

Constitutional Court of Georgia and *de facto* Real Control

*Constitutional Court of Georgia is an organ, that implements constitutional control. The status of Constitutional Court of Georgia, as negative legislator, is ensured by the Constitution, however, by the decisions of last period, Constitutional Court increased the borders of constitutional control and established new practice of constitutional control. Namely, by ascertaining constitutionality of normative contents of norm, Constitutional Court lay the foundation of using *de facto* real control in Georgia.*

The present article concerns judicial authority, made by the Constitutional Court of Georgia about the constitutionality of normative contents of norm. In my labour work, I took time to concentrate on status of Constitutional Court of Georgia, effectivity of the institute of individual constitutional complaint on the point of defending human rights in Georgia, essence constitutionality of normative contents of norm control and its influence on the Constitutional Court of Georgia, as a negative legislator's status. In this article, I discussed in detail the legal basis of constitutionality of normative contents of norm by the Constitutional Courts of Georgia and conformable rulings are provided because of the practice examples of the Constitutional Court of Georgia.

Key words: *Constitutional Court, constitutional control, Georgia, human rights, normative control, control of normative content of norm, *de facto* Real Control*

I. Introduction

In the reality of Georgian jurisprudence, quit often several thoughts was suggested, about the model of constitutional control of Georgia in the point of view of defending the human rights.¹ The fact that individual constitutional complaint is unimproved form of defending the human rights, was also noticed by the European Court,² However none of steps was taken in order to make the competence of Constitutional Court better. The *de facto* Real Control should fill the given gap for Constitutional Court; what is more, quite many thoughts was expressed about this issue,³ but up to this date, Constitutional Court is not equipped throw this effective mechanism of defending the human rights.

For the last period decisions, the Constitutional Court in the *intra vires* of Constitution, article 89 followed the different practice of constitutional control and started the ascertainment constitutionality of normative acts, this direction on the point of protecting the human rights, might be estimated as a

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¹ APOSTOL v. GEORGIA (2006), ECHR, art. 42.

² *Erkvania T.*, Normative Constitutional Complaint, as Imperfect Form of Concrete Constitutional Control in Georgia, 2014, see <<http://emc.org.ge/2014/10/27/tinat-in-erkvania/>>, [05.02.2017], (in Georgian).

³ Presentation of Public Defender of Georgia on increasing the authority of Constitutional Court of Georgia, Tbilisi, 2015, see <<https://goo.gl/7mSohU>>, [25.01.2017].

positive action. Through this way the disputed norm and its normative content⁴ was marked off from each other by the Constitutional Court, subsequently the new lead of the constitutional control was defined. Quite a lot of questions raised about this issue, for example, what is the legal nature of this constitutional authority? How this authority corresponds the mandate, defined by the Constitution of the Constitutional Courts? How it reflects on the Constitutional Court, as the negative legislator status? What was the reason of legal controversy number growth? The aim of this article will be the answering of these questions on the base of using researches analytical, comparative and normative methods.

II. Constitutional Court of Georgia, as the Negative Legislator

Constitutional Court is the creator of constitutional democracy.⁵ It is the state institution of higher category,⁶ constitutional control that is set by the Constitutional Court is the main supervisory lever of the public authority. “By using its authority, Constitutional Court plays the important role in the separation of powers, actualizing the principles of supremacy of the Constitution and defending the human rights”⁷.

Constitutional control influence on the legislative organ activity is very important to be designated. By the announcing unconstitutionality the norms, Constitutional Court enacts judicial standard, which predispose legislator for the legislative action. In certain countries, Constitutional Court has right to estimate the non-existence norms constitutionality and to make the legislative organ of showing the legislative will.⁸ Because of this functional connection with the legislative branch, Constitutional Court is reported as the negative legislator.⁹

Constitutional Court of Georgia is the organ of constitutional control,¹⁰ which has two main functions. One of them is the constitutional control of normative acts and other one is protecting the human rights. In the effective maintenance of these rights is shown the constitutional tribunal’s historical, political and legal nature, what is more their affective guarantee makes the Constitutional Court as the organ protecting the Constitution.

Besides the main competency, that is specified by the Constitution, article 89, in Georgia, the frame of constitutional control expands more and more and goes farther only from the frame of negative

⁴ *Gegenava D.*, Constitutional Court of Georgian, As Positive Legislator, report for the conference “Sergo Jorbenadze 90”, Tbilisi, 2017 (in Georgian).

⁵ *Shvartz H.*, The Struggle for Constitutional Justice in Post-Communist Europe, translation by *K. Aleqsidze*, Preface by *Patricia M. Vald*, editor *K. KublaSvili*, Tbilisi, 2003, 45 (in Georgian).

⁶ *Kakhiani G.*, Constitutional Control in Georgia – Analyzing Theory and Legislation, Tbilisi, 2011, 59 (in Georgian).

⁷ *Khetsuriani J.*, The Authority of Constitutional Court of Georgia, Tbilisi, 2016, 8-9, 54 (in Georgian).

⁸ *Shvartz H.*, The Struggle for Constitutional Justice in Post-Communist Europe, translation by *K. Aleqsidze*, Preface by *Patricia M. Vald*, editor *K. KublaSvili*, Tbilisi, 2003, 144 (in Georgian).

⁹ *Gegenava D.*, Constitutional Justice in Georgia: Main System Problems of Court Procedures, Tbilisi, 2012, 45 (in Georgian).

¹⁰ Constitution of Georgia, art. 83, paragraph 1.

legislation. Because the Constitutional Court does not have constitutional mandate of legislative work, it does not pass the law, however it helps improving the legislation,¹¹ and according to its own decisions, court creates solid legal material norms”.¹² Even more, during the constitutional control, by forming the compulsory principles Constitutional Court not only announces norms unconstitutionally, but also creates positive norms of law.

Besides the fact, that Constitutional Courts action creates hard and reliable guarantees to protect the human rights in country, it is also the risk for Constitutional Court, namely “if it is perceptive with the second legislative chamber, it will be the object of attack on the “political” motive, no matter if tribunal will make the decision only on the judicial motive”.¹³ That is why increasing the competence of Constitutional Court lies on its bound of independence and legitimation.

III. The Control of Normative Content of Norms

1. The main Features of Normative Contents Control

1.1 Essence and Meaning

The constitutional control on normative content of norm implies establishing the using of disputing norms, by the constitutional law. In the borders of this authority, Georgian Constitutional Court, by using the norms different definition states its normative nature and grammatical meaning, it takes into consideration using the norms in practice and states its suitability with the human rights that is defined by the Constitution. In the borders of this authority, not only text is checked, but also content of norms and the constitutional usage is checked by the public authority.

The aim of the control of normative content by the public authority is a prevention the use norm of unconstitutional meaning. In other words, the Constitutional Court, by its own decision excludes the norms definition to such way, that violates and in future humiliates human rights and in future might be in contravention with the normative norms essence. At the same time, the result of the given acts is to forbid the use of unconstitutional norms and not declare the questionable norm as invalid. In case of complying the complaint, (Preliminary request) the norms legislative formulation retains its legal force, with agreement that it will not be used by the Constitutional Courts to its unconstitutionally defined content.

According to the Constitution of Georgia, article 89, first paragraph, “v” sub point, the Constitutional Courts primary dependence was equally formalized. During the realization of its competence, the Constitutional Court was directing throw the constitutional mandates formal and textual meaning and

¹¹ *Kverenchkhiladze G.*, Legal Protection of Constitution (General Theoretical Issues), “Human and Constitution”, №3, 2006, 41 (in Georgian).

¹² *Gegenava D.*, Constitutional Justice in Georgia: Main System Problems of Court Procedures, Tbilisi, 2012, 49 (in Georgian).

¹³ *Shvartz H.*, The Struggle for Constitutional Justice in Post-Communist Europe, translation by *K. Aleqsidze*, Preface by *Patricia M.*, Vald, editor *K. KublaSvili*, Tbilisi, 2003, 63 (in Georgian).

was strictly defending its literal borders. For example, 23rd of July in 2004 the court by its ruling declined the control of normative content of norm and did not get the complaint in charge. This was substantiated that the Constitutional Court could not discuss about the norms incorrect usage, because courts function was only discussing cases on a constitutionality of normative acts.¹⁴ According to this consideration courts should be discussed by the legislative organ, which should have defined the norms content and eradicated the existed legislative gap.

The control of normative content of norm gains special meaning for the effectively maintaining the delay-balancing constitutional principle. By the defining the normative content of constitutionality, the Constitutional Court controls not only the statutes constitutionality, but also gives the legislator the distinct hint to define the legislative norms content and exclude the norms unconstitutional interpretation, that might be caused, by the norms dim formulation: “Because the legislator is limited by the Constitution, impliedly legislator is also limited by the decision of Constitutional Court”.¹⁵

At the same time, the constitutional control addressee is the court authority, which is obliged to defend human rights constitutional standard. By using the normative content, Constitutional Court is getting similar to a federal constitutional court, which controls the decisions constitutionality that is received by the courts authority. However, the Constitutional Court has lack of possibility to estimate the constitutionality of decisions, made by the ordinary courts. By taking into consideration these circumstances, meaning the control of normative content and the role of defending the human rights is growing.

1.2 The Norms Defining Borders

The Constitutional Court while defining the normative content of norm, is free in making arguments and discussion, however binding force for court has only the constitutional norms and terms.¹⁶ Constitutional Court should check not only the norms formal conformity with the constitutional exigency, but also should ascertain how the debated norm will ensure the essence of constitutional rights.¹⁷ “While the normative acts verification, Constitutional Court takes into consideration the debated norms not only literal meaning, but also actual thought and the practice usage, also the essence of appropriate norm of the Constitution.”¹⁸

Constitutional Court is limited by the confines of actional request, according to this the Constitutional Court, while ascertaining the normative contents, does not defines the uniform method, but excludes laws unconstitutional definition. In one of its decision, Constitutional Court remarked that the aim of debated unconstitutionality of norm was not the prohibition of 9-month pre imprisonment usage,

¹⁴ *Zoidze B.*, Constitutional Control and Valuations Order in Georgia, Tbilisi, 2007, 64 (in Georgian).

¹⁵ *Zoidze B.*, Constitutional Control and Valuations Order in Georgia, Tbilisi, 2007, 63 (in Georgian).

¹⁶ Decision of Georgian Constitutional Court, Case of a “Georgian citizens – *kemoklidze I., kharadze D.*, v. The Parliament of Georgia”, 8th October, 2014, №2/4/532,533, II-63.

¹⁷ See Decision of Georgian Constitutional Court, Case of a “Georgian citizen – *Ugulava G.*, v. The Parliament of Georgia”, 15th September, 2015, №3/2/646, II-2, II-34, II-35.

¹⁸ The Law of Georgia on Constitutional Legal Proceedings, art. 26, paragraph 3.

but it considered impermissibly the manipulation of procedural date, in a result it would come against to the right protected by the constitutions conformable article.¹⁹

As the result of ascertainment constitutionality of normative content of norm, Constitutional Court might define the concrete cases, when debated norms definition will not be considered irrelevant with the constitutional norm. For example, “besides the norms normative contents unconstitutionality, which is defined by the code of criminal process, Constitutional Court did not exclude and considered constitutional - possibility of using 9 month, in case if the motive on crime, that is committed before the imprisonment, will be known for Commonwealth counsel only after the estimation of pre-imprisonment case.”²⁰

Relating to norms definition and power of constitutional frames, the Constitutional Court’s 2012 ruling is symptomatic.²¹ Constitutional Court actually denied of increasing its authority in the frame of constitutional mandate, when decided to stay in severe constitutional frames and did not discuss the constitutionality of constitutional change.

Because the decision of the Constitutional Court has immobilizing force for government authorities, Constitutional Court is plenipotentiary to expend the norms content and enact the legislator’s authority borders on the debated action. On the case “Citizen Beka Tsikarishvili v. the Parliament of Georgia”, Constitutional Court not only reversal the sanction – suppression of freedom from seven to twelve years, for the using of 70 gramme narcotic means, but also reversal using the suppression of freedom in general for the given action.

1.3 Legal Results

The control of normative content of norm purports norms definition and its using practice accordance with the constitutional norm by the court. Differently to the process of ascertainment constitutionality of norms, ascertainment unconstitutionality normative content of norm, does not make laws concrete norm void, in this case unconstitutionally is declared the norms concrete content interpretation by the government authority organ. According to this decision, Constitutional Court excludes norms definition and its usage with constitutional norms irrelevant practice.

On the result of defining constitutionality of normative content of norm, decision made by the constitutional court is binding while the norm using process. “Constitutional Court descants on a concrete issues normative content and makes decision about the problems normative contents conformity with the Constitution that is conditioned by the contesting regulation.”²² In case of using the norm, which is known as unconstitutional the decision of Constitutional Court works directly and has straight judicial force, also it excludes unconstitutionally known normative norms content of using ability.

¹⁹ Decision of Georgian Constitutional Court, Case of a “Georgian citizen –*Ugulava G.*, v. The Parliament of Georgia”, 15th September, 2015, №3/2/646, II-2, II-34, II-35.

²⁰ See the same case, II-2, II-34, II-34.

²¹ See Decision of Georgian Constitutional Court, Case of a “Georgian citizen *Ashordia G.*, v. The Parliament of Georgia”, 24th October, 2012, №1/3/523.

²² Decision of Georgian Constitutional Court, Case of a “Georgian citizen *Mamagulashvili T.*, v. The Parliament of Georgia”, 11th July, 2013, №1/3/534, II-34.

Constitutional Court of Georgia, while establishing constitutionality of normative content of norm, did not take into Consideration Courts several action and pointed on the previous excepted decision. The statute of Constitutional Court defines designated competence. According to this statute if the Constitutional Court finds out, that debated normative act or its part has the same norms that court already notified as unconstitutional, the court deduces ruling of denying the case discussion in essence and about the making normative content of norm void.²³

However, two case should be marked off from each other:

a) If the problem that is raised in in preliminary request has the same content to the already discussed issue, but also extra circumstances should be estimated, Constitutional Court in this case discuss these issues. If new actual circumstance does not influence on a old decision of Constitutional Court, the court will not take suit in charge, but the court will announce the normative content as unconstitutional on the direction of an old decision.²⁴

Constitutional Court in 2017 got back to freedom suppressing constitutionality for marihuana acquisition and preservation. This time district court of Bolnisi was demanding ascertaining the constitutionality of norm.²⁵ The difference between the case actual conditions appeared only in one detail. This time preliminary request was about the damp marihuana acquisition/preservation. Constitutional Court guided 2015th of 24 Octobers decision and noticed unconstitutional article 260 from the criminal code, namely it noticed unconstitutional the normative content that involved freedom prohibition sanction for the given action.

b) If Constitutional Court already has the previous decision on the contesting norm, in this case court does not discuss the case actual circumstances and by the direction of an old decision decline of taking case in essence.²⁶

2. The Authority of Ascertainment Normative Content of Norm

2.1 Legal Basis

Constitution of Georgia equips Constitutional Court of Georgia with a very important authority. Normative, abstract and concrete constitutional control powers create the main basis for the Constitutional Court of Georgia. Constitutional control of normative content is contained in this area of authority, which accomplish not differently defined legal basis, but a legal basis of salutation is Constitution's 89 article, first paragraph, "v" sub point. Submitted actions indirect legal basis also creates

²³ The Organic Law of Georgia on Constitutional Court, art. 25, paragraph 41.

²⁴ Decision of Georgian Constitutional Court, Case of a "Constitutional preliminary request of Bolnisi district court on constitutionality of normative content of article 260, Georgian Criminal Code, which foresee the punishment for purchasing and conserving the "damp marihuana" for a private use", 15th February, 2017, №3/1/855.

²⁵ See the same case.

²⁶ Decision of Georgian Constitutional Court, Case of a "Constitutional preliminary request of Supreme Court of Georgia on constitutionality of normative content of Georgian Criminal Procedure Code 20th February, 1998, article 546 and article 518", 24th December, 2014, №3/3/601, II-27.

Organic Law of Georgia on Constitutional Court, article 19, first paragraph “e” sub point, in case of constitutional preliminary request, works article 19, second paragraph from the same statute.

While controlling the normative content, it is important to pay attention to The Law of Georgia on Constitutional Legal Proceedings, namely paragraph 26, third point. According to this paragraph, “Constitutional Court, while controlling the normative act, takes into consideration not only debated norms literal meaning, but also the actual thought and its practice of usage, also constitutional norm conformable essence.”²⁷

During the implementation of constitutional control, constitutional preliminary request is the main power of Ordinary Courts, while controlling the concrete norms *intra vires*,²⁸ common courts have ability to inhibit consideration of concrete case and address to Constitutional Court about controlling the constitutionality of norms. On the base of these norms, court should make decision on a concrete case, if they believe that the given norm entirely or partially might be considered irrelevant with Constitution.²⁹

The court that brings in constitutional preliminary request is obliged to indicate constitutional regulation that might be irrelevant or might violate normative act.³⁰ Against to this, according to a practice of Constitutional Court, constitutional preliminary request will not be submitted in ruling.³¹ Besides this agreement, Constitutional Court made different ruling on one of the case.³² Besides the fact, that Constitutional Court considered in preliminary request mentioned constitutional norm as inappropriate, the court anyway submitted it in ruling and checked its constitutionality with the conformable Constitution norm. This kind of approach was substantiated by the court in occasion of impediment the consideration of Constitution preliminary request, as the existence of using the unconstitutional norm by the common courts.

2.2 The Practice of the Constitutional Court

The first decision about the constitutionality of normative content of contesting acts, Constitutional Court made in 2011,³³ on the given case, Constitutional Court did not doubt the obligation of discharging the military reserves services. Constitutional Court considered unconstitutional statutes normative content, which ascertained any citizen’s obligation on military reserves work and did not foresee the right of use the conscientious resistance. According to the given resolution, Constitutional Court made

²⁷ The Law of Georgia on Constitutional Legal Proceedings, art. 26, paragraph 3.

²⁸ *Khetsuriani J.*, The Authority of Constitutional Court of Georgia, Tbilisi, 2016, 54 (in Georgian).

²⁹ The Organic Law of Georgia on Constitutional Court, art. 19, paragraph 2.

³⁰ The Law of Georgia on Constitutional Legal Proceedings, art. 16, paragraph 5.

³¹ See Decision of Georgian Constitutional Court, Case of a “Constitutional preliminary request of khashuri district court” 22th September, 1999, №1/6/115.

³² Decision of Georgian Constitutional Court, Case of a “Constitutional preliminary request of Supreme Court of Georgia on constitutionality of normative content of Georgian Criminal Procedure Code article 306, article 297”, 29th September, 2015, №3/1/608,609.

³³ Decision of Georgian Constitutional Court, Case of a “ Public Defender of Georgia v. The Parliament of Georgia”, 22th December, 2011, №1/1/477.

the exception from the absolute obligations, defined by the law and underlined norms practical interpretation problem.

According to a decision of Constitutional Court, it is possible for norm to not only lose concrete normative content, but also ascertain new norm-principle and also it should diffused on inculpatory, concrete act, which is widespread in code of criminal process. In 2015, Constitutional Court considered one of the most important case “Georgian citizen Beka Tsikarishvili v. the Parliament of Georgia”³⁴. In this case, the problem for plaintiff was not narcotic medicines in general, but suppression of freedom for 7 to 14 years for the sapped marihuana’s purchase/preservation (and not for any action that is prohibited by a debated paragraph).³⁵ On the given case, Constitutional Court not only declined 70 gramme narcotic means – sapped marihuana’s for purpose of private use, defined sanction form 7 to 14 years freedom suppression on purchasing and preservation the marihuana, but in general the court considered unconstitutional to use freedom suppression punishment for the given action.

The ascertainment constitutionality of normative content of norm should not be estimated as authorities, or some of its branches opposite action, by the Constitutional Court. Constitutional Court considered Georgian statute of “military commitment and military service”, paragraph 11, first point, first sentence, conformable with Constitution of Georgia, paragraph 14. Georgian Law of “military commitment and military service”, paragraph 11, first point, first sentence, imposed men, who did not have any military registration speciality, on a military registration in such circumstances, when women, who did not have any military registration speciality, were free from a military work.³⁶ On the given case, Constitutional Court considered country’s defense and discharging the military commitment as one of the form of constitutional obligation and selecting the discharging of this obligations form as the countries discretion.³⁷

Constitutional Court of Georgia ascertains constitutionality of normative content of norm, not only the bases of citizen, but also on a base of preliminary request of Ordinary Courts. Constitutional Court of Georgia in 2014-2016 considered several constitutional preliminary request, in which the court specially remarked specific disposition of a constitutional preliminary request, because constitutional preliminary request is connected with complex problems that exist in court practice because considering the constitutional preliminary request, it is connected with the indisputable ruling regulation.

While ascertaining constitutionality a normative contents of norms, Constitutional Court might go far from norms texts and might ascertain a new regulation. The court also might go far from normative statutes, literal meaning. Constitutional Court relative to first paragraph of Constitution, article 42,

³⁴ Decision of Georgian Constitutional Court, Case of a “Georgian citizen Giorgi Beka Tsikarishvili v. The Parliament of Georgia”, 24th October, 2015, №1/4/592.

³⁵ Decision of Georgian Constitutional Court, Case of a “Constitutional preliminary request of Supreme Court of Georgia on constitutionality of normative content of Georgian Criminal Code article 260, article 297”, 26th February, 2016, №3/1/708,709,710.

³⁶ Decision of Georgian Constitutional Court, Case of a “Georgian citizen Giorgi Kekenadze v. The Parliament of Georgia”, 30th September, 2016, №1/7/580.

³⁷ See the same case, II-29.

considered unconstitutional Georgian supreme courts N601 constitutional preliminary request, namely given debated norms normative content, which neglected the possibility for justified person to appeal via appellate order. According to a debated norm, state accuser, higher procurator, victim, sentenced, defender and victims legal representative had right to appellate the complaint in court. According to a court decision, it is possible that the persons, who were justified, had the interest of appealing the justified sentence.³⁸

According to this decision, Constitutional Court used higher constitutional standard. Court used norm teleological definition method and spread norms protected legal welfare on those officials, who were not considered in norms literal meaning of this welfare-protecting object. The court go farther from negative legislators constitutional frames, created the positive legal norm and changed to a positive legislator.³⁹

The same contents decision was made by Constitutional Court in 2005, when for the aim of protecting more legal welfare, it notified unconstitutional normative content of article 306, paragraph four from the code of criminal process. This article was depriving the reviewing court possibility of going farther from borders of appeal complaint and liberate from responsibility the person, when the statute that was derived after the commitment of some legal action abolished acts criminality.⁴⁰

IV. Real Control: Between *de facto* and Formal

According to a Constitution, article 89, each person, who think that, their human rights, that is secured by Constitution, was abolished, has right to file a complaint in Constitutional Court about the ascertainment constitutionality of norm.⁴¹ This possibility creates the main guarantee of protecting the human rights in Georgia, however the act of its area confine oneself to constitutionality of normative acts. It does not effect on decisions of ordinary courts, that comparative to normative acts might no less abolish someone's constitutional rights. According to this, normative control has formal character on someone's human rights. For considering the protecting of effectuality of human rights, the Court not only has to protect the rights guaranteed by Constitution in indirect way, but also provide straight and fast satisfaction for statement of claims.⁴²

³⁸ Georgia on constitutionality of normative content of Georgian Criminal Procedure Code 20th February, 1998, article 546 and article 518”, 24th December, 2014, №3/3/601, II-27.

³⁹ *Gegenava D.*, Constitutional Court of Georgian, As Positive Legislator, report for The conference “Sergo Jorbenadze 90”, Tbilisi, 2017 (in Georgian).

⁴⁰ Decision of Georgian Constitutional Court, Case of a “Constitutional preliminary request of Supreme Court of Georgia on constitutionality of normative content of Georgian Criminal Procedure Code article 306, article 297”, 29th September, 2015, №3/1/608,609.

⁴¹ Constitution of Georgia, art. 89, 1st par., “v” sub point.

⁴² Compere *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).

On the base of ascertainment the constitutionality of normative content of norm, Constitutional Court of Georgia created important institute to protect the human rights. However, this authority appertains to a courts subsidiary competency. This competence is empowered not by a legislator, but by a Constitutional Court, to its own decision. Accordingly, separate specified legal base ascertainment of this authority does not exist in legal system of Georgia.

Expanding the authority by the Constitutional Court, in the circumstances, when in early practice Constitutional Court on the one hand was against of its authority expansion⁴³ and on the other hand, abstained from consideration of constitutionality of normative content of norm⁴⁴, might be estimated as a “normative starvation” of Constitutional Courts competent arsenal.⁴⁵ What is about last practice of Constitutional Court, it might be estimated as attempt of eradication by this normative lacuna. although, it doesn't mean that increasing the new practice of the Constitutional Court is correct and without defect.

Constitutional Court of Georgia, which is connected to European model of constitutional tribunal, shows many similarities to a German Federal Constitutional Court.⁴⁶ I consider that in case of conformable legislative decision and implementation of institutional measure, by empowering the real control, Georgian Constitutional Court might not need to define its authority borders and become a strong guarantee in protecting the human rights.

V. Conclusion

Constitutional Court to its last period practice, without creating additional legislative basis could increase its authority, transformation of own competence and formed as overseer of *de facto* real control organ. Constitutional Court via the right of estimation the constitutionality normative content of norm lay the foundation to a new way of constitutional control. Intra vires to the all cases considered in this authority, Constitutional Court not only made unconstitutional norms void, but also go farther from negative legislator's authority borders and re-acquired a new positive legislator's function, by creating new norms.⁴⁷

By increasing the borders of Constitutional Court authority, it shows that comparing to existed model, much more powerful constitutional control is needed. Without proper legislative changes, the control of constitutionality of normative content of norm is an important instrument to protect the human

⁴³ Decision of Georgian Constitutional Court, Case of a “Georgian citizen *Ashordia G.*, v. The Parliament of Georgia”, 24th October, 2012, № 1/3/523.

⁴⁴ *Zoidze B.*, Constitutional Control and Valuations Order in Georgia, Tbilisi, 2007, 64 (in Georgian).

⁴⁵ About the term see *Gegenava A.*, *Gegenava D.*, Citizen of Denmark Heik Qronvist v. Parliament of Georgia and Normative Starvation of Legislation, Article in anniversary collection “Besarion Zoidze 60”, 173, 2016 (in Georgian).

⁴⁶ *Papier H.I.*, Individual Complaint in Federal Constitutional Court, “Human and Constitution”, Tbilisi, 2003, №2, 16 (in Georgian).

⁴⁷ *Gegenava D.*, Constitutional Court of Georgian, As Positive Legislator, report for The conference “Sergo Jorbenadze 90”, Tbilisi, 2017 (in Georgian).

rights, however I consider it is important to institutionalize the de facto real constitutional control and to award the Constitutional Court the right of real control on the legislative level. This step will create much more improved guarantee for protecting the human rights by the Constitutional Court.

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