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## Formal Constitutional Review from the Georgian Legal Perspective

### ABSTRACT

Constitutional review stands as one of the most crucial mechanisms among state authorities' activities, serving to uphold constitutional supremacy, protect human rights, and resolve competency disputes between state bodies. To fulfill these essential functions, constitutional courts examine the conformity of normative acts with the constitution. This examination encompasses not only the assessment of substantive compatibility with fundamental law, but also verification of compliance with constitutionally established procedures for the adoption and implementation of normative acts. This authority, recognized in legal doctrine as "formal constitutional review," is indispensable to the Constitutional Court's role as a comprehensive mechanism for protecting constitutional supremacy and fundamental rights.

The 2017 comprehensive amendments to the Constitution of Georgia sparked a significant debate within Georgian academic circles regarding the Constitutional Court's authority to conduct formal constitutional review. This scholarly discourse emerged from specific normative foundations: while the previous constitutional framework permitted expansion of the Constitutional Court's powers through organic law, the reformed Constitution now exhaustively defines these powers. However, this strictly normative interpretation raises several critical questions. First, should the Constitutional Court's powers be subject to such a narrow normative interpretation? Second, how does the Constitutional Court perceive its own competence? Third, what

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legal foundations for formal constitutional review exist within constitutional legislation and the Court's jurisprudence? This article aims to systematically address these fundamental questions.

**Keywords:** Constitucional Court, Contitutional Review, Formal Constitutional Review, Human Rights Protection

## I. Introduction

Constitutional review stands as one of the most fundamental mechanisms among state authorities' activities, serving to uphold constitutional supremacy, protect human rights, and resolve competency disputes between state bodies.<sup>1</sup> Given this fundamental importance, both European and Georgian legal systems emphasize the development of constitutional courts and the establishment of guarantees for their effective operation. Consequently, the enhancement of constitutional review and Constitutional proceedings remains highly relevant.

The 2017 constitutional reform in Georgia sparked scholarly debate, with some arguing that the Constitutional Court of Georgia was divested of its formal constitutional review authority.<sup>2</sup> Previously, this authority enabled the Court to examine and determine whether legislative acts and parliamentary resolutions complied with constitutional requirements regarding their adoption, issuance, signing, publication, and enactment.<sup>3</sup> According to this interpretation, formal constitutional review – which encompassed the procedural aspects of normative acts' conformity with the constitution – ceased to exist after 2017, effectively removing a key parliamentary oversight mechanism.<sup>4</sup>

<sup>1</sup> კვერენჩილაძე გ., კონსტიტუციის სამართლებრივი დაცვა (ზოგიერთი თეორიული საკითხი), ჟურნ. „ადამიანი და კონსტიტუცია“, No. 3, 2006, 43 [k'verenchkhiladze g., k'onst'it'utsiis samartlebrivi datsva (zogierti teoriuli sak'itkhi), zhurn. „adamiani da k'onst'it'utsia“, N3, 2006, 43].

<sup>2</sup> ხეცურიანი ჯ., საქართველოს საკონსტიტუციო სასამართლოს უფლებამოსილება, მე-2 გამოცემა, თბილისი, 2020, 15 [khetsuriani j., sakartvelos sak'onst'it'utsio sasamartlos uplebamosileba, me-2 gamotsema, tbilisi, 2020, 15].

<sup>3</sup> It is noteworthy that, unlike some countries, where formal constitutional review is exercised over violations of both constitutional and legal procedures, in Georgia, when introducing this institution, it was considered appropriate to extend review only to violations of constitutional procedures. See also: ხეცურიანი ჯ., ნოვაციები საქართველოს საკონსტიტუციო სასამართლოს შესახებ კანონმდებლობაში, ჟურნ. „ადამიანი და კონსტიტუცია“, No. 1, 2002, 12 [khetsuriani j., novatsiebi sakartvelos sak'onst'it'utsio sasamartlos shesakheb k'anonmdeblobashi, zhurn. „adamiani da k'onst'it'utsia“, No. 1, 2002, 12].

<sup>4</sup> Ibid.

This article examines the prospects of formal constitutional review within Georgia's constitutional framework. Through teleological, analytical, and systematic research methods, it analyzes relevant legislation and Constitutional Court jurisprudence. The study focuses on three aspects in particular: the legal nature of formal review, the Constitutional Court's constitutional status, and evolving trends in its jurisdictional competence. This analysis will facilitate an assessment of whether formal constitutional review remains within the Georgian Constitutional Court's authority.

## II. Constitutional Court and Formal Constitutional Review

The scope of constitutional courts' powers varies across nations, reflecting diverse political and legal cultures. Nevertheless, certain "core powers" essential for effective constitutional oversight remain largely consistent across jurisdictions. These encompass a broad spectrum of review types: abstract and concrete, preventive and repressive, formal and substantive. This comprehensive empowerment enables constitutional courts to serve as effective guardians of constitutional principles and fundamental rights.<sup>5</sup>

Constitutional violations threaten the entire public order,<sup>6</sup> necessitating robust legal protection mechanisms.<sup>7</sup> Constitutional review extends beyond mere formal comparison of legal acts with constitutional text; it involves interpreting content and often evaluating the constitutionality of various interpretations.<sup>8</sup> Notably, ensuring formal compliance of normative acts with constitutional requirements carries equal weight to substantive review. Formal constitutional review, as a crucial aspect of constitutional court operations, exemplifies this principle in practice.

<sup>5</sup> კვერენჩილაძე გ., კონსტიტუციის სამართლებრივი დაცვა (ზოგიერთი თეორიული საკითხი), ჟურნ. „ადამიანი და კონსტიტუცია“, No. 3, 2006, 43 [k'verenchkhiladze g., k'onst'it'utsiis samartlebrivi datsva (zogierti teoriuli sak'itkhi), zhurn. „adamiani da k'onst'it'utsia“, N3, 2006, 43]; Sweet A.S., Constitutional Courts, in: *The Oxford Handbook of Comparative Constitutional Law*, edited by M. Rosenfeld and A. Sajó, Oxford University Press, 2012, 822.

<sup>6</sup> ნაკაშიძე მ., საქართველოს საკონსტიტუციო სასამართლოს გადაწყვეტილების აღსრულების პრობლემები, ჟურნ. „მართლმსაჯულება“, No. 1, 2009, 136 [nak'ashidze m., sakartvelos sak'onst'it'utsio sasamartlos gadats'qvet'ilebis aghsrulebis p'roblemebi, zhurn. „martlmsajuleba“, No. 1, 2009, 136].

<sup>7</sup> კახიანი გ., საკონსტიტუციო კონტროლის ზოგიერთი თეორიული ასპექტი, ჟურნ. „ადამიანი და კონსტიტუცია“, No. 4, 2005, 9 [k'akhiani g., sak'onst'it'utsio k'ont'rolis zogierti teoriuli asp'ekt'i, zhurn. „adamiani da k'onst'it'utsia“, No. 4, 2005, 9].

<sup>8</sup> გეწაძე გ., საკონსტიტუციო კონტროლის ფორმები და სახეები, ჟურნ. „ადამიანი და კონსტიტუცია“, No. 1, 1998, 26 [gets'adze g., sak'onst'it'utsio k'ont'rolis pormebi da sakheebi, zhurn. „adamiani da k'onst'it'utsia“, No. 1, 1998, 26].

The primary objective of formal constitutional review is to safeguard constitutional integrity and maintain its supreme status. This review process establishes a fundamental “normative act validity” principle: a legal act becomes void not only when its content contradicts constitutional provisions, but also when it violates constitutionally mandated procedures for adoption and enactment.<sup>9</sup> This authority falls within the category of abstract constitutional review, a doctrinal classification that serves to preserve constitutional supremacy.<sup>10</sup>

## II. Development of Formal Constitutional Review in Georgia

The Constitutional Court of Georgia acquired formal constitutional review authority in 2002, through the Organic Law “On the Constitutional Court of Georgia”.<sup>11</sup> This expansion enabled the Court to examine not only the substantive constitutional compatibility of legal acts, but also their procedural compliance in adoption and implementation. Although Georgia’s Constitution did not explicitly provide for formal constitutional review, relevant indicative norms<sup>12</sup> supported the Court’s exercise of this authority.

The scope of formal constitutional review under the Organic Law was specifically limited to Georgian legislative acts and parliamentary resolutions.<sup>13</sup> Consequently, standing to bring such cases was restricted to those entities authorized for abstract constitutional review: The President, Government, and parliamentary groups. The Court’s formal review jurisdiction extended only to legal acts whose procedures for adoption, issuance, signing, publication, and implementation were constitutionally prescribed, with such matters reserved for the Court’s Plenum.

<sup>9</sup> ხეცურიანი ჯ., საქართველოს საკონსტიტუციო სასამართლოს უფლებამოსილება, მე-2 გამოცემა, თბილისი, 2020, 16 [khetsuriani j., sakartvelos sak’ons’tit’utsio sasamartlos uplebamosileba, me-2 gamotsema, tbilisi, 2020, 16].

<sup>10</sup> კახიანი გ., საკონსტიტუციო კონტროლის ზოგიერთი თეორიული ასპექტი, ჟურნ. „ადამიანი და კონსტიტუცია“, No. 4, 2005, 172-173 [k’akhiani g., sak’ons’tit’utsio k’ont’rolis zogierti teoriuli asp’ekt’i, zhurn. „adamiani da k’ons’tit’utsia“, No. 4, 2005, 172-173].

<sup>11</sup> Organic Law of Georgia “On Amendments and Supplements to the Organic Law of Georgia “On the Constitutional Court of Georgia”, 12 February 2002.

<sup>12</sup> The Constitution of Georgia provided for the possibility of expanding the powers of the Constitutional Court through the organic law.

<sup>13</sup> According to Art. 7 of the Organic Law of Georgia “On Normative Acts”, which was in force during this period, the legislative acts of Georgia were the Constitution of Georgia, the Constitutional Law of Georgia, the Organic Law of Georgia, the Law of Georgia, the Regulations of the Parliament of Georgia, and the Decree of the President of Georgia.

The 2017 constitutional reform fundamentally altered the framework for determining constitutional court powers.<sup>14</sup> Previously, these powers were defined jointly by the Constitution and the Organic Law; post-reform, the Constitution became the exclusive source for establishing Court authority.<sup>15</sup> This shift prompted discussion about potential normative limitations on the Court's formal constitutional review capacity.<sup>16</sup>

Regarding practical application, the Court's exercise of formal constitutional review remained limited even before the 2017 reform, with both formal and abstract review generally categorized as “dormant” powers.<sup>17</sup> The Court's abstract review jurisprudence includes only a few notable cases.<sup>18</sup> A significant example of formal constitutional review appears in a 2004 decision, which invalidated the Autonomous Republic of Adjara's 2003 Organic Law “On the State of Emergency” due to its adoption by an unauthorized entity.<sup>19</sup> Since then, constitutional litigation has evolved primarily through substantive review powers.

### III. The Perspective of Formal Constitutional Review in Constitutional Practice

Doctrinal concerns about formal constitutional review in Georgia, arising from the 2017 constitutional reform, rest primarily on the premise that this reform exhaustively defined constitutional court powers. While explicitly codifying formal constitutional review authority in Georgia's Constitution would resolve these uncertainties, several factors challenge the conclusion that the Constitutional Court lacks formal review powers:

<sup>14</sup> Constitutional Law of Georgia “On Amendments to the Constitution of Georgia”, 13 October 2017.

<sup>15</sup> According to the Constitution of Georgia, the Constitutional Court of Georgia has 10 jurisdictions, which include 9 powers defined in Article 60 and the impeachment procedure, which is defined in Article 48 of the Constitution.

<sup>16</sup> ხეცურიანი ჯ., საქართველოს საკონსტიტუციო სასამართლოს უფლებამოსილება, მე-2 გამოცემა, თბილისი, 2020, 15 [khetsuriani j., sakartvelos sak'onst'it'utsio sasamartlos uplebamosileba, me-2 gamotsema, tbilisi, 2020, 15].

<sup>17</sup> კახიანი გ., საკონსტიტუციო კონტროლი საქართველოში, თეორია და კანონმდებლობის ანალიზი, თბილისი, 2011, 192 [k'akhiani g., sak'onst'it'utsio k'ont'roli sakartveloshi, teoria da k'anonmdblobis analizi, tbilisi, 2011, 192].

<sup>18</sup> Ibid., 185-187.

<sup>19</sup> Decision No. 15/290,266 of the Constitutional Court of Georgia of 25 May 2004 in the case “Group of Members of the Parliament of Georgia (67 deputies in total) against the Parliament of the Autonomous Republic of Adjara, and Citizen of Georgia Tamaz Diasamidze against the Parliament of the Autonomous Republic of Adjara and the Head of the Autonomous Republic of Adjara”.

1. Following the 2017 constitutional reform, significant legislative changes governed Constitutional Court operations. In July 2018, Parliament integrated the provisions of the Law “On Constitutional Proceedings” into the Organic Law “On the Constitutional Court of Georgia”.<sup>20</sup> Article 19 of this Organic Law delineates the Court’s powers, with subparagraph “a” of the first paragraph specifically authorizing the Court to review and determine compliance of legislative acts and parliamentary resolutions regarding their adoption, issuance, signing, publication, and enactment.<sup>21</sup> Despite multiple opportunities to eliminate formal constitutional review authority through legislation, Parliament maintained these provisions in Articles 19 and 33 of the Organic Law after the constitutional amendments, suggesting a deliberate choice to preserve this power.<sup>22</sup>
2. The Constitution of Georgia establishes the Constitutional Court’s powers, while the Organic Law determines its operational rules.<sup>23</sup> Although the Organic Law cannot expand or restrict these constitutional powers,<sup>24</sup> the powers stipulated in these two sources need not be editorially identical. The Organic Law frequently elaborates on constitutionally defined powers, providing detailed regulations that align with the constitutional framework. For instance, it expands upon the constitutional list of acts subject to review.<sup>25</sup> Moreover, within the context of abstract constitutional review, the Constitution defines normative act review as having autonomous constitutional

<sup>20</sup> See: Organic Law of Georgia “On Amendments to the Organic Law of Georgia “On the Constitutional Court of Georgia”, 21 July 2018.

<sup>21</sup> Organic Law of Georgia “On the Constitutional Court of Georgia”, 31 January 1996, Art. 19.

<sup>22</sup> It should be noted that Article 26(2) of the Organic Law of Georgia “On the Constitutional Court of Georgia” provided for the possibility of the Constitutional Court, within the framework of specific powers, to review not only the substantive, but also the formal constitutionality of a norm until 2022, on their own initiative, although with the relevant legislative amendment (no information is provided in the explanatory note), the reference to formal review was removed, which is at least confusing aspect, given the existence of other references to formal review in the organic law. See: Organic Law of Georgia “On Amendments to the Organic Law of Georgia On the Constitutional Court of Georgia”, 14 April 2022, and its explanatory note.

<sup>23</sup> The Constitution of Georgia, 24 August 1995, Art. 59(2).

<sup>24</sup> ხეცურიაი ქ., რჩეული შრომები, ქ. ერემაძის და გ. კვერნჩილაძის რედაქტორობით, თბილისი, 2021, 251 [khetsuriani j., rcheuli shromebi, k. eremadzis da g. k’verenckhiladzis redakt’orobit, tbilisi, 2021, 251].

<sup>25</sup> In this regard, the legislative limitation of the acts subject to review by the Constitutional Court may conflict with the Constitution of Georgia. See, ლოლაძე ბ., მაჭარაძე ზ., ფირცხალაშვილი ა., საკონსტიტუციო მართლმსაჯულება, თბილისი, 2021, 179 [loladze b., mach’aradze z., pirtskhalashvili a., sak’onst’it’utsio martlmsajuleba, tbilisi, 2021, 179].

significance.<sup>26</sup> Thus, abstract normative review under the Constitution can encompass both formal and substantive constitutionality assessments.<sup>27</sup>

Therefore, the absence of explicit constitutional provisions for formal constitutional review does not preclude its specification in organic law or its interpretation within the constitutionally defined scope of abstract constitutional review.

3. According to Kelsen's doctrine, which underlies the European model of constitutional review,<sup>28</sup> the Constitutional Court functions as a negative legislator, distinguished from a positive legislator by its power to invalidate unconstitutional laws.<sup>29</sup> In this capacity, the Court exercises oversight of legislative branch activities.<sup>30</sup> However, the Court's role in verifying the lawful enactment of legislation should not be misconstrued as either participation in the legislative process<sup>31</sup> or transformation into a positive legislator.<sup>32</sup>

According to the Constitution of Georgia, the Constitutional Court functions as a body of constitutional review, with its organizational structure and operational procedures determined by organic law.<sup>33</sup> While the Constitution defines the Court's powers, their categorization into specific types of constitutional review remains a doctrinal matter. The identification of particular authorities as forms of constitutional review involves an evaluative process that encompasses both formal and substantive review aspects. Since the Constitution does not explicitly classify the Court's powers into

<sup>26</sup> Decision No. 2/4/532,533 of the Constitutional Court of Georgia of 8 October 2014 in the case "Citizens of Georgia – Irakli Kemoklidze and Davit Kharadze against the Parliament of Georgia", II-63.

<sup>27</sup> საკონსტიტუციო სამართალწარმოება, პ. ჯავახიშვილის რედაქტორობით, თბილისი 2024, 292 [sak'onst'it'utsio samartalt's'armoeba, p'. javakhishvilis redakt'orobit, tbilisi 2024, 292].

<sup>28</sup> Passaglia P., The Italian System of Constitutional Review: a Kelsenian Model Moving Towards a Decentralized Model? in: Right-Based Constitutional Review, Constitutional Courts in a Charging Landscape, edited by J. Bell and M.L. Paris, Edvard Elgar Publishing, 2016, 247.

<sup>29</sup> Sajó A., Limiting Government: An Introduction to Constitutionalism, Budapest, 1999, 233.

<sup>30</sup> Brewer-Carias A.R., Constitutional Courts as Positive Legislators, Cambridge University Press, 2011, 8.

<sup>31</sup> ზოიძე ბ., საკონსტიტუციო კონტროლი და ღირებულებათა წესრიგი საქართველოში, თბილისი, 2001, 67 [zoidze b., sak'onst'it'utsio k'ont'roli da ghirebulebata ts'esrigi sakartveloshi, tbilisi, 2001, 67].

<sup>32</sup> გეგენავა დ., ჯავახიშვილი პ., საქართველოს საკონსტიტუციო სასამართლო, პოზიტიური კანონმდებლობის მცდელობა და გამოწვევები, წიგნი: ლადო ჭანტურია 55, დ. გეგენავას რედაქტორობით, თბილისი, 2018, 140-141 [gegenava d., javakhishvili p'., sakartvelos sak'onst'it'utsio sasamartlo, p'ozit'iuri k'anonmdblobis mtsdeloba da gamots'vevebi, ts'ignshi: lado ch'ant'uria 55, d. gegenavas redakt'orobit, tbilisi, 2018, 140-141].

<sup>33</sup> The Constitution of Georgia, 24 August 1995, Art. 59.

formal and substantive categories, establishing a definitive boundary between these functions proves practically impossible.

Furthermore, any interpretation that restricts the Constitutional Court solely to substantive review should be considered incompatible with the Court's constitutional mandate and an unwarranted limitation of its constitutional scope. However, the exercise of formal constitutional review over constitutional amendments in Georgia presents a distinct challenge, as both legal doctrine<sup>34</sup> and the Constitutional Court's jurisprudence preclude constitutional review of Georgian constitutional law.<sup>35</sup>

4. Constitutional courts actualize Marshall's concept of a "living constitution" through their constitutional proceedings.<sup>36</sup> The effective implementation of the Court's functions, and its self-understanding of these powers, are crucial elements in shaping the nation's legal landscape.<sup>37</sup> Understanding the Constitutional Court's authority requires careful examination of its jurisprudential practice, which reveals multifaceted and significant dimensions.

The Constitutional Court of Georgia has consistently adopted a broad interpretation of its constitutionally defined powers, effectively expanding its jurisdiction through teleological interpretation. A notable example occurred in 2011, when the Court, citing the imperative to establish robust protection of fundamental rights, expansively interpreted its authority, regarding individual claims of constitutional rights violations un-

<sup>34</sup> კახიანი გ., საკონსტიტუციო კონტროლი საქართველოში, თეორია და კანონმდებლობის ანალიზი, თბილისი, 2011, 173 [k'akhiani g., sak'onst'it'utsio k'ont'roli sakartveloshi, teoria da k'anonmdblobis analizi, tbilisi, 2011, 173]; ხეცურიანი ჯ., ნოვაციები საქართველოს საკონსტიტუციო სასამართლოს შესახებ კანონმდებლობაში, ჟურნ. „ადამიანი და კონსტიტუცია“, No. 1, 2002, 13 [khetsuriani j., novatsiebi sakartvelos sak'onst'it'utsio sasamartlos shesakheb k'anonmdblobashi, zhurn. „adamiani da k'onst'it'utsia“, No. 1, 2002, 13].

<sup>35</sup> Ruling No. 1/1/549 of the Constitutional Court of Georgia of 5 February 2013 in the case "Citizens of Georgia – Irma Inashvili, Davit Tarkhan-Mouravi and Ioseb Manjavidze against the Parliament of Georgia"; Ruling No. 1/2/523 of the Constitutional Court of Georgia of 24 October 2012 in the case "Georgian Citizen Geronti Ashordia against the Parliament of Georgia"; Ruling No. 2/2/486 of the Constitutional Court of Georgia of 12 July 2010 in the case "Non-Profit (Non-Commercial) Legal Entity "National League for the Protection of the Constitution" against the Parliament of Georgia".

<sup>36</sup> გეგენავა დ., საკონსტიტუციო მართლმსაჯულება საქართველოში: სამართალწარმოების ძირითადი სისტემური პრობლემები, თბილისი, 2012, 20 [gegenava d., sak'onst'it'utsio martlmsajuleba sakartveloshi: samartalts'armoebis dziritadi sist'emuri p'roblemebi, tbilisi, 2012, 20].

<sup>37</sup> Sweet A.S., Constitutional Courts, in: The Oxford Handbook of Comparative Constitutional Law, edited by M. Rosenfeld and A. Sajó, Oxford University Press, 2012, 822.

der Chapter Two.<sup>38</sup> Through this landmark decision, the Court effectively broadened its jurisdiction beyond the traditional assessment of normative constitutionality to encompass the review of constitutional interpretation, despite the absence of explicit legislative authorization from Parliament for such expansion.<sup>39</sup>

The Constitution of Georgia defines the scope of concrete and abstract constitutional review as encompassing normative acts issued by state authorities. Nevertheless, the Constitutional Court extended its review powers to include individual acts with normative content,<sup>40</sup> despite the Constitution's explicit limitation of constitutional review to normative acts in both concrete and abstract review frameworks. A particularly significant development occurred in the Court's 2015 decision,<sup>41</sup> where, considering the imperative of legal stability and public order, the Court took the unprecedented step of independently modifying the constitutional norm specified in the submission that formed the basis for assessing legislative constitutionality.<sup>42</sup>

<sup>38</sup> Decision No. 1/1/477 of the Constitutional Court of Georgia of 22 December 2011 in the case "Public Defender of Georgia against Parliament of Georgia".

<sup>39</sup> See: ჯავახიშვილი პ., საერთო სასამართლოების გადაწყვეტილებებზე საკონსტიტუციო კონტროლი ქართულ სამართლებრივ პერსპექტივაში, თბილისი, 2022, 89 [javakhishvili p., saerto sasamartloebis gadats'qvet'ilebebze sak'onst'it'utsio k'ont'oli kartul samartlebriv p'ersp'ekt'ivashi, tbilisi, 2022, 89]; ჯავახიშვილი პ., საქართველოს საკონსტიტუციო სასამართლო და ფაქტობრივი რეალური კონტროლი, „სამართლის ჟურნალი“, No. 1, 2017, 346 [javakhishvili p., sakartvelos sak'onst'it'utsio sasamartlo da pakt'obrivi realuri k'ont'oli, „samartlis zhurnali“, No. 1, 2017, 346].

<sup>40</sup> See: Ruling No. 1/7/436 of the Constitutional Court of Georgia of 9 November 2007 in the case "Caucasus Online LLC against Georgian National Communications Commission"; Decision No. 2/5/700 of the Constitutional Court of Georgia of 26 July 2018 in the case of "Coca-Cola Bottlers Georgia LLC, Castel Georgia LLC and JSC Tskal Margebeli against the Parliament of Georgia and the Minister of Finance of Georgia"; Ruling No. 1/4/1691 of Constitutional Court of Georgia of 22 February 2023 in the case "Giorgi Goroshidze and Indiko Abashidze against the Parliament of Georgia, the Minister of Education and Science of Georgia and the Academic Council of the Ivane Javakhishvili Tbilisi State University".

<sup>41</sup> Decision No. 3/1/608,609 of the Constitutional Court of Georgia of 29 September 2015 in the case "Constitutional submission of the Supreme Court of Georgia on the constitutionality of Para. 4 of Article 306 of the Criminal Procedure Code of Georgia and Constitutional submission of the Supreme Court of Georgia on the constitutionality of Subparagraph "g" of Article 297 of the Criminal Procedure Code of Georgia".

<sup>42</sup> ჯავახიშვილი პ., თვითინიციატივასა და მეჩიბრებობას შორის: ერთი გადაწყვეტილება საქართველოს საკონსტიტუციო სასამართლოს პრაქტიკიდან, წიგნში: ავთანდილ დემეტრაშვილი 75, დ. გეგენავას და მ. ჯიქიას რედაქტორობით, თბილისი, 2017, 100 [javakhishvili p., tvitinitisiat'ivasa da shejibrebitobas shoris: erti gadats'qvet'ileba sakartvelos sak'onst'it'utsio sasamartlos p'rakt'ik'idan, ts'ignshi: avtandil demet'rashvili 75, d. gegenavas da m. jikias redakt'orobit, tbilisi, 2017, 100]; ჯავახიშვილი პ., საერთო სასამართლოების გადაწყვეტილებებზე საკონსტიტუციო კონტროლი ქართულ სამართლებრივ პერსპექტივაში, თბილისი, 2022, 99 [javakhishvili p., saerto

These examples demonstrate that the Constitutional Court does not shy away from broadly interpreting its constitutional powers. The practice established by the Constitutional Court so far follows the normative line. Although the powers of the Constitutional Court are not subject to expansion or narrowing by organic law, broad interpretation and clarification of specific powers is not foreign to the practice of the Constitutional Court. It is noteworthy that the Constitutional Court is the only body that has the exclusive competence to interpret the Constitution of Georgia with binding force and finality.<sup>43</sup> It alone can see its own competent perspective in the existing normative body of the Constitution.

5. The Constitutional Court of Georgia continues to exercise review over the formality of disputed norms within its distinct jurisdictional powers. When evaluating the constitutionality of contested norms, particularly in disputes concerning fundamental rights defined in Chapter Two of the Constitution, the Court examines compliance with formal procedures for the acquisition of legal force.<sup>44</sup> The Court has consistently emphasized that constitutional limitations on legislative power require legislative acts to satisfy both formal and substantive constitutional requirements.<sup>45</sup>

The Constitution of Georgia explicitly stipulates that restrictions on certain fundamental rights must be enacted through law,<sup>46</sup> which makes the formal aspects of authority delegation between state bodies particularly significant.<sup>47</sup> Within the framework of ongoing disputes and reviews, the

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sasamartloebis gadats'qvet'ilebebze sak'onst'it'utsio k'ont'roli kartul samartlebriv p'ersp'ekt'ivashi, tbilisi, 2022, 99].

<sup>43</sup> ლოლაძე ბ., მაჭარაძე ზ., ფირცხალაშვილი ა., საკონსტიტუციო მართლმსაჯულება, თბილისი, 2021, 73 [loladze b., mach'aradze z., pirtskhalashvili a., sak'onst'it'utsio martlmsajuleba, tbilisi, 2021, 73].

<sup>44</sup> See: Decision No. 1/4/757 of the Constitutional Court of Georgia of 25 March 2017 in the case “Georgian Citizen Giorgi Kraveishvili against the Government of Georgia”; Decision No. 3/1/659 of the Constitutional Court of Georgia of 15 February 2017 in the case “Georgian citizen Omar Jorbenadze against the Parliament of Georgia”; Decision No. 1/7/1275 of the Constitutional Court of Georgia of 2 August 2019 in the case “Alexander Mdzinarashvili against Georgian National Communications Commission”.

<sup>45</sup> Decision No. 1/2/569 of the Constitutional Court of Georgia of 11 April 2014 in the case “Citizens of Georgia – Davit Kandelaki, Natalia Dvali, Zurab Davitashvili, Emzar Gogvadze, Giorgi Meladze and Mamuka Pachuashvili against the Parliament of Georgia”, II-26.

<sup>46</sup> For example, Art. 15(2) of the Constitution of Georgia.

<sup>47</sup> Decision No. 3/5/1502,1503 of the Constitutional Court of Georgia of 15 December 2023 in the case “Zaur Shermazanashvili and Tornike Artkmeladze against the President of the Republic of

Court verifies compliance with formal requirements. This established practice demonstrates that the Court is well-versed in examining the formality of disputed norms, suggesting its capability to effectively perform formal constitutional review within its designated authority.

## IV. Conclusion

The cornerstone of a constitutional state lies in maintaining effective human rights protection mechanisms. The Constitutional Court stands as a crucial institution in this framework, with its scope of authority holding particular significance. In prevalent constitutional review models, constitutional courts typically possess broad formal review powers alongside their material review capabilities. Indeed, formal constitutional review represents an essential authority without which a constitutional court cannot fully function as a comprehensive mechanism for protecting constitutional supremacy and fundamental rights.

Georgia's Constitutional Court was originally established under the Kelsenian doctrine, endowed with extensive formal and substantive review powers. While subsequent constitutional amendments and the absence of explicit reference to formal constitutional review in Georgia's Constitution have generated some skepticism about its continued existence, several factors support its ongoing validity. These include the Court's constitutional status, systematic analysis of Georgian legislation, established constitutional court practice, and the distinctive characteristics of Georgia's constitutional review model. This article has presented these arguments to demonstrate the enduring legal foundation and constitutional perspective of formal constitutional review within Georgian legal reality.

## References

- Brewer-Carias A.R., *Constitutional Courts as Positive Legislators*, Cambridge University Press, 2011.
- Passaglia P., *The Italian System of Constitutional Review: a Kelsenian Model Moving Towards a Decentralized Model?* in: *Right-Based Constitutional Review, Constitutional Courts in a Changing Landscape*, edited by J. Bell and M.L. Paris, Edvard Elgar Publishing, 2016.
- Sajó A., *Limiting Government: An Introduction to Constitutionalism*, Budapest, 1999.

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Georgia and the Government of Georgia". Add., see: საკონსტიტუციო სამართალწარმოება, პ. ჯავახიშვილის რედაქტორობით, თბილისი 2024, 159-163 [sak'onst'it'utsio samartalts'armoeba, p'. javakhishvilis redakt'orobit, tbilisi 2024, 159-163].

Sweet A.S., Constitutional Courts, in: The Oxford Handbook of Comparative Constitutional Law, edited by M. Rosenfeld and A. Sajó, Oxford University Press, 2012.

გეგენავა დ., საკონსტიტუციო მართლმსაჯულება საქართველოში: სამართალწარმოების ძირითადი სისტემური პრობლემები, თბილისი, 2012 [gegenava d., sak'ons'tit'utsio martlmsajuleba sakartveloshi: samartalts'armoebis dziritadi sistemuri problemebi, tbilisi, 2012].

გეგენავა დ., ჯავახიშვილი პ., საქართველოს საკონსტიტუციო სასამართლო, პოზიტიური კანონმდებლობის მცდელობა და გამოწვევები, წიგნში: ლადო ქანტურია 55, დ. გეგენავას რედაქტორობით, თბილისი, 2018 [gegenava d., javakhishvili p., sakartvelos sak'ons'tit'utsio sasamartlo, pozit'iuri kanonmdeblobis mtsdeloba da gamots'vevebi, ts'ignshi: lado ch'ant'uria 55, d. gegenavas redakt'orbit, tbilisi, 2018].

გეწაძე გ., საკონსტიტუციო კონტროლის ფორმები და სახეები, ჟურნ. „ადამიანი და კონსტიტუცია“, No. 1, 1998 [gets'adze g., sak'ons'tit'utsio kont'rolis pormebi da sakheebi, zhurn. „adamiani da konst'it'utsia“, No. 1, 1998].

ზოიძე ბ., საკონსტიტუციო კონტროლი და ღირებულებათა წესრიგი საქართველოში, თბილისი, 2001 [zoidze b., sak'ons'tit'utsio kont'roli da ghirebulebata ts'esrigi sakartveloshi, tbilisi, 2001].

კახიანი გ., საკონსტიტუციო კონტროლის ზოგიერთი თეორიული ასპექტი, ჟურნ. „ადამიანი და კონსტიტუცია“, No. 4, 2005 [k'akhiani g., sak'ons'tit'utsio kont'rolis zogierti teoriuli asp'ekt'i, zhurn. „adamiani da konst'it'utsia“, No. 4, 2005].

კახიანი გ., საკონსტიტუციო კონტროლი საქართველოში, თეორია და კანონმდებლობის ანალიზი, თბილისი, 2011 [k'akhiani g., sak'ons'tit'utsio kont'roli sakartveloshi, teoria da kanonmdeblobis analizi, tbilisi, 2011].

კვერენჩილაძე გ., კონსტიტუციის სამართლებრივი დაცვა (ზოგიერთი თეორიული საკითხი), ჟურნ. „ადამიანი და კონსტიტუცია“, No. 3, 2006 [k'verenchkhiladze g., k'ons'tit'utsiis samartlebrivi datsva (zogierti teoriuli sak'itkhi), zhurn. „adamiani da k'ons'tit'utsia“, N3, 2006].

ლოლაძე ბ., მაჭარაძე ზ., ფირცხალაშვილი ა., საკონსტიტუციო მართლმსაჯულება, თბილისი, 2021 [loladze b., mach'aradze z., pirtskhalashvili a., sak'ons'tit'utsio martlmsajuleba, tbilisi, 2021].

ნაკაშიძე მ., საქართველოს საკონსტიტუციო სასამართლოს გადაწყვეტილების აღსრულების პრობლემები, ჟურნ. „მართლმსაჯულება“, No. 1, 2009 [nak'ashidze m., sakartvelos sak'ons'tit'utsio sasamartlos gadats'qv'et'ilebis aghsrulebis problemebi, zhurn. „martlmsajuleba“, No. 1, 2009].

საკონსტიტუციო სამართალწარმოება, პ. ჯავახიშვილის რედაქტორობით, თბილისი, 2024 [sak'ons'tit'utsio samartalts'armoeba, p. javakhishvilis redakt'orbit, tbilisi, 2024].

ხეცურიანი ჯ., ნოვაციები საქართველოს საკონსტიტუციო სასამართლოს შესახებ კანონმდებლობაში, ჟურნ. „ადამიანი და კონსტიტუცია“, No. 1, 2002 [khetsuriani j., novatsiebi sakartvelos sak'ons'tit'utsio sasamartlos shesakheb kanonmdeblobashi, zhurn. „adamiani da konst'it'utsia“, No. 1, 2002].

ხეცურიანი ჯ., რჩეული შრომები, ქ. ერემაძის და გ. კვერენჩილაძის რედაქტორობით, თბილისი, 2021 [khetsuriani j., rcheuli shromebi, k. eremadzis da g. k'verenchkhiladzis redakt'orbit, tbilisi, 2021].

ხეცურიანი ჯ., საქართველოს საკონსტიტუციო სასამართლოს უფლებამოსილება, მე-2 გამოცემა, თბილისი, 2020 [khetsuriani j., sakartvelos sak'ons'tit'utsio sasamartlos uplebamosileba, me-2 gamotsema, tbilisi, 2020].

ჯავახიშვილი პ., თვითინიციატივასა და მეჯიბრეობითობას შორის: ერთი გადაწყვეტილება საქართველოს საკონსტიტუციო სასამართლოს პრაქტიკიდან, წიგნში: ავთანდილ დემეტრაშვილი 75, დ. გეგენავას და მ. ჯიქიას რედაქტორობით, თბილისი, 2017 [javakhishvili p., tvitinitsiat'i-

vasa da shejibrebitobas shoris: erti gadats'qvet'ileba sakartvelos sak'ons't'it'utsio sasamartlos p'rakt'ik'idan, ts'ignshi: avtandil demet'rashvili 75, d. gegenavas da m. jikias redakt'orbit, tbilisi, 2017].

ჯავახიშვილი პ., საერთო სასამართლოების გადაწყვეტილებებზე საკონსტიტუციო კონტროლი ქართულ სამართლებრივ პერსპექტივაში, თბილისი, 2022 [javakhishvili p., saerto sasamartloebis gadats'qvet'ilebebze sak'ons't'it'utsio kont'roli kartul samartlebriv perspekt'ivashi, tbilisi, 2022].

ჯავახიშვილი პ., საქართველოს საკონსტიტუციო სასამართლო და ფაქტობრივი რეალური კონტროლი, „სამართლის ჟურნალი“, No. 1, 2017 [javakhishvili p., sakartvelos sak'ons't'it'utsio sasamartlo da pakt'obrivi realuri kont'roli, „samartlis zhurnali“, No. 1, 2017].

## Legal Acts

Constitutional Law of Georgia “On Amendments to the Constitution of Georgia”, 13 October 2017.

Organic Law of Georgia “On Amendments and Supplements to the Organic Law of Georgia “On the Constitutional Court of Georgia” 12 February 2002.

Organic Law of Georgia “On Amendments to the Organic Law of Georgia “On the Constitutional Court of Georgia”, 14 April 2022, and its explanatory note.

Organic Law of Georgia “On Amendments to the Organic Law of Georgia “On the Constitutional Court of Georgia”, 21 July 2018.

Organic Law of Georgia “On the Constitutional Court of Georgia”, 31 January 1996.

The Constitution of Georgia, 24 August 2024.

## Constitutional Court Acts

Decision No. 1/1/477 of the Constitutional Court of Georgia of 22 December 2011 in the case “Public Defender of Georgia against Parliament of Georgia”.

Decision No. 1/2/569 of the Constitutional Court of Georgia of 11 April 2014 in the case “Citizens of Georgia – Davit Kandelaki, Natalia Dvali, Zurab Davitashvili, Emzar Gogvadze, Giorgi Meladze and Mamuka Pachuashvili against the Parliament of Georgia”.

Decision No. 1/4/757 of the Constitutional Court of Georgia of 25 March 2017 in the case “Georgian Citizen Giorgi Kraveishvili against the Government of Georgia”.

Decision No. 15/290,266 of the Constitutional Court of Georgia of 25 May 2004 in the case “Group of Members of the Parliament of Georgia (67 deputies in total) against the Parliament of the Autonomous Republic of Adjara, and Citizen of Georgia Tamaz Diasamidze against the Parliament of the Autonomous Republic of Adjara and the Head of the Autonomous Republic of Adjara”.

Decision No. 1/7/1275 of the Constitutional Court of Georgia of 2 August 2019 in the case “Alexander Mdzinarashvili against Georgian National Communications Commission”.

Decision No. 2/4/532,533 of the Constitutional Court of Georgia of 8 October 2014 in the case “Citizens of Georgia – Irakli Kemoklidze and Davit Kharadze against the Parliament of Georgia”.

Decision No. 2/5/700 of the Constitutional Court of Georgia of 26 July 2018 in the case of “Coca-Cola Bottlers Georgia LLC, Castel Georgia LLC and JSC Tskal Margebeli against the Parliament of Georgia and the Minister of Finance of Georgia”.

- Decision No. 3/1/608,609 of the Constitutional Court of Georgia of 29 September 2015 in the case “Constitutional submission of the Supreme Court of Georgia on the constitutionality of Para. 4 of Article 306 of the Criminal Procedure Code of Georgia and Constitutional submission of the Supreme Court of Georgia on the constitutionality of Subparagraph “g” of Article 297 of the Criminal Procedure Code of Georgia”.
- Decision No. 3/1/659 of the Constitutional Court of Georgia of 15 February 2017 in the case “Georgian citizen Omar Jorbenadze against the Parliament of Georgia”.
- Decision No. 3/5/1502,1503 of the Constitutional Court of Georgia of 15 December 2023 in the case “Zaur Shermazanashvili and Tornike Artkmeladze against the President of the Republic of Georgia and the Government of Georgia”.
- Ruling No. 1/1/549 of the Constitutional Court of Georgia of 5 February 2013 in the case “Citizens of Georgia – Irma Inashvili, Davit Tarkhan-Mouravi and Ioseb Manjavidze against the Parliament of Georgia”.
- Ruling No. 1/2/523 of the Constitutional Court of Georgia of 24 October 2012 in the case “Georgian Citizen Geronti Ashordia against the Parliament of Georgia”.
- Ruling No. 1/4/1691 of Constitutional Court of Georgia of 22 February 2023 in the case “Giorgi Goroshidze and Indiko Abashidze against the Parliament of Georgia, the Minister of Education and Science of Georgia and the Academic Council of the Ivane Javakhishvili Tbilisi State University”.
- Ruling No. 1/7/436 of the Constitutional Court of Georgia of 9 November 2007 in the case “Caucasus Online LLC against Georgian National Communications Commission”.
- Ruling No. 2/2/486 of the Constitutional Court of Georgia of 12 July 2010 in the case “Non-Profit (Non-Commercial) Legal Entity “National League for the Protection of the Constitution” against the Parliament of Georgia”.