

Council of Europe  
Conseil de l'Europe



Strasbourg, 28 August 1995  
<s:\cd\doc\95\cd\NPDG>

95/3731

Restricted  
CDL (95) 43



COE262624

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**OPINION**

**ON THE LAW ON THE CONSTITUTIONAL COURT  
OF THE REPUBLIC OF GEORGIA**

by

**Mr Ján KLUČKA**  
**(Slovak Republic)**

C o m m e n t s

on the Law of the Republic of Georgia on Constitutional Court  
of the republic of Georgia.

/Doc.CDL - 95-31/

The adoption of this law is foreseen by article 90.section 1.of  
the Draft Constitution of the Republic of Georgia /Doc.CDL-94-66/.

Article 2.- Number of the members of the Constitutional Court.

It is general experience of newly established constitutional courts of Central and Eastern Europe to be confronted with the great number of individual constitutional complaints or petitions pending relatively long time.It is reasonable to expect that the experience of newly established Constitutional Court of Georgia will be similar.Therefore twelve members of Constitutional Court would be better than eight,with three nominated by each of nominating bodies.

Article 5.para.1.- Limited term office for certain members of Constitutional Court.

It seems more appropriate to choose the names of members of Constitutional Court for 8 years term-office by lot and not "by the voting"

Article 6.para 1.- Chairman and vice-chairmen term-office.

The five years term office for chairman and deputy chairman of Constitutional Court seems inconsistent with the four years, six months term in Article 90.para 2.of the Draft of the Constitution of Georgia.

Article 8.para 4.- Amendments of the Rules of procedure.

Whereas the rules of procedure will regulate first of all activities /proceedings/ of the chambers of Constitutional Court it seems reasonable precise who is entitled to propose the amendments to the rules of procedures /Chairman,each member,plenum,chambers?/

Article 11.-Independence of the members of Constitutional Court.

It is appropriate the provision of the independence of members of Constitutional Court in "organic law" but the strong emphasis must be put on the detailed constitutional regulation of this issue.

Article 12.para.2 - Annual budget of Constitutional Court.

The Constitutional Court itself should have a right to submit proposal of its annual budget directly to the Parliament of Georgia without interferency of any other state organ.

Article 13.-Immunities of the members of Constitutional Court.

Immunity issues should be regulated by the detailed manner in the Constitution of Georgia /see also my comment on page 33,CDL /95/8 and real guarantees of immunities therefore represents first of all constitutional level regulation.

Article 13. of the Draft should only confirm the constitutional regulation of this issue.

Article 15. letter c/- Suspension of powers of Constitutional Court member.

Taking into consideration serious consequences of inability to work it would be convenient to precise the reasons and the term /time limit/ expiring of it results in the practical application of article 15. letter c/ of the Draft. Formulation "He is unable to work" without precisising the reasons of inability to work and term of inability to work is too vague.

Article 16. para 1.: Pedagogical activity of the members of Constitutional court.

It is not clear why the pedagogical activity of Constitutional Court members should be restricted only on high schools. It is therefore recommended to delete the formulation "in high schools" from paragraph 1. article 16. of the Draft.

Article 19.- Petitions of the ordinary courts.

This type of referral on the Constitutional Court /petition/ should falls into exclusive competences of the court based on its own consideration of the case and its own decision. It would be convenient therefore to delete the formulation "upon the request of any party" from article 19.

Article 24.- Constitutionality of the whole law or provision of law.

It is recommended to supplement the wording of this article adding the final sentence : "unless the otherwise is decided by Constitutional Court". Provisions of certain laws may be analysed separately but in other cases it is not possible and the law /statute/ must be analysed as a whole. It should be therefore left to the discretion of Constitutional Court to take decision of this kind on a case-by-case basis.

Article 31. letter b/- Constitutional complaint of referendum.

It is proposed to change the starting point of the 30 days term /time limit/ not immediately "after the publication of a decision of parliament" but "after the publication of presidential decision" similarly as in Article 31. letter c/.

Article 36.- Constitutional complaint on the breach of basic rights and freedoms.

It would be convenient to precise the formulation "normative act of the body of state power". Normative act can be understood as :  
a, act of direct application of the law, or  
b, individual decision of the body of state power issuing /based on/ from normative act as a generally binding legal regulation?

The Chapter 2. of the Draft Constitution of Georgia contains no less than 26 "Basic rights and Freedoms" and Article 17. letter f/ of the Draft of law on Constitutional Court confirms, that Constitutional Court is authorized to settle : "breach of rights and freedoms listed in second chapter of Constitution". This principle fully re-confirms also first part of article 36. of the Draft Law on the Constitutional Court of Georgia. Second part of the last mentioned article however seems inconsistent with article 17. letter f/ whereas restricts the right to submit constitutional complaint only on articles 22, 23, 24, 32 and 36 of the Constitution. It would be useful to precise the wording of these articles of the Draft to be clear whether the constitutional complaint concerns the breaches of all basic rights and freedoms listed in Chapter 2. of the Constitution or not.

Article 36. of the Draft contains no term /time limit/ to submit the constitutional complaint. It seems reasonable to determine concrete term for submitting the constitutional complaint of this kind before Constitutional court as one of the conditions of its "admissibility".

Article 44. para 3. : Publishing decisions of Constitutional Court.

According to Article 20. para. 1 of the Draft : "Everyone is obliged to implement decisions of the Constitutional Court". It seems therefore appropriate to publish at least the most important decisions of Constitutional Court /Article 17. letter a/b/c/d/ in official Collection of Laws /Journal Officiel/ of the Republic of Georgia to receive the form of one of generally binding sources of domestic /internal/ law.

Košice 28. July 1995

JUDr. Ján Klúčka  
Member of the Venice Commission