

**Paata Javakhishvili\***

## **Constitutional Control over the Decisions of Ordinary Courts: Experience and Perspectives of the South Caucasus States**

*The place and importance of the Constitutional Law between the state authorities are mostly conditioned with independence of the hereof institution and the competent arsenal thereof. The real Constitutional control occupies the particular place amongst the authorities of the Constitutional Law. The hereby Article aims at estimation of legislative reality of the real control and the Constitutional justice in the South Caucasian countries. The Article considers the essence and importance of phenomenon of real Constitutional control, the place of the Constitutional law in Azerbaijan, Turkey and Armenia, estimates direct impact of this institution on the Constitutional justice and prospects of real control in South Caucasus countries.*

**Key words:** *Constitutional Control in South Caucasus, Judicial review, Real Constitutional Control*

### **1. Introduction**

General control over the constitutionality of normative acts is the most important function of the constitutional court of many states of the world, in carrying out of which the supremacy of constitution, as a main law, is provided.<sup>1</sup> For the purpose of the protection of constitutional norms and fundamental human rights<sup>2</sup> the constitutional law monitors the compliance of each field of the government activity to the constitution. The constitutional court is an institution, the aim of which is to protect the constitution from unconstitutional invasions of fields of government activities.<sup>3</sup> The fulfillment of this function is turning it into a supreme controlling organ of the state government activities.

After the demise of the Soviet Union the countries of Central and Eastern Europe with the support of the European Council and on the basis of adopting a new constitution and reviewing the old one managed to implement an institute of direct applying of physical and legal persons to the constitutional court. The purpose of the above mentioned institute was to cover the so called "grey zones"<sup>4</sup> in the sphere of the protection of fundamental human rights. South Caucasus states belong to the group of these countries too.

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\* Doctoral Student, TSU Faculty of Law.

<sup>1</sup> *Kakhini G.*, Problems of Controlling of Abstract Norms in Activities of Constitutional Court of Georgia *Journal of Law*, №1, 2009, 62 (in Georgian).

<sup>2</sup> *Patrono M.*, The Protection of Fundamental Rights By Constitutional Courts – A Comparative Perspective, 2000, 405.

<sup>3</sup> *Gegenava D.*, Constitutional Justice in Georgia: Main System Problems of Court Procedures, Tbilisi, 2012, 26 (in Georgian).

<sup>4</sup> *Gentili G.*, A Comparative Perspective on Direct Access to Constitutional and Supreme Courts in Africa, Asia, Europe and Latin America: Assessing Advantages for the Italian Constitutional Court, *Penn State International Law Review*, University of Sussex, 2011, 708.

The aim of the present article is to discuss the models of the constitutional control established in the constitutional legal reality of South Caucasus and the discussion will be based on the methods of analytical, logical and comparative law investigation. For this purpose legislation of the Republics of Turkey, Azerbaijan and Armenia (hereafter Turkey, Azerbaijan and Armenia) and estimations of the International Institutes of Human Rights and scientists upon the constitutional systems of these states will be discussed.

## **2. Real Constitutional Control – European Reality and Its Inculcation in South Caucasus States**

### **2.1. Real Constitutional Control as an Effective Modern Mechanism for Protection of Fundamental Human Rights**

Constitutional action is a main mechanism of protection of individual's and citizen's rights. It is an individual initiative creating a certain procedural instrument. According to the doctrine of the individual constitutional complaint courts have the right to abolish the government's decisions, when they aren't complying with the constitution.<sup>5</sup> By estimation of the international human rights organizations this mechanism, as a means of the legal protection, must be accessible for everybody,<sup>6</sup> because in the area of the constitutional action there can be protection of negative, as well as positive rights.<sup>7</sup>

The analysis of statistics of the European Court of Human Rights showed that from those countries, which have a mechanism of the complete constitutional complaint, have much less applications to the European Court of Human Rights than the countries, which don't have an analogous mechanism.<sup>8</sup> Just for this reason the European Court is lobbying to grant constitutional courts the authority of real control.

"In order to be effective the means of protection of human rights it must not only protect indirectly the rights guaranteed by the Convention, but it must provide direct and fast settlement of plaintiff's claim".<sup>9</sup> Despite the nonhomogenous attitude a constitutional control mechanism of general courts decisions is considered to be the procedural possibility and one of the main principles for accomplishment of the above mentioned goal.

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<sup>5</sup> *Karakamisheva T.*, Constitutional Complaint – Procedural and Legal Instrument for Development of the Constitutional Justice (Case study – Federal Republic of Germany, Republic of Croatia, Republic of Slovenia and Republic of Macedonia), see <[http://www.venice.coe.int/WCCJ/Papers/MKD\\_Karakamisheva\\_E.pdf](http://www.venice.coe.int/WCCJ/Papers/MKD_Karakamisheva_E.pdf)>.

<sup>6</sup> See *Mavcic A.M.*, Individual Complaint As a Domestic Remedy to be Exhausted or Effective Within the Meaning of the ECHR, Comparative and Slovenian Aspect, Preddvor, Slovenia, 2011, 6-7.

<sup>7</sup> See *Ulvan N.C.*, Constitutional Complaint and Individual Complaint In Turkey, Ankara Bar Review, 2013, 181.

<sup>8</sup> See *Paczolay P.*, Report Introduction to the Report of the Venice Commission on Individual Access to Constitutional Justice, Conference on Individual Access to Constitutional Justice, Strasbourg, 2013, 2.

<sup>9</sup> *Sharashidze M.*, Perspectives of Granting the Constitutional Court of Georgia the Authority to Discuss Real Constitutional Complaints; Collected works: Constitutional and International Mechanisms of the Protection of Human Rights, edited by *Korkelia K.*, see reference 6, Dever against Belgium, 1980, §29, 59 (in Georgian).

## **2.2. Inculcation of the Constitutional Control of General Courts Decisions in the States of South Caucasus**

Individuals' right to apply to the constitutional court with an individual complaint in the legal system of Germany was inculcated in 1969<sup>10</sup> and this form of the complaint is still considered to be the most effective means of protection of the constitution.<sup>11</sup> More than the half of decisions of the federal constitutional court is connected with the cases of just this category.<sup>12</sup> Some scientists think that a mechanism of the constitutional control inculcated in constitutional justice of Germany is universal,<sup>13</sup> as by means of a mere procedure any person can lodge a complaint against the decision of a public authority.<sup>14</sup>

In Turkey the real constitutional control was inculcated in 2010 and after 2 years from the legislative regulation the constitutional court received the first application.<sup>15</sup> According to Article 148 of the constitution of Turkey any person, analogous to the German model of real control, has the right to lodge a complaint not only against the decision of the final instance of courts, but also against any act accepted or action carried out by the government authority, which directly infringes the person's basic right recognized by the constitution.<sup>16</sup> Up to now the Constitutional Court of Turkey has revealed 165 facts of violation of basic rights directly on individual constitutional complaints.<sup>17</sup>

In the constitution of Azerbaijan the real constitutional control has been inculcated upon the recommendation of the International Institutions of Human Rights.<sup>18</sup> According to Article 130 of the constitution of Azerbaijan by the rule stated by legislation everybody has the right, in order to restore infringed rights and freedoms, to make a constitutional complaint against the normative acts issued by the public authority and municipalities, as well as in relation to those decisions of courts, which are infringing the individual's rights and freedoms<sup>19</sup>.

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<sup>10</sup> *Patrono M.*, The Protection of Fundamental Rights By Constitutional Courts – A Comparative Perspective, 2000, 409.

<sup>11</sup> *Fremuth M. L.*, Patchwork Constitutionalism, Constitutionalism and Constitutional Litigation in Germany and Beyond the State – A European Perspective, 2011, 384-385.

<sup>12</sup> *Prakke C.L.*, Constitutional Law of 15 EU Member States, Edited by *Prakke L., Kortmann C., Brandhof H., Burkens M., Calogeropoulos A., Craenen G., Frieden L., Gilhuis P., Ballin E., Koekkoek A., Kraan K., Lunshof H., Meij J., Schagen J., Steenbeek J., Thill J.*, Deventer, 2004, 356.

<sup>13</sup> See *Singer M.*, The Constitutional Court of the German Federal Republic: Jurisdiction Over Individual Complaints, 1982, 332.

<sup>14</sup> Decision on case *Apostle* against Georgia, European Court of Human Rights, application № 40765, 02, Strasbourg, 2006, §42 (in Georgian).

<sup>15</sup> *Üstün B.*, Protection of Human Rights By the Turkish Constitutional Court, Short History of the Turkish Constitutional Court, <[http://www.constcourt.md/public/files/file/conferinta\\_20ani/programul\\_conferintei/Burhan\\_Ustun.pdf](http://www.constcourt.md/public/files/file/conferinta_20ani/programul_conferintei/Burhan_Ustun.pdf)>.

<sup>16</sup> The Constitution of the Republic of Turkey, 1982, Art. 148.

<sup>17</sup> See *Arslan Z.*, Constitutional Complaint In Turkey: A Cursory Analysis Of Essential Decisions, The draft paper prepared for the Conference the Best Practices of Individual Complaint to the Constitutional Courts in Europe, 8, Strasbourg, 2014 .

<sup>18</sup> See *Martin C.H.*, Comparative Human Rights Jurisprudence in Azerbaijan: Theory, Practice and Prospects, Journal of Transnational Law & Policy, College of Law The Florida State University, Tallahassee, 2005, 230, <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=748124](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=748124)>.

<sup>19</sup> Constitution of the Republic of Azerbaijan 1995, Art. 130.

The system analysis of Article 101 of the constitution and several articles of court rules of Armenia enables us to remark that the constitutional court of Armenia is only discussing the constitutionalism of normative acts and does not have the authority for the constitutional control of the decisions of law courts. Considering this fact and as the purpose of the present work is to analyse the practice of those South Caucasus countries, which have a constitutional control mechanism of law courts, in the following chapters in relation to Armenia there will be only discussed separate legal aspects.

### **3. Real Constitutional Control in South Caucasus Countries**

#### **3.1. Person Authorized to File an Individual Constitutional Complaint to Constitutional Court**

The main essence of the real control is that the person authorized to file a complaint might be any individual, who thinks that his/her fundamental right guaranteed by the constitution has been infringed by the decision made by the authority. As a rule, physical and legal persons of private law possess fundamental rights, though in case of a real control only a person, which argues against the infringement of his/her fundamental right, is authorized to file a constitutional complaint.<sup>20</sup>

On the basis of the amendment to Article 148 of the constitution of Turkey, made in 2010, any individual, which thinks that his/her constitutional right existed in the list of human rights of the European Convention has been infringed can apply to constitutional court after completion of other administrative and court procedures.<sup>21</sup> Legal persons of private and public law possessing the fundamental rights are also using these fundamental rights.

According to Article 130 of the constitution of Azerbaijan, according to the rule stated by law, everybody has the right to apply to constitutional court with a constitutional complaint against those normative acts of the legislative and executive government, municipalities and court decisions, which violate their fundamental rights and freedoms.<sup>22</sup> The mentioned entry is also repeated in the law of Azerbaijan “about the constitutional law”.<sup>23</sup>

At the same time on the basis of Article 57 of the constitution of Azerbaijan there is adopted a law “about the procedure of discussing citizens’ applications, which gives every citizen the right to produce petition or his/her own critical opinion connected with the decisions made by the government authority. The mentioned law is also obliging every person of high political position to devote time for meeting with citizens.<sup>24</sup>

#### **3.2. Preconditions for Accepting the Constitutional Complaint**

The basis of checking the constitutionality of the decision of the government authority by the constitutional court is an appeal of the individual having this right, which must respond the requirements for a constitutional complaint stated by normative acts. Among the widely spread require-

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<sup>20</sup> See The Constitution of the Republic of Turkey, 1982, art. 148.

<sup>21</sup> See *ibid.*

<sup>22</sup> Constitution of the Republic of Azerbaijan, Art. 130, V, 1995.

<sup>23</sup> The Law of the Republic of Azerbaijan on Constitutional Court, Art. 34, 1.

<sup>24</sup> Law of the Azerbaijan Republic On Procedures For Review of Citizen Applications, Art. 23.

ments, defined by states having the real control can be mentioned several of them. For realization of the right of applying with an individual application a complainant must be a person authorized to produce an action, all the inner legal means of protection of the right must be exhausted,<sup>25</sup> the purpose of the complaint must be directly protection of the infringed constitutional right of the individual and others.

### **3.2.1. Direct and Current Effect**

If an appealed act does not inflict a direct and current harm to the complainant, then we have an abstract constitutional control. Here can be two moments: 1. as an interested party is a "direct" victim, legislation of some countries prohibits any person from acting in the name of the victim. It means that in hearing of a concrete case constitutional juridical work is abstract, because the applicant is not a direct victim. 2. The law of some countries describes the character of the infringement of the fundamental rights. In most countries the infringement of the fundamental rights must be directly connected with the complainant's interest and must have a negative influence on the complainant's legal status.<sup>26</sup>

The legislation of the three countries of South Caucasus states as a compulsory rule that a person producing a constitutional complaint can be only one, whose rights and freedoms guaranteed by the constitution are violated by the act issued by the public authority and the complainant at the moment of producing the complaint in the constitutional court is experiencing the violation of this right.

### **3.2.2. Exhaustion of the Legal Protection Remedies of Fundamental Rights**

One of the preconditions of applying to the constitutional court with an individual constitutional complaint in the countries having the real control is the exhaustion of all the inner legal remedies. Under the inner legal remedies there is meant as a system of law courts, as well as any means of appealing the acts issued by the government authority.

According to Article 34.4 of the law about the constitutional court of Azerbaijan a complaint to the constitutional court can be presented only in 6 months from the exhaustion of all the legal remedies.<sup>27</sup> The same picture is in Turkey, where the constitutional court is accepting a complaint in a legal procedure only in case of exhausting of all the legal means.<sup>28</sup>

Requirement of exhaustion legal remedies underlines the individual complaint's subsidiary character, where before hearing the issue by the constitutional court it is necessary to pass all the instances of court and the constitutional court will start its participation at the final stage, though the use of this rule might cause the irreparable infringement of the individual's rights, it is possible that the mentioned rule can't be used as an exception.<sup>29</sup>

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<sup>25</sup> See *Gonenc L.*, Proposed Constitutional Amendments to the 1982 Constitution of Turkey, 2010, 4-5.

<sup>26</sup> See Study on Individual Access to Constitutional Justice, European Commission For Democracy through Law (Venice Commission), № 538/2009, Strasburg, 2011, 34.

<sup>27</sup> The Law of The Republic of Azerbaijan on Constitutional Court, art. 34, 7.

<sup>28</sup> See <<http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm>>.

<sup>29</sup> See Study on Individual Access to Constitutional Justice, European Commission For Democracy Rthrough Law (Venice Commission), № 538/2009, Strasburg, 2011, 34.

So for example, if in order to protect the complainant's constitutional rights applying to law courts cannot provide protection of the complainant's rights from serious and irreparable injury or in general it is impossible to avoid serious and irreparable injury by applying with a complaint to the other court,<sup>30</sup> like the federal constitutional court of Germany,<sup>31</sup> the complaint can be presented straight to the constitutional court of Azerbaijan.<sup>32</sup> This agreement is emphasizing the preference of the interest of protection of human rights compared to the formal requirement.

### 3.2.3. Fact of Violation of the Fundamental Rights

In juridical literature among other factors the scepticism of ill-disposed persons towards the constitutional control of law courts' decisions is based on the following argument: by carrying out the real control the constitutional court will not be turned into another additional instance, as a result of which a conflict between the courts of general jurisdiction and the constitutional court will become inevitable. Moreover, according to the classical doctrine of the real control the constitutional court is authorized not only to discuss acts accepted by general courts, but also to estimate the constitutionality of decisions made by other departments of the government.

The constitutional court does not estimate the rationality of the general court decision and its compliance with law, but it checks up the result – whether the fundamental human right recognized by the constitution was violated or not by the accepted decision. By this model of the constitutional control a constitutional complaint is considered to be the final means of protection of human rights and freedoms. This authority does not turn the constitutional court into the appellate instance, as hearing of the case does not concern the legal rightness of the complained case; a subject of litigation in the decision is only a part of human rights.<sup>33</sup>

Taking into account this fact, the states possessing the real control, in their own legislation for the precondition of the admissibility of the constitutional complaint are stating just this requirement. According to professor Besarion Zoidze the fundamental human right is violated, if court is violating a procedural right of the person, participating in the process, whose right is guaranteed by the constitution, court is using a law counteracting the person's fundamental right, on defining the law or using it the court is violating fundamental rights, is acting (intentionally) arbitrarily.<sup>34</sup>

According to Article 130 of the constitution of Azerbaijan, everybody in compliance with the rule stated by law, has the right to apply to the constitutional court with a constitutional complaint, if a legal act of the government authority, as well as court decision violates his/her fundamental rights and freedoms in order to restore the violated rights and freedoms.<sup>35</sup> The constitutional regulation of Turkey is analogous, particularly according to Article 148 any person, who thinks that his/her

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<sup>30</sup> The Law of The Republic of Azerbaijan on Constitutional Court, Art. 34, 7.

<sup>31</sup> Federal Constitutional Court Act Of Germany, Art. 90.

<sup>32</sup> The Law of The Republic of Azerbaijan on Constitutional Court, Art. 34, 5.

<sup>33</sup> *Gegenava D.*, Constitutional Jurisdiction in Georgia: Main System Problems of Legal Procedures, Tbilisi, 2012, 26 (in Georgian).

<sup>34</sup> *Zoidze B.*, Constitutional Control and Valuations Order in Georgia, Tbilisi, 2007, 187 (in Georgian).

<sup>35</sup> The Law of the Republic of Azerbaijan on Constitutional Court, Art. 34, 7.

fundamental right provided by the European Convention of Human Rights is violated by the government authorities, has the right to apply to the constitutional court of Turkey.<sup>36</sup>

### **3.2.4. Abuse of the Right to Appeal to the Constitutional Court with an Individual Complaint**

Individuals producing a constitutional complaint are obliged to carry out their rights and duties faithfully. When an applicant abuses this own right, the effectiveness of constitutional justice is distorted, as a procedure of an individual constitutional complaint is of special importance for protection of fundamental human rights and such abuse is prejudicial to the constitutional order protected by the constitutional court.<sup>37</sup>

In order to prevent abusing of the right of bringing an action in the countries having the real control there are used financial sanctions. For example, in Germany if the basis of bringing a constitutional complaint is abusing of the right or bringing a complaint is obviously carried out for the lawless purpose, the federal constitutional court has the right to charge a financial payment to the complainant.<sup>38</sup>

Thus the constitutional legislation of Turkey differs from the legislation of Armenia and Azerbaijan, which are not using this type of financial sanctions. The constitutional court of Turkey is authorized to use a financial sanction in amount of 2000 Turkish lira in relation of a complainant for abusing of the right of applying to the constitutional court with a complaint, if it states that producing the complaint is not based on the violation of the fundamental rights guaranteed by the constitution.

### **3.2.5. Structural Unit Accepting a Constitutional Complaint in Legal Proceedings**

A great number of individual constitutional complaints might become harmful even for any European country with rich legal traditions. On accepting a case in legal proceedings the main press is experienced just by those structural units of the constitutional court, which are checking up the admissibility of complaints. In order to avoid overburdening of the constitutional court states are taking various measures; for example, reformation of the structure of the constitutional court – increasing the number of the court staff or creating smaller structural units, which will discuss about acceptance of concrete claims in legal proceeding and etc.<sup>39</sup>

In Turkey for examining the admissibility of individual constitutional complaints committees are established as structural units of court, the structure and activities rule of which are defined by the constitution and regulations of the constitutional court of Turkey.<sup>40</sup> The committee is authorized to recognize admissibility or inadmissibility of the examined complaint. If the complaint satisfies the

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<sup>36</sup> The Constitution of the Republic of Turkey, 1982, Art. 148.

<sup>37</sup> Study on Individual Access to Constitutional Justice, European Commission For Democracy Through Law (Venice Commission), № 538/2009, Strasbourg, 2011, 34.

<sup>38</sup> See *Khubua G., Trauti I.*, Constitutional Justice in Germany, Tbilisi, 2001, 28 (in Georgian).

<sup>39</sup> Study on Individual Access to Constitutional Justice, European Commission For Democracy Through Law (Venice Commission), № 538, 2009, Strasbourg, 2011, 59.

<sup>40</sup> The Constitution of the Republic of Turkey, 1982, Art. 149.

preconditions of admissibility, it will be delegated to one of the panels, which under the leadership of the vice-chairman of the constitutional court consists of 4 members. The panel settles the case on the basis of the presented documents, but it is also authorized to fix a relevant public discussion, if it thinks that it is necessary, in ordinary cases public discussions are not held.<sup>41</sup>

In order to examine admissibility of individual constitutional complaints there is not created any special structural unit in Azerbaijan. Discussion of individual complaints for the purpose of accepting them in legal proceedings is done by the staff of the constitutional court, which also takes decisions on accepting other kinds of complaints in legal proceedings<sup>42</sup>. Several reporter-judges shall be appointed for preparation of session on public hearing of the case.

### 3.3. Pay and Term of Applying to the Constitutional Court

Some states for carrying out the constitutional review are setting a pay for considering a constitutional complaint. The objective of setting such a pay is the control of the number and the quality of complaints – the complainant should be sure in the reasonableness of his/her own complaint and only then can apply to the constitutional court. The pay for submission of the constitutional complaint is different in different countries, for example, in Russia this pay equals to the minimum living wage, in Armenia it equals to the minimum living wage multiplied by 5, in Austria – 220 euro, in Israel – 400 USA \$.<sup>43</sup>

According to the Venice Commission the payment for performing the constitutional review should be comparatively lower for individuals and considering the financial status of the complainant there should be the possibility of decreasing the payment or exemption from payment. The main aim of payment for submission of the complaint must prevent abusing of the right; though setting of the payment must not cause the restriction of court accessibility right.<sup>44</sup>

The constitutional court of Azerbaijan does not consider any kind of payment submission of a constitutional complaint; according to Article 50 of the law “about Constitutional Court” the costs for proceedings are free of charge and all the costs connected with them shall be reimbursed from the State budget,<sup>45</sup> as well as it is in case of normative control the constitutional Court of Armenia does not set any financial obligations for citizens. As for Turkey, according to the law “about Constitutional Court” for submitting an individual complaint a payment of 172.5 Turkish lira is set.<sup>46</sup>

According to the recommendation of the Venice Commission terms must be reasonable, so that each constitutional complaint should be discussed individually or to allow an advocate, which is obliged to submit the complaint, to defend individual’s rights properly.<sup>47</sup> At the same time terms of

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<sup>41</sup> <<http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm>>.

<sup>42</sup> The Law of the Republic of Azerbaijan on Constitutional Court, Art. 36.

<sup>43</sup> See *ibid*.

<sup>44</sup> Study on Individual Access to Constitutional Justice, European Commission for Democracy Through Law (Venice Commission), № 538, 2009, Strasburg, 2011, 33.

<sup>45</sup> The Law of the Republic of Azerbaijan on Constitutional Court, Art. 50.

<sup>46</sup> *Ulvan N.C.*, Constitutional Complaint and Individual Complaint In Turkey, *Ankara Bar Review*, 2013, 184.

<sup>47</sup> Study on Individual Access to Constitutional Justice, European Commission for Democracy Through Law (Venice Commission), № 538/2009, Strasburg, 2011, 41.



taking decision, if they are stated, should not be very short, so that the constitutional court will be able to discuss the whole case without restriction; the terms should not be so long, that protection of fundamental human rights by constitutional justice should become ineffective.

The term of applying to constitutional court is always defined by a proper normative act and as a rule, it is not more than one year from the moment of violation of the right.<sup>48</sup> For example, according to Article 93 of the law “about the Federal Constitutional Court” of Germany a constitutional complaint must be submitted and substantiated within one month,<sup>49</sup> time account for the term is started from the moment of familiarization with the complete text of the decision in any form or from the moment of publishing it; if the decision is not published, then from the moment, when it becomes known for the complainant.

According to paragraph 4 of Article 34 “about constitutional court” of the constitution of Azerbaijan a constitutional complaint about violation of fundamental rights will be submitted to the constitutional court in 6 months from the moment of coming into effect the decision of court of the final instance or will be submitted to court in 3 months from violation of the complainant’s rights on condition of restoring this term.<sup>50</sup> This term in Turkey is defined by 30 days from the moment of exhaustion of all legal protection remedies.

#### **4. Perspectives of Real Control in South Caucasus States**

Models of the constitutional review, acting in Turkey and Azerbaijan, are very important acquisition of constitutional justice of these states. Constitutional courts of these countries were strengthened due to recommendations of the Venice Committee and other international institutions. Since an ideal system does not exist in any state and it is impossible to consider the experience of the other state without taking into account legal culture of the state, Turkey and Azerbaijan will have to take corrective measures in relation to those defects, which are impeding effective functioning of the institution.

Constitutional court rules of Turkey include 7 articles connected with an individual application. Jurisdiction of the constitutional court includes fundamental rights defined by the constitution of Turkey and the European Commission on Human Rights, but appealing against some acts of public authorities goes beyond the limits of the individual application. For example, the decrees issued about emergency and military states are not within the constitutional court control of Turkey. So this “weakness” of constitutional court is already criticized, as the heaviest facts of violation of fundamental human rights might happen just in the period of emergency and military situation.<sup>51</sup> “Legislative and regulating administrative acts” are not under the competence of the constitutional court ei-

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<sup>48</sup> *Frremuth L.M.*, Patchwork Constitutionalism: Constitutionalism and Constitutional Litigation in Germany and beyond the Nation State – A European Perspective, *Dunquesne Law Review*, Vol. 49, Issue 2, 2011, 379.

<sup>49</sup> Study on Individual Access to Constitutional Justice, European Commission For Democracy Through Law (Venice Commission), № 538/2009, Strasbourg, 2011, 48.

<sup>50</sup> The Law of the Republic of Azerbaijan on Constitutional Court, Art. 34, 4.

<sup>51</sup> *Özbudun E.*, Judicial Review of Political Questions in Turkey, <<http://camlaw.rutgers.edu/statecon/workshop11greece07/workshop5/Ozbudun.pdf>>.

ther<sup>52</sup>. I think constitutional court power of Turkey will be widened just in this direction and individuals will be able to appeal against any act of public authority.

Constitutional tribunal of Azerbaijan is also actively using the means of complete individual constitutional review, though it has not created any mechanism for defining the admissibility of complaints and is examining the admissibility of complaints submitted by individuals within this right by a general rule. The reason of such situation might be fewer appeals to the constitutional court, though presumably in the future the constitutional court of Azerbaijan will have to take considerable steps just in this direction.

As for the constitutional court of Armenia, the model of normative control used by the constitutional tribunal in this state, is not a real constitutional review, though the tendency approaching this legal system is noticeable – the definition of the constitutional review in the constitution of Armenia has evidently features characteristic for a real control mechanism (reference to exhaustion of legal remedies, fundamental human rights and other elements of the subsidiary principle). So presumably for the future there is a perspective of granting this power to the constitutional court of Armenia. Furthermore such a recommendation in relation to Armenia already exists from the Venice Commission.<sup>53</sup>

## 5. Conclusion

Analysis of experience of those countries, where the constitutional court has the right of checking up the conformity of general court decisions with the constitution, obviously shows that a procedure of submitting a constitutional complaint by an individual turns the constitutional court into an effective protector of fundamental rights.<sup>54</sup> Since a mechanism of an individual constitutional complaint is protecting the fundamental rights better and more effectively,<sup>55</sup> implementation of a mechanism of the real constitutional review will be able to contribute a valuable share in creating guarantees for protection of fundamental human rights and to assist the European Court of Human Rights in implementing long-term effective mechanisms for fundamental rights.<sup>56</sup>

From the countries of South Caucasus the republics of Turkey and Azerbaijan, after having considered international recommendations, already gave their own constitutional courts the authority of constitutional review of law courts decisions. Moreover, the constitutional review mechanism established in these countries is giving the opportunity of revising decisions made by the three spheres of

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<sup>52</sup> *Üstün B.*, Protection of Human Rights by the Turkish Constitutional Court, Short History of The Turkish Constitutional Court, see <[http://www.constcourt.md/public/files/file/conferinta\\_20ani/programul\\_conferintei/Burhan\\_Ustun.pdf](http://www.constcourt.md/public/files/file/conferinta_20ani/programul_conferintei/Burhan_Ustun.pdf)>.

<sup>53</sup> Annual Report of Activities 2011, European Commission For Democracy Through Law, Strasbourg, 2012, 39.

<sup>54</sup> Speech of *Mr. Dean Spielmann*, President of the European Court of Human Rights, conference – The best practices of individual complaint to the Constitutional Courts in Europe, Paris, Strasbourg, 2014, 2.

<sup>55</sup> CDL-AD (2004) 043 Opinion on the Proposal to Amend the Constitution of the Republic of Moldova (introduction of the individual complaint to the Constitutional Court) adopted by the Venice Commission at its 61<sup>st</sup> Plenary Session.

<sup>56</sup> *Paczolay P.*, Report Introduction to the Report of the Venice Commission on Individual Access to Constitutional Justice, Conference on Individual Access to Constitutional Justice, European Commission to Democracy Through Law (Venice Commission), Strasbourg, 2013, 2.

the governmental authorities. These courts are trying to share traditions of such European states, as Germany, Spain, Czechia and others. In the case of Armenia the constitutional court is confined by the authority of normative control, though a constitutional norm regulating this right is already experiencing a considerable influence from the institution of real control.

In the present article there was estimated the institution of constitutional review of law courts decisions in the states of South Caucasus, as one of the important legal means for protection of fundamental human rights, there were shown issues and peculiarities connected with its functioning and discussed perspectives of real control in these states.