

XIX Congress of the Conference of European Constitutional Courts

Forms and Limits of Judicial Deference: The Case of Constitutional Courts

Questionnaire

filled by

Constitutional Court of Georgia

I. Non-justiciable questions and deference intensities

1. In your jurisdictions, what is meant by “judicial deference”?

In accordance with the jurisprudence established by the Constitutional Court of Georgia (hereinafter referred to as the "Constitutional Court" or “the Court”), the term "judicial deference" pertains to specific circumstances, in which the Constitutional Court recognizes the competence of another branch of the state that is better suited to regulate a particular issue, consequently leading to a reduced level of scrutiny by the Court.

For example, the Constitutional Court assesses the constitutionality of criminal and administrative punishments/sanctions in exceptional circumstances where the punishment/sanction is clearly unreasonable and disproportionate, leading to a violation of Paragraph 2 of Article 9 of the Constitution of Georgia (prohibition of inhuman, cruel, or degrading treatment or punishment).¹

In this regard, the Constitutional Court has held that "in comparison to the judiciary, whose function is the administration of justice, the Parliament is more closely connected and has more mechanisms to objectively assess specific social dangers and, based on empirical conclusions, define efficient ways to address them."²

The Constitutional Court has ruled that “Determination of an act as an offence, setting the sanction and determination of its severity is an exclusive competence of the state (legislator) ... Although the legislator has a wide margin of appreciation in the determination of the size of a sanction, volume, and severity, its discretionary power is not unlimited. The legislator is obliged to respect the principle of proportionality while setting sanctions for offenses. The administrative sanction prescribed by the law should not be clearly unreasonable and disproportionate means for the achievement of the aim designed by the legislator and

¹ See e.g. N1/4/592 Judgment of the Constitutional Court (October 24, 2015), N1/8/696 Judgment of the Constitutional Court (July 13, 2017), N1/9/701,722,725 Judgment of the Constitutional Court (July 14, 2017), N3/1/1239,1642,1674 Judgment of the Constitutional Court (April 21, 2022).

² N1/10/703 Judgment of the Constitutional Court, chap II, para. 37 (October 13, 2017).

accordingly should not result in violation of the constitutional rights and freedoms of individuals. Although acts of the legislator should always be aimed towards setting adequate administrative penalties for acts violating the rights of others and harming society, the size of the administrative penalty might become the subject of assessment by the Constitutional Court only in exceptional circumstances ... The Constitutional Court will consider the administrative penalty to be within the ambit of an individual's constitutional right only if it constitutes a clearly unreasonable and disproportionate measure of achieving legitimate aim designed by the legislator.”³

2. *Is there a spectrum of deference for your Court? Are there “no-go” areas or established zones of legal unaccountability or non-justiciable questions for your Court (e.g., questions of moral controversy, political sensitivity, societal controversy, the allocation of scarce resources, substantial financial implications for the government, etc.)?*

The Constitutional Court, in its case law, has defined particular circumstances where it generally acknowledges a wide margin of appreciation for another branch of the state to regulate the matter, resulting in reduced scrutiny by the Court. These circumstances include when the case involves: a) the social, economic, and fiscal policy of the state;⁴ b) the constitutionality of the sanctions;⁵ c) the defence and administration of military forces by the state;⁶ d) exhaustible state resources;⁷ e) the choice of the election system and its administration;⁸ f) content-neutral restrictions on freedom of expression;⁹ g) Legitimate expectations with regard to the right to property;¹⁰ h) unequal treatment based on non-enumerated criteria or cases of non-intense unequal treatment.¹¹

It should be highlighted that the practice of the Constitutional Court does not establish any "no-go" areas. Rather, as mentioned above, in the indicated circumstances, the Court usually applies lessened scrutiny. However, this does not mean the Court relinquishes complete control over the matter. In many of the cases cited above the Constitutional Court deemed the disputed law unconstitutional.

3. *Are there factors to determine when and how your Court should defer (e.g., the culture and the conditions of your state; the historical experiences in your state; the absolute or qualified character of fundamental rights in issue; the subject matter of the issue before the Court; whether the subject-matter of the case involves changing social conditions and attitudes)?*

³ N4/482,483,487,502 Recording Notice of the Constitutional Court of Georgia, chap II, para. 8 (November 10, 2010).

⁴ See e.g., N2/3/540 Judgment of the Constitutional Court (September 14, 2014), N2/3/630 judgment of the Constitutional Court (July 31, 2015), N2/7/667 of the Constitutional Court (December 28, 2017).

⁵ See e.g., N4/482,483,487,502 Recording notice of the Constitutional Court of Georgia (November 10, 2010), N1/4/592 Judgment of the Constitutional Court (October 24, 2015).

⁶ N1/7/580 Judgment of the Constitutional Court (September 30, 2016).

⁷ N1/3/611 Judgment of the Constitutional Court (September 30, 2016).

⁸ N3/3/763 Judgment of the Constitutional Court (July 20, 2016), N1/1/539 Judgment of the Constitutional Court (April 11, 2013).

⁹ N1/1/468 Judgment of the Constitutional Court (April 11, 2012).

¹⁰ N2/3/522,553 Judgment of the Constitutional Court (December 27, 2013)

¹¹ N1/1/477 Judgment of the Constitutional Court (December 22, 2011).

As already mentioned in answer 2 of this questionnaire, according to the practice established by the Constitutional Court, there are specific circumstances where the Court acknowledges the competence of another branch of the state that is better suited to regulate a particular issue which leads to lessened scrutiny by the Court. However, this does not mean the Constitutional Court relinquishes control over the disputed norm. Instead, this factor is taken into consideration when assessing the norm based on the principle of proportionality.

For example, one case¹² brought before the Constitutional Court concerned whether foreign citizens (citizens of the Russian Federation and Armenia) who permanently resided in Georgia should have the right to free secondary education. When assessing the proportionality of the restriction, the Court first highlighted the importance of education in enabling individuals to fully develop their skills and abilities, engage in critical analysis, integrate into society, foster understanding and tolerance, and lead independent and financially stable lives. The Court emphasised that the full realisation of the right to education is vital for the development of a democratic society, while limiting accessibility to education permanently deprives individuals of a fulfilling life.¹³

However, the right to receive free general secondary education, despite its extreme importance, is not absolute. The representative of the Georgian Parliament cited limited state funds as the legitimate purpose for the norm. The Court acknowledged that the state has a broad margin of appreciation when it comes to managing limited resources and economic planning. However, the Court emphasised that existing resources should primarily be allocated to effectively realise fundamental human rights. The Court underscored that elementary and secondary education equips individuals with basic knowledge and invaluable skills necessary for personal development. The inability to read and write significantly hampers a person's everyday life. Additionally, restricting the right to education leads to lowered social status for adolescents and the stigma of being "uneducated," which can have lifelong consequences. This creates the risk of a "shadow society" within the country, negatively impacting not only the individuals themselves but also the economic well-being of the nation and potentially contributing to a higher crime rate. Therefore, saving resources on education can result in higher future costs caused by a lack of education.¹⁴

Furthermore, the Court determined that by 2013, a total of 467 individuals had requested financing from the Ministry of Science and Education under the disputed norm, and the total amount paid out by the state equalled GEL 117,497 and 75 Tetris. In the Court's opinion, this amount could not be considered a significant burden on the State budget. Consequently, the Court concluded that the restriction of the right to education for foreigners residing in Georgia was disproportional, and the relevant part of the disputed norm was declared unconstitutional with regard right to free education of the Constitution of Georgia.¹⁵

¹² N2/3/540 Judgment of the Constitutional Court (September 14, 2014).

¹³ N2/3/540 Judgment of the Constitutional Court, chap II, paras 16-18 (September 14, 2014),

¹⁴ Ibid, paras 30-31

¹⁵ Ibid para. 33.

Sometimes, a state is granted a wide margin of appreciation based on the intensity of the measure it has imposed on a specific right. In cases involving unequal treatment, the Constitutional Court applies a strict scrutiny test based on the proportionality principle if the ground for differentiation falls within the categories specified in Article 11 of the Constitution (such as race, colour, sex, origin, religion, etc.) or if the disputed provision interferes with the protected right with high intensity. In such cases, the state is required to provide a strong justification for the differentiated treatment.¹⁶

However, if the ground for differentiation does not fall within the specified categories and the interference with the right is not intense, the Court applies a less stringent standard of scrutiny known as the "rational differentiation test." Under this test, it is sufficient for the state to demonstrate the rationality of a differentiated treatment, including the need for the imposed measure and the existence of a rational connection between the objective reason for differentiation and its impact.¹⁷

4. Are there situations when your Court deferred because it had no institutional competence or expertise?

One of the cases before the Constitutional Court involved the assessment of unequal treatment of men, as the law subjected them to the military draft while women were exempted from compulsory service.¹⁸ The Constitutional Court emphasised that the Constitution grants exclusive competence to the highest state organs to regulate matters related to state defence and security, military forces, issues pertaining to war and truce, and the determination and implementation of a state of emergency and martial law. It is a legitimate interest of the state to establish and support the formation of military forces, and the state possesses significant discretion in this regard.¹⁹

The Constitutional Court further ruled that the decisions related to military forces, including matters such as the military draft, recruitment, training, equipping, budgeting, and ensuring combat efficiency, rely on specific and specialised assessments provided by experts and relevant government agencies. Therefore, the legislature holds exclusive authority, based on national security and requirements, to determine the structure of the military draft. The constitution grants the state the discretion, in times of necessity, to conscript every capable citizen for compulsory military service, irrespective of their sex. However, the Constitution also provides the state with the discretion to determine, based on its needs, whether an equal number of men and women is necessary in the military at any given time.²⁰ Therefore, the Court did not find discrimination in this case.

¹⁶ N 2/4/603 Judgment of the Constitutional Court, chap II, para. 8 (October 28, 2015).

¹⁷ N2/3/522,553 Judgment of the Constitutional Court, chap II, para. 15 (December 27, 2013).

¹⁸ N1/7/580 Judgment of the Constitutional Court (September 30, 2016).

¹⁹ Ibid, chap II, para. 27.

²⁰ Ibid 28-29.

5. *Are there cases where your Court deferred because there was a risk of judicial error?*

There has been no such case.

6. *Are there cases when your Court deferred, invoking the institutional or democratic legitimacy of the decision-maker?*

In cases concerning the constitutionality of criminal punishments, the Court has explicitly affirmed that the lawmaker, as the organ endowed with democratic legitimacy, has the right to make fundamental decisions regarding the types and severity of punishable acts, based on criminal policy objectives, as well as the challenges involved.²¹

7. *“The more the legislation concerns matter of broad social policy, the less ready will be a court to intervene”. Is this a valid standard for your Court? Does your Court share the conception that questions of policy should be decided by democratic processes, because courts are unelected and they lack the democratic mandate to decide questions of policy?*

The Court has never emphasised the lack of a democratic mandate in this regard. However, when the case concerns the social policy of the state, particularly the reasonableness of tax policy, the Court acknowledges the state's competence and a wide margin of appreciation in this regard.

For instance, in one of the cases,²² the Court held that Article 94 of the Constitution recognises the right of the state to impose taxes and carry out effective administration in this regard. At the same time, the amount of tax required for the state to fulfil its various functions depends on many factors, including the fiscal policy chosen by the state. Different states impose different tax burdens. In some cases, states impose high taxes to finance various public services, while others impose lower taxes to encourage private initiatives. The decision of which social needs the state faces and how much tax it should collect is within the state's discretion.²³

Therefore, the Court noted that it is evident that the state has wide discretion in imposing a certain amount of taxes. It is difficult in constitutional adjudication to assess how reasonably the state determines the necessary funds for the state budget. The Court also cannot evaluate which fiscal policy of the state is better for the welfare of the country. Thus, within constitutional adjudication, it is impossible to assess whether a particular amount of tax is the least restrictive measure regarding the right to property. However, it should be highlighted that this does not grant the state absolute discretion when imposing a tax regime. The state is obliged to create a tax system that does not undermine the nature of the right to property. The law imposing taxes should be reasonable and should not make it impossible to enjoy the right to

²¹ N3/1/1239,1642,1674 Judgment of the Constitutional Court, chap II, para. 4 (April 24, 2022).

²² N2/7/667 Judgment of the Constitutional Court (December 28, 2017).

²³ Ibid, chap. II, para. 10.

property. Therefore, based on these criteria, the Constitutional Court will assess the disputed norm.²⁴

8. Does your Court accept a general principle of deference in judging penal philosophy and policies?

For example, in one of its landmark cases,²⁵ the Constitutional Court had to check the constitutionality of criminal punishment – imprisonment from 7 to 14 years for purchasing and possession of up to 70 grams of dried leaves of cannabis for personal use, with respect to the prohibition of inhuman, cruel or degrading treatment or punishment.

The Constitutional Court held that the criminalisation of certain acts and the determination of punishment thereof fall within the scope of state policy. The state should have effective means to combat the dangers arising from these acts and, based on their severity and seriousness, criminalise them and determine the appropriate extent of punishment to effectively address these dangers. However, the nature of a crime and legal interests affected by it should be the primary consideration.²⁶

Furthermore, the determination of these matters should be based on historical experience, the culture of the state, societal values, and legal sentiment. Nevertheless, the margin of appreciation granted to the state cannot be unlimited. Regardless of the state's motivations and the importance of the values underlying the regulations aimed at protecting the state, the state is not exempt from the responsibility to act strictly within the boundaries set by the Constitution and unconditionally respect the fundamental rights of individuals. In a democratic and rule-of-law-based state, there is no aim or interest, even if it involves protecting human rights, that would grant the state the legitimate right to violate the right to liberty of certain individuals.²⁷

Therefore, there is a threshold that the state is not allowed to exceed. Accordingly, the Constitutional Court is obligated to assess the policy of punishment in extreme cases where it results in the violation of a human right. This does not mean that the Constitutional Court is potentially authorised to assess the constitutionality of every measure used as a punishment. Such an approach would disrupt the balance between the competencies of the court and the legislature and create a temptation for the judiciary to replace the legislator.²⁸

However, the restraint shown by the judiciary in not involving itself in this sphere becomes groundless and inappropriate in cases where the magnitude of punishment is clearly unreasonable and disproportionate. The court is authorised and, in fact, obligated to assess the constitutionality of punishment when its inadequacy and disproportionality reach a certain

²⁴ Ibid para. 13.

²⁵ N1/4/592 Judgment of the Constitutional Court (October 24, 2015).

²⁶ N1/4/592 Judgment of the Constitutional Court, chap. II, para. 33 (October 24, 2015).

²⁷ Ibid.

²⁸ Ibid para. 34.

level, and when the imbalance is evident. In such cases, the punishment goes beyond its intended purpose and unjustifiably restricts constitutional rights.²⁹

9. There may be narrow circumstances where the government cannot reveal information to the Court, especially in contexts of national security involving secret intelligence. Has your Court deferred on national security grounds?

There has been no such case.

10. Given the courts' role as guardians of the Constitution, should they interfere with policies stronger (apply stricter scrutiny) when the governments are passive in introducing rights-compliant reforms?

According to Paragraph 4 (a) of Article 60 of the Constitution of Georgia, the Constitutional Court reviews the constitutionality of a normative act in relation to the fundamental human rights enshrined in Chapter Two of the Constitution based on a claim submitted by a natural person, a legal person, or the Public Defender. Therefore, in cases where the government does not take proactive steps to introduce any form of normative act, the Court cannot engage in constitutional adjudication proactively.

However, if the Court had to check the constitutionality of normative acts that fail to meet the human rights standards set by the Constitution, the Court obviously engages in constitutional adjudication and might use strict scrutiny as it depends on what the subject matter in the case is. For example, the Constitutional Court uses strict scrutiny when the disputed law concerns content regulation of the freedom of expression.³⁰

II. The decision-maker

11. Does your Court pay greater deference to an act of Parliament than to a decision of the executive? Does your Court defer depending on the degree of democratic accountability of the original decision maker?

According to paragraph 3 of Article 4 of the Constitution of Georgia, the exercise of state authority is based on the principle of the separation of powers. Therefore, in case of a dispute, firstly, the Constitutional Court determines which state body has the constitutional mandate to decide on a particular matter and renders its decision accordingly.

²⁹ Ibid.

³⁰ N1/1/468 Judgment of the Constitutional Court (April 11, 2012).

For instance, in one of its cases,³¹ the Constitutional Court established that content regulation of freedom of speech must be exclusively carried out by the Parliament of Georgia, and this power cannot be delegated to the executive branch. The underlying issue before the Constitutional Court of Georgia was whether the Georgian National Communications Commission had the authority to impose content-based restrictions on online speech in compliance with Article 17 (freedom of expression) of the Constitution of Georgia. The Court emphasised that although the Communications Commission is an important governmental body, imposing content-based restrictions on freedom of expression is a matter of significant public interest, and thus, it is a function that only the Parliament can undertake. Therefore, the exclusive right to regulate the content of speech, following the wide and transparent political debate, lies with the Parliament, and the delegation of this function is prohibited.³²

In another instance, when the Court had to decide on the constitutionality of night curfews imposed to stop the spread of the Covid-19 in relation to the freedom of movement, the Constitutional Court ruled that the Executive's power to impose curfews did not violate the freedom of movement of persons. The Court reasoned that this power could not effectively be exercised by the legislature due to the rapidly changing situation with the coronavirus, requiring prompt decision-making that cannot be realised through parliamentary sessions. Furthermore, the Court emphasised that granting the executive the power to impose curfews does not imply that it has acquired the essential power of the parliament. The executive's power was limited in terms of time, related to the end of the coronavirus situation, and did not significantly impact the state's social, economic, cultural, legal, and political spheres in the long term.³³

12. What weight gives your Court to legislative history? What legal relevance, if any, should parliamentary consideration have for the judicial assessment of human rights compatibility?

According to Paragraph 3 of Article 26 of the Organic Law on the Constitutional Court of Georgia, when evaluating a normative act, the Constitutional Court considers not only the literal meaning of the disputed provision, but also the expressed intent, practical application, and the essence of the relevant constitutional standard. When deemed necessary, the Constitutional Court may interpret the norm, including by referring to legislative history, among other sources of interpretation.³⁴

³¹ N1/7/1275 Judgment of the Constitutional Court (August 2, 2019).

³² Ibid, chap II, para. 41-42.

³³ N1/5/1499 Judgment of the Constitutional Court, chap II, para. 17-24 (December 16, 2021).

³⁴ N2/3/540 Judgment of the Constitutional Court (September 14, 2014).

13. Does your Court verify whether the decision maker has justified the decision or whether the decision is one that the Court would have reached, had it itself been the decision maker?

The Constitutional Court, based on the proportionality test, examines whether a decision maker has provided justification for its decision to restrict a specific right.³⁵

14. Does your Court defer depending on the extent to which the decision or measure was preceded by a thorough inquiry regarding compatibility with fundamental rights? How deep must the legislative inquiry be, for example, before your Court will, eventually, give weight to it?

No.

15. Does your Court analyze whether the opposing views were fully represented in the parliamentary debate when adopting a measure? Is it sufficient for there to be an extensive debate on the general merits of the legislation or must there be a more targeted focus on the implications for rights?

When the Constitutional Court assesses individual applications submitted by individuals or legal entities, the focus of the adjudication is the compatibility of the norms in question with the human rights enshrined in the Constitution. The Court examines whether the contested norms infringe upon or violate the constitutionally guaranteed human rights and freedoms of the applicants. This involves evaluating the conformity of the norms with the relevant constitutional provisions and principles and ensuring that they do not unjustifiably restrict or infringe upon the protected rights and freedoms.

16. Is the fact that the decision is one of the legislature's or has come about after public consultation or public deliberation conclusive evidence of a decision's democratic legitimacy?

There has been no such case.

III. Rights' scope, legality and proportionality

17. Has your Court ever deferred at the rights-definition stage, by giving weight to the government's definition of the right or its application of that definition to the facts?

³⁵ E.g., N3/1/512 Judgment of the Constitutional Court, chap II, para. 60 (June 26, 2012).

The Constitutional Court of Georgia, as the guarantor of the Constitution, has the exclusive competence to interpret the Constitution and the human rights enshrined therein.³⁶

18. Does the nature of applicable fundamental rights affect the degree of deference? Does your Court see some rights or aspects of rights more important, and hence more deserving of rigorous scrutiny, than others?

In this regard, it is important to note that the intensity and nature of the disputed measure/law play a significant role in determining the level of scrutiny applied by the Constitutional Court, rather than the relative importance of the rights involved. While certain rights may be considered more fundamental to individuals, the Court's scrutiny primarily focuses on the proportionality of the disputed measure and the careful balancing of various interests. The aim is to ensure that the interference with a person's rights is no greater than necessary and does not undermine the essence or meaning of those rights.

For instance, when it comes to content-neutral restrictions on freedom of expression, the Constitutional Court's scrutiny is not as strict. In one of its cases³⁷, the Court recognised that the state enjoys a relatively wide margin of appreciation when determining the timeframe for granting licenses for broadcasting through cable networks or satellite, compared to content-based restrictions on freedom of speech. The Court noted that it is inherently challenging to define an exact timeframe that would be deemed proportional for granting broadcasting licenses. However, in exceptional circumstances where a specific timeframe for granting a license is unreasonably long and imposes unjustifiably heavy burdens on broadcasters, the Court acknowledges that it would infringe on the freedom of expression.³⁸

19. Do you have a scale of clarity when you review the constitutionality of a law? How do you decide how clear is a law? When do you apply the In claris non fit interpretatio canon?

When interpreting the content of a disputed law, the Constitutional Court commonly utilises different methods, including systemic interpretation. For example, in one of its cases, where the definition of espionage in Georgia's criminal code was challenged by an applicant due to its alleged vagueness, the Court applied systemic interpretation to assess the disputed norm. After considering the broader context and interconnection of legal provisions, the Court concluded that the definition of espionage in the law was foreseeable and comprehensible for a rational person.³⁹

20. What is the intensity review of your Court in case of the legitimate aim test?

³⁶ Article 60 of the Constitution of Georgia

³⁷ N 1/1/468 Judgment of the Constitutional Court (April 11, 2012)

³⁸ Ibid chap. II, para. 81.

³⁹ N2/2/516,542 Judgment of the Constitutional Court, chap II, para. 21 (May 14, 2013).

The legitimate aim test is indeed one of the steps in the proportionality principle used by the Constitutional Court to assess the compatibility of a disputed law with the human rights enshrined in the Constitution. If a law is found to lack a legitimate aim, the Court considers it arbitrary and therefore unconstitutional. The Court has established that if there is no valid and justifiable legitimate aim for restricting human rights, there is no need to further analyse the proportionality of the measure itself. In such cases, the Court can declare the norm unconstitutional based on the absence of a legitimate aim alone.⁴⁰

21. What proportionality test employs your Court? Does your Court apply all the stages of the “classic” proportionality test (i.e. suitability, necessity, and proportionality in the narrower sense)?

The Constitutional Court applies the classic proportionality test, which involves evaluating the legitimate aim, rational connection, necessity, and proportionality in a narrow sense (*stricto sensu*) of a measure. The Court examines whether there is a legitimate aim behind the measure, whether there is a rational connection between the measure and the aim, whether the measure is absolutely necessary to achieve the aim, and whether the measure is proportionate to the aim pursued.⁴¹

22. Does your Court go through every applicable limb of the proportionality test?

Yes, however, if a measure does not meet one of the steps, the court does not continue to evaluate the remaining steps and deems the norm unconstitutional.

23. Are there cases where your Court accepts that the impugned measure satisfies one or more stages of the proportionality test even if there is, on the face of it, insufficient evidence to show this?

There have been no such cases.

24. Has the inception of proportionality review in your Court’s case-law been concomitant with the rise of the judicial deference doctrine?

No, however, the Court usually takes into consideration the margin of appreciation given to a state in a particular matter when assessing the proportionality of the disputed norm.

25. Has the jurisprudence of the ECtHR shaped your Court’s approach to deference? Is the ECtHR’s doctrine of the margin of appreciation the domestic equivalent of the margin of discretion your Court affords? If not, how often do considerations regarding the margin of appreciation of the ECtHR overlap with the considerations regarding deference of your Court in similar cases?

⁴⁰ N 2/4/570 Judgment of the Constitutional Court (August 4, 2016).

⁴¹ E.g., N3/1/512 Judgment of the Constitutional Court, chap II, para. 60 (June 26, 2012).

The doctrine of margin of appreciation of the ECtHR has some similarities with the Constitutional Court's doctrine of margin of appreciation, as both recognise that the competence of the state to regulate matters, including social and economic aspects of the state.⁴²

26. Had the ECtHR condemned your State because of the deference given by your Court in a specific case, a deference that has made it an ineffective remedy?

There has been no such case.

IV. Other peculiarities

27. How often does the issue of deference arise in human rights cases adjudicated by your Court?

The Constitutional Court does not maintain statistics on this matter. However, as mentioned previously, whether the Court acknowledges a wide margin of appreciation for another state organ depends on the specific subject matter of the case.

28. Has your Court have grown more deferential over time?

No.

29. Does the deferential attitude depend on the case load of your Court?

No.

30. Can your Court base its decisions on reasons that are not advanced by the parties? Can the Court reclassify the reasons advanced under a different constitutional provision than the one invoked by the applicant?

Article 2 of the Organic Law on the Constitutional Court of Georgia establishes that the Court conducts its activities based on principles of legality, collegiality, openness, equal treatment, and adversarial proceedings. However, it is important to note that the Court also possesses strong inquisitorial powers. While the Court typically considers the arguments presented by the parties, it is not limited to relying solely on those arguments and can reach its own conclusions as well. Moreover, Paragraph 6 of Article 29 of the Organic Law explicitly states that the admission of the claim by the respondent does not lead to the termination of

⁴² See e.g., N2/3/540 Judgment of the Constitutional Court (September 14, 2014), N2/3/630 judgment of the Constitutional Court (July 31, 2015), N2/7/667 of the Constitutional Court (December 28, 2017).

proceedings in the Constitutional Court. Therefore, the Constitutional Court continues its constitutional adjudication even if the respondent agrees with the claimant and deems the law unconstitutional.

31. Can your Court extend its constitutionality review to other legal provision that has not been contested before it, but has a connection with the applicant's situation?

No. Paragraph 1 of Article 26 of the Organic Law on the Constitutional Court of Georgia states that “The Constitutional Court shall have no right to judge the compliance of an entire law or other normative act with the Constitution if a claimant or an author of the submission demands that only a certain provision of the law or other normative act be recognised as unconstitutional.” Thus, the Court cannot do it on its initiative (*sua sponte*).