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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in co-operation with the

The Constitutional Court of Georgia
The Public Defender's Office of Georgia
and
The Center for Constitutional Studies of Ilia State University

**CONFERENCE
ON**

**“JUDICIAL ACTIVISM AND RESTRAINT
THEORY AND PRACTICE OF CONSTITUTIONAL RIGHTS”**

**BATUMI, GEORGIA
13-14 JULY 2010**

SYNOPSIS

The Constitutional Court of Georgia, in cooperation with the Office of the Public Defender of Georgia, the Centre for Constitutional Studies of Ilia State University, GTZ (German Society for Technical Cooperation) and the Venice Commission of the Council of Europe organised a seminar on “Judicial activism and restraint: theory and practice of constitutional rights”. It took place on 13-14 July 2010 in Batumi, Georgia.

The Council of Europe’s delegation consisted of judge Francoise Tulkens, Second Section President, European Court of Human Rights, three experts of the Venice Commission namely Mr Kaarlo Tuori, Finnish member, Mr James Hamilton, Irish substitute member, and Ms Tanja Groppi, Professor, University of Siena; Ms Tatiana Mychelova, External Relations Officer of the Venice Commission also took part in the seminar.

Among the participants were the judges and members of the registry of the Constitutional Court of Georgia, members of the Constitutional Commission, judges from the Supreme Court, the Batumi regional court, law professors and students of Tbilisi State University, representatives of international and local NGOs and the School of Magistrates. As the Constitutional Court was holding a summer school at the same time, several US moderators took part in the seminar: Professor Lori F. Damroch, Columbia Law School, Professor Alan B. Morrison, George Washington University Law School, US Federal judges John R. Tunheim, District of Minnesota, and Philip M. Pro, District of Nevada.

The following issues have been covered:

- the concept of judicial activism and restraint in common law and continental systems; different approaches to constitutional review;
- the doctrine of the European Court of Human Rights of interpretation of fundamental rights;
- examples of judicial activism and restraint from the Finish, Hungarian, Irish, Italian, Polish, US and Georgian practice.

Judicial activism and restraint (based on historic interpretation called *originalism* in the US) were seen as two approaches to constitutional judicial review. The need to choose, as it were, between the two approaches arose in particular when the courts were to interpret constitutional rights, usually following societal developments. The seminar formulated two main reasons for an active constitutional review: the necessity to develop human rights standards and to effectively ensure the supremacy of the Constitution over ordinary legislation.

The doctrine of the ECtHR, whereby the Strasbourg Court is guided by the teleological method of interpretation, based on Article 31.1 of the Vienna Convention on the Law of Treaties of 1969, and the interpretation logic whereby the Convention is treated as a “living instrument” where the object and the purpose of the legal provisions have priority, were of particular importance and interest.

The question of democratic legitimacy of active judicial review was also addressed; reference to other courts case-law gave more weight to so-called “activist” judgements.