



**3rd Congress of the World Conference on Constitutional Justice
'Constitutional Justice and Social Integration'
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Seoul, Republic of Korea**

Questionnaire

Reply by the Constitutional Court of Georgia

A. Court description

It exists in CODICES (follow the link:
<http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm>)

Note: starting from May 2014 the CCG took over the presidency of the Conference of the Constitutional Courts from the CC of Austria.

B. Social integration

1. Challenges of social integration in a globalised world

1.1. – 1.3. Challenges regarding social integration have not been prevailing issue in Georgian constitutional review. Thus, the Constitutional Court did not directly address issues concerning conflicts and disagreements between different social groups. However, still there were cases related to right to equality of different social groups.

On 04/02/2014 the Constitutional Court of Georgia upheld the Claim of citizens and declared unconstitutional the provisions of Order of the Minister of Labor, Healthcare, and Social Protection. According to disputed norm homosexuals were banned to become blood and blood components donors. The Constitutional Court of Georgia stated that application of the term "homosexuality" in disputed norms was not limited to high risk sexual behaviors only, and carried broad meaning. Moreover, "homosexuality" can be seen as sexual orientation and it may not necessarily infer sexual activity. The Court also concluded that given modern technological progress it is now possible to identify HIV virus after certain time (after the so called "open window period" has passed) therefore indefinitely disallow homosexuals to donate blood was discriminatory and a disproportional restriction of their rights. Accordingly, the Constitutional Court found that disputed norms were not in conformity with Articles 14 (right to equality) and Article 16 (right to free development of personality) of Constitution of Georgia.

The Constitutional Court in its judgment emphasized that when state regulates issues related to vulnerable groups there are special requirements in order to avoid the risk of human rights violations.

On 26/06/2012 the Constitutional Court of Georgia upheld the Claim of foreign citizen and declared unconstitutional the provision of the Law on Agrarian Land of Georgia which restricted foreigners the right to acquire property title on the Agrarian Land. The Court concluded that article 21 of the Constitution of Georgia ensures the right to property for both foreigners and citizens of Georgia. Hence, the Court should protect the right to property of every person regardless their nationality.

Despite the judgment, the Parliament of Georgia enacted provisions establishing similar prohibition. The only difference between those two cases was that in the first case prohibition had been permanent while in current case it had temporary character.

On 24/06/2014 the Constitutional Court of Georgia upheld the claim and declared unconstitutional those new enacted provisions. The Constitutional Court of Georgia concluded that impugned norms was identical to previous one which was declared unconstitutional by the judgment of 26/06/2012.

There are also some pending cases worth to note. Namely, citizens of Russia and Armenia challenged the constitutionality of provisions of Law on General Education. The claimants point out that, in contrast to citizens of Georgia, they are obliged to pay for public schooling despite the fact that they live in Georgia on permanent basis.

The claimants believe that impugned norms contradict with the right to equality enshrined in the article 14 of the Constitution and para. 1, 3 of the article 35 of the Constitution which defines that everyone shall have the right to education. Freedom of choice in education shall be guaranteed The State shall guarantee pre-school education as determined by law. Elementary and basic education shall be compulsory. General education shall be fully funded by the State according to law.

Another pending case related to issue of legal capacity. Claimants consider that Georgian Civil Code distinguishes between full capacity and full incapacity, but it does not provide for any "borderline" situation and therefore claimants believe that their constitutional rights are restricted more than is strictly necessary. The claimants emphasis that according to current legislation the common courts have no other choice than to apply full incapacity – the most stringent measure which meant total loss of autonomy in nearly all areas of life. Thus such measure will totally isolate them from society.

2. International standards for social integration

2.1. – 2.5. According to para. 2 of the article 6 of Georgian Constitution The legislation of Georgia shall comply with the universally recognised principles and rules of international law. A treaty or international agreement of Georgia, unless it comes into conflict with the Constitution or the Constitutional Agreement of Georgia, shall take precedence over domestic normative acts. Furthermore according to article 39 of Georgian Constitution, 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. Georgia has ratified several international treaties for example the European Convention of Human Rights, International Covenant on Economic, Social and Cultural Rights, the United Nations convention on the rights of persons with disabilities. The Constitutional Court of Georgia takes international standards into consideration when deciding on the cases.

3. Constitutional instruments enhancing/dealing with/for social integration

3.1. – 3.2. When deciding the above-mentioned cases the Constitutional Court of Georgia applied fundamental human rights enshrined in the second chapter of Georgian Constitution, furthermore, constitutional principles and international standards. Georgian legislation allows individuals to directly access the Constitutional Court, in such cases the individuals can rely on in their constitutional claims fundamental human rights recognised by Georgian Constitution, constitutional principles and international standards.

3.3 -3.7. The Constitutional Court of Georgia is an only state body which has authority to declare unconstitutional normative acts or part thereof. It is not within the Constitutional Court's jurisdiction to declare unconstitutional a normative act that has not entered into force. According to the Constitution of Georgia a judgement of the Constitutional Court shall be final. A normative act or part of it recognised as unconstitutional shall cease to have legal effect as soon as the respective judgement of the Constitutional Court is published.

4. The role of constitutional justice in social integration

4.1. -4.3. The Constitutional Court of Georgia deal only with cases that have been brought to the court in accordance with law. According to Georgian legislation the Constitutional Court has not any specific authority to act as a “social mediator”.