied in that case is unconstitutional;