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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in co-operation with the Constitutional Court of Georgia

**Conference
on
Justiciability of Social Rights in Courts
of Constitutional Jurisdiction and the
European Court of Human Rights

Batumi, Georgia, 11-12 July 2009**

SYNOPSIS

The Venice Commission participated in a conference organised by the Constitutional Court of Georgia in cooperation with the Directorate of Cooperation of the Directorate General of Human Rights and Legal Affairs of the Council of Europe on „Justiciability of Social Rights in Courts of Constitutional Jurisdiction and the European Court of Human Rights“, held in Batumi, Georgia (11-12 July 2009).

The conference gathered together inter alia judges from the Georgian Constitutional Court, the Supreme Court and lower courts, representatives from the Ministry of Justice and the Georgian Parliament, the Georgian judge of the European Court of Human Rights, representatives from the European Committee for Social Rights, UNDP, the German Society for Technical Co-operation, NGOs and Georgian and German researchers.

Discussions evolved around the obligations of states under the Revised European Social Charter. It was pointed out that while some of the Charter's provisions allowed for gradual implementation, others, such as the right to social security, social welfare and social services, needed to be fully implemented from the date of entry into force of the European Social Charter and then be further improved. Some of the rights contained in the Revised European Social Charter had strong financial impacts. It was explained that in relation to these rights, the Charter foresees some flexibility in implementation; states should take the necessary steps to implement these rights in reasonable time. However, once a state committed itself to protecting or realising a certain right by ratifying the relevant provision of the Revised European Social Charter, it was obliged to take all necessary measures, including legislative ones, to put the right into effect.

In relation to the justiciability of social rights, it was underlined that civil and political as well as social and economic rights were not fundamentally different in character and that they were equally applicable by national courts. Representatives of the European Committee of Social Rights also presented the collective complaint mechanism through which states could accept international adjudication of social rights in a quasi-judicial proceeding. It was also explained that the Revised European Social Charter was directly applicable before Georgian courts.

The question was discussed to what point courts could determine the level of social protection to be granted. Courts must evaluate whether existing resources were allocated reasonably by the state, gather information on available financial means and realistically consider the financial impact of their decisions. While there were no concrete standards as to the required level of protection in the Revised Social Charter, the more concrete case-law of the European Social Committee could serve as a yardstick.

An overview was given of the case-law of the European Court of Human Rights in relation to social rights, showing that the Court had gradually extended its jurisdiction to cover also social rights, especially in relation to Articles 2, 3 and 8 ECHR. Many cases were related to health issues. Also, a comparative report of the case-law of European Constitutional Courts provided insight into methods applied by these courts to define or extend their jurisdiction on social rights. Often, Constitutional Courts defined the states' "obligation to fulfil" as participatory entitlements of individuals allowing them to equally benefit from the existing resources and services, thus striking a balance between social rights.