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Kakhi Samkharadze*

Consideration of Competence Disputes in the Constitutional Court, as the Principal Constitutional Mechanism for the Realization of Power Division Principle

"Think of the word 'constitution — *it doesn't* mean *a 'bill of rights', it* means *structure*" — *Antonin Gregory Scalia*

The idea of the Constitutional Court is essentially linked to the constitutional control of the state authorities power. In the Constitutional judicial history, one of the most important precedents (Marbury vs. Madison) happened in the United States Constitutional Justice and it was particularly about the crisis of power division between state authorities. Therefore, at the modern development stage of the constitutionalism, it is important to evaluate the role and significance of the Constitutional Court's competence regarding the competent disputes. It is also necessary to evaluate the European experience in this direction and those important and interesting consequences for the constitutional control and constitutional justice within such competence. Consequently, within the framework of this key instrument of constitutional control, we should talk about the primacy of the law, within that the idea of constitutionalism should be developed. This issue has a doctrinal importance and at the same time has a special significance for the development of Georgian constitutionalism.

Key words: *Constitutional Court, principle of power separation, competent disputes, constitutional justice.*

1. Introduction

"It is universally recognized that the division of governmental power is one of the fundamental principles of the successful functioning of the state governmental organization and the Constitutional order. This provision, which has been repeatedly confirmed by the doctrine or practice, in the 16th Article of the "Declaration of the Rights of the Man and of the Citizen of 1789 (French: *Déclaration des droits de l'homme et du citoyen de 1789*)," was reflected: "The state, where is no division of the governmental power, has no constitution.[1]

History of Georgian Constitutionalism includes the number of different models of the state governance. Still under the Constitution of 1921, in the governance model, the division of governmental power was established in an interesting way. The main feature of this constitution is pointed out to be that, the basic law did not envisage the governance of the head of state and because of such peculiarities, it is called the "naive" constitution.[2] Law of November 6, 1992, so called "the small constitution" non-

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1 *Kverenchkhiladze G.*, Constitutional Status of the Government of Georgia (Comment on Article 78 of the Constitution), Contemporary Constitutional Law, *Kverenchkhiladze G., Gegenava D.* (eds.), Book I, Tbilisi, 2012, 8-9 (in Georgian).

2 *Papuashvili G.,* 1921 Constitution of the Democratic Republic of Georgia (from the perspective of 90 years), 2nd ed., Batumi, 2013, 24 (in Georgian).

ordinary regulated by the organization of the governmental bodies, for e.x. Under Article 17 of this Law, the person elected as the Chairman of the Parliament also had the status of the Head of State.[3]

According to the new Constitution, adopted on 24 August 1995, was created a new model of governance that formed a type of presidential governance system. This Constitution provided the basis for the idea of constitutional justice in Georgia, in particular, for the Constitutional Court.[4] By the constitutional reform of February 6, 2004, was formed the semi-presidential model of the mixed governance, to be more specific, the semi-presidential system of the presidential-parliamentary subtype.[5,6] Particularly, interesting is the constitutional law enacted on 15 October, 2010 and adopted on 17 November 2013 as a result of the constitutional reform of 2009-2010. According to which the responsibilities of the executive governmental authorities are separated from of the head of state and it is clearly defined, that the executive government is the Government of Georgia. Under this amendment of the basic law, classification of the state governance model was determined as the Prime Minister-Presidential subtype of the Semi-Presidential model. Mainly as a rule, in the such forms of governance arise constitutional conflicts and collisions.[7] It could be noted that, the Prime-Minister-Presidential model is more sensitive to constitutional conflicts, than-a Presidential-Parliamentary model.[8] In the frames of the principle of power separation, the parliamentary governance model, that will be established in Georgia within the framework of the 2017-2018 constitutional reform, is especially sensitive to the constitutional conflicts.[9]

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3 *Kverenchkhiladze G.*, Constitutional Status of the Government of Georgia (Comment on Article 78 of the Constitution), Contemporary Constitutional Law, *Kverenchkhiladze G., Gegenava D.* (eds.), Book I, Tbilisi, 2012, 19 (in Georgian).

4 The history of the constitutional justice is very important and is directly related to the development of constitutionalism and the idea of securing division of power. In the United States, in 1803, in the case of Marbury v. Madison, 5 U.S. 137 (1803), Judge *John Marshall* by his decision established one of the most important constitutional precedent, which is the subject of interest even today. The 1920s, *Kelsen*'s European Reception became the basis for the idea of the Constitutional Court. The Constitutional Court of Georgia was established on the base of the Constitution adopted on 24 August 1995.

5 The second wave of democratization in Europe has led to the types of regimes that do not belong to either parliamentary or presidential systems. The term 'semi-presidentialism' was first used by the French journalist and editor of the newspaper 'Le Monde' – *Hubert Beuve-Méry* in 1959, and in the case of academic spheres, the term in this case was used by *Maurice Duverger* "About of the Political Institutions and Constitutional Law" of 11th edition, *Elgie R.,* The Politics of Semi-Presidentialism, 1999, <http://www.researchgate.net/publication/265101267_The_Politics_of_Semi-Presidentialism>, [20.11.2018]. A mixed model of governance originated in the French constitution by combining European and American consensus systems and a hybrid of these two systems. *McQuire K. A.,* President – Prime Minister Relations, Party System, and Democratic Stability in Semiprezidental Regimes, Comparing the French and Russian Models, Texas International Law Journal, Vol. 47(2), 2012, 429.

6 *Alasania G.,* The Scope of the Executive Government of the President of Georgia with the Constitution of Georgia, Seminar Paper, Tbilisi, 2008, 23 (in Georgian).

7 *Protsyk O.,* Intra-Executive Competition between President and Prime Minister: Patterns of Institutional Conflict and Cooperation under Semi-prezidentalism, Politik Studies, Vol. 54, 2006, 222.

8 *Sedelius T., Mashtaler O.,* Two Decades of Semi-presidentialism: Issues of Intra-executive Conflict in Central and Eastern Europe 1991-2011, East European Politics, № 29:2, 2013, 115.

9 On 24th August, 1995 the Constitution compiles three major constitutional reforms: 1) of 6 February 2004; 2) of October 15, 2010 (adopted on 17 November 2013), and 3) the constitutional reform of 13 October

I can say, that despite of those changes, the realization of the power separation principle cannot be perfectly implemented without the substantial and practical involvement of the Constitutional Court. I believe that the confirmation for this is the fact that in finding for a political censuses and the number of reforms, the consensus about the optimal model of the power division has not yet reached and it is therefore important that this process be conducted through a much more impartial constitutional jurisdiction.

It is important to judge the idea of the primacy of law, on the base of the legal state principle in the context of the political-competent dispute. Consequently, all the competent or governmental collisions should be resolved within the constitutional jurisdiction, in order to ensure that these conflicts are systematically resolved, through the real constitutional mechanism of the principle of powers' separation. Since all competencies must serve the purpose and objectives, that are defined for each branch of the government, in accordance with their main state functions.

The principle of "judicial review" implies the idea of constitutional justice, which was introduced in 1803, in the case of Marbury vs. Madison.

According to the above mentioned, it can be clearly stated that as well in the frame of the acting, also within the future Constitution, the issue of constitutional conflicts among the state authorities is particularly relevant, because the basic law does not rigidly separate the competences and constitutional functions between state authorities.

In this situation, It can be said that the most important constitutional mechanism to eradicate such constitutional collisions is the constitutional court, as the main body to review the competent dispute between the highest authorities.

Therefore, it is important to be considered the contents of constitutional competences and practice in Georgia and Europe.

The purpose of the work is, on the base of the analysis of the Competent Dispute Conceptual Issues of regulatory provisions, to determine the necessity and inevitability of establishing a wide range of disputes in the Constitutional Court, also to evaluate the systematic resolution concepts of such constitutional conflicts and to present opportunities for implementation of them within the borders of justice idea.

For the research were used prescriptive, analytical, comparative, historical, legal, practical methods of analysis, as well as the meta-legal and interdisciplinary methods. As far as the discussion is around the political sector of the constitutional justice, also was used a historical-socio-political analysis.

2. Constitutional Justice as a Guarantee of Division of the Power

The well-known lawyer *Steinberg* correctly pointed out that, "It is an important circumstance when the constitutional reforms are implemented for the first time in the history of the state, constitutional justice is created, especially, when the former legal practice of that state did not deserve any trust."[10] The Constitutional Court may have a significant impact on resolving competent disputes over

2017 and 28 March 2018, which will enter into force, after 2018 presidential election. These reforms have transformed the model of governance and replaced the semi-presidential model with a dual executive governance system, in the form of semi-presidential and semi-parliamentary models, and it means the future transition to a classic parliamentary system.

10 *Bezhuashvili G.,* The Role of Modern International Law in Implementation of Georgia's Foreign Policy, Georgia and International Law, *Korkelia K., Sesiashvili I.* (eds.), Tbilisi, 2001, 27 (in Georgian).

foreign and domestic political activities. This issue is principally related to the sense of common sovereignty, which is assigned to all the governmental branches, including the Constitutional Court.[11] And therefore the court with its jurisdiction ensures the distribution of power by the principle of unity of government. "A big policy was, it is and will remain a problem of the Federal Constitutional Court of Germany. From the day of its' establishment, the Constitutional Court of Germany has to deal with this issue, since honest people have to make fair decisions on the merge of the politics and justice." [12]

About the Constitutional Court of Georgia, at first we have to noted that, according to Article 82 (paragraph 1) of the Constitution of Georgia[13], judicial power is executed according to the constitutional control, justice and other forms determined by law, but in accordance with article 83, paragraph 1, The Constitutional Court of Georgia is a judicial body of constitutional control" The same constitutional provision is read by Article 59 (2) of the Constitution, which constitutes constitutional control and at the same time constitutional justice.[14] Thus "Specialized judicial body" acts in Georgia, which carries out constitutional control and at the same time constitutional justice. I believe that this term may have a broad definition, than just being determined as a constitutional control, because the majority of scientists implies the examination of the constitutionality of the laws and normative acts (*M. Nudiel*, *T. Nasirova*, *G. Kakhiani*). There are also different opinions that do not only refer to the constitutional control as the concept of the legal acts, but also to examine the actions (*L. Lazarev*), but *A. Blancenagel* points out that, the constitutional control is the activity directed towards division of governmental power and resolving constitutional conflicts.[15] The most important function of the constitutional control organs is to consider competent disputes that are directly related to the principle of power separation.[16] The purpose of the constitutional justice is substantially the same as the constitutional control has, but somewhat different are the form of means for achieving the goal. It can be said that in the view of the guarantee of the Constitution's protection, it is far more effective than constitutional justice, because in this case the advantage is given to its purpose and not the formal circumstances.[17]

The Constitutional Court may be the only constitutional subject that can solve conflicts among the competent state organs. "*Carl Schmidt* believes that, because in the constitutional disputes there is more

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11 *Bezhuashvili G.,* Constitutional Legal Basis of the Foreign Policy of Georgia, Journal "Man and Constitution", № 3, Tbilisi, 2001, 57 (in Georgian).

12 *Getsadze G.,* Constitutional Justice and Politics?! (On the example of the Federal Republic of Germany), "Georgian Law Review", 1st 2nd Quarter, Tbilisi, 1999, 74 (in Georgian); comp. *Wesel U.*, Die Zweite Kreise, Zeit № 40, September, 1995.

13 The amendment to the Constitution of Georgia of October 13, 2017 and March 23, 2018, which is valid until 2018, when the newly elected president is elected in the presidential election. Constitution of Georgia, Departments of the Parliament of Georgia, 31-33, 24/08/1995.

14 Amendments to the Constitution of Georgia on 23 April 2017 and 2018 on the new edition after the newly elected president's election in 2018 presidential election. Constitution of Georgia, Departments of the Parliament of Georgia, 31-33, 24/08/1995.

15 *Kakhiani G.,* Institute of Constitutional Control and its Problems in Georgia: Analysis of Law and Practice, Tbilisi, 2008, 24 (in Georgian).

16 Ibid, 20.

17 We mean, for example, the categories of issues where the constitutional jurisdiction is not necessary to dispute a specific legal act, but from all forms, including constitutional traditions, habits, or/and any other action which may Constitutional subject.

politics, than the law, the supreme patron of the constitution cannot be the Supreme Court, but rather than the President of the Reich"[18], but for a long ago this view has been rejected, but the president still maintains the function of the constitutional guarantor. At the same time, the task of the President is to solve the problem, which constitutes constitutional conflicts between the state authorities and it should be implemented through the application to the Constitutional Court.[19] "In the post-soviet countries, the constitutional courts have the mandate to take part in political relations between the branches of government".[20] According to *Schwartz*, there should be a neutral institution in the system of power division, which will solve constitutional conflicts related to the power division.[21]

As far as the Constitutional Court examines disputes between the political-constitutional authorities,[22] and the political disputes are judged in accordance with the law, it is possible to say, that the law is the only "tool" for the Constitutional Court. However, when the constitutional authorities argue about their competences-the legal dispute is inevitably transferred into the political dimension.[23] According to *Jörn Ipsen*: "Justice is the aim, outcome, frame, and scale of the policy"."[24] By *Theodore Munts*: "the constitutional dispute is a dispute between law theorists and politicians".[25]

According to Article 89 (paragraph 2) of the Constitution of Georgia, it is established that, "the decision of the Constitutional Court is final. The normative act totally or a part of it is null and void, after the decision of the Constitutional Court is published." Essentially identical text is copied, the new Constitution, in particular in the new edition of the Constitution of Article 60 paragraph 5, however, the new edition of some favorites have been included in the contents of the regulations, according to which the normative act or its part loses force upon the moment of publication of the constitutional court decision, if the decision does not establish an act or part of the power loss of the other later date. So, in the end I can say that in the Constitutional Law the Constitutional Court's decision is the sole and final authority, and has the power to be mandatory for everyone. Regarding this issue, could be said, the primacy of the law in constitutionalism, which, in turn, is a constant guarantee of the power division and the unconditional recognition of other ideas and values of the constitution.

Of note is the fact that the status of the Constitutional Court would be suspicious, because of its ability to influence a policy. In this topic may be considered the case of the constitutional changes operated by the legal political subjects, and moreover, when these constitutional authorities have the possibility to act on The Constitutional Court.

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18 *Getsadze G.,* Constitutional Justice and Politics?! (On the example of the Federal Republic of Germany), "Georgian Law Review", 1st 2nd Quarter, Tbilisi, 1999, 75 (in Georgian).

19 *Nakashidze M.,* Peculiarities of Presidential Relations with Government Departments in Semi-Presidential Systems of Management, Tbilisi, 2010, 210 (in Georgian).

20 Ibid, 217

21 Ibid, 218

22 Political-constitutional organs are meant by the authorities of the authorities directly related to the implementation of the state policy based on their constitutional status.

23 *Getsadze G.,* Constitutional Justice and Politics?! (On the example of the Federal Republic of Germany), "Georgian Law Review", 1st 2nd Quarter, Tbilisi, 1999, 81 (in Georgian).

24 Ibid, 81, comp. *Ipsen J.*, Statrecht, München, 1996, 245.

25 *Getsadze G.,* Constitutional Justice and Politics?! (On the example of the Federal Republic of Germany), "Georgian Law Review", 1st 2nd Quarter, Tbilisi, 1999, 82 (in Georgian).

The constitutional justice openly confronted with the 'cardinal issues' of the policy gave the reverse results. For e.g., in the 50s of the twentieth century, the Supreme Court of South Africa recognized the discriminatory law as unconstitutional. In response, its power was restricted by constitutional amendments. Moreover, in 1993, the Chairman of the Russian Constitutional Court was dismissed from the position, after he interfered with the parliament and the president's dispute.[26] Despite of a such problematic experience in the Constitutionalism history, in Georgia there are sufficient safeguards in place to protect the court at the institutional level. This has been proved by the Constitutional Court practice, according to which the court may amulet the law, which determines its competences by other governmental bodies. Also, the adoption of the new amendment of Constitutional law against its will, is protected by a high quorum, but there is space for improvement and possibility of higher standard introduction.[27] Also, the judicial independence at the institutional level is ensured, as the independence of all judges is protected individually and there are substantial guarantees regarding carry out their powers.

Another issue that confirms the importance of judicial decision-making in constitutional conflicts is that the Constitution becomes politicized by entering "state objectives" into it. At the expense of this, political issues can be resolved not only by the interaction of the government forces but in exchange for it, to give the constitutional dimension, by which creates the possibility to find in the legal framework more balanced solutions for the political processes. But it is a very dangerous game because it is not easy to put legal forms into concrete situations."[28] Therefore, it is important that the Constitutional Court participates in the forming process of the state objectives correctly on the basis of general constitutional principles. That ultimately leads to less politicization of the text of the Constitution, which in itself is unconditionally important for the development of a legal state.

3. The Essence and Basis of the Competent Dispute

At the same time the purpose and essence of the Competent Dispute is the Article 5 (paragraph 4) of the Constitution (in accordance with the Constitutional Reform of 2017-2018, the paragraph 3 of Article 4 of the Constitution of Georgia envisages the principle of regulating the power separation),[29] ensuring the power separation principle and this mechanism is one of the basic constitutional and legal

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[26] *Shajo A.*, The Restriction of the Authorities (Introduction to Constitutionalism), *Maisuradze M.* (trans.), *Ninidze T.* (ed.), Tbilisi, 2003, 283 (in Georgian).

[27] In the frames of the 2013-2015 Constitutional Commission, there were the considerations regarding the Constitutional Court involvement in the discussion about new constitutional amendments. It is true that, so-called Certification Agency cannot be the perfect substitutive entity, but at some point, can create important guarantees to protect the law from unnecessary policies. See the project of Authors Group of Constitutional Law, <http://constcommission.ge/1-6>, [20.11.2018] (in Georgian).

[28] *Shajo A.*, The Restriction of the Authorities (Introduction to Constitutionalism), *Maisuradze M.* (trans.), *Ninidze T.* (ed.), Tbilisi, 2003, 45 (in Georgian).

[29] The constitutional laws of October 13, 2017 and March 28, 2018, which will come into force after the incumbent of the elected president in 2018. Above mentioned reforms have transformed the model of governance-presidential model has been replaced with a mixed governance model, as the combination of the semi-presidential and semi-parliamentary models, and with farther logical transition to a classic parliamentary system.

guarantees to ensure the power's horizontal division between the highest state authorities.[30] In addition to resolving the conflict between the highest state authorities, with the exception of the Constitutional Court, the dispute can become a collision of powers that arises between central and local authorities.[31]

Despite the multilateralism of the competence disputes', the classical competence dispute is the one between the highest authorities of the Government. The grounds for the competent disputes are defined by the Constitution, particularly in accordance with Article 89 (paragraph 1, subparagraph "b") of the Constitution of Georgia (from the Constitutional Reform of 2017-2018-the same is defined by the Article 60, paragraph 4, subparagraph "d" of the Georgian Constitution). The definition of the competence dispute between the state authorities could be in conflict with the definition of governmental branches' the functions and competencies by the Constitution of Georgia.[32]

The essence of the competence dispute, as one of the main constitutional-legal principle and the core idea of constitutionalism, is the ensuring of the supremacy of the principle for the power division. Constitutional conflicts have often arisen in countries where acted or acts the mixed governance model, more specifically, the semi-presidential model's subtype of Prime-Minister — Presidential governance model, which is currently active in Georgia. The same political regimes also operate in Poland and Hungary and in the states of Central and Eastern Europe, where government collisions happened in the circumstances of the newly formed governance systems. Although some competent conflicts may arise in the presidential republics, for example disagreement between the President of the United States and the Congress on the military powers, but the regulation of this dispute was easily accomplished in benefit of the President (Chief of Staff), and the decision was based on the legal nature of the state governance model.[33] In particularly of *Lewis Fischer's* opinion, the President of the United States can launch the war without agreement of the Congress.[34]

"With or without the Constitution, the government-structural conflicts were widespread in the former socialist bloc countries, and each of these conflicts due to of their constitutional nature became the subject of discussion for the Constitutional Court."[35]

The decisions list adopted by The Polish Constitutional Tribunal includes 1. Early cases of a delegation of governmental functions that deal with administrative duties; 2. Changes introduced in

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30 *Kakhiani G.,* Institute of Constitutional Control and its Problems in Georgia: Analysis of Law and Practice, Tbilisi, 2008, 147 (in Georgian).

31 In Georgia, due to the current legislation, the dispute between the central and local authorities is further expected, because the regulation of this issue is not directly determined by the constitution and depends on the full restoration of the jurisdiction on the entire territory of Georgia.

32 Competance disputes in doctrinal sources are more widely interpreted, and it includes the separation of competences in the vertical and horizontal context of the powers' division, which is considered within the competence of the Constitutional Court, *Kakhiani G.,* Institute of Constitutional Control and its Problems in Georgia: Analysis of Law and Practice, Tbilisi, 2008, 146 (in Georgian).

33 Actually only in 1975 Year During the Mayaguez incident, the conflict arose about the military powers between the President of United States and the Congress, and it was the only exception to the 132 military paradigms.

34 *Council on Foreign Relations*, Balance of U.S. War Powers, 2013, <http://www.cfr.org/united-states/balance-war-powers-us-president-congress/p13092>, [20.11.2018].

35 *Schwartz H.,* Establishing Constitutional Justice in Post-communist Europe, *Aleksidze K.* (trans.), Tbilisi, 2003, 112 (in Georgian).

the small constitution of 1992, concerning the relationship between the *Sejm* and the Senate; 3. The release of the Chairperson of the Radio-TV Broadcasting Board in 1994, which was related to the powers of the President over the governmental bodies; 4. The case of 1994, which concerned the issue of the dissolution of the *Sejm* and the budget, caused a conflict between the President and the *Sejm*. The first cases were about the relationship between the government and the ministry cabinet, in which the government went beyond the scope of the law and the matter was settled by its act, but the Constitutional Tribunal of Poland abolished this act.[36] Since then, the Constitutional Tribunal has made decisions that strictly adhered to the rule of law and legalized the highest standards in this regard.[37]

In Hungary and Poland, the constitutional courts, unlike the Supreme Court of the United States, have been consistently confined to economic issues, and this was caused by the economic situation in those countries. [38]

A case of Hungary is in an area of our interest, when the conflict arose conflict between the Prime Minister *József Antall Jr.* and the President *Árpád Göncz.* "The Prime Minister *József Antall Jr.* hoped to attend the meeting, instead of President *Árpád Göncz*, with *Czechoslovak* and Polish delegations, in *Visegrád*, to discuss the relationship with Western Europe, despite that the attendees had to be the head of the governments. The issue was resolved without pain."[39]

Thereafter, constitutional conflicts emerged and those were not easily resolved. The first controversy led to the efforts of the Defense Minister to control the armed forces, which seriously confronted the President *Árpád Göncz* and his political supporters, but the constitutional court resolved the dispute in favor of the government.[40] It is noteworthy that the Constitutional Court had judged this dispute in the part of the interpretation of the Constitution and therefore the decision was just a recommendation.[41]

Also, it is worth to say in few words, about the decision of the Hungarian Constitutional Court on competence disputes-in the case to choose between Primer Minister and the President, as the which authority body, who could assign the head of national TV-Radio broadcaster, the decision was made in favor of the Government of Hungary.[42]

It is also possible that to separate paragraph on the issues about the appointment of officials from the introduction of disputed functions. Because of that the above mentioned belongs to the cases, with high probability of development disputes regarding the Constitution, and already we have observed the practice of such disputes in Poland and Hungary, and also, in Georgia, there was the same kind of dispute case with the significant political content.[43] So, I consider that one of the main tasks of

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36 *Schwartz H.,* Establishing Constitutional Justice in Post-communist Europe, *Aleksidze K.* (trans.), Tbilisi, 2003, 112 (in Georgian). 113.

37 Ibid, 114.

38 Ibid, 117.

39 Ibid, 149.

40 Ibid, 149.

41 Ibid, 415.

42 Ibid, 120.

43 The diplomatic content of Amagvari's political content was broad in Georgian political reality, including the example of which was particularly relevant to the signing of the Association Agreement between Georgia and the European Union signed on June 27, 2014. This was partially expressed in the academic circle in this context, the following concepts were expressed: "Discussion on this issue [the issue of signing the Associa-

constitutional justice is to define clearly the Constitutional Court competence to discuss and resolve the disputes among the competent subjects and thereby facilitate the development of the principle of constitutionalism and separation of powers in the country. Consequently, the Constitutional Court must provide all necessary mechanisms to resolve disputes of this category.

4. The Scope of competence disputes

A competent dispute has to be understood broadly because the formal grounds for reviewing competent disputes are inadmissible and contrary to the idea of constitutional justice. A court dispute could be conducted directly through the interpretation of and within the constitutional provisions. Although the dispute between the competent authorities may also arise in relation to matters not directly defined by the Constitution, but with the constitutional content. I believe, that in this case the Constitutional Court must examine substantially and solve the problematic issues, including the more concrete explanation on the country's governance model nature, on the basis of broad understanding of the constitutional norms. The Constitutional Court must be the principal body, which determines the manner of power division in the different types of governance models, within its competences and in accordance with the governance model's classificatory.

It is right that a definition of a state governance model has to be a function of the commissions, but in this case it is necessary that the Constitutional Court has its own position on this issue, therefore which will result in systematic solving of a problem, to avoid of the development of new one with an incomplete solution. At the same time, the polemic about a definition of the governance regimes must not carry only the theoretic meaning and be considered only in the process of formation of the Constitution.

4.1. The Subjects of Competent Dispute

In the constitutional jurisdiction the parties are those constitutional bodies and persons, who have been granted with the status by the Constitutional Court of Georgia in accordance with the Or-

tion Agreement] would be considered to be complete, the dispute had to be decided on the competence of the Constitutional Court and not when the Prime Minister announced the issue closely. The constitutional dispute should be initiated by the President on the competence of the competence. If such a president is judged as a manifestation of legal and political culture in the legal state, such a move in Georgia will be considered 'political split' or 'rising presidential ambitions". *Liberali*, What is the meaning of the Liberal, who will sign the Association Agreement with the European Union?, 2014, <http://liberali.ge/blogs/view/5903/ra-mnishvneloba-aqvs-vin-moatsers-khels-evrokavshirtan-asotsirebis-shetankhmebas>, [20.11.2018] (in Georgian). There were also clearer opinions regarding this issue, the President of Georgia has the primary competence of signing the Association Agreement. This is the logic of the constitution. Nevertheless, discussion on this topic has been renewed once again. *Menabde V.,* Who should Sign the Association Agreement?, "Liberali", 2014, <http://liberali.ge/blogs/view/5889/vin-unda-moatseros-kheli-asotsirebis-khelshekrulebas> (in Georgian). In addition to this issue, broader public opinion polls have been interviewed so much about the current political issue. *Transparency International — Georgia*, The Association Agreement with European Union should be signed by the President of Georgia, 2014, <https://www.transparency.ge/ge/blog/evrokavshirtan-asotsirebis-shetankhmebas-kheli-sakartvelos-prezidentma-unda-moatseros>, [20.11.2018] (in Georgian).

ganic Law and the Constitution, in particular, defined by the articles 33-40 of the Law on Constitutional Court.[44] As for the competent disputes, this issue is regulated by Article 34 of the same law, in the 1 paragraph it sets out the determination of the applicant and the subjectiveness of the claim, and paragraph 2 regulates the legal status of the respondent.

The subjects in the competence disputes are the main participants of the constitutional jurisdiction, who dispute the competences and, therefore, they represent the governmental bodies and the constitutional officials. In the Constitutional Court, at the dispute, the subject can be only the authority or the official listed in Article 89 of the Constitution of Georgia. The subjects, referred to in Article 89 (1) of the Constitution, are: the President of Georgia, the Government of Georgia, at least 1/5 of the members of the Parliament of Georgia, the Supreme Representative bodies of the Autonomous Republic of Abkhazia and the Autonomous Republic of Adjara, representative body of self-governing unit-an assembly, the High Council of Justice or the Public Defender.[45]

By the Constitution and the Organic Law on the Constitutional Court, the head of state is also equipped with a universal power and a function to appeal to the Constitutional Court and request the discussion of the case, even though it is under his jurisdiction, or under the scope of other state governmental bodies. The above mentioned follows from the Presidential function as the guarantor of the Constitution, which is not literally read in the text of the Constitution, but the President gives the oath and therefore undertakes the responsibility to protect the Constitution, and it is from the list of the powers that are assigned to its constitutional jurisdiction. The President is entitled to submit the matter to the Court for almost all competencies of the Constitutional Court. The Organic Law of Georgia indicates all other constitutional bodies, enlisted in Article 89 of the Constitution, with competence to appeal to the Constitutional Court in the case violently involvement in their competencies by the another of state authority. Also, the 1/5 of members of the Parliament have got the universal applicant competence to appeal to the Constitutional Court, for the determination of competences between the authorities. This group can appeal to the Constitutional Court, if they define the violation in the frame of the constitutional competences of their own or of other governmental authorities.[46]

By the law the issues regarding the side of defender in the court is not clearly defined. Although the claimant in this category has to be represented by a governmental body that has issued a normative act in accordance with Article 34 (2) of the Organic Law,[47] but still there is no an exact definition of who may be the respondent when the dispute does not refer to the normative act, but the disputable is a constitutional-legal relationship, a constitutional-individual act or constitutional-legal action, which is not explicitly excluded by law and while, in accordance with the Constitution it can be viewed as a possible disputable subject. Consequently, the applicant has to specify who should be the defendant in relation to his claim, and the Constitutional Court has the competence, envisaged by law, on the same

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44 *Kakhiani G.,* Institute of Constitutional Control and its Problems in Georgia: Analysis of Law and Practice, Tbilisi, 2008, 197 (in Georgian).

45 Constitution of Georgia, Departments of the Parliament of Georgia, 31-33, 24/08/1995.

46 Organic Law of Georgia on the Constitutional Court of Georgia, Departments of the Parliament of Georgia, 001, 27/02/1996.

47 By the opinion of the applicant, the defender is the state agency, whose statutory act has violated its constitutional competences, Constitution of Georgia, Departments of the Parliament of Georgia, 31-33, 24/08/1995.

time, when the claim is registered, to send the copies of case to the President of Georgia, the Government, the Parliament, the Supreme Representative Authorities of Adjara and Abkhazia. Within 15 days, if these authorities claim that their competence could be restricted by the satisfaction of the claim, the Court is entitled to invite the concrete legal authorities to the dispute as a party.

Also, in this category of cases, by the law and the Constitution, is vaguely defined the full and comprehensive circle of suers and defenders. As I have already indicated the Organic Law of Georgia, in the case of determination of the applicant's circle, refers in general to the Article 89 of the Constitution, which does not specify the issue. So, it can be said that the Article 89 indicates as a representative bodies-a local self-government body, also the High Council of Justice and Public Defender.

First of all, I have to mention that, in the disputes of this category, the enlisted bodies' subjective nature is beyond of the scope. By the paragraph "E", in Article 89 of the Constitution does not at all consider the constitutional authorities, including the State Audit Office of Georgia, the National Bank of Georgia, the National Security Council and other constitutional subjects, whose functions and competencies are directly defined by the Constitution, and that they may be forced to address in defense of their competences to the Constitutional Court.[48]

The most evident problem in the constitutional court's current practice is related to the claimant's powers, as far as the defender is represented by the improper subject at the court, and the process cannot be fully accomplished without the appropriate parties and the right applicant. That is why, it is more appropriate that constitutional authorities not to have the limited rights to initiate a lawsuit in the Constitutional Court.[49]

4.2. The Object of Competent Dispute

The constitution of Georgia defines the right of the Constitutional Court's competencies to determine the dispute within the constitutional jurisdiction. According to the Constitution, the rules for the dispute process at the Constitutional Court is determined by the Organic Law and by the Organic Law of Georgia on the Constitutional Court, it is possible to judge the subject of the dispute, which may become the object of the Constitutional Court's consideration.

The constitutional claim concerns the dispute over the competence between the state authorities. Such dispute, based on Articles 23 and 34 (paragraph 2) of the Organic Law of Georgia on the Constitutional Court of Georgia, has to be examined by the Constitutional Court, if the breach of competence relates to a normative act.[50]

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48 Within the framework of the 2013-2015 Constitutional Commission, the proposals were also considered to include such powers as an institutional formation of independent constitutional organs.

49 By the record of № 3/6/668 dated October 12, 2015, the Constitutional Court has received a complaint of a group of members of the Parliament of Georgia, asking for the substantial consideration to find unconstitutional the amendment and addition of the 'Organic Law on the National Bank of Georgia' (№ 4188-I to 03/09/2015) The law adopted by the Parliament of Georgia by the justification Georgia had the National Bank, since the law adopted by the Parliament of Georgia limits the Georgian National Bank's, as the Constitutional Institute's competences. An Introductory Record of Plenum of the Constitutional Court of Georgia, № 3/6/668 of 12 October 2015.

50 Organic Law of Georgia on the Constitutional Court of Georgia, Departments of the Parliament of Georgia, 001, 27/02/1996.

The normative act clearly represents the subject of a possible dispute, but in addition to the statutory act, there are no other objects of the dispute envisaged by any legislation. However, by the analysis of the constitutional record, I can say that the dispute may arise in any matter, even if it does not concern the normative act.

The President has the opportunity to create a normative act, with the particular issues discussed on the government meetings and later adopted as the normative act and/or by the presidential request of creation a normative order on the governmental session, which in future could be appealed at the Constitutional Court. This possibility can be considered as the mechanism for realization, but of course, this approach is unnatural.

In addition, in the case of refusal of the submitted act for counter-assignment, the President of Georgia can appeal to the Constitutional Court and this type of dispute will have a normative nature. Also, the President of Georgia can appeal for the normative content of the Article 23 and the Article 34 (2) of the Organic Law of Georgia "On the Constitutional Court of Georgia", which may limit his power within reference to the Constitutional Court only regarding the constitutionality of the normative acts.[51]

In fact, above mentioned mechanisms, which may establish the constitutional 'truth' through the court, are based only a hypothetical reasoning. I consider that it may be more essential and give a better outcome in determination of the constitutional legal proceedings problems in practice, if the dispute goes not only in adherence with statutory text to the Constitution, but via the wider and more comprehensive legislative process.

In this way, the dialect of constitutionalism will be proceed with the formulated forms. There is an opinion, that the constitutional court should only discuss the disputes on normative acts with the legal grounds and not-the actions or legal relations. In particular, the doctrinal opinion states that "differentiation of subjects subject to constitutional justice is relatively simple, not by a circle of public relations or their importance, but with a 'normative scale'[52]. I believe, that it is not be appropriate to make such conclusions, even if the Constitutional Court examines the constitutionality of actions within other competences, including when the matter concerns the understanding of the impeachment or/and termination of the Parliamentary Deputies' delegation within the Constitution. In both cases, the Court actually discusses the circumstances of the case and therefore makes a decision.

There are the type of legal relations that neither can be considered within the competence of the General Court and nor be judged by the Constitutional Court within the current constitutional arrangement, as today it is impossible appeal if you do not have a normative-legal act. In this case, the issues of constitutional action or inactivity and constitutional individual legal acts are beyond judicial control.

In this case it is necessary to have an inspection body. In Georgia this type of "specialized body" [53] is the Constitutional Court and if it examines all the judgments related to constitutional control, will give better results.

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[51] In this case, all such subjects, which may be the claimant of this type of dispute, are eligible to make such a request.

[52] *Khubua G.*, Constitutional Court Justice and Policy, Journal "Review of the Constitutional Law", № 9, 2016, 8 (in Georgian).

[53] Generally there are specialized and non-specialized constitutional courts. The specialized body is the one, whose field of principal activity is constitutional control, *Kakhiani G.,* Institute of Constitutional Control and its Problems in Georgia: Analysis of Law and Practice, Tbilisi, 2008, 32-33 (in Georgian).

In practice of the Supreme Court of Georgia (*K. Davitashvili's* case) was the case, when the MP of the Parliament challenged the order N 286 of the President of Georgia, issued on 15th March 2003, which was a call for unscheduled meeting of the Parliament. The court did not examine the case, because, according to its decision, the act was not determined as a legislative, but as-an political act issued on the basis of the Constitution, and assessment of its appropriateness was beyond its competence. The Supreme Court stated that by taking the case into the consideration and ruling out the decision, would violate the principle of power division.[54]

Thus the Supreme Court did not accept for the consideration the case related to the individual constitutional-legal act. In spite of this impugned judicial assessment, I have to rely on the same opinion that the dispute arising from constitutional law is better to be considered by the Constitutional Court, due its specific nature, immediate and high level of competence.

5. The Rule of Examination of Competence Dispute and Enforcement of the Decision

The Constitutional Court shall guides by the strictly defined procedural rules in the case of the complaint. Constitutional proceedings are familiar with the following stages: 1) appeal to the Constitutional Court; 2) Preliminary examination and registration of the constitutional claim/submission; 3) Decision on the adoption of a constitutional claim/submission for substantial review; 4) Preparation of a constitutional claim/submission for substantial review; 5) Trial discussion.[55] The Constitutional Court reviews the dispute by reviewing the complaint and submission, in respect of which decisions or conclusions are made.[56]

The Competent Dispute Review in the Constitutional Court is carried out in compliance with the lawsuit. In accordance with paragraph 2 of Article 21 of the Organic Law of Georgia the Constitutional Court resolves the matter on competent disputes, usually with a collegial composition and not on the plenum. In accordance with the Organic Law of Georgia on the Constitutional Court of Georgia, in particular Article 23, paragraph 2, satisfaction of the constitutional claim on the issue of competent disputes leads to invalidation of the disputed normative act from its enactment. There may also be a multilateral constitutional dispute in the Constitutional Court when there are several applicants involved in the case review or/and respond to specific competences.

Besides that, it can be said that the person involved as the respondent is not necessary to be submitting/receiving subject of the contested normative act. In this context, the constitutional conflict can be understood as a result of legal and factual relations and not only a dispute on the basis of a normative act.

The Constitutional Court Board is authorized to consider a constitutional claim or constitutional submission and make a decision if at least three members are present at the session, and the Constitu-

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54 Decision of Supreme Court of Georgia of 22 May 2003, № 3d-as-44k-s-03, Decisions of the Supreme Court of Georgia on Administrative and other Categories of Cases, *Jorbenadze S.* (ed.), № 7, Tbilisi, 2003, 1769-1773.

55 *Kakhiani G.,* Institute of Constitutional Control and its Problems in Georgia: Analysis of Law and Practice, Tbilisi, 2008, 215 (in Georgian).

56 Ibid, 237.

tional Court makes a positive decision on a majority of the votes cast by a majority of the members attending the Panel.

The timeframe for consideration of the case is 9 months. The timeframe for reviewing a constitutional claim or constitutional submission to the court starts at the moment of their registration. The term of consideration of a special case, not more than two months, may be extended by the chairman of the Constitutional Court.

However, it should also be noted that these categories of disputes largely determine the constitutional order and they have a substantial impact on the constitutional system, and to my mind, that such disputes should be predominantly discussed by the Constitutional Court.

The decision of the Constitutional Court of Georgia is a self-acting act and is mandatory for the execution.[57] It is a legitimate definition of the constitution, when the consideration of the Constitution widely or narrowly is the subject of the Constitutional Court, even for the simple reason that he is the only and highest institution, whose decision-making mechanism is still in its hands.[58] However, the Georgian legislation provides certain mechanisms and important legislative safeguards in order to protect the decision of the Constitutional Court.

Organic Law of Georgia on Constitutional Court, in particular, in accordance with Article 25 §4[1], the Constitutional Court may withdraw the normative act without a substantive review If it considers that the decision that had already made on the matter leads to similar legal consequences of norms that are known as unconstitutional. In the practice of the Constitutional Court there are such cases when the Court has made such interlocutory decisions.[59]

In relation to these cases, the Constitutional Court has judged the legislative act that has been ruled out by the interlocutory decision. However, I believe that such a legislative guarantee should be directly reflected in the Constitution in order to protect the priority of the legal decision and the primary nature towards political decision making. Under the three-fold divisions of the government, the judiciary is, of course, involved in the division conflicts.

In Poland, the relationship between *Sejm* and the Constitutional Tribunal was particularly complex, as de Jure Tribunal's decisions on the unconstitutional nature of the law was not final.[60] The Polish *Sejm* did not carry out the execution of the tribunal decisions for a certain period.

However, the Tribunal, by its practice, determined, that the law, in which will not be enforced by the Parliament, would be automatically deemed to be valid after six months.[61] Also, an interesting practice was established by the Constitutional Tribunal when it considered that *Sejm* has no right to overcome the decision of the Constitutional Tribunal regarding the Act adopted without the signature

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57 *Nakashidze M.,* Peculiarities of Presidential Relations with Government Departments in Semi-Presidential Systems of Management, Tbilisi, 2010, 226 (in Georgian).

58 The Constitutional Court can overcome its own practice, but in this case it is necessary to make such a decision by the plenum.

59 Moldovan citizen Mariana Kiku against the Parliament of Georgia, Judgment of the Constitutional Court of Georgia of 14 December 2012, № 1/5/525. A citizen of Austria Matthias Huter against the Parliament of Georgia, Judgment of the Constitutional Court of Georgia of 24 June 2014, № 1/2/563.

60 *Schwartz H.,* Establishing Constitutional Justice in Post-communist Europe, *Aleksidze K.* (trans.), Tbilisi, 2003, 119 (in Georgian).

61 Ibid, 120.

of the *Sejm*.[62] In this case, it is also noteworthy that if we consider not only the normative act as a possible dispute in the court, but also the act or omission of any other constitutional-legal act or competent authority, the issue may be problematic in part of its enforcement. On the one hand, it is true that the decision of the Constitutional Court is self-enforced and, as a rule, does not lead to additional legal action, on the other hand, in case of such competent dispute, the cancellation of a constitutional act can be somewhat ineffective without substantial review. Since the dispute concerns a specific action, it may be difficult to assess if this action leads to the same legal consequences. Thus, this process will resemble 'real constitutional control',[63] which will result in the more constitutional dispute at the Constitutional Court, the court can not bypass substantial reviews and making decisions on all these types of cases.

Consequently, such regulation loses the positive effect that is a function of the abovementioned norm, that public interests were protected, saving state and judiciary resources, saving the economy, and most importantly, the guarantees of the enforcement of the Constitutional Court decision. The enforcement of the decision of the Constitutional Court will be changed and the parties to the constitutional dispute will be subject to different legal conditions. Despite the possible problems, this competence should be widely understood in order to implement the constitutional principle of the division of power in all forms and means.

In Poland, *Lech Walesa* tried to rewind a decision of the Constitutional Tribunal in the case of TV and Radio Broadcasting in 1994,[64] saying that the decision of the Tribunal had no retroactive force, but in 1995 the same Constitutional Tribunal explained that his decision was normally involved in the retroactive effect.[65]

6. Practice of the Constitutional Court of Georgia (Competent Disputes)

In legal literature, it is considered that the court decision is a lawful act in the common law countries, but in some cases it is a legal source of precedent, in contrast to roman German systems, which are considered to be just the act of law.

On the one hand, it can be said that the Constitutional Court is a source of law by executive effect of its decision and legal nature of action, on the other hand, the General Court will use it only for

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62 *Schwartz H.,* Establishing Constitutional Justice in Post-communist Europe, *Aleksidze K.* (trans.), Tbilisi, 2003, 120 (in Georgian)

63 It is important for the composition of the Constitutional Court to implement the 'real' constitutional control. Until now the doctrinal staff: judicial self-restraint, political question doctrine, *abgestufte Verhältnismäßigkeitskontrolle*, *Beck'sche Formel*, *Schumann's Formel,* etc.) and the most difficult process are considered, constitutional control. The object (compliance with the Constitution, and not the hierarchical balance between the legislative and general normative acts in the control of the law enforcement process and specify the quality of the constitutional judges in the proceedings ('real' constitutional control), *Erkvania T.,* Normative Constitutional Claim as an Imperfect Form of Concrete Constitutional Control in Georgia, 2014, <https://emc.org.ge/ka/products/normatiuli-sakonstitutsio-sarcheli-rogorts-konkretuli-sakonstitutsio-kontrolis-arasrulqofili-forma-sakartveloshi>, [20.11.2018] (in Georgian).

64 The president of the TV and Radio Broadcasting Director was considered an exemplary rule.

65 *Schwartz H.,* Establishing Constitutional Justice in Post-communist Europe, *Aleksidze K.* (trans.), Tbilisi, 2003, 117 (in Georgian).

justification, as the Constitutional Court only fulfills the function of a negative legislator.[66] It is possible to say that *René David's* opinion that "the judge should not become a law in countries of Roman-German law",[67] can not be applied to the Constitutional Court. It can be said indirectly that the legislator[68] is guided by the Constitutional Court when it makes a decision and thinks about whether or not a specific legislative or other normative act may later become subject to the Constitutional Court.

Georgia's Constitutional Court has no diverse experience in discussing competent disputes. However, we may partially agree with the opinion expressed in the literature that the purpose of competent disputes to protect the principle of separation of power, is carried out by the Constitutional Court in relation to other competences.[69] In this regard, several decisions of the Constitutional Court of Georgia may be considered.[70] The decision of 25 May 2004 by which the Constitutional Court recognized the state status of the Autonomous Republic of Adjara as unconstitutional, in which case the dispute was passed between the MPs and the head of the Government of the Autonomous Republic of Adjara. The Constitutional Court has unanimously established that in accordance with Article 3 of the Constitution of Georgia, announcing the state of emergency belongs to a special board of higher state governments. Consequently, the Constitutional Court annulled the January 7, 2004 order of the head of the Autonomous Republic of Adjara and the normative grounds that allowed him to provide such acts within the Autonomous Republic of Adjara. But in this case the basis for referring to the Constitutional Court by a group of MPs was not sub-paragraph "b" of Article 89 of the Constitution of Georgia, but subparagraph "a" of the same paragraph, discussion of competent disputes was the violation of the principle of vertical divisions of the government and not the principle of horizontal divisions.

Although the Constitutional Court of Georgia does not have practice in the separation of relations between the President and the Government, however, there is some experience in general regarding the competent disputes within the Article 89 (1) (b) of the Constitution of Georgia, in particular the dispute between the members of the Parliament of Georgia and the Ministry of Education of Georgia. In the dispute a group of Georgian MPs appealed to the constitutional court to order the № 469 Order of September 30, 1997 of the Minister of Education of Georgia to determine the financing rule for preschool, primary and general school education.

A group of MPs pointed out that this was contrary to Article 94 of the Constitution of Georgia which contained that the any kind of tax or fee could only be imposed by the law, and in this case the Ministry of Education violated the Constitution and was involved in the competence of the Parliament of Georgia.[71] Based on the fact that the matter was regulated by the Minister's order, the Constitutional Court did not make a decision because the procedure for adoption of this normative act was violated and could not be regarded as a normative act, and therefore could not be judged.

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66 *Marinashvili M., Gelashvili N.,* Place of the Decision of the Constitutional Court in the System of Justice, Journal "Justice", № 3, 2007, 167-170 (in Georgian).

67 *David R.,* Modern Legal Systems of Modernity, *Ninidze T., Sumbatasgvili E.* (trans.), *Ninidze T.* (ed.), Tbilisi, 1993, 125 (in Georgian).

68 Legislation does not mean only legislative authorities, but everybody receiving or issuing a normative act.

69 *Kakhiani G.,* Institute of Constitutional Control and its Problems in Georgia: Analysis of Law and Practice, Tbilisi, 2008, 22 (in Georgian).

70 Decision of the Constitutional Court of Georgia of 25 May 2004, № 15/290, 266.

71 Decision of the Constitutional Court of Georgia of 29 January 1998, № 1/1/72-73.

It is true that in this decision the court should express more boldness, because the Constitutional Court takes into account not only the formal nature of the Act but its contents, on the other hand, the Constitutional Court has avoided making decisions on this matter.

Therefore, it is important to consider the issue, that all categories of disputes should be considered essentially in terms of competent dispute regardless of whether or not a normative act is presented as a matter of dispute. In principle it is important that all constitutional legal acts and constitutional legal real-acts (action) may become judicable within the competent dispute, otherwise the real power of separation can not be realized through constitutional justice. In addition, the expression of institutional conflicts were the decisions of the Constitutional Court № 3/122, 128 of June 13, 2000 and the Decree № 6134-139-140 of March 30, 2001. In both disputes the applicant was a group of members of the Parliament of Georgia and the Central Election Commission was the respondent. In addition, there are several judgments related to the competent dispute at the Constitutional Court, namely, April 10, 1998, № 2/53/1, which finds that the members of the Parliament of Georgia disputed the competent issues with the Ministry of Finance.[72]

Interlocutory decision of the Constitutional Court of Georgia dated November 9, 1999, № 1/7/87 should also be mentioned. This issue was a dispute between members of the Parliament of Georgia and the President of Georgia that he violated his competence. The grounds for filing a claim were also included in subparagraph "b" of paragraph 1 of article 89. This is a classical competent dispute, but this time the Constitution Court shirked its responsibilities On the grounds, that the issue of the dispute in the conflict was the President's ordinances, which were adopted before the new constitution was adopted, consequently, the Constitutional Court clarified that it was not the normative act in that case, since such a decision had not been taken by the Minister of Justice. In this case, based on the formalities of the matter, the Constitutional Court avoided the relevant reasoning. [73]

Practice of the Constitutional Court has a few number of interlocutory decision in respect of competent disputes. In particular, the Constitutional Court's statistics on total constitutionality of five constitutional suits have been submitted to consider the constitutionality of normative acts with Article 89 (1) (b) of the Constitution.[74]

Therefore, it can be said that the separation of power in Georgia is not implemented by constitutional justice, not just because the court is not applied for decisions on these issues, but because the court was obviously avoiding discussions in this direction.

"The inability of the state to end the disagreements of its various organs ultimately threatens legal security and, therefore, freedom."[75] The Supreme Court of the United States has never tried to avoid conflicts among state governments. The doctrine of separation of power was recognized in 1787 not to encourage their effectiveness, but to prevent them from inclination. The goal was not to avoid disagreements, but to protect people from autocracy, through the inevitable disagreement of the divi-

[72] Decision of Constitutional Court of Georgia of 10 April 1999, № 2/53/1.
[73] Decision of Constitutional Court of Georgia of 9 November 1999, № 1/7/87.
[74] Constitutional Court of Georgia, <http://constcourt.ge/album/stat/9.gif>, [20.11.2018].
[75] *Shajo A.*, The Restriction of the Authorities (Introduction to Constitutionalism), *Maisuradze M.* (trans.), *Ninidze T.* (ed.), Tbilisi, 2003, 92 (in Georgian).

sion of power into three sections.[76] In the USA there is a 'political question' doctrine, according to which the Supreme Court of the United States may refuse to consider the case that 'the issue is political'. In practice, the Supreme Court basically refuses to discuss foreign policy issues. The American doctrine of 'political question' is less common in Germany and continental Europe. The German Constitutional Court developed its own doctrine of political question.[77] The Federal Constitutional Court of Germany does not distinguish those issues that are not subject to judicial review due to political content. At the same time, the German Constitutional Court does not avoid discussing politically important issues that may have a big impact on the political system. It can be said that the Constitutional Court of Germany became an important factor in political life. Decisions of the Constitutional Court define the frameworks of the government not only for individual cases, but also for politics and not rarely affect the content of the politics.[78]

It can be said that Georgia, as a country of continental European law, has to share a great deal of European experience and so called the issues of 'political question' should be discussed in the Constitutional Court more actively, in case of adequate preconditions, of course.

7. Conclusion

Competent dispute is the inevitable way out of division of power and it's perfect realization, which is more established in semi-presidential systems of mixed governance models, In which the functions of state power bodies are not strictly divided and it is less common in states which government systems are rigidly divided.

It can be said that the dispute between the high bodies is constitutional natural phenomenon and should not be treated as a crisis in the functioning of the government, on the contrary, all the bodies are determined to try to eliminate such incompatibilities of government functions within its competence, especially in this regard should the resource of the Constitutional Court be applied.

The Constitutional Court should review the competent dispute inherently and make decision in any possible hypothetical case, depending on the qualification of such a dispute and taking into consideration that this court is the main legal alternative of resolution of such dispute.

In addition, the Court must consider issues broadly in all cases and consider the general nature of the model of state governance, while making decision.

It is especially important to note that the practical part of the state government's constitutional organization is in the frame of the law and under the framework of such a legal primacy, the idea of constitutionalism and the principle of separation of powers is to be realized. The relevant constitutional institution, the Constitutional Court, must have the special and leading role in this process, with the competence that will ensure the consistent development of the principle of separation of the power and it's complete realization.

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[76] Ibid, 92-93, comp. Myers v. United States, 272 US 293 (1926).

[77] *Khubua G.*, Constitutional Court Justice and Policy, Journal "Review of the Constitutional Law", № 9, 2016, 5 (in Georgian).

[78] Ibid.

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