



Constitutional dispute related to political parties in Georgia

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Abstract

Political parties are necessary institutions of a democratic, legal state and play an important role in the political life of the country.¹ Strengthening political entities and creating a healthy political system is of the utmost importance for a democratic society.² Constitutional bodies of many states of the world are equipped with the authority to control the constitutionality of political parties.³ The said authority is not uniform in different states, in particular, in some of the states it is considered as one of the guarantees of the freedom of creation and activity of political parties. In these cases, the constitutional courts verify the constitutionality of the decision to ban or suspend the activities of political parties.⁴ In other states, the issue concerns the restriction of the freedom to form an association, the question of the political party's responsibility for violating the constitution, etc.⁵

In order to ensure the aforementioned guarantees provided by the Constitution of Georgia, the Constitution provides for the possibility of exercising constitutional control over the activities of political parties. In particular, the Constitutional Court of Georgia "based on the lawsuit of the President of Georgia, at least one-fifth of the members of the Parliament or the government, will consider the issue of the constitutionality of the activity of a political party and the termination of the authority of a member of the representative body elected by the nomination of this political party."⁶ Accordingly, if during the creation and activity of a political party, the requirements stipulated by the Constitution of Georgia are violated, the Constitutional Court of Georgia will use the mentioned authority.

The Constitution of Georgia strengthens the freedom of political parties. Citizens of Georgia have the right to form a political party and participate in its activities.⁷ As part of the control of the constitutionality of the political party's activities, the Constitutional Court intervenes in the protected sphere of freedom of political parties in the most serious, prohibitive form. The question of the authority and responsibility of the Constitutional Court of Georgia

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¹ Khetsuriani J., Powers of the Constitutional Court of Georgia, Second Revised and Completed Edition, "Favorite Style" Publishing House, Tbilisi, 2020, 222.

² Decision N3/3/600 of the Constitutional Court of Georgia dated May 17, 2017 in the case, Georgian citizens Salome Kinkladze, Nino Kvetenadze, Nino Odisharia, Dachi Janelidze, Tamar Khitarishvili and Salome Sebiskveradze against the Parliament of Georgia, II, 23.

³ For example, the constitutional courts of the Czech Republic, Romania, Bulgaria, etc.

⁴ Kakhiani G., Institute of Constitutional Control and Problems of its Functioning in Georgia: Analysis of Legislation and Practice, Tbilisi, 2008, 175.

⁵ Ibid.

⁶ Ibid., Article 60, Paragraph 4, Sub-paragraph "F".

⁷ The first paragraph of Article 23 of the Constitution of Georgia.

in this case is particularly high, since the latter, on the one hand, must protect the constitutional order from dangerous political forces, the infringement of whose freedom derives from the interests of protecting the freedom of society, and on the other hand, the aforementioned task of the Constitutional Court of Georgia must be fulfilled in accordance with the fundamental values of the Constitution of Georgia without damage.⁸ In addition, the Constitution of Georgia states that it is not allowed to create a political party and to carry out such activities by the latter, the purpose of which is to overthrow or change the constitutional order by violence, to encroach on the independence of the country, to violate the territorial integrity, or to carry out such activities aimed at the promotion of war, violence, which stirs up national, ethnic, religious, regional or other social strife. And of course, it is not allowed to create a political party based on territorial grounds.⁹ Therefore, if the party goes beyond the constitutional framework, this may become the basis for its ban. In addition to the prohibitions established by the Constitution of Georgia in relation to the creation and activities of a political party, the Parliament of Georgia also adopted the Organic Law "On Political Unions of Citizens", which establishes an additional basis for the prohibition, namely, the creation of an armed formation by a party is prohibited.¹⁰ Before the last constitutional reform, the said record was included directly in the Constitution of Georgia, however, as a result of the reform, the latter was transferred to the organic law.

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1. Eligible claimant

The constitutional reform implemented in 2017 essentially changed the authority of the Constitutional Court to consider the issue of creation and activity of political associations of citizens. Article 23 of the Constitution of Georgia provides for the freedom of political parties, which establishes the right of citizens of Georgia to create and participate in the activities of political parties. According to paragraph 4 of the same article, a political party can be banned only by the decision of the Constitutional Court, the grounds of which are provided by the relevant organic law. Chapter 2 of the Organic Law of Georgia "On Political Unions of Citizens" regulates the creation of a political party and the organization of its activities, while Chapter 4 guarantees the grounds for termination of party activity. According to Article 35 of the mentioned law, "the party can be banned only by the decision of the Constitutional Court of Georgia".¹¹ In addition, as a result of the reform, the list of claimants was specified and the obligation to verify the constitutionality of the creation of a political party was no longer taken into account. Also, the authority of the Constitutional Court was expanded in the part of consideration of the issue of termination of the authority of the member of the elected representative body by the nomination of the political party. In particular, according to Article 19 of the Organic Law on the Constitutional Court of Georgia, not only the activity of the parties, but also the constitutionality of their creation is also considered.¹²

The political party represents a voluntary and independent association of citizens created on a common worldview and organizational basis, which is registered in accordance with the law and carries out its activities within the framework of the Constitution and other legislative and by-laws.¹³ Pursuant to Article 35 of the Constitution of Georgia, the President of Georgia, the Government of Georgia or at least one-fifth of the members of the Parliament

⁸ Loladze B., Macharadze Z., Phirtskhalashvili A., Constitutional Justice, Tbilisi, 2021, 243.

⁹ Paragraph 3 of Article 23 of the Constitution of Georgia.

¹⁰ Article 36 of the Organic Law of Georgia "On Political Unions of Citizens".

¹¹ Ibid., Article 35.

¹² "On the Constitutional Court of Georgia", Article 19, Sub-Clause 1, Clause 1 of the Organic Law of Georgia.

¹³ Paragraph 2 of Article 29 of the Organic Law of Georgia "On Political Unions of Citizens".

of Georgia may apply to the Constitutional Court of Georgia for the purpose of checking the constitutionality of the activities of a political party.¹⁴

If the lawsuit is related to the constitutionality of the creation of the party, the defendant will be both the political party itself and the relevant registering body. The registration of the political party is carried out by the legal entity of public law operating in the sphere of governance of the Ministry of Justice of Georgia - the National Public Registry Agency,¹⁵ to which all the necessary documents for the registration of the political party, including the party's charter, will be submitted. Based on the content of the statute, the registering authority has the opportunity to investigate information about the unconstitutional goals and activities of the party, for which the law has granted a review period of 1 (one) month.¹⁶ The party registration act is a registration certificate issued by the National Public Registry Agency.¹⁷ In addition, the National Public Registry Agency is authorized to refuse party registration, on the grounds that the charter of a political party or other attached documentation contradicts the Constitution of Georgia or the Organic Law of Georgia "On Political Unions of Citizens".¹⁸ Accordingly, the responsibility for the registration of an unconstitutional political party rests with the National Public Registry Agency.

In 2018, an amendment was made to Article 35 of the Organic Law of Georgia "On the Constitutional Court of Georgia", which will concern the verification of the constitutionality of political parties. As a result of the change, the highest representative bodies of the autonomous republics were removed and the latter replaced by the government. Generally, of the plaintiffs, the government has the greatest opportunity to present an argument about the unconstitutional goals and actions of a political party.¹⁹ Article 35 of the Organic Law on the Constitutional Court has been amended in relation to the defendant party. According to the old edition, the political union of citizens and its registering body represented the defendant in the Constitutional Court. It is assumed that the amendment is justified in relation to the removal of the registering authority, since the respondent cannot be the registering authority when considering the constitutionality of the activities of a political party. Because the registering authority is responsible for the registration of the political party and not for its subsequent activities.²⁰ It should be noted that both Article 35 of the Organic Law on the Constitutional Court, as well as Article 19, Paragraph 1, Sub-paragraph "c", concern the control of the constitutionality of the party's activities as well as its establishment. As a result, it can be said that if a lawsuit concerns the constitutionality of the activities of a political party, the defendant will be the relevant political party.

2. The subject of the dispute

The freedom to create political parties and participate in their activities is the basic principle determining the existence of a democratic society. The creation of a political party implies the establishment and registration of a party, and the activity - the political activity of an already established party. The creation of a party is a prerequisite for the party's activity, because otherwise the party cannot act legally.²¹ Prior to the constitutional reform, the Constitutional Court judged both the creation of political associations of citizens and the constitutionality of their activities. As for the constitutionality of the creation of political parties, it is left outside the jurisdiction of the Constitutional Court.²²

¹⁴ The first paragraph of Article 35 of the Constitution of Georgia.

¹⁵ Ibid, Article 22, Paragraph 1.

¹⁶ Ibid, Article 22, Paragraph 1.

¹⁷ Ibid, Article 23, Paragraph 3.

¹⁸ Ibid, Article 23, Paragraph 4.

¹⁹ Loladze B., Macharadze Z., Phirtskhalashvili A., Constitutional Justice, Tbilisi, 2021, 246.

²⁰ Ibid, 247.

²¹ Ibid, 251.

²² Khetsuriani J., Phirtskhalashvili A., Important decisions made by the Constitutional Court of Georgia in the field of constitutional justice in 2017, "Constitutional Law Journal", N1, Tbilisi, 2018, 40.

In order to preserve the democratic order in the state, the Constitution of Georgia imposes certain restrictions on political parties. Prohibition of a political party is the exclusive authority of the Constitutional Court. The legitimacy of political party bans in democracies derives from the doctrine of militant or defensive democracy, which empowers states to fight the enemies of democracy if they resort to undemocratic means or pursue anti-democratic goals.²³ The authority of the Constitutional Court of Georgia has been expanded in relation to the prohibition of a political party to decide the issue of terminating the authority of a member of a representative body elected by the nomination of this party. In addition, the consideration of the termination of the powers of the members of the representative body depends on the constitutionality of the political party's activities. However, the Organic Law of Georgia "On the Constitutional Court of Georgia" does not provide for the consequences of satisfying the constitutional claim in relation to the termination of the powers of the members of the representative body elected by the nomination of the non-constitutional party. All that is known is that the list of relevant persons must be specified exhaustively in the lawsuit filed in the Constitutional Court of Georgia.²⁴

Clause 4 of Article 3 of the Constitution of Georgia will strengthen the constitutional-legal function of political parties and the principles of their activity. The legal regulation of the activities of political parties should be based on four basic principles approved by the Constitution of Georgia, which in turn regulate four different dimensions of the parties' activities. In particular, the principle of freedom of parties, which regulates the relationship of parties with the state; the principle of equality of parties, which regulates the relationship of parties with other parties; The principle of transparency of parties' activities, which regulates the relations of parties with the public, and the principle of intra-party democracy, which regulates the relations of parties with party members.²⁵

The constitution of Georgia establishes the arsenal of restrictions on the creation and activity of political parties:

- a. It is not allowed to create and operate such a political party, the purpose of which is to overthrow the constitutional order of Georgia or to change it with violence, to violate the democracy of the country, to violate the territorial integrity;
- b. It is not allowed to create a political party that promotes war or violence, stirs up national, regional, religious or social strife;
- c. It is not allowed to create a party based on territorial grounds; Just as it is not allowed to carry out activities by a political party on a territorial basis.²⁶

According to the Constitution of Georgia, it is not directly stipulated, however, it is also considered inadmissible to create a political party on the basis of any discriminatory signs (ethnic, religious, etc.) provided for in the first paragraph of Article 11 of the Constitution of Georgia. All of the above-mentioned circumstances can become grounds for banning the party by the Constitutional Court of Georgia. The court considers the case on the basis of the lawsuit of the President of Georgia, at least 1/5 of the members of the Parliament or the government. Along with the banning of the party, the court can make a decision on the termination of the powers of the members of the representative bodies elected by the nomination of this party.²⁷

The Constitutional Court of Georgia in decision #1277 of April 21, 2022,²⁸ where the contested norm established an unreasonable restriction of the freedom of political parties, as the submission of a list of at least 1,000 members to the National Public Registry Agency was a mandatory requirement for the registration of a political party, the plaintiff indicated that the cancellation of the contested regulation would contribute to the formation of a pluralistic political

²³ Morlok M., *Das Parteiengesetz Georgiens und die Möglichkeiten seiner Verbesserung*, GIZ, N8, 2018, 4-11.

²⁴ "On the Constitutional Court of Georgia", Article 311, Clause 3, Sub-clause "c" of the Organic Law of Georgia.

²⁵ Kobakhidze I., *Law of political associations*, Tbilisi, 2008, 69-112.

²⁶ Kobakhidze I., *Constitutional Law*, first edition, Tbilisi, 2019, 103.

²⁷ Ibid.

²⁸ Decision N1277 of the Constitutional Court of Georgia dated April 21, 2022 in the case "Giorgi Labadze vs. Parliament of Georgia".

environment and the full participation of minorities in political processes. Clause 2 of Article 11 of the Constitution of Georgia is a special, extraordinary norm that protects the rights of minorities and establishes additional protection guarantees and special rights for ethnic, religious and linguistic minorities.²⁹ The Constitutional Court of Georgia explained that "the named article should be considered as a special norm (*lex specialis*), because it establishes equality as one of the forms of protection of the rights of minorities."³⁰ By participating in public life, minorities defend their rights, articulate their concerns and put them on the agenda of the political landscape.³¹

The Constitutional Court of Georgia explained that political parties have the most important role for the full functioning of democratic government, since it is through political unions that the individuals who may occupy political and other state positions in the future are promoted and introduced to the public. In addition, according to the court's explanation, the constitution and legislation require the political party to confirm the minimum number of supporters,³² For which there are various ways, such as, for example, the presence of a member of the parliament elected by the party at the time of the elections, etc.³³ It is also important to note that state-imposed restrictions on participation in elections are an obstacle to the political process itself. Restricting the free environment for a political entity damages the electoral environment and affects the will of the voters.³⁴ And, the intervention of the state, for example, in the formation of a political list or the cancellation of the registration of a political party is a strict restriction in relation to the right guaranteed by Article 24 of the Constitution of Georgia. Accordingly, a kind of ranking of a political party is completely unacceptable,³⁵ Because the existence of democratic governance is unthinkable without elections. Taking office through elections is an indispensable mechanism for realizing democratic governance, and of course the sphere protected by Article 24 of the Constitution of Georgia should be determined taking into account the constitutional nature of elections, and not by the decisions taken by the legislator within the framework of free discretion.³⁶

3. Legal consequences of declaring the activities of political parties unconstitutional

As a result of the constitutional reform of 2017, the powers of the Constitutional Court of Georgia are determined by the Constitution of Georgia.³⁷ According to the Constitution of Georgia, it is possible to determine the powers and capabilities of the Constitutional Court, and the political unconstitutionality of the party is mainly manifested in the process of its activities. It is interesting the authority of the Constitutional Court of Georgia in the part of checking the constitutionality of political parties, which means the control of compliance with the norms of the constitution that impose requirements on the parties. Apart from the grounds for establishing the unconstitutionality of political parties, several important requirements of the constitution have been neglected. In particular, there is no rule governing the procedure that would establish the issue of terminating the authority of a member of a representative

²⁹ Clause 2 of Article 11 of the Constitution of Georgia.

³⁰ Judgment N2/8/366 of the Constitutional Court of Georgia of March 31, 2006 on the case, Legal entities - Chairman of the International Union for the Protection of the Rights of Armed Forces Employees, Veterans and War Participants "Mizani-2005" - Nodar Tsofniasvili and others against the Parliament of Georgia, para 4.

³¹ Avaliani T., Rights of ethnic and religious minorities, Tbilisi, 2022, 43.

³² However, the number of members of a political party does not determine the extent of its support.

³³ Decision N1277 of the Constitutional Court of Georgia of April 21, 2022 on the case, Giorgi Labadze v. Parliament of Georgia, II-29.

³⁴ Decision N3/3/600 of the Constitutional Court of Georgia dated May 17, 2017 on the case "Citizen of Georgia Kakha Kukava vs. Parliament of Georgia", II-35.

³⁵ August 17, 2021, N1647 constitutional lawsuit on the case "Citizens' political association "European Georgia - Movement for Freedom", Nino Tordia, Martha Kardava, Nino Ordenidze and others (12 plaintiffs in total) against the Parliament of Georgia".

³⁶ Decision N3/3/600 of the Constitutional Court of Georgia of May 17, 2017 on the case, Georgian citizen Kakha Kukava vs. Parliament of Georgia, II, 10.

³⁷ According to the version available until 2017, the powers of the Constitutional Court of Georgia were defined by the Constitution of Georgia and the Organic Law of Georgia "On the Constitutional Court of Georgia", which provided for the possibility of expanding the powers of the Constitutional Court and determining issues related to constitutional proceedings not provided for by the Constitution.

body elected by the nomination of an unconstitutionally known party. In addition, despite the fact that the issue of terminating the powers of a member of the Parliament of Georgia is subject to the Constitutional Court of Georgia, the final decision is made by the Parliament. Accordingly, the aforementioned authority of the Constitutional Court of Georgia is only optional.

When the Constitutional Court of Georgia examined the constitutionality of the political party's activity, the constitutional claim was satisfied and the party's activity was assessed as unconstitutional, the latter will lead to the cancellation of the act of registration of the political party,³⁸ which leads to the termination of the functioning of the party as a political and legal entity, it will lose the status of the party, and the property of the party will be transferred to the state treasury.³⁹ Also, the banning of the party by the Constitutional Court of Georgia will lead to the cancellation of the registration of the political party,⁴⁰ Consequently, the party will not be able to participate in the elections and certainly will not be able to present candidates. However, this does not completely exclude the possibility of "reincarnation" of a political party,⁴¹ because it is possible for the members of the dissolved party to create a completely new party, which will formally conform to the constitutional standards.

Conclusion

Political parties have long been well-studied subjects of the legislative field. It should be noted that despite the high constitutional status of political parties, even today, researchers single out four major problems of Georgian political parties. These are: lack of clear ideology, values and vision, excessive influence of leading personalities on parties, high degree of political opportunism and populism and lack of internal democracy.⁴² The separation of these factors by researchers indicates the fact that along with the high constitutional status of political parties, the existence of a relevant legal framework ensuring their effective and transparent activity is no less important. In scientific and political circles, there is a lot of talk about the need for parties to strongly emphasize their ideological values and have a specific political course. They should increase the transparency of their activities and also take care of the permanent involvement of citizens in the process of creating their action program, so that the voter has a full opportunity to know what groups are behind the party and what is the connection between their economic and political interests, which helps the voter to make an informed choice. State support for political associations of citizens is the obligation of the state. But it is justified only when it is based on the principle of equal treatment, giving equal chances. The measure of the strength of the democratic order of the state is the ideological diversity of political parties and the existence of a fair environment for their activities.

The Constitution of Georgia will strengthen the freedom of political parties. Citizens of Georgia have the right to form a political party and participate in its activities.⁴³ As part of the control of the constitutionality of the political party's activities, the Constitutional Court intervenes in the protected sphere of freedom of political parties in the most serious, prohibitive form. The question of the authority and responsibility of the Constitutional Court of Georgia in this case is particularly high, since the latter, on the one hand, must protect the constitutional order from dangerous political forces, the infringement of whose freedom derives from the interests of protecting the freedom of society, and on the other hand, the aforementioned task of the Constitutional Court of Georgia must be fulfilled in accordance with the fundamental values of the Constitution of Georgia without damage.⁴⁴ In addition, the Constitution of Georgia states that it is not allowed to create a political party and to carry out such activities by the latter, the purpose of which

³⁸ "About the Constitutional Court of Georgia", Article 23, Clause 3 of the Organic Law of Georgia.

³⁹ Article 38 of the Organic Law of Georgia "On Political Unions of Citizens".

⁴⁰ Article 113, paragraph 12, subparagraph "b" of the Organic Law of Georgia "Election Code of Georgia".

⁴¹ Loladze B., Macharadze Z., Phirtskhalashvili A., Constitutional Justice, Tbilisi, 2021, 257.

⁴² Dambari U., Svanidze M., Processes of policy formation in the political and non-governmental sector of Georgia, Tbilisi, 2012, 31.

⁴³ The first paragraph of Article 23 of the Constitution of Georgia.

⁴⁴ Loladze B., Macharadze Z., Phirtskhalashvili A., Constitutional Justice, Tbilisi, 2021, 243.

is to overthrow or change the constitutional order by violence, to encroach on the independence of the country, to violate the territorial integrity, or to carry out such activities aimed at the promotion of war, violence, which stirs up national, ethnic, religious, regional or other social strife. And of course, it is not allowed to create a political party based on territorial grounds.⁴⁵ Therefore, if the party goes beyond the constitutional framework, this may become the basis for its ban.

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⁴⁵ Paragraph 3 of Article 23 of the Constitution of Georgia.

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