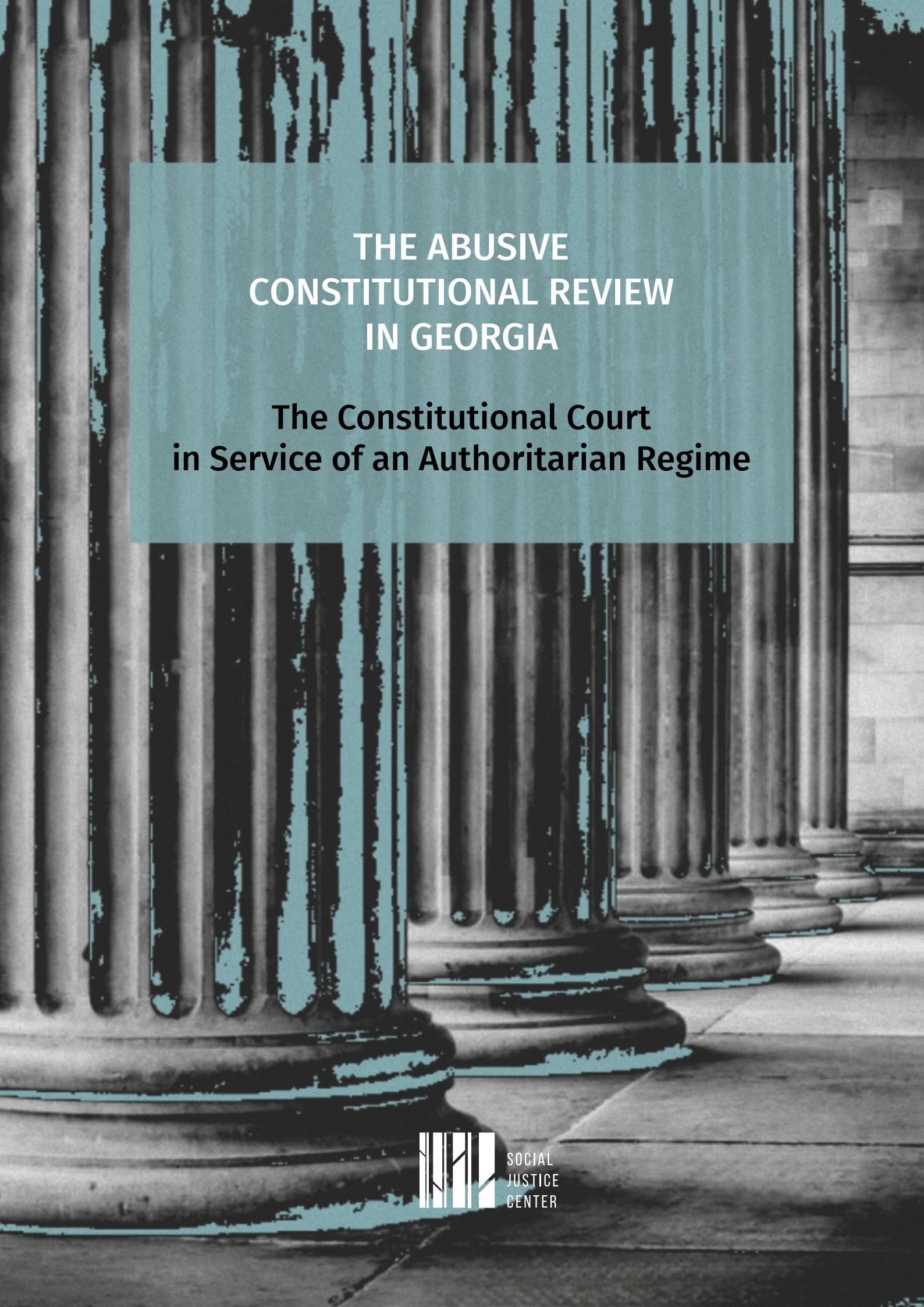

THE ABUSIVE CONSTITUTIONAL REVIEW IN GEORGIA

The Constitutional Court in Service of an Authoritarian Regime

SOCIAL JUSTICE CENTER

The Abusive Constitutional Review in Georgia

The Constitutional Court in Service of an Authoritarian Regime

Social Justice Center

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Introduction

Constitutional democracy is under threat across the globe, as leaders in a number of countries seek to undermine its foundations. What distinguishes the recent wave of attacks on democracy is their appearance of legality. Today's autocrats primarily rely on both formal and informal constitutional amendments, as well as normal legal mechanisms, to reshape the constitutional order in a way that tilts the electoral playing field in their favor.

One of the key tools modern autocrats employ is the abusive judicial review. In this context, justice becomes powerful instrument of authoritarian regimes, and the judiciary—particularly apex courts—becomes an integral part of the regime's long-term strategy.

Recent academic literature increasingly analyzes the abuse of certain judicial actors - constitutional courts and constitutional review. A theoretical framework on this topic was introduced by David Landau and Rosalind Dixon in their 2020 article, *Abusive Judicial Review: Courts Against Democracy*[1]. The framework defines the concept of "abusive constitutional review" and explores its logic and typology within authoritarian strategies—explaining why and how regimes co-opt courts, and distinguishing between "strong" and "weak" forms of such abuse. In its weak form, constitutional courts support or enable authoritarian tendencies through silence or strategic concessions. In its strong form, courts actively participate in dismantling democratic and constitutional order. Ultimately, abusive judicial review entails a parasitic use of trust and legitimacy (if any exists) of courts by fundamentally illegitimate regimes. While such strategies require careful timing and execution, failure can render courts ineffective tools for the regime and cause them to lose both institutional independence and public trust—often leaving them buried under the regime's collapse. Rebuilding from such a collapse demands full-scale reform of the judiciary and years of its legitimacy restoration.

This document applies that theoretical lens to the Georgian model of abusive constitutional review. Despite its unique characteristics, the Georgian case fits squarely within the conceptual framework. Drawing on an analysis of institutional, legislative, and personnel changes throughout the Constitutional Court of Georgia's history—as well as the Court's recent jurisprudence on key constitutional matters—this paper examines how one of the most trusted institutions of the post-independence period has become first a silent partner to political power with authoritarian leanings, and eventually an active enabler of authoritarian consolidation. The consequences of its decisions continue to have a devastating impact on Georgia's deepening political, social, and constitutional crisis.

It must also be acknowledged that this critique of the Constitutional Court of Georgia is both necessary and belated. It took years for civil society and the broader public to confront the uncomfortable truth of the Court's political capture—despite the fact that, in retrospect, the turning point came in 2016. This realization was delayed even as government-friendly judges were appointed, key cases were stalled for years, and the Court shifted into strong forms of abusive review. This trajectory unfolded differently from the well-documented failures of the common courts' reform process, which has long been the

[1] David Landau, Rosalind Dixon, "Abusive Judicial Review: Courts against Democracy," UC Davis Law Review, Vol. 53, 2020, Georgian translation available at: https://cutt.ly/zrcEGzLi; accessed on: 27.05.2025.

subject of consensus and critique, and which, ironically, contributed to the Constitutional Court's own institutional decline.

Nevertheless, in the face of Georgia's ongoing democratic regression and institutional capture, a systemic critique of this process remains vital. Only by properly diagnosing the problem can we hope to find long-term solutions—should the opportunity for democratic renewal arise. This document is one such attempt and is intended to contribute to public discourse on Georgia's future, and, in the event of change, to the deep institutional recovery of the Constitutional Court and the rebuilding of public trust in its role.

1. Constitutional Review and Apex Courts as Guardians of Constitutional Democracy - Myth or Reality?

The enforceability of constitutions through judicial means has long been considered a vital mechanism of constitutional democracies[2]. Accordingly, the authority of courts to exercise constitutional review has become an integral element of modern constitutionalism. However, as constitutional democracies have evolved, so too has the practice of constitutional review—developing into a complex and multifaceted phenomenon[3].

In the United States, one of the earliest constitutional democracies, judicial review emerged in a decentralized form through the ordinary court system. In contrast, Europe later developed a centralized model, where a specialized constitutional court exclusively exercised this function.

The powers granted to constitutional review bodies also vary, but they can broadly be grouped into three core categories:

- Protection of the fundamental structure and identity of the constitution;
- Protection and enforcement of fundamental constitutional rights;
- Enforcement of the principles of separation of powers and checks and balances[4].

While safeguarding the constitution's structural core is not always within the purview of the judiciary—in some countries, this is achieved through complex and multi-layered amendment procedures—the latter two powers are almost universally present and are deeply interlinked. Specifically, by enforcing fundamental rights, apex courts also check whether political branches are exercising their constitutional powers properly. Conversely, by interpreting the separation of powers, they inevitably protect individual rights. These functions are intertwined, and failure to exercise them conscientiously can undermine both the rule of law and democratic governance.

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[2] Steven G Calabresi, "The Global Rise of Judicial Review Since 1945," Cath. UL Rev. 69 (2020): 401.; cited in the research: Davit Zedelashvili, Tamar Ketsbaia, „Constitutional Judicial Control Reform: Toward Full Institutionalization and Systemic Impartiality", Gnomon Wise, 2024, p. 8, available at: https://cutt.ly/4rcEJlNs; accessed on: 27.05.2025.

[3] Ibid.

[4] Ibid. p. 9.

Due to their crucial powers and roles, constitutional review and apex courts became subjects of intense focus in the late 20th century—particularly in post-communist transitions, where constitutional courts played key roles in the democratic transformation of Central and Eastern Europe.

During the Soviet era, constitutions in the Soviet republics only nominally adhered to the rule of law. In practice, the principle was devoid of both procedural and substantive meaning. Parliaments were presented as the supreme representative institutions, but under the primacy of the Communist Party, they were entirely controlled by and subordinate to it. Consequently, the concept of legality served to entrench party supremacy and left no room for genuine constitutional review[5]. Even if such a mechanism had existed, it would have mirrored the fate of the judiciary at large, which was also under party and executive control[6].

Following the collapse of the Soviet Union, Central and Eastern European countries rejected this distorted notion of legality and made substantial efforts to establish legal constitutionalism. In this process, constitutional courts played a flagship role, as the rebuilding of governance and legal systems was based on the idea of the constitution as a supreme, enforceable legal document. These courts operated independently and performed the critical tasks of protecting rights and enforcing separation of powers, thus serving as barriers to political government overreach and power consolidation[7]. Their active role was crucial in overcoming the Soviet legacy—particularly the idea of parliamentary supremacy, which was used to justify the Communist Party's dominance[8].

It is therefore unsurprising that a conception of constitutionalism emerged that placed increasing importance on the judiciary as a protector against the abuse of political power. This perspective has attracted both supporters and critics. Critics argue that excessive judicial power leads to the "juridification" of politics, shifting political decision-making from the public sphere to the courtroom. Supporters, on the other hand, emphasize the judiciary's potential to act as a safeguard against the erosion or capture of democratic institutions.

Unfortunately, these optimistic expectations about constitutional courts have not fully materialized. Over time—and with the emergence of modern authoritarian regimes using more subtle and sophisticated tactics—it has become clear that apex courts are among the first and most vulnerable targets. In hindsight, this is unsurprising. Today's authoritarians have weaponized law and

[5] Paul Blokker, "The (Re-) Emergence of Constitutionalism in East Central Europe," in Thinking Through Transition: Liberal Democracy, Authoritarian Pasts, and Intellectual History in East Central Europe After 1989, eds. Michal Kopeček and Piotr Wciślik (Central European University Press, October 2015): 139–168; cited in the research: Davit Zedelashvili, Tamar Ketsbaia, „Constitutional Judicial Control Reform: Toward Full Institutionalization and Systemic Impartiality", Gnomon Wise, 2024, p. 30.

[6] Ana Papuashvili, "The 'European Model' of Judicial Institutional Design: Salvation or Obstacle on the Way to Successful Judicial Reform – Lessons for Georgia," Social Justice Center, 2021, available at: https://cutt.ly/wrcEZAbl; accessed on: 27.05.2025.

[7] Alec Stone Sweet, "Constitutions and Judicial Power," essay, in Comparative Politics, Oxford: Oxford University Press, 2008.

[8] Davit Zedelashvili, Tamar Ketsbaia, „Constitutional Judicial Control Reform: Toward Full Institutionalization and Systemic Impartiality", Gnomon Wise, 2024, p. 31.

constitutions to implement their agendas[9]. Thus, while constitutional courts played an inspiring role in earlier democratic transitions, many have since failed to resist authoritarian capture—and in some cases, have actively facilitated it. They have redirected their powers to serve authoritarian aims and undermine the very foundations of democracy. In academic discourse, this phenomenon is now widely referred to as „abusive constitutional review“[10].

2. Abusive Constitutional Review in Contemporary Authoritarian Regimes

The optimism that emerged at the end of the 20th century about the irreversible dominance of liberal-democratic constitutional order and the so-called "end of history"[11] turned out to be far from reality. With the progression of the new millennium, the democratic-constitutional order has been experiencing an increasingly deep crisis globally. Attacks on democracy are, of course, not new, but unlike earlier crises, where such attacks were mostly conducted openly and unlawfully, through confrontational methods such as military coups, today's authoritarian actors employ "softer," yet significantly more dangerous methods that are cloaked in an appearance of legality. Specifically, these actors often come to power through free and fair elections, and subsequently use their authority, legal mechanisms, and the inherent contradictions of the existing constitutional order to create new, advantageous rules[12].

The methods and legal tools used by leaders in various countries to dismantle democratic-constitutional orders are diverse, but show important similarities. In cases where such regimes manage to secure a constitutional majority through elections, their first step is often formal constitutional amendments. For instance, in several Latin American countries, presidential term limits were loosened or abolished[13]; in Turkey, Erdoğan's authoritarian regime used constitutional amendments to expand presidential powers and subordinate the Constitutional Court[14]; in Hungary, Orbán introduced major changes, including reforms aimed at restructuring the judiciary to his advantage[15]. Where governments are unable to initiate formal constitutional change, a broad arsenal of informal or sub-constitutional methods is employed. These include amending or adopting ordinary legislation to restrict the independence of democratic institutions, courts, ombudspersons, or media; selective enforcement of defamation laws, media regulation, electoral, criminal, administrative, or other relevant legislation; discreditation and harassment of the opposition and civil society; and the appointment of loyal

[9] Kim L. Scheppele, "Autocratic Legalism," University of Chicago Law Review: Vol. 85: Iss. 2, Article 2 (2018), available at: https://cutt.ly/XrvZ45eB; accessed on: 27.05.2025.

[10] David Landau, Rosalind Dixon, "Abusive Judicial Review: Courts against Democracy," UC Davis Law Review, Vol. 53, 2020, p. 12.

[11] The End of History?, Francis Fukuyama, The National Interest, No. 16 (Summer 1989), pp. 3-18.

[12] David Landau, Abusive Constitutionalism, 47 UC DAVIS L. REV. 189, 191 (2013); Kim Lane Scheppele, Autocratic Legalism, 85 U. CHI. L. REV. 545, 560–62 (2018); cited in the article: David Landau, Rosalind Dixon, "Abusive Judicial Review: Courts against Democracy," UC Davis Law Review, Vol. 53, 2020, p. 5.

[13] David Landau, Presidential Term Limits in Latin America: A Critical Analysis of the Migration of the Unconstitutional Constitutional Amendment Doctrine, 12 LAW & ETHICS HUM. RTS. 225, 226 (2018).

[14] Steven A. Cook, How Erdogan Made Turkey Authoritarian Again, ATLANTIC (July 21, 2016), accessible at: https://cutt.ly/LrcEMCSM; Maria Haimeri, The Turkish Constitutional Court Under the Amended Turkish Constitution, VERFASSUNGSBLOG (Jan. 27, 2017), accessible at: https://cutt.ly/OrcE1ixf ; accessed on: 27.05.2025.

[15] NORWEGIAN HELSINKI COMM., Democracy at Stake in Hungary: The Orbán Government's Constitutional Revolution 5–9 (2012), accessible at: https://cutt.ly/brcE0eke ; accessed on: 27.05.2025.

individuals to key public positions. However, the success of such programs is difficult without the participation of the third, non-political branch of power — the judiciary.

It is no coincidence, then, that the judiciary is viewed as one of the main mechanisms for safeguarding the liberal-democratic constitutional order. Judges are increasingly called upon to play an active role in defending democracy[16], and while bold judicial action may not be able to halt democratic backsliding altogether, it can slow its progress and buy critical time for democratic forces to consolidate. Naturally, the local context and the strength of the judiciary itself - including its independence and historical legitimacy - play a crucial role. The stronger the judiciary and the longer its experience of independence and public trust, the higher the chances it can successfully meet this challenge.

However, an alternative scenario is also possible — where courts do not take an active stance in defense of the constitutional-democratic order. Worse still, judicial inaction may not even be the most harmful outcome — in some cases, courts are transformed into active agents of the regime[17].

2.1. What Does Abusive Constitutional Review Mean?

David Landau and Rosalind Dixon refer to a targeted attack on the core of representative democracy by courts as "abusive judicial review", identifying it as an extremely alarming element of democratic erosion[18].

Such a strategy is highly risky and requires sufficient time and calculated maneuvering from the regime, but if successful, courts can play a decisive role in the implementation and maintenance of anti-democratic projects. A case in point is Poland, where the ruling party "Law and Justice" did not have the constitutional majority required for formal amendments, but nonetheless achieved its goals by capturing the judiciary—especially the Constitutional Tribunal—and adopting unconstitutional laws, which were then endorsed by the restructured tribunal[19].

The very term "abuse" can be understood as the hollowing out of constitutional democracy's institutions and values, stripping them of the real substance and goals they are meant to serve. In anti-democratic projects, institutions - and particularly courts - serve the regime; they reinterpret constitutional and democratic values according to the regime's objectives[20], distort the actual meaning of the constitution, and misuse concepts and doctrines originally developed to protect liberal democracy. This harms the core purpose of these doctrines and turns them into instruments for attacking liberal democratic values. Naturally, courts do not openly admit to such abuse. *"The true*

[16] David Landau, Rosalind Dixon, "Abusive Judicial Review: Courts against Democracy," UC Davis Law Review, Vol. 53, 2020, p. 5.
[17] Ibid., p. 6.
[18] Ibid.
[19] Wojciech Sadurski, How Democracy Dies (in Poland): A Case Study of Anti-Constitutional Populist Backsliding (Sydney Law School Research Paper No. 18/01, 2018), accessible at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3103491 ; accessed on: 27.05.2025.
[20] Davit Zedelashvili, When a Weatherman Cheats During the Storm - The Abusive Judicial Review and Civil Society, Gnomon Wise, Opinion 21/01, p. 2, available at: https://cutt.ly/prcE9MGS; accessed on: 27.05.2025.

threat of "abusive judicial review" lies in the fact that regimes try to present the deliberate erosion of constitutional democracy, tailored to meet the regime's political goals, as the realization of those very ideals"[21].

When it comes to identifying abusive judicial review, Landau and Dixon emphasize the need to establish, first, an **abusive change** on the minimum standards of democracy resulting from a court's decision, and second, an **intentional element** behind the court's action. By abusive, they mean a change that, in the given context, deteriorates democratic and constitutional standards and makes the regime less democratic than it previously was[22]. As for intent, it is a broader concept that includes several aspects.

As further chapters discuss, the issuance of anti-constitutional and anti-democratic decisions is usually preceded by a process of judicial capture, through which the court becomes part of an anti-democratic actor's strategy. Accordingly, establishing intent is crucial to determining whether we are dealing with a successfully executed strategy or some other explanation for why the court made such a decision. At the same time, it must be noted that while motive and purpose are not necessary to determine the extent of democratic harm caused by a court's action, they do matter when it comes to evaluating how local and international actors should respond. Since abusive judicial review significantly contributes to the long-term success of authoritarian regimes in eroding democratic institutions and values, timely and appropriate reactions are essential[23].

When speaking of intent in abusive judicial review, several situations are identified. One such case is when judges adopt anti-democratic or anti-constitutional decisions based on legally incorrect but sincere reasoning**,** as constitutional texts are often vague and allow for broad interpretation. Clearly, it is unlikely that the text or structure of a constitution would force a judge to reach a decision that contradicts it outright. However, in such cases, it becomes difficult to distinguish between a lack of competence and a lack of good faith[24]**.**

Another case may involve judges refusing to hear a case or issuing decisions unfavorable to democracy out of caution — in an effort to avoid a direct clash with political authorities and thereby prevent even greater risks[25]. In such situations, judges might believe that by doing so, they are defending the rule of law in the short term and safeguarding the court's institutional independence in the long term. Their aim might be to avoid open political attacks that could erode public trust in the court and diminish its authority and legitimacy[26]. Even so, what matters here is the importance of the case in question - in other words, what is at stake when the court seeks to protect its reputation and independence. If a

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[21] Ibid. p. 3.
[22] David Landau, Rosalind Dixon, "Abusive Judicial Review: Courts against Democracy," UC Davis Law Review, Vol. 53, 2020, pp. 12–16.
[23] Ibid. pp. 16–17.
[24] Ibid. p. 17.
[25] Stephen Gardbaum, Are Strong Constitutional Courts Always a Good Thing for New Democracies? 53 COLUM. J. TRANSNAT'L L. 285 (2015).
[26] Rosalind Dixon & Samuel Issacharoff, Living to Fight another Day: Judicial Deferral in Defense of Democracy, 2016 WIS. L. REV. 683, 699 (2016).

political regime has already decided to pursue authoritarian consolidation, conceding at the wrong time could mark not a tactical retreat, but the beginning of a complete collapse[27].

As the above suggests, proving anti-democratic intent is not easy, because such regimes and their courts do not abuse power openly. However, the literature identifies several indicators that, when examined together, may reveal whether courts are deliberately undermining the constitutional-democratic order and serving the regime's goals.

In particular, because abusive judicial review is closely tied to judicial capture, one must first examine whether there are signs of compromised judicial independence**,** through either **formal or informal means** available to political authorities.

Other indicators may include **procedural violations** in case handling, unjustified delays, postponements of motion hearings, or arbitrary refusals to hear cases. While delays can sometimes be caused by objective factors, in certain situations they may serve as significant warning signs[28].

A particularly important indicator is the **reasoning behind the court's decisions**, **and the quality of that reasoning.** Here, the case context and circumstances are critical — particularly whether the court deviates from its own precedent or jurisprudence. It has been observed that when courts consciously and deliberately issue anti-democratic or anti-constitutional judgements**,** they often engage in **manipulative use of precedent or constitutional interpretation,** such as: 1. Extremely **superficial reasoning** that references the formal text of a norm without engaging its real substance; 2. **Selective reasoning** that isolates certain constitutional or democratic elements and applies them in a distorted way; 3. **Context-free reasoning** that ignores political, social, cultural, or other relevant factors; **4. Reasoning that distorts the purposes of constitutional and democratic norms**, applying them in ways that produce outcomes opposite to their intended goals[29]. In such cases, courts may use one or several of these techniques to strike a balance between the appearance of legal justification and the substantive anti-constitutional impact of their decisions. Conversely, the most blatant form of abusive judicial review would be one where judges don't even attempt to provide justification. However, such behavior is less valuable for authoritarian actors**,** since its illegitimacy is too obvious and fails to legitimize the regime's decisions - instead, it openly exposes the judiciary as a political tool. Therefore, the more effective form of abusive review tends to be judgments that are better reasoned, procedurally conventional, and harder to detect — unless one analyzes them alongside the appropriate indicators.

[27] Khemthong Tonsakulrungruang, Thailand: An Abuse of Judicial Review, in JUDICIAL REVIEW OF ELECTIONS IN ASIA (Po Jen Yap ed., 2016).

[28] G. Pollock, Adequate and Independent State Grounds as a Means of Balancing the Relationship between State and Federal Courts, 63 TEX. L. REV. 977, 977 (1985).

[29] David Landau, Rosalind Dixon, "Abusive Judicial Review: Courts Against Democracy," UC Davis Law Review, Vol. 53, 2020, p. 22; Rosalind Dixon & David Landau, 1989–2019: From Democratic to Abusive Constitutional Borrowing, 17 INT'L J. CONST. L. 489, 489 (2019).

2.2. The Goals of Abuse – Why Apex Courts?

As already noted, the overwhelming majority of modern constitutions include mechanisms for enforcement through courts. The existence of judicial power and the granting of constitutional review to it is generally considered an essential feature of constitutional democracies[30]. Moreover, since the judiciary is a more "legal" and less political institution, it enjoys a certain presumption of legitimacy from its inception[31]. The legitimacy of judicial decisions primarily entails trust, respect, and voluntary compliance from society and various actors, regardless of how unacceptable a particular outcome may be to some segments of the public. This presumption of respect also exists among international actors. While political decisions can be sharply criticized inside or outside society, criticism of judicial decisions tends to be more cautious, requiring proper understanding of the context and quality justification[32]. Clearly, the more independent and strong the judiciary is within a particular state, and the longer institutional memory of its independence persists, the greater its practical legitimacy and trust both domestically and internationally.

In contrast, **autocracy is an "essentially legitimacy-deficient regime" that seeks to maintain itself through restriction and repression**. To justify these repressions and satisfy their "hunger" for legitimacy, such regimes appeal to the "legality" of restrictions and abuse the supremacy of law and democratic institutions[33], which under normal circumstances should practically uphold these ideals and imbue democratic and constitutional values with appropriate substance through their legitimate decisions. More specifically, when such regimes abuse judicial review, they attempt to exploit the presumption of legitimacy granted to the judiciary and its decisions within the democratic and constitutional system in their favor[34].

Autocratic regimes need to fill the legitimacy deficit both domestically—to convince their supporters and reduce public criticism of non-democratic restrictions or repressions—and internationally, to mitigate external criticism and, in some cases, especially at the early stages of institutional capture, to delay such criticism and corresponding measures. The constitutional order, as well as internationally recognized human rights standards and norms, prevent political authorities from openly ignoring or violating them. The political cost of such actions is quite high and may put sanctions by international or regional institutions on the agenda. On the other hand, courts—especially constitutional courts—due to the general nature of their mandate and constitutional-legal norms, and given adequate capacity, may attempt to break or skillfully modify the restrictions imposed by the constitution of a given country. This elicits less reaction from international institutions because responding to legal norms and

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[30] Alec Stone Sweet, Constitutional Courts, in THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW 816, 816 (Michel Rosenfeld & András Sajó eds., 2012).

[31] David Landau, Rosalind Dixon, "Abusive Judicial Review: Courts against Democracy," UC Davis Law Review, Vol. 53, 2020, pp. 25–26.

[32] Ibid., p. 26.

[33] Davit Zedelashvili, When a Weatherman Cheats During the Storm - The Abusive Judicial Review and Civil Society, Gnomon Wise, Opinion 21/01, pp. 1–2.

[34] David Landau, Rosalind Dixon, "Abusive Judicial Review: Courts against Democracy," UC Davis Law Review, Vol. 53, 2020, p. 26.

decisions is far more complex and sometimes prolonged than with political decisions. Ultimately, *"judicial review may become both a less visible and more legitimate means of democratic erosion that can be beneficial for the regime"*[35].

Beyond the key mission of filling the legitimacy deficit, abuse of judicial review may serve as an informal and auxiliary lever for non-democratic constitutional changes when the ruling team cannot formally implement constitutional changes or when openly doing so would entail much greater political costs.

Finally, the abuse of constitutional review may be **a facilitating mechanism for other non-democratic instruments at the regime's disposal** when it comes to "justifying the constitutionality" of unconstitutional legislative changes, weakening or capturing other democratic and independent institutions, and so forth.

2.3. Methods of Abuse – How are Courts Subjugated?

Authoritarian groups have a variety of methods for involving apex courts in the abuse process of democratic institutions, which can be formal or informal, overt or covert.

Informal, non-explicit levers for subjugating and subsequently abusing apex courts may include various forms of bribery or incentives, or conversely, punishing judges by forcing them to leave office early or coercing favorable decisions[36]. Informal methods also include campaigns to damage or threaten the prestige, personal, or professional reputation of the court or individual judges unacceptable to the regime. However, it should be noted that obtaining direct and explicit evidence regarding informal mechanisms is often fraught with many objective difficulties. Often, such mechanisms can only be detected through their intersection with formal mechanisms and proper understanding of the broader context, sometimes only post factum - when the court's abuse of its powers becomes evident and consistent.

Regarding **formal legal levers** for subjugating courts, political authorities typically use two main paths: **changing the court's composition and modifying the court's powers**. In these cases, the regime attempts, through legal changes, to "pack" the court either directly or indirectly by gaining influence over its composition or to "moderate" it by restricting its institutional powers or threatening such restrictions[37].

Among formal legal mechanisms, the simplest and "traditional" method is **appointing judges favorable to the regime to vacant positions**[38]. In democratic constitutional orders, judicial terms generally exceed the term(s) of political authority, preventing one political group from fully staffing the court.

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[35] Ibid. p. 27.

[36] Gretchen Helmke, Institutions on the Edge: The Origins and Consequences of Inter-Branch Crises in Latin America, pp. 126–50 (2017).

[37] David Landau, Rosalind Dixon, "Abusive Judicial Review: Courts against Democracy," UC Davis Law Review, Vol. 53, 2020, p. 29.

[38] For example, see the case of Hungary: Zoltán Szente, The Political Orientation of the Members of the Hungarian Constitutional Court Between 2010 and 2014, 1 CONST. STUD. pp. 123, 131 (2016).

Consequently, under conditions of power alternation, it becomes difficult to assemble a court majority aligned with the government's wishes. Moreover, the appointment of constitutional court judges may involve different branches of government. However, if the ruling team does not change via elections for a long time and is consolidating an authoritarian regime, these formal blocking mechanisms clearly fail to fulfill their roles.

Political authorities may more rapidly change the court's personal composition through other formal legal changes, such as **lowering judges' retirement age**[39], changing the number of judges, the quorum, or the size of specific panels. Attempts to formally change the court's composition may also include mechanisms allowing for composition changes or **manipulation for particular cases**.

Regarding targeting not individual judges but the entire court institution for subjugation, political authorities have various methods at their disposal, including **budget cuts, limiting powers, obstructing publication of decisions or refusal to enforce them, and damaging the court's prestige through defamation campaigns**. Collectively, these methods reduce the court's reputation, trust, and effectiveness. Courts can and have found ways to overcome or avoid such restrictions on their jurisdiction. However, this puts courts in a difficult position, forcing them to choose whether to respect formal legal restrictions or fulfill their general role as guardians of the constitution. Actors inclined toward authoritarianism may discredit courts in the eyes of key stakeholders, forcing courts to sacrifice their legal obligations to comply with these actors' demands[40].

There are multiple country experiences where anti-democratic regimes have employed the above formal and informal methods either sequentially or simultaneously. However, such regimes' program to capture apex courts usually looks as follows:

- Restricting the court's powers;
- Filling it with judges loyal to the regime;
- Instrumentalizing the captured court for the regime's anti-democratic and anti-constitutional goals.

2.4. Typology of Abuse — Strong and Weak Forms of Judicial Control

Following the subjugation and capture of judicial power by authoritarian regimes using the above methods, judges become particularly important allies of such regimes, though the degree of capture and alliance depends on the form and scale of abuse of power.

Two main types of constitutional justice abuse are distinguished based on the degree of abuse: "weak" and "strong" forms[41]. The weak form refers to cases where courts create free space for political

[39] Case C-286/12, Commission v Hungary, 1 C.M.L.R. 1243 (2012).

[40] David Landau, Rosalind Dixon, "Abusive Judicial Review: Courts against Democracy," UC Davis Law Review, Vol. 53, 2020, pp. 32–33.

[41] For a theoretical analysis of strong and weak forms of judicial review, see: MARK TUSHNET, WEAK COURTS, STRONG RIGHTS, pp. 33–36 (2008); Rosalind Dixon, "Creating Dialogue About Socioeconomic Rights: Strong-Form v. Weak-Form Judicial Review Revisited," 5 Int'l J. Const. L., pp. 391, 402 (2007).

authorities through various formal means. For example, such means may include strategically avoiding significant disputes or simply remaining silent by not timely deciding legal disputes on procedural grounds, thus tacitly facilitating the regime's anti-democratic actions[42].

Strong forms of abuse are those where courts actively repeal or weaken democratic protection mechanisms, uphold or justify laws and executive actions undermining democracy and the constitution, and actively legitimize political authorities' measures[43].

The "legitimization effect" is especially valuable to actors leaning toward authoritarianism at the stage when they try to conceal or "package" their authoritarian ambitions and wish to implement anti-democratic changes in such a way that both they and the captured judicial institutions maintain the perception of defenders of constitutional democracy[44]. Moreover, at the initial stage, when captured judicial bodies still enjoy inertia-based public legitimacy and trust, problematic decisions initiated or accepted by political authorities may still become subjects of constitutional review by political opposition or various social groups. In such cases, the regime requires the court's "consent" for practical implementation of these changes, creating a semblance of legitimacy unless the regime openly disregards the judicial system and its decisions and enters into open confrontation with the judiciary[45].

Additionally, as noted, authoritarian-leaning regimes often seek to gain legitimacy benefits and soften local and international dissatisfaction through decisions by captured courts. However, as Landau and Dixon point out, the local context, level of trust and legitimacy of the judiciary, and the content of particular decisions matter, since not every decision in favor of the regime will equally enhance its legitimacy. If the judiciary is not perceived as independent and strong by society, its decisions will have less desired effect. Another important factor is the extent to which the ruling team compromises and allows courts some autonomy, including decisions against the government[46]. Such situations often confuse critical segments of society and make it harder to credibly perceive the regime's real authoritarian ambitions implemented through the courts.

Strong forms of abuse are characterized by courts actively employing "strict," "active" control methods that dismantle key democratic and constitutional supports, sometimes demanding specific acts from institutions or officials, repealing restrictions on executive or legislative branches, banning political parties, as neutralizing such obstacles is one of the key tasks for authoritarian regimes consolidating power[47]. Within strict control, courts help regimes remove restrictions related to the vertical or horizontal division of powers or formal constitutional limits on amendments, requiring bypassing these limits with formal-legal arguments[48].

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[42] Davit Zedelashvili, When a Weatherman Cheats During the Storm - The Abusive Judicial Review and Civil Society, Gnomon Wise, Opinion 21/01, p. 4.
[43] David Landau, Rosalind Dixon, "Abusive Judicial Review: Courts against Democracy," UC Davis Law Review, Vol. 53, 2020, p. 39.
[44] Ibid.
[45] Ibid. p. 39.
[46] Ibid., pp. 39–40.
[47] Ibid., p. 40.
[48] Ibid., pp. 40–41.

Finally, it should be noted that in the literature, weak forms of abusive constitutional review are more explored and conceptualized, although both types target democratic-constitutional values and institutions. This approach may be due to the fact that strong forms of abuse involve such obvious and tangible links between the judiciary and political authorities that judicial decisions no longer serve as attempts at legitimacy or shields from local and international criticism.

As noted in the introduction, systemic criticism of the Constitutional Court of Georgia is vital, yet relatively delayed. It is delayed in the sense that the process of the deterioration of this important institution began years ago, and had the ruling government's anti-democratic strategy been timely identified and exposed, this process might have been postponed or might have led to a different outcome altogether. However, criticism remains important today for future development, because only a correct diagnosis of the existing problems can serve as the foundation for success and create the chance for democratic change.

Unfortunately, the current state of the Constitutional Court of Georgia fully allows its institutional development and practice to be analyzed within the theoretical framework of "abusive constitutional review" as reviewed in this chapter. Accordingly, the following chapter of this document reviews the institutional development of the Constitutional Court of Georgia within this theoretical framework and considering relevant time intervals, including the renewal of its composition, which took place against the background of weak forms of control, and finally its developed practice following the full renewal of its personal composition — decisions which fundamentally undermined the constitutional framework of state power, weakened the crucial constitutional principle of checks and balances, facilitated the abolition of independent supervisory institutions, and, as a result, substantially worsened the protection of fundamental human rights in the country.

Consequently, today, the Constitutional Court of Georgia fully meets the definition of strong abuse of constitutional review, a state it has reached step-by-step over many years.

3. What Happened in Georgia – The Georgian Model of the Abuse of Constitutional Review

The abuse of constitutional review in Georgia is predominantly a phenomenon of the last decade[49]. However, since the restoration of independence and the establishment of the Constitutional Court, every government has, to some extent, been tempted to tame it. Interestingly, this process, in both timing and nature, significantly parallels the history of subjugation of apex courts in Central and Eastern Europe. Moreover, legislative changes adopted in 2016, at the end of the first term of the "Georgian Dream" government, regarding the Constitutional Court's operations, closely resembled reforms implemented in Hungary and Poland aimed at weakening or subordinating these courts. In both cases—including Georgia—the reforms ultimately yielded desirable outcomes for the ruling parties.

[49] Author's note: This assumption does not imply that the Constitutional Court's activities were entirely functional or free from major flaws. However, it was in 2012 that an intense democratic backsliding began, laying the foundation for today's strong forms of abusive constitutional review through anti-democratic institutional and personnel reforms.

The Georgian society became more broadly aware of the “Georgian Dream’s” authoritarian drift and its intention to subdue all democratic institutions mostly after 2020, with the deepening political crisis. However, the justice system was among the first areas where "Georgian Dream" revealed its authoritarian inclinations during its very first term in power. The Constitutional Court became the first democratic institution to fall victim to these tendencies. This is especially regrettable considering that during the transitional period of the governmental change, Georgia’s apex court had been an institution with growing public legitimacy and demonstrated considerable resilience. Unfortunately, despite high levels of legitimacy and public as well as civil society support, the Court ultimately failed to overcome the political challenges it faced. Today, under the "Georgian Dream" government, which is in the final stage of authoritarian consolidation, the Constitutional Court is a fully subordinated institution. It no longer even performs its function of legitimizing the regime, as its judgments have made the Court’s internal crisis and political loyalty to the current regime widely apparent to the public. Despite this, the regime stubbornly continues to use the Constitutional Court to validate its anti-democratic and unconstitutional decisions. The Court is no longer afforded even the minimal freedom to preserve itself through strategic silence during this severe political crisis, in order to avoid criticism from local or international actors.

The only solace under these conditions lies in a compilation of dissenting opinions authored by a few judges, which clearly reveal the dire situation within the Court and could serve as a foundation for renewed constitutional jurisprudence grounded in a commitment to the Constitution and the protection of fundamental rights—should democratic change occur.

Three major phases can be identified in the history of the implementation and eventual abuse of constitutional review in Georgia:

- **1996–2016**: The Constitutional Court was a newly created institution fighting for its legitimacy and institutional consolidation. The period from 2012 to 2016 stands out in particular as a time of active resistance by the Court against political power.
- **2016–2020**: The Court's legitimacy and level of independence became intolerable for the political authorities. This led to efforts to subordinate it institutionally—initially through restrictive legislative reforms and later by appointing loyal judges. This period marked the beginning of the soft abuse of constitutional review in Court practice.
- **2020–present**: The Georgian Dream government uses the now institutionally and personally subordinated Constitutional Court to maintain a façade of legality and legitimacy for its authoritarian decisions. During this phase, the abuse of constitutional review in its strong form has become apparent to the broader public, turning the Court into a subject of active criticism both domestically and internationally.

The following sections of this document provide a detailed and critical analysis of these periods.

3.1. 1996–2016: The Fight for Institutional Independence

In Georgia, constitutional review is exercised by a specialized, independent, and centralized court. The Constitutional Court as an institution was first introduced in the 1995 Constitution[50] and began functioning in 1996. Interestingly, unlike the post-independence period, during the drafting of the 1921 Constitution, the idea of a judicial body that could override Parliament and the people in interpreting the Constitution was considered incompatible with popular sovereignty and parliamentary governance[51].

In its early years, when state institutions were still in the process of formation, public awareness of the Court and its powers was understandably low. Even among the Constitution's authors, some expressed fears[52] that this entirely new institution, lacking any historical precedent in the country, might struggle to earn legitimacy. Therefore, the Court's primary challenge was to understand its own powers correctly and find the strength to exercise them actively—thus gradually positioning itself as a counterbalance to political power.

Some argue that the absence of a prior tradition of constitutional review positively influenced the development of the Constitutional Court, as it did not inherit Soviet-era standards or the idea of socialist legality[53]. These concepts still significantly hinder the development of other institutions essential for a democratic and lawful state in Georgia.

Nevertheless, from the outset, the Constitutional Court had to fight for its legitimacy and deal with a lack of political will to enforce its decisions. As recalled by former Chief Justice Joni Khetsuriani, not only were the Court's judgments often ignored, but there were also cases where political authorities would re-enact the same laws previously annulled by the Court—and express criticism toward the Court for its decision[54]. For example, in 2002, when the Court issued a precedent-setting decision regarding electricity tariffs[55], the President of Georgia criticized the Court for not consulting with the executive branch—a power the Court did not possess. Such comments from the executive branch once again pointed to the difficulties in understanding the role and powers of the Constitutional Court

As former judge of the Constitutional Court - Ketevan Eremadze notes, *"In the historical context in which Georgia's Constitutional Court was established, it was expected to play a crucial role in the value-based transformation of the country and society—by effectively exercising its mandate, including by*

[50] Georgia's 1921 Constitution did not foresee the creation of a special body to exercise constitutional review. Oversight and enforcement of the Constitution and laws was, on one hand, the government's prerogative (Art. 72b), and on the other hand, the Senate—named as the guardian of law—served as the supreme judicial authority throughout the Republic (Art. 76).

[51] Davit Zedelashvili, Tamar Ketsbaia, „Constitutional Judicial Control Reform: Toward Full Institutionalization and Systemic Impartiality", Gnomon Wise, 2024, p. 29.

[52] V. Babekhi, "Drafting and Adoption of the Constitution in Georgia (1993–1995)," p. 248.

[53] Davit Zedelashvili, Tamar Ketsbaia, „Constitutional Judicial Control Reform: Toward Full Institutionalization and Systemic Impartiality", Gnomon Wise, 2024.

[54] Ketevan Eremadze, Defenders of Freedom in Search of Freedom, Meridian Publishing, 2018, p. 17; J. Khetsuriani, From Independence to a Legal State, Tbilisi, 2026, pp. 313, 315.

[55] Judgment No. 1/3/136 of 30 December 2002 of the Constitutional Court of Georgia in the case "Citizen Shalva Natelashvili v. Parliament of Georgia, President of Georgia, and the National Energy Regulatory Commission of Georgia."

neutralizing authoritarian tendencies within the government. Naturally, it was bound to face challenges. The greatest resistance to this process almost always came from the political authorities themselves. When the Constitutional Court declared a law unconstitutional... the ruling political force often refused to understand or accept the legal reasoning behind the Court's decisions. In some cases, when the government disagreed with a particular judgment*, it preferred to publicly accuse the Court of being politicized rather than confront its own problems. The Court's proximity to political processes was further intensified in cases where the complainant was represented by the opposition. It was difficult—and at times impossible—to convince one side of the political process that it had lost a case not due to judicial bias or political sympathies or antipathies, but solely because that was how their own country's Constitution responded to their political decision"*[56].

Ultimately, the main challenge for the Court between its establishment and the "Rose Revolution" was institutional consolidation and gaining legitimacy—a difficult task in a politically turbulent environment with weak institutions.

The Constitutional Court did not go unnoticed by the subsequent government either. After the "Rose Revolution", the victorious United National Movement initiated large-scale institutional reforms, including proposed constitutional amendments.

In 2004, the NGO "Liberty Institute" presented a draft constitutional law proposing a new model of fundamental rights and the abolition of the Constitutional Court, transferring part of its powers to the Supreme Court. The President would appoint Supreme Court judges based on nominations from the High Council of Justice and parliamentary consent. Notably, the new Supreme Court composition would be determined within six months of the law's adoption, effectively terminating the terms of sitting Constitutional Court judges[57]. Even more controversially, the Supreme Court would not be given the authority to rule on the constitutionality of elections or referenda—a politically sensitive area.

The proposed constitutional draft law was jointly assessed by the Venice Commission and the OSCE/ODIHR. According to their opinion, the changes concerning the Constitutional Court were evaluated critically, and it was noted that it was unclear why such a radical institutional reform was necessary. The assessment acknowledged that both the American and European models of constitutional review have their advantages and disadvantages, and thus, countries are free to determine the model most suitable for them. However, when a functioning Constitutional Court already exists, its abolition would not be advisable without a clearly defined and demonstrable benefit[58].

This proposal marked the first attempt in Georgia's post-independence history to simultaneously reform and reconstitute the Constitutional Court institutionally and personnel-wise. However, the premature dismissal of judges conflicted with democratic standards. Furthermore, stripping the Court

[56] Ketevan Eremadze, Defenders of Freedom in Search of Freedom, Meridian Publishing, 2018, p. 16.
[57] CDL(2004)019, Proposal For a Constitutional Law on Changes and Amendments to the Constitution of Georgia Prepared by the Liberty Institute, Strasbourg, 12 November 2004, available at: https://cutt.ly/ErvZ6fug; accessed on: 27.05.2025.
[58] CDL-AD(2005)003, Joint Opinion on a Proposal for a Constitutional Law on Changes and Amendments to the Constitution of Georgia by the Venice Commission and OSCE/ODIHR, endorsed by the Commission at its 61st Plenary Session (Venice, 3–4 December 2004), para. 109, available at: https://cutt.ly/WrvZ61ZQ; accessed on: 27.05.2025.

of election-related powers reflected the political elite's fear of judicial independence and its desire to control the Court. Interestingly, the Constitutional Court itself learned of the reform initiative only after the Venice Commission and OSCE/ODIHR issued their assessment[59].

Following the publication of international assessments, in December 2004, the President of Georgia promptly submitted to Parliament a draft constitutional law[60] which once again designated the Constitutional Court as the institution responsible for exercising constitutional review. According to the proposal, its members would be elected by Parliament upon nomination by the President. Moreover, the draft envisaged granting the Court the authority of real constitutional review—that is, the power to assess the constitutionality (compatibility with fundamental rights) of decisions rendered by common courts. This initiative was considered a significant step forward, as it expanded the Court's powers and extended constitutional control over all three branches of government. Unlike the draft proposed by the "Liberty Institute", these amendments would have restored the Constitutional Court's authority to review the constitutionality of elections and referenda, albeit in a limited manner. Under the existing version of the Constitution, the Court was empowered to adjudicate "disputes related to the constitutionality of elections and referenda." However, according to the explanatory note, such broad competence intruded into the jurisdiction of common courts, since reviewing the legality of specific decisions fell under their authority[61]. Therefore, the draft law included a provision specifying that the Constitutional Court would be responsible for reviewing the constitutionality of the legal norms regulating elections and referenda, as well as disputes concerning the constitutionality of elections/referenda conducted or to be conducted under those norms.

In parallel with these more or less positive developments, the draft law still contained the most problematic provision—the change in the Court's composition. Specifically, the transitional provisions stipulated that the entire composition of the Constitutional Court would be renewed within two weeks of the law's enactment. At this point, it became evident that a primary goal of the new administration's reform was to replace the Court's personnel. Although this provision was ultimately removed during the first reading and never became law, it clearly demonstrated the political authorities' intention and temptation to appoint judges who were acceptable to them. According to the proposal, Parliament, based on nominations by the President, would appoint the full bench.

This version of the draft constitutional law was once again evaluated by the Venice Commission[62]. The Commission expressed a preference for the existing diversified model of judicial appointments over the proposal to grant the President unilateral power to nominate all candidates, especially considering that the President, as the head of the executive branch, held extensive powers and enjoyed the support of a

[59] Ketevan Eremadze, Defenders of Freedom in Search of Freedom, Meridian Publishing, 2018, p. 17.
[60] Draft Law "On Amendments and Additions to the Constitution of Georgia," 17 December 2004, Bill No. 07-1/99/5, available at: https://info.parliament.ge/file/1/BillReviewContent/116629; accessed on: 27.05.2025.
[61] Explanatory Note to the First Reading of the Draft Law "On Amendments and Additions to the Constitution of Georgia," 14 December 2005, available at: https://info.parliament.ge/file/1/BillReviewContent/324122; accessed on: 27.05.2025.
[62] CDL-AD(2005)005, Opinion on Draft Constitutional Amendments relating to the Reform of the Judiciary in Georgia, adopted by the Venice Commission at its 62nd Plenary Session (Venice, 11–12 March 2005), available at: https://cutt.ly/arvXwBas; accessed on: 27.05.2025.

large parliamentary majority. The Commission welcomed the introduction of real constitutional review but also urged the authorities to consider the potential risk of overburdening the Court and to plan accordingly.

Ultimately, very little remained from the two constitutional draft laws that had been developed. Following the first reading, the provisions related to real constitutional review and the President's power to appoint the entire Court were removed. The final version of the law retained only two changes: a lowered age requirement for judges (to 30 years), and limited authority for reviewing the constitutionality of elections and referenda[63].

During the rule of the "United National Movement", no further legislative initiatives were undertaken that either strengthened or weakened the Constitutional Court, despite the fact that the Court's legitimacy increased notably in the final years of their governance—when the Court issued several judgments aimed at expanding human rights protections.

In conclusion, if the Constitutional Court's early years were marked by limited public awareness and legitimacy—a consequence of Georgia's political, social, and economic conditions at the time, as well as institutional weakness—then from the outset of the "United National Movement's" rule, the Court became a central focus of political attention. This was the period following the "Rose Revolution", when the new ruling authorities launched comprehensive and aggressive institutional reforms with the declared aim of modernizing and democratizing the country. However, as the historical perspective reveals, the ruling party quickly strayed from its noble reformist goals, and its governance took on an authoritarian character—one that led to widespread and growing human rights violations. In 2012, the Georgian people voted them out of office through democratic elections.As for the Constitutional Court, unlike in the case of the common courts, the authorities refrained from aggressively reshuffling its personnel. Nonetheless, they also failed to take any steps to further institutionalize or empower the Court—for example, by granting it real, individualized constitutional review. In fact, during this very period, the Court's powers regarding the constitutionality of elections were curtailed—a limitation that the succeeding administration retained and later further entrenched at the constitutional level.

3.2. 2016–2020: A Chronicle of Institutional and Personal Subjugation amid the Weak Form of Abusive Constitutional Review

Under the rule of the "Georgian Dream" party, the Constitutional Court was among the first state institutions to be subdued by the political power. Interestingly, however, the beginning of GD's rule marked a drastically different attitude toward the Court.

When GD came to power in 2012, the ruling team was publicly supportive of the Constitutional Court. Then-Prime Minister Bidzina Ivanishvili stated[64] that *"... there are virtually no questions about the*

[63] Draft Law "On Amendments and Additions to the Constitution of Georgia," 17 December 2004, Bill No. 07-1/99/5 (Approved at First Reading), 14 December 2005, available at: https://info.parliament.ge/file/1/BillReviewContent/324121; accessed on: 27.05.2025.

[64] Civil.ge, "Ivanishvili Met with Chair of the Constitutional Court," 14 June 2013, available at: https://cutt.ly/CrvXyjJa; accessed on: 27.05.2025.

Constitutional Court, and apart from positive opinions, one hears nothing from the public…" Moreover, Georgian Dream's pre-election promises included strengthening the Constitutional Court and expanding its powers. At that time, the ruling party had already engaged in an open confrontation with an influential group of judges within the common court system and, having come to power with a promise of restoring justice, pledged a comprehensive reform of the judiciary. In subsequent years, not only did the government fail to implement this reform, but it entered into a political bargain with the so-called "judicial clan." As a result, the group's influence was solidified in the judiciary, and over time, any dissent or signs of genuine judicial independence were entirely eradicated from the system[65]. Given this context, it could have been assumed that Georgian Dream's announced "restoration of justice" would not touch the Constitutional Court.

However, the opposite happened. The government's initial goodwill toward the Constitutional Court changed as early as April 2014, after the Court's First Chamber ruled[66] unconstitutional **the early termination of the mandates of members of the Public Broadcaster's Board of Trustees.** The judgment triggered a protest rally and property damage at the Court's premises, which prompted the Court to issue a statement urging law enforcement agencies to promptly and adequately investigate the incident[67].

The next controversial decision followed in June 2014, when the Court annulled **a moratorium on the sale of agricultural land to foreign nationals[68]**. Even under the previous government, on June 26, 2012, the Constitutional Court's Plenum had declared unconstitutional the norm that prohibited foreign nationals from owning agricultural land, in a case initiated by a Danish citizen, Heike Kronqvist. In June 2013, legislative amendments imposed a moratorium until December 31, 2014, on land purchases by foreign individuals. A new constitutional claim challenging the moratorium was submitted by an Austrian national, arguing that the disputed provisions essentially repeated the content of the previously annulled norm. The Court agreed and declared them unconstitutional. The decision was met with harsh criticism from both legislative and executive branches[69], as well as from the Georgian Orthodox Church[70]. Notably, the judgment was also in line with Georgia's obligations under the EU Association Agreement.

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[65] Ana Papuashvili, Nino Nozadze, Gvantsa Tsulukidze, Giorgi Davituri, Ten Years of Justice Reform: Challenges and Prospects, Coalition for Independent and Transparent Judiciary, 2023, available at: https://cutt.ly/GrcRtO2B; accessed on: 27.05.2025.

[66] Constitutional Court of Georgia Judgment No. 1/2/569 of 11 April 2014 in the case "Citizens of Georgia – Davit Kandelaki, Natalia Dvali, Zurab Davitashvili, Emzar Goguadze, Giorgi Meladze and Mamuka Pachulashvili v. Parliament of Georgia."

[67] Batumelebi, "Statement by the Constitutional Court," 13 April 2014, available at: https://cutt.ly/zrvXpbJV; accessed on: 27.05.2025.

[68] Constitutional Court of Georgia Ruling No. 1/2/563 of 24 June 2014 in the case "Austrian Citizen Mathias Hutter v. Parliament of Georgia."

[69] IPN, "Zurab Tkemaladze – Constitutional Court Decision Does Not Serve National Interests," 24 June 2014, available at: https://cutt.ly/urvXsoYj; also see: IPN, "Giorgi Kvirikashvili – No One Obligates Us to Be Ultra-Liberal in the Privatization of Agricultural Land," 2 July 2014, available at: https://cutt.ly/jrvXsCYS; accessed on: 27.05.2025.

[70] IPN, "Patriarchate Publishes Statement by Ilia II on Sale of Land to Foreign Citizens," 2 July 2014, available at: https://cutt.ly/crvXdAaG; accessed on: 27.05.2025.

Later in 2014, for the first time under "Georgian Dream's" rule, the issue of appointing a new judge to the Constitutional Court arose. Parliament initially rejected[71] the ruling party's nominee, **Merab Turava**, but later approved him during a second vote in spring 2015[72]. The reasons for this change of heart remain unknown. However, Turava's appointment to the Constitutional Court would later play a critical role in weakening and politically subjugating the Court.

Turava had previously served as a judge on the Supreme Court from 1999 to 2006, including as Deputy Chair and Chair of the Criminal Law Chamber. Throughout and after his judicial career, he was actively engaged in academic work both in Georgia and abroad.

In 2005, Merab Turava and several other judges, including Nino Gvenetadze—who would later be appointed Chair of the Supreme Court—publicly accused[73] then-Chairman of the Supreme Court Konstantine Kublashvili of exerting pressure on judges. The High Council of Justice, upon Kublashvili's request, launched disciplinary proceedings under the then-existing legislation. The judges were accused of improper administration of justice and various legal violations. The Disciplinary Board found them guilty, and they were dismissed. This decision was upheld[74] by the Disciplinary Chamber of the Supreme Court on August 10, 2006, which also barred them from holding judicial office. Notably, Levan Murusidze served on the Disciplinary Chamber at that time.

According to media reports and public sources, during their tenure at the Supreme Court, Gvenetadze and Turava allegedly demanded the arrest of journalists from the program "60 Minutes" over a 2003 video showing alleged extortion of money by judges. Rustavi 2 reported that Gvenetadze and Turava held three press conferences condemning the program and called on the Prosecutor General to investigate whether the broadcast contained signs of criminal offenses against the judiciary. This stance was criticized by both local NGOs and international organizations[75].

After resigning from the Supreme Court, Turava and others filed an application with the European Court of Human Rights (ECtHR) in 2007. However, the ECtHR never ruled on the merits of the case. Following the 2012 change of government, legislative amendments in 2014 lifted the ban preventing the dismissed judges from holding judicial office. Turava was soon appointed to the Constitutional Court, and Gvenetadze became Chair of the Supreme Court. Unlike Gvenetadze, Turava never informed the ECtHR about these developments, despite repeated inquiries. In 2017, the ECtHR

[71] IPN, "Parliament Rejects Merab Turava's Candidacy for Constitutional Court Judge," 25 December 2014, available at: https://cutt.ly/9rvXfLNR; accessed on: 27.05.2025.
[72] IPN, "Parliament Elects Merab Turava as Constitutional Court Judge," 20 March 2015, available at: https://cutt.ly/arvXhbAn; accessed on: 27.05.2025.
[73] Tabula, "Merab Turava Elected as Member of Constitutional Court," 20 March 2015, available at: https://cutt.ly/XrvXjC7L; accessed on: 27.05.2025.
[74] Merab TURAVA and Others v. Georgia and Tamar LALIASHVILI v. Georgia, Applications Nos. 7607/07 and 8710/07, 27/11/2018, available at: https://cutt.ly/DrvXlLMj; accessed on: 27.05.2025.
[75] Tabula, "Nino Gvenetadze Demanded the Arrest of 60 Minutes Journalists", 21 February 2015, available at: https://cutt.ly/brvXznni; accessed on: 27.05.2025.

discontinued the case, citing lack of cooperation from Turava[76]. He later stated that he was no longer interested in the outcome, as the case had remained unresolved for 10 years[77].

Meanwhile, politically sensitive cases continued to be submitted to the Constitutional Court. In spring 2015, the Public Defender and civil society organizations filed claims[78] against the legislation on covert surveillance as part of the "This Affects You Too" campaign. A separate complaint was filed[79] by former Tbilisi Mayor Gigi Ugulava.

By this point, growing dissatisfaction from the ruling party with the Court's actions was evident, accompanied by increasing civil society criticism of Georgian Dream's ongoing judicial reforms. Particularly, the party had abandoned meaningful reform in exchange for a deal with the influential judicial group in the common courts. Before this, however, the frontline of political struggle was the Constitutional Court, where tensions rose notably in 2015.

In September 2015, the Constitutional Court's Plenum ruled[80] to release Gigi Ugulava from pre-trial detention after 14 months, finding that holding a defendant beyond the 9-month limit was unconstitutional. **This judgment revealed Georgian Dream's first attempts to undermine the Court**. The party's first appointee to the Court, Merab Turava, refused[81] to sign the decision. Initially citing health issues and hospitalization, he later claimed he lacked sufficient time to review the judgment and alleged pressure from fellow judges[82]. The Plenum responded by issuing a statement calling his claims unfounded and emphasized that *"a judge is not allowed to abstain from signing a decision regardless of their opinion during deliberations"*[83]. The issue was referred to the Court's Ethics and Disciplinary Commission, and the judgment was announced without Turava's signature the following day.

The decision sparked renewed protests at the Court and at judges' residences. Judges expressed concern, but then-Justice Minister Tea Tsulukiani responded by emphasizing citizens' right to protest and downplayed legal restrictions on demonstrating at residential addresses. She publicly criticized the Court Chair and accused the Court of procedural violations[84]. This marked the beginning of a pattern,

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[76] Applications nos. 7607/07 and 8710/07, Merab TURAVA and Others v. Georgia and Tamar LALIASHVILI v. Georgia, 27/11/2018.

[77] Netgazeti, "Merab Turava's Explanation in Court About the Judicial Clan", 25 June 2020, available at: https://netgazeti.ge/news/463582/; accessed on: 27.05.2025.

[78] IPN, "Law on So-called Secret Surveillance Challenged in the Constitutional Court", available at: https://cutt.ly/brvXcrBQ; accessed on: 27.05.2025.

[79] IPN, "Gigi Ugulava Will Submit a Complaint to the Constitutional Court Today", 30 April 2015, available at: https://cutt.ly/5rvXcOgK; accessed on: 27.05.2025.

[80] Judgment No. 3/2/646 of 15 September 2015 of the Constitutional Court of Georgia in the case of "Citizen of Georgia Giorgi Ugulava v. the Parliament of Georgia".

[81] Radio Liberty, "Judge Turava Left Gigi Ugulava in Pretrial Detention", 16 September 2015, available at: https://cutt.ly/1rvXbyz7; accessed on: 27.05.2025.

[82] Ibid.

[83] Tabula, "Constitutional Court: A Judge Has No Right to Refuse Signing a Decision", 15 September 2015, available at: https://cutt.ly/DrvXb0BU; accessed on: 27.05.2025.

[84] Netgazeti, "Tsulukiani: Procedural Violations Cascade in Ugulava's Case at the Constitutional Court", 22 September 2015, available at: https://netgazeti.ge/news/44153/; accessed on: 27.05.2025.

where Georgian Dream officials would routinely attack and discredit the Court over politically unfavorable decisions—an early indicator of the temptation to subjugate democratic institutions.

Following the Court's judgment, Ugulava was released from detention, but only for one day. He was re-arrested the next day after being convicted in a separate case[85]. In this context, Turava's persistent requests for additional time to review the decision raised serious suspicions.

The next politically sensitive decision came on October 12, 2015, when **the Court suspended legislation that stripped the National Bank of supervisory powers[86]**. The constitutionality of the legislative changes was challenged by the parliamentary opposition who claimed that the initiative was driven by Georgian Dream's tensions with President Giorgi Margvelashvili and growing mistrust toward the National Bank, which the government blamed for the currency crisis[87]. At the time, the Bank's President was Giorgi Kadagidze, a former member of the previous government. Although the President vetoed the law, Parliament overrode the veto and passed the law[88].

According to the Constitution, the National Bank was entrusted with the function of financial sector supervision. The President of Georgia also participated in composing the Bank's board. By separating this authority and creating an independent board through Parliament—one in which the President no longer had a role—the National Bank was effectively stripped of its constitutional mandate, and the President was excluded from the process of composing it. Since at that time the ruling party "Georgian Dream" did not have a constitutional majority, it chose to pursue this goal through ordinary legislation[89]. The Constitutional Court admitted the constitutional complaint for substantive consideration and suspended the newly adopted law until a final decision was made. This was followed by criticism from the ruling party and accusations of political bias against the Court. As Gia Volski remarked, *"The Constitutional Court largely stems from the team that used to govern the country, and they were never critical of its actions. I believe Papuashvili's membership in that team obliges him to express politically biased positions."*[90] It is also worth noting that although ten years have passed since the case was filed, a final decision has yet to be rendered, and the National Bank continues to function as usual.

That same year, another case appeared on the Constitutional Court's docket—this time involving media outlets critical of the government. The case concerned a dispute over **the ownership of the television**

[85] Civil.ge, "Court Found Ugulava Guilty of Embezzlement and Sentenced Him to 4.5 Years in Prison", 19 September 2015, available at: https://cutt.ly/6rvXQUaw; accessed on: 27.05.2025.

[86] Recording Notice No. 3/6/668 of 12 October 2015 of the Constitutional Court of Georgia in the case of "Group of Members of the Parliament of Georgia (Zurab Abashidze, Giorgi Baramidze, Davit Bakradze and others, a total of 39 MPs) v. the Parliament of Georgia".

[87] Radio Liberty, "Constitutional Complaint against the Financial Supervisory Agency", 22 September 2015, available at: https://cutt.ly/1rvXElu9; accessed on: 27.05.2025.

[88] Netgazeti, "Constitutional Court Starts Hearing of Complaint Regarding the National Bank", 3 February 2016, available at: https://netgazeti.ge/business/93595/; accessed on: 27.05.2025.

[89] Radio Liberty, "Suspended Financial Supervision", 13 October 2015, available at: https://cutt.ly/brvXRMR7; accessed on: 27.05.2025.

[90] Ibid.

company "Rustavi 2," which, due to its editorial line critical of the government during the pre-election period, was seen as an attempt to silence the broadcaster[91].

On November 2, 2015, the Court admitted a constitutional complaint for substantive consideration in which the claimant challenged one of the legal grounds allowing for the immediate enforcement of a first-instance court decision. The Court's First Chamber simultaneously suspended the challenged provisions until a final decision was issued[92]. As a result, even if the civil dispute between Kibar Khalvashi and Rustavi 2 were decided in favor of Khalvashi, the immediate enforcement of the decision would no longer be possible. Interestingly, the very next day—on November 3—the Tbilisi City Court ruled in favor of Kibar Khalvashi, granting him ownership of the broadcaster's shares. The opposing party began preparing to appeal the decision. However, unexpectedly, on November 5, it was revealed that Judge Tamaz Urtmelidze had satisfied Khalvashi's motion and, based on the case circumstances, found it appropriate to issue a judgment to ensure enforcement of the judgment. Under that judgment, the existing management and representatives of Rustavi 2 were suspended from their powers until a final verdict (through all court instances) was reached, and Davit Dvali and Revaz Sakevarishvili were appointed as interim managers[93].

In response, on November 13, the Constitutional Court admitted a new constitutional complaint submitted by Rustavi 2 representatives, seeking to declare unconstitutional the very provisions on which the City Court's decision was based. Once again, the First Chamber of the Constitutional Court suspended the disputed provisions[94]. Thus, through swift action, the Constitutional Court managed to defuse the tense situation surrounding the case and halted immediate changes to the editorial policy of a critical media outlet. However, it seems that this decision was the final straw for the ruling party.

Soon, the issue of reforming the legislation regulating the work of the Constitutional Court appeared on the agenda. As later became clear, the main goal of this reform was to maximally obstruct the work of judges in the First Chamber who were unacceptable to the ruling party and refused to cooperate with it in politically significant cases. Thus, one of the first steps on the long path toward subjugating the Constitutional Court logically became the adoption of legislation restricting the Court's powers. Notably, during this period, similar anti-democratic legislation was actively being adopted in Hungary and Poland, where the Constitutional Courts ultimately became tools of the political authorities.

In December 2015, Tea Tsulukiani announced her readiness to initiate a reform of the Constitutional Court and directly cited as the reason the alleged bias of the chamber reviewing the *Rustavi 2* case[95].

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[91] Davit Zedelashvili, Tamar Ketsbaia, „Constitutional Judicial Control Reform: Toward Full Institutionalization and Systemic Impartiality", Gnomon Wise, 2024, p. 62.

[92] Recording Notice No. 1/6/675 of 2 November 2015 of the Constitutional Court of Georgia in the case of "LLC Broadcasting Company Rustavi 2 and LLC TV Company Georgia v. the Parliament of Georgia".

[93] Factcheck, "What Was the Purpose of Appointing a Temporary Manager in Rustavi 2 and Was It Legal?", 24 November 2015, available at: https://cutt.ly/6rvXYFVM; accessed on: 27.05.2025.

[94] Recording Notice No. 1/7/681 of 13 November 2015 of the Constitutional Court of Georgia in the case of "LLC TV Company Georgia v. the Parliament of Georgia".

[95] Tabula, "Tsulukiani: I Will Take the First Step toward Reforming the Constitutional Court", 3 December 2015, available at: https://cutt.ly/ZrvXUWUA; accessed on: 27.05.2025.

Interestingly, in February 2016, the President of the Constitutional Court, Giorgi Papuashvili, publicly stated that the Minister of Justice had offered him and another judge continued membership in the Venice Commission in exchange for close cooperation with the government[96]. This became known during the selection process for the European Court of Human Rights judge, in which Papuashvili was a candidate, and where the Justice Minister, Tea Tsulukiani, chaired the selection committee.

Ultimately, the draft law on amendments to the legislation on the Constitutional Court was initiated in the Parliament of Georgia on March 10, 2016. According to the explanatory note, the official aim of the amendments was to eliminate or clarify existing flaws and ambiguities in the legislation[97]. The initiative was met with strong criticism from the opposition and civil society[98]. As noted, parliamentary elections were scheduled for later that year, representing the first opportunity to revalidate the Georgian Dream's political mandate. In retrospect, it is unsurprising that the legislative process was fast-tracked, and by May 14, the amendments had passed all three readings in Parliament. The Venice Commission's assessment was issued only after the adoption of the changes, and, unsurprisingly, was critical of the most essential and problematic provisions[99]. The majority of the amendments weakened the powers of judicial chambers while granting individual judges increased authority to influence the Court's work. Specifically, the amendments[100]:

- Stripped judicial chambers of jurisdiction over electoral and referendum disputes, referrals from ordinary courts, and reviews of the constitutionality of organic laws;
- Granted individual judges the authority to transfer cases under chamber review to the Plenum at any stage if their views diverged from previous court judgments or if the case raised rare or especially important issues regarding constitutional interpretation or application. Denying such a transfer required a reasoned decision by at least six judges;
- Removed chambers' power to suspend contested norms, transferring this authority exclusively to the Plenum. Suspending a norm required the support of at least six judges;
- Increased the quorum for Plenum decisions from six to seven judges, and replaced the simple majority requirement with support from six participating members;
- Strictly limited judicial terms to 10 years, mandating immediate termination of the judge's mandate upon expiration, regardless of whether a replacement had been appointed. Judges were also prohibited from participating in cases during the final three months of their term,

[96] Netgazeti, "Papuashvili Says Tsulukiani Proposed a Deal in Exchange for Cooperation with the Government", 29 February 2016, available at: https://netgazeti.ge/law/98192/; accessed on: 27.05.2025.
[97] Explanatory Note, available at: https://info.parliament.ge/file/1/BillReviewContent/114240; accessed on: 27.05.2025.
[98] Coalition for an Independent and Transparent Judiciary, "Statement on the Amendments Related to the Constitutional Court", 14 May 2016, available at: https://cutt.ly/lrvXSgNp; accessed on: 27.05.2025.
[99] CDL-AD(2016)017, European Commission for Democracy Through Law (Venice Commission), Opinion on the Amendments to the Organic Law on the Constitutional Court and to the Law on Constitutional Legal Proceedings, endorsed by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016), available at: https://cutt.ly/trvXOU0T; accessed on: 27.05.2025.
[100] Draft Organic Law of Georgia "On Amendments to the Organic Law of Georgia on the Constitutional Court of Georgia", available at: https://info.parliament.ge/file/1/BillReviewContent/120042; accessed on: 27.05.2025.

with few exceptions. Re-election of the Court's Chairperson or Deputy Chairperson was banned;

- Changed the effective date of decisions to their publication on the Constitutional Court's official website (initially, this was defined as publication in the Legislative Herald).

The President vetoed the law and returned it to Parliament with motivated remarks. This was a key opportunity for the GD to abandon its attempt to subjugate the Constitutional Court and to consider the Venice Commission's recommendations. However, even the President's version did not incorporate all of the Commission's recommendations and still left key levers in the hands of the government. The remarks[101] proposed three main changes:

- The high quorum for case reviews would be lifted in only some cases[102];
- The three-month restriction on judges participating in cases before the expiration of their terms would be abolished, although the 10-year term limit remained intact;
- The majority needed to reject a request by a single judge to transfer a case to the Plenum would be reduced to five (a majority of the full bench);
- The transfer of suspension authority to the Plenum remained untouched.

On June 1, the Human Rights Committee of Parliament, which had initiated the amendments, supported the President's remarks. On June 3, Parliament adopted them in a plenary session and sent the revised version to the President for signature.

Strikingly, just days after the law was passed - on June 8 - Judge Merab Turava, a member of the First Chamber, exercised the newly granted powers for the first time, requesting the Plenum to take over three politically sensitive cases (involving *Rustavi 2*, Gigi Ugulava, and the so-called "Cables" case). The Plenum granted the request on June 15 and took the cases for substantive review. According to then-First Chamber Judge Ketevan Eremadze, two of the three cases were scheduled for substantive hearings the following day, and the *Rustavi 2* case had already been completed, with a judgment scheduled for the coming days[103].

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[101] Civil.ge, "President's Three Comments on the Controversial Constitutional Court Bill", 1 June 2016, available at: https://civil.ge/ka/archives/155089; accessed on: 27.05.2025.

[102] Issues of immunity of Constitutional Court judges, elections and referenda norms, impeachment, and constitutionality of organic laws. According to the version proposed by the President, at least 7 out of 9 plenary members must be present for decisions on: disputes about the constitutionality of elections and referenda; compliance of organic laws with the Constitution; impeachment of the President, Supreme Court Chair, government member, Auditor General, or National Bank Board member; and lifting the immunity of Constitutional Court members. There are currently 17 organic laws in Georgia, including the Law on the Constitutional Court. For all other matters, under the President's proposal, the plenary adopts decisions by a majority of the full composition (i.e., at least 5 votes) provided that at least 6 members are present. Under current legislation, the plenary is competent with at least 6 members and adopts decisions by majority of attendees. Matters decided by a simple majority (i.e., lower quorum) include disputes about constitutional agreements, non-organic laws, normative acts, the constitutional status of Adjara Autonomous Republic, international treaties, and suspension of contested norms until a final decision is made.

[103] Ketevan Eremadze, Defenders of Freedom in Search of Freedom, Meridiani Publishing, 2018, p. 39.

Merab Turava offered a different account, claiming that a judgment on the *Rustavi 2* case was not planned at the time, especially since the Court of Appeals had delivered its judgment on June 10[104]. He insisted he did not intend to delay the case. However, the practical result was that the handover of the cases to the Plenum significantly delayed the final judgment on *Rustavi 2*, and the terms of the First Chamber's remaining judges expired on September 30, 2016. Additionally, higher court judgments rendered the Constitutional Court's eventual decision[105] on *Rustavi 2* meaningless, due to its lack of retroactive effect. As for the *Ugulava* and *Cables* cases, the Court issued its decision eight years later, on June 7, 2024, and rejected the constitutional complaints[106].

The legislative amendments were quickly challenged in the Constitutional Court by the parliamentary minority and civil society. This could have been an important opportunity for the Court to effectively defend itself. However, since the government had already achieved its main objective—removing "uncooperative" judges and tailoring the legislation to its interests—the Court failed to manage the process successfully. Initially, when the Court still functioned with its "old" composition, it declined to suspend the contested norms[107], resulting in the cases being heard under the new legal framework.

This transitional period clearly demonstrated the initial success of the political authorities, as remaining judges who cooperated with the government facilitated its plan and enabled the success of the legislative changes. Some argue that these judges actively contributed to the internal dismantling of the Court and erosion of its legitimacy[108].

For instance, on July 21, 2016, the President of the Constitutional Court issued a special statement alleging that individual judges were being subjected to pressure and surveillance aimed at blackmailing them. The Prosecutor's Office later launched an investigation into these claims, but, unsurprisingly, it was fruitless[109]. Five judges[110] also submitted a statement[111] accusing the Court President of expediting politically sensitive cases and called on him to suspend hearings until the investigation was completed. Papuashvili rejected the request, dismissing the idea that the Court should wait for the Prosecutor's Office or any other agency before effectively protecting human rights[112]. Nevertheless, the signatory

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[104] Netgazeti, "Turava: We Could Not Precede the Appeals Court Judgment in Rustavi 2 Case", 17 June 2016, available at: https://netgazeti.ge/law/123845/; accessed on: 27.05.2025.

[105] Judgment No. 3/7/679 of the Constitutional Court of Georgia dated 29 December 2017 in the case of "LLC Broadcasting Company Rustavi 2" and "LLC Television Company Georgia" v. Parliament of Georgia.

[106] Judgment No. 3/1/740, 764 of the Constitutional Court of Georgia dated 7 June 2024 in the case of Giorgi Ugulava, Nugzar Kaishauri, Davit Tsipuria, Gizo Glonti, Giorgi Lobzhanidze and Archil Alavidze v. Parliament of Georgia.

[107] Recording Notice No. 3/4/768, 769 of the Constitutional Court of Georgia dated 17 June 2016 in the case of the group of MPs (Davit Bakradze, Sergo Ratiani, Roland Akhalia, Levan Bezhashvili and others, a total of 38 MPs) and citizens of Georgia Erasti Jakobia and Karine Shakhparonyan v. Parliament of Georgia.

[108] Davit Zedelashvili, Tamar Ketsbaia, „Constitutional Judicial Control Reform: Toward Full Institutionalization and Systemic Impartiality", Gnomon Wise, 2024, pp. 72-73.

[109] Radio Liberty, The Chief Prosecutor's Office Shows Interest in Giorgi Papuashvili's Statement, 21 July 2016, available at: https://www.radiotavisupleba.ge/a/27871862.html accessed on: 27.05.2025.

[110] Zaza Tavadze, Lali Paphiashvili, Tamaz Tsabutashvili, Otar Sichinava and Merab Turava.

[111] Netgazeti, Appeal of Five Judges to Giorgi Papuashvili and the Rustavi 2 Case, 29 July 2016, available at: https://netgazeti.ge/news/131911/ accessed on: 27.05.2025.

[112] Netgazeti, Papuashvili on Judges' Letter: Let's Blame the Heat and Stress from the Investigation, 29 July 2016, available at: https://netgazeti.ge/news/131914/ accessed on: 27.05.2025.

judges succeeded in delaying proceedings. For example, Judge Lali Papiashvili recused herself from high-profile cases after a *Rustavi 2* report on her mother. Hearings on the *Cables* and *Ugulava* cases were postponed[113] several times. Judge Otar Sichinava was seen walking dogs in Tbilisi on the day of a scheduled hearing[114], and Merab Turava also failed to appear.

Ultimately, as noted, the composition of the Court changed significantly before judgments were made in these three cases, since the four judges unacceptable to the government had completed their terms.

The Constitutional Court finally issued[115] its judgment on the legislative changes affecting its own functioning on December 29, 2016. It found the following provisions unconstitutional:

- The ban on re-election of the Court's Chairperson and Deputy Chairperson[116];
- The immediate termination of a judge's mandate upon expiration of their term, even if no replacement had been appointed, thereby impeding the Court's ability to function due to lack of quorum[117];
- The requirement for Plenum decisions to be made by a majority of the full bench, and the high quorum required to rule on organic laws[118];
- The Plenum's exclusive authority to suspend contested norms[119];
- The obligation to publish the full text of a decision.

However, the most problematic provision—allowing individual judges to refer cases to the Plenum—was not found unconstitutional. It was only clarified that the Plenum could reject such referrals by a simple majority[120].

As a result, while most problematic provisions were eventually annulled, the temporary objective of delaying politically sensitive cases long enough to replace First Chamber judges was successfully achieved by the ruling party in the short term.

As former Constitutional Court judge Ketevan Eremadze recalls: *"The belated realization only confirmed that the objective of the legislative amendments had already been achieved by the ruling power. The government's unusual silence regarding the consequences of the Court's decision also unambiguously signaled this lack of interest. There was not a single critical comment, expression of*

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[113] Netgazeti, Judge Lali Paphiashvili Requests Recusal from High-Profile Cases, 30 August 2016, available at: https://netgazeti.ge/news/137735/ accessed on: 27.05.2025.

[114] Netgazeti, Gvaramia Says Otar Sichinava Was Appointed to the High Council of Justice Due to Proximity to Saakashvili, 1 September 2016, available at: https://netgazeti.ge/news/138387/ accessed on: 27.05.2025.

[115] Judgment No. 3/5/768, 769, 790, 792 of the Constitutional Court of Georgia dated 19 December 2016 in the case of the group of MPs (Davit Bakradze, Sergo Ratiani, Roland Akhalia, Levan Bezhashvili and others, a total of 38 MPs) and citizens of Georgia Erasti Jakobia and Karine Shakhparonyan v. Parliament of Georgia.

[116] Ibid. para. 2.52.

[117] Ibid., para. 2.89.

[118] Exception remained for certain cases requiring a quorum of 7 members and a 6-member majority (Article 44).

[119] The Plenum retained the ability to review organic laws; ibid., para. 2.164.

[120] Para. 2.179.

dissatisfaction, or even a single argument about the unconstitutionality of the very same legislative amendments that their initiators and government representatives had earlier declared to be of vital importance."[121]

In conclusion, prior to the 2016 parliamentary elections—when GD faced its first major electoral test and it remained uncertain whether Georgian society would renew its governing mandate—the ruling party successfully implemented its short-term plan to neutralize the Constitutional Court. Judges who had refused to issue politically convenient decisions were no longer part of the Court. GD managed to partially deflect political responsibility for the weakening legislative changes by selectively accommodating some recommendations from the Venice Commission and fully incorporating the President's remarks. At the same time, the Court itself failed to effectively defend its own institutional independence. If we refer back to the theoretical framework of apex court subordination discussed in second hapter of this study, during this period the political authorities employed multiple elements of both formal and informal institutional subordination. These included reputational attacks against the Court, intentional delays in case processing, disruptions to the Court's functioning, the adoption of restrictive legislation limiting the Court's powers, and strategic judicial appointments. When combined with the targeted use of legislative reform, these tactics yielded immediate political gains for the ruling authorities.

It became clear that this crisis period caused substantial and, arguably, justified damage to the Constitutional Court's reputation and the public's trust in the institution. Yet it still took several more years for civil society and the broader public to fully acknowledge the politically motivated subordination of the Court—a process that, in hindsight, had effectively concluded by 2016. This likely explains why, unlike the consensus surrounding the critique of the ordinary court system, there has been a relative silence regarding the problems facing the Constitutional Court. This study, in part, seeks to address that gap.

However, to present the full picture, it is equally important to examine the developments that occurred after the 2016 parliamentary elections, which ultimately sealed the Court's fate. It was during this period, after returning to power with a constitutional majority, that Georgian Dream enacted further constitutional changes aimed at curtailing the Court's powers. Over the 2016–2020 and 2020–2024 parliamentary terms, the ruling party completed the process of fully staffing the Court with loyal judges. While between 2016 and 2020 the partially renewed composition of the Court mainly resorted to softer forms of abuse of constitutional review—primarily by delaying final decisions in sensitive cases—after 2020, as the country's political crisis deepened, the Court's maneuvering space diminished. As a result, the practice of remaining in the shadows gave way to a more active role: the Constitutional Court became an overt enabler of the ruling party's authoritarian agenda. Simultaneously, a powerful group of judges within the common court system further consolidated their control. The judiciary grew increasingly closed, dissenting views were repressed, and these dynamics directly influenced

[121] Ketevan Eremadze, Defenders of Freedom in Search of Freedom, Meridiani Publishing, 2018, p. 47.

subsequent appointments to the Constitutional Court, where power was gradually handed over to individuals loyal to this "judicial clan."

The following chapters of this study therefore focus on analyzing these developments, including the continuation and consolidation of political subordination of constitutional review in Georgia.

Georgian Dream's Constitutional Majority and the 2017–2018 Amendments to the Constitution

In the 2016 parliamentary elections, Georgian Dream secured a constitutional majority. It was thus unsurprising that in 2017 the party initiated a large-scale constitutional reform that also affected the Constitutional Court.

Most notably, the Court was stripped of its authority to conduct **formal constitutional review** - a power that may have seemed minor at first glance, but was in fact of considerable significance. It is worth noting that the provision authorizing such review remains, as of now, formally included in the Organic Law on the Constitutional Court[122].

Within this framework, the Court previously had jurisdiction to examine the compliance of legislative acts and parliamentary decisions with constitutional procedures related to their adoption, signing, promulgation, and entry into force. In these cases, the Court was not reviewing the substantive content of the norms but rather their procedural validity. The aim was to ensure adherence to constitutionally established legislative procedures. Formal review held such weight that, although treated as a distinct category of judicial oversight under the law, it was also deemed mandatory whenever the Court exercised other forms of review. The legislature had seemingly recognized a key legal principle: a normative act lacks legal force not only when its content contradicts the Constitution, but also when the procedure for its adoption violates constitutional requirements.

As former Court Chairperson Johnny Khetsuriani remarked at the time: *"Under the new version of the Georgian Constitution, it is conceivable that a legislative act or parliamentary decision may not contradict the Constitution in substance, yet may be adopted in gross violation of constitutionally mandated procedures. Unfortunately, the Constitutional Court will no longer have a mechanism to address such cases. Parliament will be free to violate the Constitution without institutional restraint. Thus, revoking this power from the Court was a serious mistake."*[123] This warning unfortunately came to pass. As the political crisis deepened in subsequent years, Parliament gradually—and then almost entirely—disregarded fundamental principles of the legislative process. At that point, however, there was neither a formal legal basis nor an independent and empowered institution left to challenge these violations.

A second major constitutional amendment affected the Court's jurisdiction over **elections and referenda**—an already contentious area. As former judge Ketevan Eremadze recalls, the trigger was another "scandalous" decision for the government: the judgment of 20 July 2016. Although the Court ultimately rejected a complaint filed by MPs concerning the electoral districting rules, four dissenting

[122] Subparagraph "a" of the first paragraph of Article 19 of the Organic Law of Georgia on the Constitutional Court.

[123] Joni Khetsuriani, Constitutional Reform in Georgia (2017) and the Constitutional Court, Journal of the Constitutional Court, pp. 37–38, available at: https://cutt.ly/prvX1Sak accessed on: 27.05.2025.

opinions apparently alarmed the ruling party to such a degree that it moved to legally shield itself from similar risks in the future. Specifically, the Constitution was amended to prohibit the Court from declaring any election-regulating norm unconstitutional within the election year—if that norm had been adopted within 12 months prior to the elections[124]. Furthermore, any such decision had to be issued no later than seven days after official results were announced and required a majority of the full Plenum. The Venice Commission criticized this change, pointing out that banning all forms of electoral norm review during a specific period was a disproportionate restriction[125]. While Parliament ignored this recommendation, the restriction was slightly modified in the 2018 constitutional amendments—extending the blackout period from 12 to 15 months.

Renewal of the Court's Composition

After the Georgian Dream government achieved its short-term goals prior to the 2016 parliamentary elections—disrupting the work of the Constitutional Court and delaying decisions on politically sensitive cases—the agenda shifted to fully subordinating the Court. As the theoretical framework analyzed in second chapter of this document shows, alongside legislative changes, a key lever of political control over the Court became changes in its personnel, i.e., the process of selecting and appointing new judges.

According to the Constitution of Georgia, the Constitutional Court consists of nine judges appointed for a term of 10 years. Three judges are appointed by the President, three are elected by the Parliament with a majority of at least three-fifths of the full composition, and three are appointed by the Supreme Court. A judge of the Constitutional Court must be a citizen of Georgia aged at least 35, hold a higher legal education, have at least 10 years of professional experience, and possess outstanding professional qualifications[126].

Thus, the composition of the Constitutional Court is based on the principle of parity, where the power to appoint judges is distributed among various branches of state authority. In democratic states, such a system ensures, on the one hand, the involvement of top state institutions in the formation of this crucial constitutional body, thereby granting it a high degree of legitimacy. On the other hand, it acts as a safeguard against any single political authority unilaterally forming a majority in the Court with favorable judges—if such a temptation arises. Clearly, this political temptation exists not only in countries like Georgia but also in well-established democracies. However, it should be noted that no principle can prevent a scenario where a single political party remains in power for an extended period—say, over four parliamentary terms—since, especially in parliamentary republics, the authority to appoint members of other state bodies that in turn appoint Constitutional Court judges typically lies with the legislature. Therefore, it is unsurprising that, as of 2025, the current composition of Georgia's Constitutional Court was almost entirely renewed during the Georgian Dream's rule.

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[124] Article 60(6) of the Constitution of Georgia.

[125] CDL-AD(2017)023, Georgia – Opinion on the Draft Revised Constitution as Adopted by the Parliament of Georgia at the Second Reading on 23 June 2017, adopted by the Venice Commission at its 112th Plenary Session (Venice, 6–7 October 2017), para. 44, available at: https://cutt.ly/crvX0dDi accessed on: 27.05.2025.

[126] Article 60(2) of the Constitution of Georgia.

As for the constitutional requirements for becoming a Constitutional Court judge, they are quite general and vague, mostly related to age and work experience. An additional requirement is the candidate's "outstanding professional qualifications," though the law says nothing about the candidate's reputation or integrity—unlike the case for common court judges, whose candidacies must meet both competence and integrity constitutional criteria as defined in greater detail by subordinate legislation.

As noted earlier, the terms of four Constitutional Court judges—Giorgi Papuashvili, Konstantine Vardzelashvili, Ketevan Eremadze, and Otar Sichinava—expired on September 30, 2016. Of these, the first three judges had refused to cooperate with the Georgian Dream government. Replacing them, therefore, inevitably led to significant changes in the Court's composition over the following years—and to some extent, that is exactly what happened. This was especially relevant considering that at the time, the President of Georgia, Giorgi Margvelashvili—who was elected as part of the Georgian Dream team—soon fell into conflict with the ruling party, and those disagreements intensified over time.

Giorgi Papuashvili and Konstantine Vardzelashvili were appointed by the President, Ketevan Eremadze was elected by Parliament, and Otar Sichinava was appointed by the Supreme Court Plenum.

To replace them, President Giorgi Margvelashvili nominated **Giorgi Kverenchkhiladze** and **Irine Imerlishvili,** while the Supreme Court Plenum appointed **Teimuraz Tughushi** to replace Otar Sichinava. All three judges took their oaths on October 2, 2016. As for the candidate elected under the Parliament's quota, **Manana Kobakhidze** was chosen to replace Ketevan Eremadze. Kobakhidze began exercising her judicial authority on February 15, 2017.

Margvelashvili's nomination of **Giorgi Kverenchkhiladze** was not unexpected, as his professional qualifications and academic work were closely tied to constitutional law. Kverenchkhiladze headed the Legal Support and Research Department of the Constitutional Court from 2006–2007 and has twice served as a member of the State Constitutional Commission. He continues his academic work at Tbilisi State University in constitutional law[127]. Furthermore, during Margvelashvili's presidency he served as the President's Parliamentary Secretary (2014–2016). In this role, he often criticized problems in the common court system—particularly in the High Council of Justice—and the public's lack of trust in that institution[128].

Together with the judges appointed in 2016 - Teimuraz Tughushi and Irine Imerlishvili, Giorgi Kverenchkhiladze is one of those minorities who has issued the highest number of dissenting opinions in the Court's recent practice.

Unlike Kverenchkhiladze, **Irine Imerlishvili's** professional background—especially during the Georgian Dream period—was linked to politics. She was a Member of Parliament in the 8th convocation and co-authored constitutional amendments. Before being appointed to the Court, she served as an assistant to

[127] Official website of the Constitutional Court of Georgia, Current Judges, Biography of Giorgi Kverenchkhiladze, available at: https://cutt.ly/brvX7VRQ accessed on: 27.05.2025.

[128] Netgazeti, Kverenchkhiladze: The Current Composition of the High Council of Justice is Incompatible with the Idea of Justice, 11 February 2016, available at: https://netgazeti.ge/law/94974/ (accessed 27.05.2025).

President Margvelashvili in the National Security Council and later as Secretary of the Security Council[129].

Teimuraz Tughushi's professional background prior to his appointment also related to the Constitutional Court: from 2006 to 2016, he worked in various positions within the Court's Legal Support and Research Department, including as department head[130].

However, it is both interesting and controversial that Tughushi was appointed as a Constitutional Court judge in 2016 by the Supreme Court Plenum at a time when the public and civil society were actively discussing the influence and problems in the common court system and the stalling of judicial reforms. Nevertheless, Tughushi remains one of the rare judges who has authored the most principled and constitutionally grounded dissenting opinions on key Constitutional Court judgments—an issue explored further in the following chapter analyzing court practice.

Irine Imerlishvili is not the only judge in the current composition of the Constitutional Court whose past is closely linked to politics and specifically to the Georgian Dream. Another is **Manana Kobakhidze**.

Before entering politics, Kobakhidze worked as a private attorney and in the NGO sector. For years, she held leadership positions at the NGO "Article 42 of the Constitution," including as Executive Director. She also co-founded the Georgian Bar Association. However, since 2012, Kobakhidze has been closely affiliated with Georgian Dream, serving as one of its key figures and as an MP for two terms. During this time, she was Deputy Speaker of Parliament and a member of two constitutional commissions.

Thus, Kobakhidze is among those who transitioned directly from political office to the judiciary without prior judicial experience. Her political career was also marred by several corruption scandals for which the public never received definitive answers from investigative bodies.

Specifically, in 2015, a year before the elections, Tbilisi City Council member and former Pardons Commission chair (2013–2014) Aleko Elisashvili accused Kobakhidze and MP Eka Beselia of involvement in a corruption deal related to pardons[131]. The Prosecutor's Office closed the investigation without pressing charges, citing insufficient evidence[132]. Kobakhidze categorically denied the allegations but acknowledged that she had an interest in the convicted individuals involved in the case because she had previously served as their attorney. She stated that she believed the case was

[129] Official website of the Constitutional Court of Georgia, Current Judges, Biography of Irine Imerlishvili, available at: https://cutt.ly/zrvCqCYj accessed on: 27.05.2025.
[130] Official website of the Constitutional Court of Georgia, Current Judges, Biography of Teimuraz Tughushi, available at: https://cutt.ly/RrvCwhBb accessed on: 27.05.2025.
[131] Civil.ge, Elisashvili Accuses Two MPs from Georgian Dream of Trading in Influence and Demands Parliamentary Inquiry, 23 December 2015, available at: https://cutt.ly/irvCrbKX accessed on: 27.05.2025.
[132] Civil.ge, Prosecutor's Office Closes Investigation into Alleged Trading in Influence without Charges, 19 March 2016, available at: https://cutt.ly/ArvCtcaH accessed on: 27.05.2025.

"fabricated" and confirmed that she had asked the Pardons Commission to review the request so it wouldn't be shelved[133].

In 2016, further corruption allegations emerged against her brother, Tedo Kobakhidze. As chair of the Tbilisi City Council's Legal Commission, he was accused by a former employee—speaking to TV station Rustavi 2—of extortion[134][135]. Manana Kobakhidze dismissed these allegations as a slanderous, politically motivated campaign against her during the election campaign and accused the former employee of attempted extortion. She also appealed to law enforcement[136]. Civil society organizations also demanded a formal investigation, warning that delays would deepen public distrust[137].

Given Kobakhidze's political background and these allegations, her appointment to the Constitutional Court was met with public criticism. Civil society organizations argued that despite her meeting the formal legal requirements of age and education, her appointment damaged the Court's authority and increased the risks of politicization[138].

In 2019, secret audio recordings—allegedly made by the State Security Service—surfaced online. These suggested that after the Court began substantive review of the case *Ani Gachechiladze v. Parliament of Georgia* (the so-called "Aiisa" case)[139], a cleric contacted Manana Kobakhidze to discuss the case. Kobakhidze was part of the panel reviewing it. According to leaked documents, the cleric said the Patriarchate was monitoring the case and asked how the Church could express and defend its position. Kobakhidze allegedly shared the Church's views but said she could not speak publicly due to ethical norms. She then advised the cleric to use the "amicus curiae" mechanism[140]. The authenticity of the conversation was confirmed by the cleric and later by Kobakhidze herself—though she denied the content. She soon filed a request to the Prosecutor's Office for victim status[141]. The Georgian Democracy Initiative (GDI), representing the plaintiff in the case, filed a motion with the Constitutional Court requesting Kobakhidze's recusal and the initiation of disciplinary proceedings against her[142]. The Court

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[133] Civil.ge, Elisashvili Accuses Two MPs from Georgian Dream of Trading in Influence and Demands Parliamentary Inquiry, 23 December 2015.

[134] Tabula, Kakhidze: Investigation Must Be Launched into Charges against Tedo Kobakhidze, 22 August 2016, available at: https://cutt.ly/3rvCyWZC accessed on: 27.05.2025.

[135] Tabula, Former City Council Staffer Accuses Tedo Kobakhidze of Extortion, 12 June 2016, available at: https://cutt.ly/9rvCui8x accessed on: 27.05.2025.

[136] Tabula, Kobakhidze: They Won't Succeed in Tarnishing My Professional Reputation, 13 June 2016, available at: https://cutt.ly/brvCu2Rs accessed on: 27.05.2025.

[137] Tabula, Marikashvili: Delay by Prosecutor's Office in Launching Investigation Deepens Distrust, 13 June 2016, available at: http://tbl.ge/1rev accessed on: 27.05.2025.

[138] Transparency International Georgia, Nomination of Manana Kobakhidze as Constitutional Court Judge Undermines the Court's Authority, 23 January 2017, available at: https://cutt.ly/IrvCaljS accessed on: 27.05.2025.

[139] Recording Notice No. 2/15/1423 of the Constitutional Court of Georgia dated 24 October 2019 in the case of Ani Gachechiladze v. Parliament of Georgia.

[140] Tabula, SSG Files: During Aiisa Case, Kobakhidze Was Providing Legal Consultation to the Church, 15 September 2021, available at: http://tbl.ge/5osc accessed on: 27.05.2025.

[141] Tabula, Manana Kobakhidze Files Complaint in SSG Files Case, Demands Victim Status, 29 June 2022, available at: http://tbl.ge/627f accessed on: 27.05.2025.

[142] Tabula, GDI Demands Recusal of Kobakhidze in Aiisa Case at the Constitutional Court, 22 September 2021, available at: http://tbl.ge/5p22 accessed on: 27.05.2025.

denied the motion. Instead, Kobakhidze was soon elected Deputy Chairperson of the Constitutional Court and Chair of the Second Panel[143].

In December 2017, the term of office of former Constitutional Court judge Lali Papiashvili expired, and the Parliament of Georgia elected **Eva Gotsiridze** in her place. She began exercising her mandate in January 2018. Gotsiridze's name is associated with several problematic statements and positions she has taken, as well as with appointments of influential members of the judiciary, not to mention her support for a number of constitutionally and legally questionable decisions within the Constitutional Court and her differing or concurring opinions.

Eva Gotsiridze's professional background is linked to the Supreme Court of Georgia during the 1990s and 2000s, where she held various positions. She has been actively involved in academic and teaching work to this day. From 2013 to 2017, she served as a non-judge member of the High Council of Justice—one of the most controversial periods for the institution. She was among those Council members who supported Levan Murusidze's appointment to the Court of Appeals. Murusidze was elected[144] as a judge of the Court of Appeals by the High Council of Justice in late 2015, receiving 10 votes[145].

As Eva Gotsiridze herself explained, one of the reasons for this decision was the "unprecedented support" for Levan Murusidze from within the judicial corps. According to her, *"We made the decision as public servants. We prioritized the principle of irremovability of judges, the fact that the entire judicial corps supported Mr. Levan [Murusidze]. His dismissal could have triggered extremely unpleasant processes throughout the judicial system. We made the decision in favor of stability within the judiciary."*[146] However, given that the Georgian Constitution and legislation clearly define the criteria for selecting judges (integrity and competence), Gotsiridze's justification was entirely incomprehensible—especially considering Murusidze's professional record and his leadership role within an informal group of influential judges. Murusidze was among the first Georgian judges to be sanctioned by the United States for "involvement in significant corruption," "abuse of office," and "damaging the rule of law and public trust in the judiciary."[147]

Eva Gotsiridze also participated in the 2016 competition to select a Georgian judge for the European Court of Human Rights, which was led by the Minister of Justice. Notably, the then-Chairperson of

[143] Instead of Initiating Disciplinary Proceedings, Manana Kobakhidze Was Promoted, 2 December 2021, available at: http://tbl.ge/5sbr accessed on: 27.05.2025.

[144] Murusidze received votes from Tamar Alania, Merab Gabinashvili, Shota Getsadze, Eva Gotsiridze, Ilona Todua, Vakhtang Todria, Zaza Meishvili, Paata Silagadze, Kakha Sopromadze, and Levan Tevzadze.

[145] Radio Liberty, Levan Murusidze Remains a Judge, 25 December 2015, available at: https://cutt.ly/ArvCk4GX accessed on: 27.05.2025.

[146] Netgazeti, Why Civil Society Representatives Oppose the Nomination of Eva Gotsiridze, 28 November 2017, available at: https://netgazeti.ge/news/237044/ accessed on: 27.05.2025.

[147] Radio Liberty, U.S. Imposes Sanctions on Four Judges from Georgia, 5 April 2023, available at: https://www.radiotavisupleba.ge/a/32350958.html accessed on: 27.05.2025.

the Constitutional Court, Giorgi Papuashvili, also competed in this selection[148][149]. The process was meant to produce a shortlist of three candidates to be submitted to the Committee of Ministers of the Council of Europe's Advisory Panel, which would assess whether the nominees met the Convention's standards, before the list was passed to the Parliamentary Assembly of the Council of Europe.

At that time, the Public Defender and members of civil society—who participated in the selection commission—rated Gotsiridze's interview performance as unsatisfactory[150]. Despite this, Gotsiridze was among the five candidates initially selected by the commission (Alexander Baramidze, Nana Mchedlidze, Giorgi Badashvili, Ana Dolidze, and Eva Gotsiridze). The government eventually selected three of them—Alexander Baramidze, Giorgi Badashvili, and Eva Gotsiridze—for submission to the Parliamentary Assembly. Gotsiridze replaced Nana Mchedlidze, who was deemed at that career stage to not meet the high standards expected of a judge[151]. Civil society organizations harshly criticized the government's decision, arguing that the evaluation appeared to show that *"the entire public competition process was purely formal and that the decision was based entirely on political considerations."*[152] In September of the same year, the selection committee of judges in Paris rejected all three of Georgia's nominated candidates.

Gotsiridze is also known for her critical and problematic assessment of the March 3 decision of the European Court of Human Rights, which suspended enforcement of the March 2 decision of the Georgian Supreme Court in the Rustavi 2 case. According to her, suspending the enforcement of a national court's decision would have a chilling effect on the effectiveness of justice in all property-related disputes pending in the Georgian judiciary. She claimed it would further prolong the decades-long legal uncertainty, intensify public nihilism, and disappoint the Georgian society in its legitimate expectations of restoring justice[153]. Earlier, Gotsiridze had openly supported a controversial ruling by Judge Tamaz Urtmelidze, who on November 5 questioned the editorial independence of Rustavi 2 under its existing ownership and appointed a temporary manager to the company. Civil society organizations considered this decision as interference in the broadcaster's editorial policy[154]. Later, the Constitutional Court suspended the legal provisions on which the judgment had been based. Gotsiridze stated: "*I am amazed how this could be interpreted as interference with editorial independence. Let me remind everyone that the principle of fair reporting is a universally accepted international legal*

[148] A total of 47 candidates expressed interest in the competition – including Deputy Minister of Justice Aleksandre Baramidze, Deputy Minister of Defense Ana Dolidze, High Council of Justice member Eva Gotsiridze, Constitutional Court Chair Giorgi Papuashvili, and Georgia's Permanent Representative to the Council of Europe Konstantine Korkelia, among others.

[149] 47 Candidates from Georgia Interested in ECHR Judgeship, 11 February 2016, available at: http://tbl.ge/fz1 accessed on: 27.05.2025.

[150] Tsulukiani: Comments from Civil Society Are Incomprehensible, 29 February 2016, available at: http://tbl.ge/vh7 accessed on: 27.05.2025.

[151] Eva Gotsiridze Also Competes for ECHR Judgeship, 28 July 2016, available at: http://tbl.ge/1tiy (accessed 27.05.2025).

[152] Coalition's Appeal to the Prime Minister of Georgia Regarding the 2016 Selection Process of ECHR Judgeship Candidates, 11 March 2016, available at: https://cutt.ly/GrvCvrtd accessed on: 27.05.2025.

[153] Gotsiridze: Suspending Enforcement Will Have a Chilling Effect on the Justice System, 14 March 2017, available at: http://tbl.ge/28hj accessed on: 27.05.2025.

[154] Gotsiridze: Limiting Freedom of Expression May Be Necessary to Protect Justice, 9 November 2015, available at: http://tbl.ge/k3a accessed on: 27.05.2025.

standard. The authority and prestige of the judiciary are inviolable values and may justify limitations on freedom of expression—even that of journalists disseminating one-sided, unverified information." [155]This statement was harshly criticized by the Chairperson of the Georgian Young Lawyers' Association, Ana Natsvlishvili, who noted that *"even the European Court of Human Rights gives clear priority to public interest when balancing private and public interests. This does not mean property rights should be violated, but Urtmelidze's judgment questioned Rustavi 2's role as a media outlet in a democratic society—something that is for the public to judge, not the courts."*[156]

Shortly after the failed nomination process for the ECtHR, Parliament appointed[157] Eva Gotsiridze as a judge of the Constitutional Court. The selection process lasted only a few days, from November 27 to December 1. Unsurprisingly, given the prior developments, her candidacy was criticized by both civil society and the opposition. Civil society representatives highlighted the accelerated and non-transparent process and the lack of opportunity for the public to question Gotsiridze about her professional background and public positions, especially concerning her time in the High Council of Justice and her stances on the Rustavi 2 case and freedom of expression.

As later revealed by the Constitutional Court's evolving case law, Gotsiridze's controversial views on human rights and the powers of the Court itself were not an exception.

Gotsiridze's appointment was the last personnel change in the Constitutional Court's composition until 2020—just before the COVID-19 pandemic and the so-called "Gavrilov's Night," which plunged the country into a deep political crisis. Today, "Georgian Dream" is using that crisis to consolidate an increasingly authoritarian regime. It was during the first half of 2020, under the pandemic, that two new judges—**Khvicha Kikilashvili** and **Vasil Roinishvili**—were appointed to the Constitutional Court through the Supreme Court Plenum's quota. Later, in the summer of 2021, **Giorgi Tevdorashvili** was appointed through the President's quota. A few days after Kikilashvili and Roinishvili's appointment, the Court's Plenum elected Merab Turava as its new Chairperson, with 5 votes out of 9. The other candidate, Irine Imerlishvili, received 4 votes. The newly appointed judge Roinishvili became the Deputy Chair and head of the First Chamber. These developments raised serious public concerns that Turava's election was decisively influenced by loyal members of the so-called "judicial clan," appointed through the Supreme Court Plenum.

Khvicha Kikilashvili was elected by the Plenum of the Supreme Court on April 3, 2020. The vacancy in the court emerged after the term of another judge—Maia Kopaleishvili, who was not acceptable to the political authorities—expired on December 4, 2019. According to the law, the Supreme Court had to elect a new judge by November 24. During this period, a state of emergency was

[155] Gotsiridze: Limiting Freedom of Expression May Be Necessary to Protect Justice, 9 November 2015, available at: http://tbl.ge/k3a accessed on: 27.05.2025.
[156] Natsvlishvili: The Role of Media Is Not a Matter for Judges to Evaluate, 9 November 2015, available at: http://tbl.ge/rp5 accessed on: 27.05.2025.
[157] Netgazeti, Parliament Elects Eva Gotsiridze as Constitutional Court Judge, 1 December 2017, available at: https://netgazeti.ge/news/237909/ accessed on: 27.05.2025.

declared in the country due to the COVID-19 pandemic. Accordingly, the civil sector called[158] on the Supreme Court to refrain from appointing a new judge until the state of emergency ended. However, the Plenum did not heed this request. Notably, several Supreme Court judges did not participate in the Plenum session. According to a statement by the "Group of Independent Lawyers," composed of professional representatives and former judges, Khvicha Kikilashvili is part of the "caste" of court chairpersons *"who have long fulfilled the function of political control over judges in the Georgian judiciary."*[159]

Khvicha Kikilashvili's professional career is equally split between investigative bodies and the common court system. From 1994 to 2006, he worked in the Prosecutor's Office, and since 2006 he has served as a judge in various courts (Signagi District Court, Khelvachauri District Court, Batumi City Court, and the Criminal Chamber of the Tbilisi Court of Appeals). Unlike other Constitutional Court judges, Kikilashvili's biography does not include any information about academic or teaching experience[160].

Among the cases presided over by Kikilashvili was an episode[161] involving former Secretary of the High Council of Justice and Supreme Court Judge Giorgi Mikautadze. Parents Tamar Khachapuridze and Kakha Khachidze accused Judge Mikautadze of beating their child during an incident at Gonio beach. On the same day the investigation into the child's beating began, the case was requalified and continued as a threat to the judge's life. That same evening, the child's parents were arrested. A year prior to the Gonio incident, Giorgi Mikautadze had reviewed an administrative offense by the child's mother, who had insulted him on Facebook. According to media reports, this prior case led to the conflict at the beach. Ultimately, the Khelvachauri court did not confirm the threat to the judge's life and fined the parents 4,000 GEL for hooliganism[162]. Shortly after presiding over this case, Kikilashvili was appointed as a lifetime judge. The European Court of Human Rights later reviewed the Khachapuridze-Khachidze case and found[163] a violation of the right to a fair trial. The family subsequently left Georgia and received asylum in the UK[164].

On October 17, 2023, the Parliament of Georgia elected two non-judge members to the High Council of Justice. Among them was Goga Kikilashvili, the son of Khvicha Kikilashvili[165]. This decision was made just one day after the Constitutional Court—supported by Khvicha Kikilashvili—endorsed the

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[158] Radio Liberty, "NGOs: Appointment of a Constitutional Court Judge during a State of Emergency is Unacceptable," April 3, 2020, available at: https://www.radiotavisupleba.ge/a/30527159.html; accessed on: 27.05.2025.

[159] Radio Liberty, "Kikilashvili Elected as Judge of the Constitutional Court," April 03, 2020, available at: https://www.radiotavisupleba.ge/a/30527816.html; accessed: 27.05.2025.

[160] Official Website of the Constitutional Court of Georgia, "Former Judges: Biography of Khvicha Kikilashvili," available at: https://cutt.ly/lrvCTwMF; accessed: 27.05.2025.

[161]Radio Liberty, "Is the Secretary of the High Council of Justice Abusing His Position?" September 24, 2018, available at: https://cutt.ly/YrvCTJ3H; accessed: 27.05.2025.

[162] Tabula, "Supreme Council Appoints Kikilashvili to the Constitutional Court," April 03, 2020, available at: https://cutt.ly/ErvCUSKD; accessed: 27.05.2025.

[163] Case of Khachapuridze and Khachidze v. Georgia (Applications nos. 59464/21 and 13079/22), August 29, 2024

[164] Netgazeti, "Janezashvili: Kikilashvili's Appointment Is a Mockery of the Constitutional Court," April 3, 2020, available at: https://netgazeti.ge/news/440558/; accessed: 27.05.2025.

[165] Radio Liberty, "Son of Constitutional Court Judge Says He Was Not Selected as Council Member Due to Family Ties," October 18, 2023, available at: https://www.radiotavisupleba.ge/a/32643040.html; accessed: 27.05.2025.

impeachment of President Salome Zourabichvili. Goga Kikilashvili's election as a non-judge member of the Council raises suspicions, especially considering that he had previously applied for the position multiple times but had never secured enough votes. This changed the day after the Constitutional Court ruled that the president's actions had violated the Constitution.

On March 28, 2025, two days before Merab Turava's 10-year term expired, Khvicha Kikilashvili resigned from the Constitutional Court five years before the end of his term, citing "personal reasons." The ruling party, *Georgian Dream*, amid a political crisis, did not have enough votes to appoint Turava's successor. However, the Supreme Court Plenum swiftly selected Revaz Nadaraia—a figure close to the judicial "clan"—to replace Kikilashvili[166].

Vasil Roinishvili's professional career, like Kikilashvili's, is linked to both the Prosecutor's Office and the judiciary. From 2006 to 2008, he served as Prosecutor of the Autonomous Republic of Adjara, and from 2008 to 2009, as Deputy Chief Prosecutor of Georgia. Between 2009 and 2020, Roinishvili held various roles: Supreme Court Judge, Deputy Chair of the Supreme Court, Chair of the Civil Chamber, and a member of the Disciplinary Chamber. In 2017, he was one of nine judges on the Grand Chamber of the Supreme Court who supported transferring ownership of TV Company Rustavi 2 to Kibar Khalvashi. In December 2019, the High Council of Justice nominated him for lifetime appointment to the Supreme Court, but Parliament rejected his candidacy.

Roinishvili has acknowledged his long-standing friendship with Mikheil Chinchaladze, the influential leader of a group of judges within the judiciary[167].

His wife, Diana Tsindeliani, has worked at Russia's Ministry of Trade and Industry. According to Roinishvili's 2024 declaration, she was Deputy Head of the Department for Legislative Affairs from January 1 to October 6, 2023[168]. Her LinkedIn profile shows she has worked in Russia since 2008, including in the ministry since 2016[169].

While at the Adjara Prosecutor's Office, Roinishvili oversaw the investigation into the murder of former military serviceman Roin Shavadze. On November 19, 2020, the European Court of Human Rights found Georgia responsible for violating both the procedural and substantive aspects of the right to life[170]. The court ordered the government to pay €40,000[171].

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[166] Publika, "Who Is the New Judge of the Constitutional Court, Revaz Nadaraia?" April 03, 2025, available at: https://publika.ge/vin-aris-sakonstitucio-sasamartlos-akhali-mosamartle-reva/; accessed: 27.05.2025.

[167] Netgazeti, "Me and Chinchaladze Are Friends, He Is a Worthy Person – Roinishvili," May 29, 2020, available at: https://netgazeti.ge/news/456568/; accessed: 27.05.2025.

[168] Publika, "Wife of Constitutional Court Judge Roinishvili Worked at the Russian Ministry of Trade," July 18, 2024, available at:https://publika.ge/sakonstitucios-mosamartle-roinishvilis-coli-rusetis-vachrobis-saministroshi-mushaobda/; accessed: 27.05.2025.

[169] Ibid.

[170] Shavadze v. Georgia, Application No. 72080/12, Judgment of November 19, 2020, available at: https://cutt.ly/DrvCGhfm; accessed: 27.05.2025.

[171] Civil.ge, "Independent Lawyers Demand Investigation against Judge Vasil Roinishvili," November 21, 2020, available at: https://civil.ge/ka/archives/383853; accessed: 27.05.2025.

The final cycle of Constitutional Court appointments ended with President Salome Zurabishvili naming **Giorgi Tevdorashvili** as a judge. He took office on August 5, 2021, replacing Tamaz Tsabutashvili, who had been appointed in 2011 under the presidential quota. On December 1, 2021, the Plenum of the Constitutional Court elected Tevdorashvili as Secretary of the Court.

In 2019, Tevdorashvili was among the candidates for the Supreme Court, but his parliamentary interview did not lead to appointment[172]. From 1999 to 2021, his professional career spanned both private and public sectors. He was not part of the judiciary but has been actively engaged in academic work related to constitutional law since 2003. He is a Doctor of Law, Associate Professor of Constitutional Law at Tbilisi State University's Faculty of Law, and a member of the dissertation council. Despite his qualifications and appointment via the President's quota—made amid Zurabishvili's growing disagreement with the ruling party—Tevdorashvili has unfortunately failed to demonstrate principled stances in the Court's important decisions, often aligning with the majority.

As a result, the process of renewing the Constitutional Court's membership ended in 2021. By then, it had become clear that principled judges who upheld democratic values and constitutional norms were in the minority. If needed, their positions could be neutralized via the 2016 legislative amendments, the most problematic of which - allowing any judge to refer a case to the Plenum at any time - remained in force. Accordingly, the Constitutional Court, as reconstituted by the ruling party, no longer posed a political threat. On the contrary, it could be used by the government as a tool for political goals. At first, this was done through relatively "soft" forms of abuse—strategic silence in certain cases or prolonging final decisions for years.

Under Georgian law, a constitutional complaint must be resolved within 9 months from the date of its registration. In exceptional cases, this can be extended by no more than 2 months. In practice, the Court interprets this period as covering only the substantive review stage, excluding the time from deliberation to final judgment. This results in inconsistent timelines and often excessive delays. In October 2021, the Social Justice Center published a brief report[173] on delayed cases, including complaints the organization itself filed on urgent matters such as repressive drug policy, weak privacy protections, and access to subsistence assistance for the homeless. To this day, the Court has not issued a decision in the so-called "second surveillance case," under review since 2018[174].

Thus, during this period, the delay of critical public interest cases became a hallmark of the Court's deference to political power and a primary expression of weak constitutional oversight. However, during the same period, there was a noticeable increase in atypical judgments —mostly on less "publicized" cases. Ultimately, this culminated in the normalization of practices that undermined

[172] High Council of Justice, "Supreme Court Judge Candidates Registered," June 7, 2019, available at: https://cutt.ly/GrvCDnuw; accessed: 27.05.2025.
[173] Social Justice Center, "The Problem of Delayed Proceedings in the Constitutional Court of Georgia," 2021, available at: https://cutt.ly/9rvCSCTf; accessed: 27.05.2025.
[174] Netgazeti, "Representatives of the Security Service and Agency Await Questions from Judges – Surveillance Case," May 10, 2018, available at: https://netgazeti.ge/news/275304/; accessed: 27.05.2025.

democratic and constitutional principles and entrenched more aggressive forms of abuse of constitutional review, which the next section of this document analyzes in depth.

3.3. 2020–2025: From Weak to Strong Forms of Abuse of Constitutional Review — the Evolution of the Constitutional Court in Practice

In the practice of the Constitutional Court, the tendencies of delaying cases and issuing decisions contrary to the Court's well-established jurisprudence became increasingly evident as the composition of the Court changed — a process largely completed in the first half of 2020. This period coincides with the beginning of a major political crisis in the country, the increasingly apparent authoritarian tendencies of the Georgian Dream government in its third term, and the acceleration of the weakening and capture of democratic institutions. Unfortunately, the Constitutional Court played an active role in these processes in favor of the political authorities and continues to do so to this day.

Since 2020, the abuse of constitutional review has taken on stronger forms. The Court's judgments increasingly included reasoning and precedents that were disconnected from the prevailing political and social contexts, disregarded established practice and constitutional or international legal standards, and aimed to legitimize the government's anti-democratic decisions. At the same time, while in previous years the Court more often dealt with cases initiated by the civil sector or the opposition — where the government appeared as a respondent — recently Georgian Dream itself has intensified its engagement with the Court. The ruling party began to actively bring cases before the Court, thereby stripping the already subservient judiciary of the cover of being in the shadows and, consequently, the privilege of avoiding public and international scrutiny. As attention toward the Court increased, particularly during the renewed political crisis that erupted with full force after the 2024 parliamentary elections, the judges of the Constitutional Court could no longer escape accountability, especially from the international community.

Regrettably, the current Constitutional Court in Georgia includes a majority of judges who have been sanctioned[175] by Georgia's international partners for their conduct. However, an analysis of several critically important decisions, which we discuss below, clearly demonstrates how well-deserved these measures of political and legal accountability are.

These decisions concern not only fundamental human rights and their inadequate protection but also directly implicate the Court's core constitutional powers — safeguarding the basic structure and constitutional identity of the state, and upholding the principles of separation of powers and checks and balances. These were the decisions that became the main test for the Constitutional Court's political independence and its commitment to the Constitution and democracy. They addressed, for the first time in independent Georgia's history, the public selection process of Supreme Court justices; the delegation of legislative functions to the executive branch during the COVID-19 pandemic; the abolition of an independent oversight body — the State Inspector's Service; the impeachment of the

[175] TV Pirveli, "Who Was Sanctioned – Lithuania Publishes List of 102 Names," April 15, 2025, available at: https://cutt.ly/CrcRrtYn; accessed: 27.05.2025.

President; the persecution of civil society organizations; and the constitutional review of parliamentary elections.

In all these cases, had the Court delivered principled and courageous decisions in line with constitutional and democratic principles, it would have at the very least significantly hindered the ruling party's authoritarian ambitions. Alternatively, the Court could have sounded the alarm and raised public awareness of the imminent threats, thus playing a significant role in supporting the democratic consolidation of society. In other words, the Constitutional Court could have fulfilled the vital role that independent and constitutionally loyal institutions are meant to play in constitutional democracies.

Unfortunately — though this is a logical conclusion at this stage of critical analysis — the Court failed to show resilience or loyalty to its constitutional mandate in any of these cases. The only real function these judgments serve is to clearly demonstrate the full extent of the Court's subjugation.

2019–2020: The "Supreme Court Judges Selection Case" - An Unsuccessful Attempt to Legitimize the Process

In 2019, for the first time in the history of independent Georgia, the issue of publicly selecting judges for the Supreme Court became part of the national agenda. As a result of judicial reform, the selection process was split into two stages: the High Council of Justice was responsible for selecting candidates through a multi-step procedure, while the final decision on their appointment rested with the Parliament of Georgia. It is important to note that by this time, the judicial reforms that had been implemented were already being evaluated as unsatisfactory by both local and international organizations. These reforms, superficial and incomplete in nature, failed to eliminate informal influences within the judiciary. On the contrary, through coordinated action with the political authorities, they contributed to the strengthening of the so-called "judicial clan."[176] Accordingly, the key question remained: would this new selection procedure provide safeguards against existing risks, or would it instead allow powerful groups and the ruling political party to appoint favorable candidates?

Given this context, the judicial selection process that took place from May to December 2019 attracted significant public interest, both domestically and internationally. The process was subject to numerous assessments regarding both the legal framework and its practical implementation. According to local and international evaluations, the process raised serious doubts about its objectivity and about the integrity and competence of the candidates nominated for parliamentary approval[177].

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[176] Ana Papuashvili, Nino Nozadze, Gvantsa Tsulukidze, Giorgi Davituri, "Ten Years of Justice Reforms: Challenges and Perspectives," Coalition for an Independent and Transparent Judiciary, 2023, available at: https://cutt.ly/GrcRtO2B; accessed: 27.05.2025.

[177] Venice Commission, "Urgent Opinion on the Selection and Appointment of Supreme Court Judges," June 24, 2019, adopted at the 119th Plenary Session, June 21–22, 2019 (CDL-AD(2019)009), available at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)009-e; OSCE/ODIHR, "Report on the First Phase of Judicial Appointments to the Supreme Court of Georgia," June–September 2019, and "Second Report," June–December 2019, available at: https://www.osce.org/odihr/429488 and http://www.osce.org/odihr/443494; Coalition for Independent and Transparent Judiciary, "Assessment of the Judicial Selection Process," September 12, 2019, available at: http://www.coalition.ge/index.php?article_id=215&clang=0; European Parliament, "EU–Georgia Association Agreement:

Thus, by the time the Public Defender filed a constitutional complaint with the Constitutional Court, requesting an assessment of the constitutionality of the High Council of Justice's procedures in the selection process, the country already had a negative practical experience with this process. This experience revealed significant flaws in the legal framework that the Court was called to assess in light of constitutionally protected rights — specifically, the right to hold public office and the right to a fair trial. Since the disputed norms were part of an organic law, the case was heard by the full plenary session of the Constitutional Court, composed of eight judges. Judge Vasil Roinishvili, a former Supreme Court justice, filed a motion to recuse himself, which the Court granted. As a result, the remaining eight judges were evenly split, and the Court did not uphold the constitutional complaint in its judgment of July 20, 2020[178]. A critical and comprehensive dissenting opinion was issued by Judges Teimuraz Tughushi, Irine Imerlishvili, Giorgi Kverenchkhiladze, and Tamaz Tsabutashvili[179].

According to the claimant, the selection system for Supreme Court judicial candidates failed to ensure a fair selection procedure, as it allowed the Council to conduct the process — which involved secret ballots and unsubstantiated decisions — arbitrarily and in a way that could violate candidates' rights. The Council was not bound by the constitutional criteria of integrity and competence, which meant it could refrain from presenting the best-qualified candidates to Parliament. This, in turn, restricted individuals' right to a fair trial, as their cases would not be heard by a court with constitutional and legal legitimacy. Moreover, the secrecy and lack of justification in the Council's decisions prevented any examination of consistency in the members' voting, made it difficult to appeal the decisions, and hampered efforts to detect bias.

The respondent — the Parliament of Georgia — argued that the High Council of Justice's selection of candidates was not a competitive process and that it differed from the procedure used to select first- and second-instance judges, where the Constitutional Court had previously required the Council to provide justifications[180]. According to the Parliament, the nomination of candidates by the Council and their subsequent election by Parliament constituted a unified political-legal decision-making process involving two constitutional bodies with high legitimacy. The Council's role was limited to presenting candidates to Parliament (without necessarily rejecting others), and the final decision rested with Parliament. Furthermore, according to Parliament, the Constitution required not the selection of the "best" candidates but of those who met the minimum criteria of integrity and competence. The Council, they claimed, was bound by these criteria at every stage of the decision-making process. The selection procedure defined by law — due to its openness, transparency, accessibility to the public, the method

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Implementation Assessment (Updated)," April 2020, available at: https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2020)642820; PACE Co-Rapporteurs' Assessment on Georgia's Obligations, September 25, 2019, available at: https://pace.coe.int/en/news/7626/georgia-parliament-must-rectify-the-selection-process-for-supreme-court-judges-say-monitors. Accessed: 27.05.2025.

[178] Plenary of the Constitutional Court of Georgia, Judgment No. 3/1/1459,1491 of July 30, 2020, in the case "Public Defender of Georgia v. Parliament of Georgia."

[179] Dissenting Opinion by Judges Teimuraz Tughushi, Irine Imerlishvili, Giorgi Kverenchkhiladze, and Tamaz Tsabutashvili in the above-mentioned Judgment.

[180] Constitutional Court of Georgia, Judgment No. 3/2/717 of April 7, 2017, in the case "Citizens of Georgia Mtvarisa Kevlishvili, Nazi Dotiashvili and Marina Gloveli v. Parliament of Georgia."

of composing the Council, and the required number of votes to make decisions — was sufficient to ensure the proper composition of the Supreme Court. Moreover, the secrecy of voting was intended to protect Council members from external pressure.

In this case, the Constitutional Court effectively fully endorsed the argumentation presented by the Parliament of Georgia, entirely disregarding the context and practical experience related to the process of selecting Supreme Court judges, as well as local and international assessments. This marked the first significant warning signal in favor of the political authorities and an influential group of judges within the common courts. However, the nuances of the Court's reasoning went much further: with unconvincing justification, it first contradicted its own established practice and then devoted most of the decision to attempting to portray the High Council of Justice as independent. This raised serious questions about whether the decision was, in reality, an attempt to legitimize the process of appointing Supreme Court judges—though ultimately with limited effectiveness given the comprehensive criticism of the process both domestically and internationally. Accordingly, this decision stands as one of the first clear examples of a strong form of abuse of constitutional review and aligns with the theoretical framework on the abuse of constitutional review discussed in the second chapter of this document.

First, in the initial part of its reasoning, the Constitutional Court attempted to substantially differentiate the process of appointing judges to the first and second instance courts (in which, according to the Court's own established practice, the voting by the High Council of Justice must be open and decisions must be reasoned) from the process of selecting/electing judges to the Supreme Court, and to present the role of the High Council of Justice in this process differently.

According to the Court, analysis of the relevant constitutional-legal framework made it clear that this process was legal-political in nature, with the main decision made by a political body—the Parliament[181]. However, the Court also noted that the process should be viewed as a single mechanism, and that the role of the High Council of Justice should be defined accordingly[182]. Based on this reasoning, the Court concluded that *"if the appointment of Supreme Court judges were entirely in the hands of the High Council of Justice, and it made the final decision, as is the case for judges of the first and appellate instance courts, then a different approach would be required and there would be a much greater need to justify its decisions."*[183]

Four dissenting judges sharply criticized this interpretation, pointing out that the Constitutional Court's prior established practice on the issue was clear and unambiguous. According to that practice, *"in the process of appointing a judge to a position by the High Council of Justice, one of the most essential constitutional-legal requirements is the prevention of unreasoned or arbitrary decisions. Moreover, in line with the Constitutional Court's practice, the requirement for justification applies to the entire selection process. Accordingly, in the process of selecting a candidate for the Supreme Court*

[181] Judgment of the Plenum of the Constitutional Court of Georgia of 30 July 2020, No. 3/1/1459,1491, in the case "Public Defender of Georgia v. Parliament of Georgia", para. 2.17.
[182] Ibid., para. 2.18.
[183] Ibid., para. 2.20.

by the High Council of Justice, the obligation to justify the decision is considered part of the right—regardless of whether the selection is treated as a separate stage or part of a unified process. Therefore, the fact that the final decision on the judge's appointment is made by Parliament does not negate the Council's obligation to justify its decisions."[184]

According to the judges, historically, the Constitution of Georgia delegated the appointment of Supreme Court judges to political bodies. However, this approach changed following the 2017 constitutional amendments, which established a two-stage model. Thus, at the time of adopting the Constitution, the legislator's intent was clearly aimed at reducing the politically motivated and expediency-based decisions by political bodies in appointing Supreme Court judges and at creating a transparent, justification-based system. Against this background, the approach developed by the Court effectively neutralized the constitutional legislator's objectives[185] and equipped the High Council of Justice with unchecked power—contradicting the essence of the Constitution, the principle of democracy, and the idea of popular sovereignty[186].

Moreover, the judges pointed to the legislation[187] regulating the functioning of the Constitutional Court, which requires that any decision by the Plenum contradicting established practice must be supported by at least five members of the Constitutional Court. In this case, however, the rejection of the claim was supported by only four members, meaning they were not authorized to change the Court's practice through the adopted decision[188].

Particularly interesting and revealing in the decision is the Constitutional Court's reasoning on the guarantees of independence of the High Council of Justice and the degree of its actual independence.

Specifically, according to the Constitutional Court's interpretation, *"the High Council of Justice, as a constitutional body, is composed of members elected by different branches of government — some enjoying the trust of Parliament and the President, and others — the trust of the judicial corps. Moreover, considering that the Council's primary function, as determined by the Constitution itself, is the selection of judges, it should be understood that the trust vested in its non-judge members by the President and Parliament, and in its judge members by the judiciary, primarily encompasses institutional trust in the Council's role in the selection of judges."*[189] Additionally, the Court pointed to the Council's accountability exclusively to the self-governing judicial body — the Conference of Judges, its financial independence, and the rule that decisions must be made by a two-thirds majority, which, according to the Court, excluded the possibility of decisions being driven by corporate or political interests. As a result, the Court concluded that these accountability mechanisms additionally ensured the political neutrality of the Council and mitigated risks of arbitrariness. Ultimately, the Court stated: *"The existing constitutional model for the formation of the Council, its composition, and the*

[184] Dissenting opinion, para. 82.
[185] Ibid., para. 27.
[186] Ibid., para. 34.
[187] Organic Law of Georgia "On the Constitutional Court of Georgia", Article 21^1, Paragraph 2.
[188] Dissenting opinion, para. 88.
[189] Judgment of the Plenum of the Constitutional Court of Georgia of 30 July 2020, No. 3/1/1459,1491, in the case "Public Defender of Georgia v. Parliament of Georgia", para. 2.30.

decision-making process ensures that the Council does not become a closed, narrowly corporatist, interest-driven structure."[190]

This line of reasoning reveals a complete insensitivity by the Constitutional Court to the critical context surrounding the High Council of Justice. In fact, this reasoning may be seen as an inadequate attempt to legitimize the functioning of the Council and a controversial process of great importance that involved its participation — particularly given how local and international organizations assessed this process, and especially the Council's role in decision-making.

On the issue of the Council's secret voting and lack of justification in its decisions, the Constitutional Court once again fully adopted the Parliament's arguments, blatantly contradicting its own prior practice by artificially separating the decisions made by the Council as a body from those made by its individual members. Moreover, the Court went even further by asserting that decisions made by the Council within the bounds of its competence were inherently legitimate due to existing legislative guarantees[191]. This too was critically assessed in the dissenting opinion, which stated: *"The Constitutional Court of Georgia and its members enjoy higher guarantees of independence than members of the High Council of Justice. However, naturally, this does not legitimize the Court's adoption of unreasoned decisions. The more an institution's decisions impact human rights and the legal system of the country, the more important it becomes to ensure those decisions are justified."*[192] According to the dissenting judges, *"the requirement of a reasoned decision relates to the nature of the decision being made and the accountability of the decision-makers. In exercising powers granted by the people, accountability of government to the people is an inseparable part of a democratic state. Governance conducted without proper accountability amounts to the usurpation of power, which the Constitution unequivocally prohibits."*[193]

As for the issue of secret voting, the Constitutional Court argued that such a rule provided an additional guarantee for the proper functioning of the Council, as its judge members often have to make decisions concerning their own colleagues, and in such cases, secret voting better ensures the free expression of their will[194]. The dissenting judges rightly pointed out that invoking this reasoning in favor of secret voting, based on the need to make decisions about one's colleagues, only highlights the fact that Council members often have personal relationships and a sense of obligation toward these individuals. Thus, such conditions increase the risk of conflicts of interest and biased decision-making — not the opposite. According to the judges, *"the primary aim of openness in selection procedures is to prevent potential bias. Against this backdrop, invoking secret voting in relation to decisions about one's colleagues once again points to our colleagues' flawed understanding of the right to hold public office and their disregard for the principle of fairness in this process."*[195]

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[190] Ibid., para. 2.33.
[191] Ibid., para. 2.49.
[192] Dissenting opinion, para. 13.
[193] Ibid., para. 14.
[194] Judgment of the Plenum of the Constitutional Court of Georgia of 30 July 2020, No. 3/1/1459,1491, in the case "Public Defender of Georgia v. Parliament of Georgia", para. 2.54.
[195] Dissenting opinion, para. 61.

Finally, another clear example of strong abuse of constitutional review in this decision — used perhaps in an effort to add legitimacy — was the invocation of foreign court practice, without consideration for the contextual differences, experience, level of democracy, legal order, or legislative traditions of the state in question. Specifically, in the concluding section of its reasoning, the Court referenced a decision of the German Federal Constitutional Court, in which it rejected a constitutional complaint brought by a candidate for the German Supreme Court who had not been appointed by the competent authority and challenged the decision on the grounds of lack of justification. In that case, the German Constitutional Court found that *"the appointing authority for judges was not obligated to justify why it appointed another candidate to the position of judge of the German Supreme Court and not the complainant. The Court held that the obligation to justify such decisions does not derive from the principle of effective legal protection."*[196]

Even after this decision, the process of filling vacancies on the Supreme Court continued. The majority of vacant positions had already been filled when the Georgian Parliament finally considered the recommendations of the Venice Commission and made the High Council of Justice's selection process for Supreme Court candidates open and the decisions reasoned[197]. As a result, this extremely problematic decision by the Constitutional Court failed to achieve its original goals — namely, to legitimize the process initiated in 2019 and to affirm the independence and impartiality of the High Council of Justice. Ultimately, it played a much smaller role in the subsequent stage of legislative reform in the judiciary than the evaluations of international organizations.

2021: The So-Called "Covid Cases" – Strengthening the Executive at the Expense of the Legislative Branch

In late 2019, a new coronavirus emerged in China and rapidly spread worldwide. The first case of infection in Georgia was confirmed in February 2020, and on March 11, the World Health Organization declared the outbreak a global pandemic. In this context, countries naturally faced the challenge of effectively managing the virus and ensuring the proper functioning of their governments. In Georgia, a state of emergency was declared on March 21 and extended for another month on April 22. During this period, the ruling party prepared legislative amendments to the Law on Public Health, which aimed to maintain certain restrictive powers after the state of emergency ended—this time on a legislative basis. These amendments entered into force at the end of May 2020 and were sharply criticized by the Public Defender and civil society[198]. In June and July, four different constitutional complaints were submitted to the Constitutional Court concerning this issue.

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[196] Judgment of the Plenum of the Constitutional Court of Georgia of 30 July 2020, No. 3/1/1459,1491, in the case "Public Defender of Georgia v. Parliament of Georgia", para. 2.56.

[197] Ana Papuashvili, Nino Nozadze, Gvantsa Tzulukidze, Giorgi Davituri, "10 Years of Justice Reforms: Challenges and Perspectives," Coalition for an Independent and Transparent Judiciary, 2023, p. 33; Some of the recommendations indicated in the Venice Commission's opinion of 8 October 2020 were considered by the Parliament of Georgia through the amendments adopted on 1 April 2021.

[198] Radio Liberty, "How the Government Will Retain the Right to Restrict People without Parliament," 19 May 2020, accessible at: https://cutt.ly/VrvNbfEz ; accessed on: 27.05.2025.

The First Chamber of the Constitutional Court issued its final decision on February 11, 2021, and dismissed the overwhelming majority of the claims[199]. A dissenting opinion was expressed by Judge Giorgi Kverenchkhiladze[200].

The claimants challenged the constitutionality of restricting an individual's right to liberty without judicial oversight, as well as the delegation by Parliament to the Government of Georgia of several constitutional powers and the granting of excessively broad discretionary authority that deviated from standard legislative procedures. The case was significant in that the court had to enforce the constitutional principles of separation of powers and checks and balances in practice. As it turned out, the Court failed to fulfill this mission.

The first issue addressed in the decision was whether requiring a person who had contact with an infected individual to self-isolate or be transferred to a quarantine facility constituted a restriction of physical liberty. The Court held that this only involved the isolation of the person and prohibition from leaving a certain location, not an interference with their behavioral freedom—which, it argued, amounted only to a restriction of freedom of movement. Through this interpretation, the Court unreasonably narrowed the scope of the right to liberty and contradicted its own well-established case law, which recognized that forcing a person into confinement or into a closed space against their will—or placing them under long-term restrictions—constituted an intensive interference with the right to physical liberty that required judicial oversight[201].

As expected, the most problematic aspect of the judgment was the Court's reasoning on the constitutionality of delegating the power to restrict human rights from Parliament to the Government—an issue that should have been a key test of the Court's understanding of its mandate and its political independence. The Court stated: *"While regulation by law offers greater guarantees of stability, some matters require a more flexible mechanism. In this regard, delegating authority to the executive facilitates simple normative changes in fields that demand frequent modification and adaptation of regulation to changing circumstances through simplified procedures."*[202]

According to the Court's established practice, the delegation of normative authority by Parliament was not inherently unconstitutional if it met certain conditions. Specifically, the delegation of matters explicitly prohibited by the Constitution, or those of fundamental importance, was deemed inadmissible—as was granting the executive branch unlimited discretion. Under this standard, issues of principle concerning the restriction of fundamental rights had to be resolved through legislation, which must clearly define the purpose, scope, and content of the restriction. The executive could only

[199] Judgment of the Constitutional Court of Georgia of 11 February 2021, No. 1/1/1505,1515,1516,1529, in the case "Paata Diasamidze, Giorgi Chitidze, Eduard Marikashvili, and Lika Sajaia v. Parliament of Georgia and Government of Georgia".
[200] Dissenting opinion of Giorgi Kverenchkhiladze, Member of the Constitutional Court of Georgia, regarding the Judgment of 11 February 2021, No. 1/1/1505,1515,1516,1529.
[201] Judgment of the Constitutional Court of Georgia of 11 April 2013, No. 1/2/503,513, in the case "Citizens of Georgia – Levan Izoria and Davit-Mikheil Shubladze v. Parliament of Georgia", paras. 15–16; 21–22.
[202] Judgment of the Constitutional Court of Georgia of 11 February 2021, No. 1/1/1505,1515,1516,1529, in the case "Paata Diasamidze, Giorgi Chitidze, Eduard Marikashvili, and Lika Sajaia v. Parliament of Georgia and Government of Georgia", para. 2.40.

be delegated details necessary for implementing the law—namely, procedural and technical matters[203]. Therefore, the constitutionality of the delegation in this case should have been assessed based on these criteria.

However, in this case, the Constitutional Court drastically limited the scope and content of what Parliament had to define, effectively expanding the Government's authority. The Court concluded that the executive would exceed its delegated powers only if: a) it restricted a right not specified in the law; b) the restrictive measure did not serve the goal of protecting public health; or c) the measure violated the principles of proportionality or the prohibition of discrimination. These criteria were excessively broad and vague, insufficient to set real limits on the executive's freedom of action. Granting such wide discretion to the Government runs counter to the principles of democracy, the rule of law, and the separation of powers—all of which underpin the constitutional order. These principles serve to prevent the concentration of power and the abuse of authority.

In assessing the clarity of the content and scope of the delegation, the Constitutional Court considered it sufficient for the delegation act to simply mention the rights which the government was authorized to restrict—without at all specifying the nature or extent of those restrictions. According to this standard, Parliament was not even required to detail the specific legal components included in the listed rights. As a result, the government adopted numerous measures that restricted fundamental rights, which went far beyond technical or procedural regulations necessary for the interpretation of the law. Moreover, the contested norms not only failed to define the scope of the executive's actions but also granted it the authority to introduce regulations that differed from those in the law. In effect, this amounted to an explicit legislative refusal to impose boundaries on the executive's discretion. As a consequence, the executive branch acquired unchecked power both to impose and enforce restrictions—thereby upsetting the balance among branches of government and increasing the risks of excessive limitation of rights. With such indeterminate delegation of authority, oversight bodies were left without any real tools to control governmental overreach. Nonetheless, the Court deemed this approach justified.

The Constitutional Court also separately examined whether the legislature had delegated to the government the authority to regulate matters of fundamental importance. It defined such issues as including: a) the foundational principles and essential features of the country's social, economic, cultural, legal, or political development; b) matters of high political and public interest; c) issues affecting the country's long-term development prospects; d) severe interference with individual fundamental rights.

By definition, restricting human rights constitutes a matter of such fundamental importance that decisions on these issues fall under the exclusive competence of the legislature. Furthermore, the Court itself acknowledged that the human rights-restricting measures taken in response to the pandemic were politically significant and a matter of broad public concern. Nevertheless, it concluded that this was

[203] Judgment of the Constitutional Court of Georgia of 2 August 2019, No. 1/7/1275, in the case "Aleksandre Mdzinarashvili v. Georgian National Communications Commission", para. 2.30.

not sufficient to classify the matter as one of fundamental importance. Relying on the temporary nature of the restrictions and their stated purpose—to protect public health and prevent virus transmission—the Court argued that these measures could not significantly impact the country's long-term development prospects. It also held that these did not constitute intense interference with rights or amount to repression. However, the Court selectively cited mild examples of the restrictions and ignored the fact that the legislative changes introduced strict administrative and criminal sanctions for violations.

As a result, the Constitutional Court justified the delegation of powers to the Government of Georgia by invoking the need for timely and, where possible, effective decision-making in response to pandemic-related threats.

Ultimately, these legislative changes created a de facto state of emergency in the country - without even the minimal guarantees of protection from executive arbitrariness that would otherwise apply in a de jure state of emergency. Under normal emergency conditions, Parliament retains oversight tools and the authority to approve or reject decisions made by the executive.

This case clearly demonstrated that, during the pandemic, the Parliament of Georgia effectively renounced its legislative powers and transferred full authority to impose rights-restricting measures to the executive. In turn, the Constitutional Court failed to fulfill its constitutionally mandated and vital role in ensuring the checks and balances among branches of power, and refused to exercise effective constitutional oversight.

2022: The Case of Londa Toloraia – Dissolution of an Independent Institution Disguised as an Individual Dispute

Another grave example of the instrumentalization of the Constitutional Court to aid the irreversible consolidation of power by Georgian Dream is tied to the abolition of an independent oversight body — the State Inspector's Service — and the premature termination of its head Londa Toloraia's mandate.

For years, the effective investigation of crimes committed by law enforcement officers has been a major challenge in Georgia. The absence of an independent and impartial mechanism facilitated the widespread abuse of power and ill-treatment within the law enforcement system. To address these systemic flaws, civil society developed a legislative proposal as early as 2015, which envisioned the creation of an independent investigative body with the power to investigate and prosecute crimes. This mechanism was also included in the 2017–2020 EU-Georgia Association Agenda.

In July 2018, the Parliament of Georgia passed the Law on the State Inspector's Service, granting the Inspector the power to investigate, while fully retaining prosecutorial oversight within the Prosecutor's Office. Parliament postponed the enactment of the law four times, and the Inspector's Service finally began operating on November 1, 2019. The Service was also entrusted with the function of personal data protection. Two years after its launch, both domestic and international actors assessed the Service's independence and impartiality positively. While civil society had concerns during its creation about combining investigative and data protection functions in a single agency, monitoring of the institution

in practice revealed no compatibility issues between these functions. Therefore, the logical next step should have been strengthening the Service further and enhancing its independence[204].

Nonetheless, the Georgian Dream government found this institution's existing level of independence and its politically inconvenient decisions problematic — especially regarding the acquisition and disclosure of personal data of Georgia's third president Mikheil Saakashvili; the legality of processing personal data of the deceased journalist Lekso Lashkarava; and the public release of materials indicating possible illegal surveillance[205].

In retrospect, it is unsurprising that on December 30, 2021, the Parliament of Georgia, in an expedited process, adopted legislative amendments abolishing the State Inspector's Service and replacing it with two new agencies: the Special Investigation Service and the Personal Data Protection Service[206]. Under this law, as of March 1, 2022, the mandates of the State Inspector's head, Londa Toloraia, and her deputies were automatically terminated. Toloraia had been elected by Parliament in 2019 for a six-year term. Despite calls from civil society organizations and other stakeholders, the President of Georgia signed the bill into law and did not exercise her veto power[207].

Shortly thereafter, on January 25, Londa Toloraia filed a constitutional complaint, requesting that the disputed provisions be declared unconstitutional. She also petitioned the Court for expedited review and for a suspension of the disputed provisions pending a final judgment. Civil society organizations urged the Court to prioritize the case and suspend[208] the norms in question - especially since the Court had precedent for doing so in a similar case involving the early termination of members of the Public Broadcaster's Board of Trustees[209]. Moreover, reviewing the claim after the abolition of the Inspector's Service on March 1 would render the dispute meaningless, as reinstating Toloraia to her position would no longer be possible. The Constitutional Court's First Chamber admitted[210] part of the case for substantive review just one day before the Service's abolition - on February 28 - but denied Toloraia's request to suspend the operation of the disputed provisions. Judge Giorgi Kverenchkhiladze issued a dissenting opinion on both the interim and final decisions[211].

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[204] Statement by Non-governmental Organizations regarding the possible abolition of the State Inspector's Service, 26 December 2021, available at: https://cutt.ly/2rcRdEXs; accessed on: 27.05.2025.

[205] Ibid.

[206] IPN, "Parliament Approved the Bill on the Abolition of the State Inspector's Service in the Third Reading – The Service Will Cease to Operate from 1 March 2022", 30 December 2021, available at: https://cutt.ly/RrcRd5MU; accessed on: 27.05.2025.

[207] Netgazeti, "Zurabishvili Did Not Veto the Law on the Abolition of the Inspector's Service", 13 January 2022, available at: https://netgazeti.ge/life/586449/; accessed on: 27.05.2025.

[208] Joint Statement of Civil Society Organizations, "We Call on the Constitutional Court to Promptly Review Londa Toloraia's Claim", 11 February 2022, available at: https://cutt.ly/xrcRgehy; accessed on: 27.05.2025.

[209] Judgment of the Constitutional Court of Georgia of 11 April 2014, No. 1/2/569, in the case "Citizens of Georgia – Davit Kandelaki, Natalia Dvali, Zurab Davitashvili, Emzar Goguadze, Giorgi Meladze, and Mamuka Pachulashvili v. Parliament of Georgia".

[210] Recording Notice No. 1/1/1673 of the Constitutional Court of Georgia of 28 February 2022 in the case "Londa Toloraia v. Parliament of Georgia.".

[211] Dissenting Opinion of Justice Giorgi Kverenchkhiladze regarding the Judgment No. 1/9/1673,1681 of the First Collegium of the Constitutional Court of Georgia of 17 November 2022.

Thus, the Constitutional Court's February 28, 2022, decision represents yet another unfortunate and alarming precedent. The Court blatantly disregarded its own established practice on protecting independent institutions, stripped one of the most critical tools for effective protection of fundamental rights - the power to suspend contested norms - of its substance, and reduced the entire matter to a private employment dispute over the early dismissal of a single official. It failed to acknowledge that the case also concerned the hasty and politically motivated dissolution of a key independent oversight body whose work was positively evaluated and which helped restore public trust in state institutions.

Specifically, when deliberating on the suspension of the contested norms, the Constitutional Court was not convinced by the claimant's argument as to why it would be impossible to reinstate her to her position if the norms were eventually declared unconstitutional. As an argument, the Court stated that *"acts deemed unconstitutional and nullified by the Constitutional Court are unconstitutional for the entire period of their application and cause violations of rights from the moment they take effect and produce legal consequences."*[212] Accordingly, the Court held that Londa Toloraia's early dismissal from office would be unconstitutional from the moment the amendments entered into force. However, this reasoning was manipulative and legally incorrect, since the Constitution of Georgia and relevant legislation tie the legal consequences of the Constitutional Court's decisions primarily to the formal annulment of the norm. A norm loses its force from the moment of the decision's official publication, not from the moment of its enactment (unless the decision sets a later effective date). Therefore, even if the Court found the contested norms unconstitutional, the claimant could not be reinstated in her position, because the Court's decision does not have retroactive effect.

Among the arguments used by the Court to deny the suspension of the contested norms was the protection of the interests of the heads of newly established agencies, who had already been selected by that time. However, the Court itself rendered both the interim and final decisions just one day before the official abolition of the State Inspector's Service, effectively depriving the case of practical relevance. Moreover, in its decision, the Court prioritized the legitimate expectations of these newly appointed heads - individuals who had been selected but had not yet assumed their duties - over the interests of the claimant. This raised the question of how Toloraia could be reinstated in her position, even in the event of a favorable judgment, when during the deliberation on suspending the contested norms, her interests were not prioritized at all.

Furthermore, when discussing the harm caused, the Court considered the claimant's interests and the damage resulting from her early dismissal solely from the perspective of individual rights. It completely ignored the broader institutional implications of the abrupt abolition of the State Inspector's Service—specifically, the potential threats and harms this could pose to the institutional independence of similar agencies, and the legal interests of individuals who rely on their uninterrupted functioning. The Court also failed to address the issue of public trust, which is crucial for the effective protection of human rights.

[212] Recording Notice No. 1/1/1673 of the Constitutional Court of Georgia of 28 February 2022 in the case "Londa Toloraia v. Parliament of Georgia," para. 2.22.

Finally, in an attempt to distinguish the present case, the Constitutional Court misinterpreted its own decision of 19 February 2014, which concerned the premature dismissal of members of the Public Broadcaster's Board of Trustees. The Court argued that, unlike in the present case, not all seven members of the Board had been selected at the time, and therefore their rights were not at risk - an inaccurate characterization of that case. In fact, although only a few members had been selected by that point, their ability to exercise their mandates was contingent upon the full composition of the Board. Similarly, in Toloraia's case, the ability of the new agency heads to begin exercising their mandates also depended on a specific date - 1 March 2022. Therefore, for the purposes of evaluating the suspension of the contested norms, the "third parties" in both cases were in comparable situations.

Additionally, in its 2014 decision, the Court emphasized that the legitimate expectations of elected trustees could not outweigh the claimant's interest in avoiding irreversible damage to her legal status through the suspension of the contested norms. In this case, however, the Constitutional Court misrepresented not only the factual context of Case No. 569 but also manipulated its own precedent to justify its reasoning. Notably, in the operative part of the 2014 decision, the Court itself stated that, without suspension of the contested norms, the claimants would lack legal mechanisms to be reinstated in their positions even if their claim was later upheld. Thus, in this case as well, the Court's interpretation and application of its own precedent was incomplete and manipulative.

Ultimately, the Constitutional Court issued its final judgment[213] in Londa Toloraia's case on 17 November 2022, several months later. The Court partially upheld the claim, declaring unconstitutional the normative content of the provisions that allowed for the dismissal of the State Inspector and her deputies without offering equivalent positions or fair compensation. In evaluating whether the reform, as a means chosen by the state, was necessary to achieve a legitimate aim, the Court found that the dismissal of the State Inspector was not the least restrictive means. The Court considered the offer of an equivalent position or the payment of fair compensation as less restrictive alternatives. According to the Court, paying fair compensation to the State Inspector due to early termination of her mandate would be *"a very important and positive step in terms of reducing the intensity of interference and minimizing the damage.[214]"* In this way, the Court effectively accepted financial compensation as sufficient justification for the constitutionality of dismissing the head of an independent oversight body, thereby reducing the matter to a question of personal employment relationships.

It is noteworthy that, in its initial assessment, the Court acknowledged that the legislative amendments in question could affect not only individual officials' rights but also potentially create a "chilling effect" on the stability guarantees for other officeholders. However, the final reasoning focused narrowly on the individual case, ignoring the broader context of the law's enactment and the essential role of independent oversight bodies in democratic societies. While the decision's introduction included an extensive discussion of the State Inspector's Service's importance in protecting human dignity and privacy, none of this analysis was reflected in the conclusion of the decision.

[213] Judgment No. 1/9/1673, 1681 of the Constitutional Court of Georgia of 17 November 2022 in the case "Londa Toloraia and the Public Defender of Georgia v. Parliament of Georgia."
[214] Ibid., para. 2.61.

In conclusion, in the Toloraia case, the Constitutional Court, by fully embracing Parliament's arguments on the necessity of reforming the State Inspector's Service, legitimized an entirely undemocratic process and set a dangerous precedent of dismissing elected officials before the end of their term. In reviewing the case, the Court failed to give due consideration to the broader context of the legislative changes and turned a blind eye to the threats posed by Parliament's actions to the independence and autonomy of an investigative body. This approach starkly illustrates the extent to which constitutional review was being abused already by 2022.

2023: "The Presidential Impeachment Case" – Abandoning the Constitutional Court's Mandate in Favor of Political Retribution

In 2023, for the first time in its existence, the Constitutional Court of Georgia was given the opportunity to issue its constitutionally mandated opinion on the impeachment of a president initiated by Parliament. The Court's conclusion in this unprecedented case was affirmative: it confirmed that the actions of President Salome Zurabishvili, violated the Constitution of Georgia. The impeachment case was reviewed by the Court's Plenum, which adopted the decision with the support of a majority - 6 out of 9 judges[215]. Judges Teimuraz Tughushi, Irine Imerlishvili, and Giorgi Kverenchkhiladze dissented[216].

Despite the Constitutional Court's favorable conclusion, Parliament failed to remove the President from office, as it lacked the necessary 100 votes—a fact known even before the case was submitted to the Court. This, along with prior statements from ruling party leaders, clearly indicated that the government's goal in approaching the Constitutional Court was never the actual removal of the President. Rather, the aim was to legitimize the ruling party's political accusations through a judicial decision, which is ultimately what happened.

Given the specificity of this constitutional dispute and the surrounding circumstances, opinions within the professional community remain divided on whether Salome Zurabishvili did, in fact, violate the Constitution. However, for the purposes of this document, more significant and problematic is the part of the judgment where the Court interpreted the scope of its authority in the impeachment process. In doing so, it essentially reduced its role to a mechanical determination of whether grounds for impeachment existed in the specific case. As in several other cases analyzed in this document, the Constitutional Court thereby narrowed its own mandate in favor of a decision desirable to the political authorities, simultaneously providing legal legitimacy to the political agenda of the ruling Georgian Dream party. This should be regarded as another case of abusive use of constitutional review.

It is also important to note that this case had significant foreign policy implications, as Georgia was expecting a decision on its EU candidacy status within weeks. There was therefore a high likelihood

[215] Conclusion No. 3/1/1797 of the Constitutional Court of Georgia of 16 November 2023 in the case "Constitutional submission of Members of the Parliament of Georgia (Irakli Kobakhidze, Shalva Papuashvili, Mamuka Mdinaradze et al., 80 members in total) regarding the alleged violation of the Constitution of Georgia by the President of Georgia."

[216] Dissenting Opinion of Justices Irine Imerlishvili, Giorgi Kverenchkhiladze, and Teimuraz Tughushi regarding the Conclusion No. 3/1/1797 of the Plenum of the Constitutional Court of Georgia of 16 October 2023.

that the impeachment process could negatively impact the country's chances of obtaining candidate status.

Georgian Dream began discussing the possibility of the President's impeachment as early as the beginning of 2022. This coincided with increasing political crisis in the country and President Zurabishvili's growing criticism of the government's harmful actions during a time of accelerated European integration. On March 14, 2022, during her annual parliamentary address, Zurabishvili harshly criticized the ruling party and spoke about the government's refusal to approve her official visits to various European countries[217]. Georgian Dream chairman Irakli Kobakhidze labeled these visits as constitutional violations[218]. Shortly thereafter, the party's political council announced its intention to request a conclusion from the Constitutional Court confirming the President's alleged constitutional violation. In June 2022, the Government of Georgia filed a constitutional petition against the President, asking the Court to clarify the division of powers between the President and the Government regarding the appointment and dismissal of ambassadors and heads of diplomatic missions. However, in January 2023, the government withdrew the petition without providing any explanation[219].

The impeachment issue returned to the political agenda in September 2023, after the government once again denied the President permission to conduct official visits to 10 countries in support of Georgia's EU integration efforts. Despite the refusal, the President proceeded with her meetings with European leaders[220]. On September 14, a constitutional submission was registered at the Constitutional Court by 80 MPs from the ruling party, requesting a conclusion on the President's violation of the Constitution. The Court issued its conclusion a month later, on October 16, recognizing the President as having violated the Constitution.

As noted, the particularly noteworthy aspect of this case is how the Constitutional Court interpreted its own mandate within this crucial political-legal mechanism—the impeachment of a president. According to the Court, *"the constitutional powers concerning impeachment are divided into legal and political components and are accordingly allocated between political and non-political branches of government. The Court must assess the constitutionality of the disputed actions based solely on legal criteria, while political bodies must assess—based on political criteria—the necessity, justification, and expediency of removing the officeholder"*.[221] Given this framework, the Court concluded that the grounds for impeachment—"violation of the Constitution" / "commission of an offense" - should not be interpreted in light of the goals of the Constitution, as had previously been common practice, but instead in their "ordinary" meaning, regardless of the presence or absence of intent. The Court stated that assigning autonomous meanings to these terms would be necessary only if its conclusion

[217] Radio Liberty, "Salome Zurabishvili: I Refused Visits to Paris, Brussels, Berlin, and Warsaw," 14 March 2022, available at: https://cutt.ly/qrcRlMho; accessed on: 27.05.2025.
[218] Radio Liberty, "Irakli Kobakhidze: If the President Conducted International Visits Without Government Authorization, It Constitutes a Violation of the Constitution," 14 March 2022, available at: https://cutt.ly/yrcRzXn6; accessed: 27.05.2025.
[219] Netgazeti, "The Government Withdrew the Constitutional Lawsuit against the President," 7 February 2023, available at: https://netgazeti.ge/news/653873/; accessed: 27.05.2025.
[220] Radio Liberty, "The President of Georgia Met with the President of Germany," 31 August 2023, available at: https://www.radiotavisupleba.ge/a/32572641.html; accessed: 27.05.2025.
[221] Conclusion No. 3/1/1797 of the Plenum of the Constitutional Court of Georgia of 16 October 2023, para. 2.20.

automatically resulted in the removal of the official from office[222]. The Court argued that any broader interpretation of its powers *"would make it the ultimate arbiter on the official's removal, which not only contradicts the Constitution's intent but would also constitute direct encroachment on Parliament's competence. According to the Constitution, it is Parliament that is authorized to make the political judgment and final decision on whether or not to remove the official who committed the alleged violation".*[223]

At the same time, the Constitutional Court fully endorsed the positions of the Parliament's representatives and decided to define the "political criteria relevant to the purpose of impeachment" for the Parliament (rather than for itself within the same mandate), thus allowing decisions to be made based on "political expediency." According to the Court, *"before casting their votes, members of Parliament must determine whether the case truly concerns a situation in which leaving the official in office, due to their actions, is no longer justified or appropriate. From the perspective of the public interest, they must assess whether removing the official from power or allowing them to remain is the better option. Members of Parliament must be convinced that the official, through their actions, demonstrated unfitness for office and that they can no longer continue their duties in that position."*[224] The Court further justified the establishment of political criteria for the Parliament by noting that no subsequent judicial review is provided for in impeachment cases, and there is no legal recourse mechanism, making it crucial that this political power be exercised properly.

Regarding the President's possible violation of the Constitution and the impact of the constitutional obligation under Article 78 to promote European integration, the Court clarified that while it did not dispute the noble intentions behind the President's visits, it was essential for such measures to be taken within the bounds of constitutional authority. According to the Court, this authority had to be exercised with the consent of the government.[225]

In summary, the Court emphasized that *"a grand and noble goal or good intention, presumably pursued by the President of Georgia, cannot legally negate the fact of a constitutional violation committed by them. The Court cannot adopt a tolerant attitude toward a constitutional breach merely because it was committed in pursuit of a noble goal."*[226]

According to the dissenting opinion, the Constitutional Court misinterpreted both the constitutional mandate of the President and the purpose of the constitutional provision requiring governmental consent for the President's exercise of representative powers in foreign affairs. At the same time, by treating the constitutional violation deemed grounds for impeachment as merely formal—reducing it to any degree of violation—the Court diminished the significance of judicial oversight in the process. Specifically, the dissenters argued that "*in the impeachment process, the Constitutional Court's role is precisely to evaluate, using legal criteria, which constitutional provision was violated, and to analyze*

[222] Ibid.
[223] Ibid., para. 2.21.
[224] Ibid., para. 2.22.
[225] Ibid., para. 2.71.
[226] Ibid., para. 2.74.

the nature, intensity, and consequences of the violation, the degree of fault of the officeholder, and the balance of legal goods potentially harmed by impeachment, which the process is meant to protect. Taking all these criteria into account, the Constitutional Court must determine whether removing the person from office is permissible. Therefore, the Constitutional Court must evaluate not only the formal violation of the Constitution by an officeholder, but also whether the nature of the violation reaches a level sufficient to be considered a 'constitutional violation' for impeachment purposes and thus justifies removal from office."[227] In contrast, the interpretation offered by the Constitutional Court in this case, regarding the scope of its mandate in impeachment cases, was, according to the dissenting judges, a renunciation of the Court's own constitutional function: *"Under this approach, the Constitutional Court of Georgia defers to a political assessment on an issue that, according to the aims of the Constitution of Georgia, is unequivocally legal in nature. The removal of the President from office is a form of legal sanction and can only result from a violation of the Constitution and/or the law. Otherwise, the question of whether the President of Georgia deserves to be removed from office should be answered by the Constitutional Court through legal analysis—not by the Parliament through political expediency."*[228]

The dissenting judges also rightly criticized the majority of the Constitutional Court for disregarding its own past practice and attempting to establish a double standard in this case. In particular, in its September 25, 2020 decision in *"Nikanor Melia v. Parliament of Georgia,"* the Court addressed whether a criminal conviction served as grounds for terminating a Member of Parliament's mandate and whether this had a different implication than for Article 31 of the Constitution (which refers to any criminal conviction). The Court explained that *"not every offense, for which prosecution requires the protections afforded by the right to a fair trial, is necessarily incompatible with continuing to exercise a Member of Parliament's mandate."*[229]

Thus, in Melia's case, the Court correctly applied its long-standing practice of interpreting constitutional terms autonomously. In contrast, in the impeachment case, the Court failed to consider this approach. As the dissenters pointed out, this resulted in a situation where *"the President of Georgia can be removed from office for committing even a minor offense or a merely formal constitutional violation, whereas, if the same act is committed by a Member of Parliament (and confirmed by a court verdict), the Constitutional Court evaluates whether the act is compatible with continuing to serve under the Constitution. Such a non-systemic and substantively empty reading of constitutional provisions undermines not only the role of the Constitutional Court but also leaves the person subject to impeachment without proper legal protection or guarantees."*[230]

Moreover, the judges noted that the risk of unjustified removal from office could not be mitigated by the mere fact that the final decision rests with the Parliament, as that decision is entirely dependent on political expediency. This means that even if the Court sets out improper criteria, Members of

[227] Dissenting Opinion, para. 49.
[228] Ibid., para. 40.
[229] Judgment No. 3/2/1473 of the Constitutional Court of Georgia of 25 September 2020 in the case "Nikanor Melia v. Parliament of Georgia," para. 22.
[230] Dissenting Opinion, para. 52.

Parliament are not bound to follow them. Accordingly, it was the Constitutional Court that had the responsibility to assess the gravity of the constitutional violation and decide whether the conduct in question constituted a "constitutional violation" for the purposes of impeachment and whether there was sufficient cause for the removal of a high-ranking official such as the President. This was especially critical given that neither the authors of the constitutional submission nor the government's representatives mentioned during the substantive hearing that any harm had been caused to Georgia's interests, that the President's actions had negatively impacted foreign policy implementation, that the functioning of constitutional bodies had been disrupted, or that any threat had emerged that undermined public trust in the institution of the presidency, thus necessitating the President's removal.

In conclusion, the dissenting judges rightly pointed out that *"the Court's consent to the President's removal from office was, in effect, based on the notion that the President might in the future interfere with the government's conduct of foreign policy. As a result, the Constitutional Court of Georgia provided a formal legal basis for a political vision in which the President could be removed from office for allegedly violating the Constitution—merely because they are no longer 'trusted.' We believe that the Constitution of Georgia does not allow the removal of the President based on a loss of trust from other branches of government."*[231]

The President's impeachment case is a telling example of political authorities abusing constitutional review by using it to legitimize their own decisions. In this case as well, the Constitutional Court weakened one of its own key constitutional mandates and reduced its role in the impeachment process to a mere mechanical assessor of constitutional violations. In doing so, the Court stripped public officials subject to impeachment of their legal protections as envisaged by the Constitution.

2024: The "Russian Law" Case – Persecution of Civil Society amidst the Consolidation of Authoritarianism

On April 3, 2024, the reintroduction of the so-called "Russian Law" by the ruling party Georgian Dream, just like the first attempt, triggered continuous, massive, and peaceful protests across the country. The initial attempt to pass the law had faced sharp criticism from civil society and international partners, including the European Union. In March 2023, *Georgian Dream* was forced to withdraw the bill during its second reading. Nevertheless, the party reintroduced a nearly identical draft law in 2024, just months before the parliamentary elections scheduled for October 26. The proposed law envisaged the creation of a discriminatory and stigmatizing registry for non-governmental and media organizations that receive more than 20% of their annual funding from foreign sources. Such organizations would be required to register as "organizations pursuing the interests of a foreign power" and submit corresponding declarations. Failure to register or submit declarations would result in severe financial penalties, effectively hindering the organizations' ability to operate. These organizations would also be subjected to intensive monitoring. The monitoring body would be granted the authority to request and obtain any information containing secrets (except state secrets) and personal data (including special category data) from any individual, including private

[231] Dissenting Opinion, para. 36.

persons. Despite the wave of protests and strong international condemnation, Parliament adopted the "Russian Law" on May 14 and overrode the President's veto two weeks later[232].

In July 2024, the President of Georgia, representatives of opposition parties, and 120 civil society and media organizations filed constitutional complaints regarding the "Law on Transparency of Foreign Influence." They also requested the suspension of the enforcement of unconstitutional provisions of the law pending the Constitutional Court's final decision. The issue of admitting the complaints for substantive consideration was reviewed by the Plenum of the Constitutional Court, composed of eight judges, at the end of August. On October 4, the Court issued an interim decision, refusing to suspend the contested norms[233]. Judge Irine Imerlishvili did not participate in the proceedings, citing health reasons. Judges Teimuraz Tughushi and Giorgi Kverenchkhiladze expressed dissenting opinions[234].

In addition to alleging violations of fundamental rights, some claimants argued that the "Russian Law" was substantively incompatible with Article 78 of the Georgian Constitution, which obliges constitutional bodies to take all measures within their competence to ensure Georgia's full integration into the European Union and NATO. The contested law labeled as "foreign power" an entity which, according to the Constitution, is a goal of membership for Georgia. In practice, it impeded the country's European integration process by directly or indirectly undermining the fulfillment of commitments that are prerequisites for EU accession.

According to the respondent, the Parliament of Georgia, civil society and media organizations significantly influence public opinion, often express views on behalf of society, cooperate with international partners, and, under the law, play an important role in various commissions, including those making staffing decisions for constitutional bodies. Their involvement is also relevant to the EU integration process. Therefore, these organizations exercised significant powers, and it was essential to ensure their accountability and inform the public about their activities. Parliament maintained that the contested norms served the legitimate aim of transparency and protection of state sovereignty. The public, as the source of power, should be able to make informed decisions and not be vulnerable to misinformation.

At this initial stage of reviewing the constitutional complaints, the Constitutional Court's decision only addressed the issues it did not admit for substantive review. Accordingly, the decision primarily focused on whether to suspend the contested provisions.

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[232] Georgian Young Lawyers' Association, "Georgia: Human Rights Facing the Russian Law — Human Rights Situation in the First 60 Days Since the Reinitiation of the Foreign Influence Transparency Bill," June 2024, available at: https://cutt.ly/orcRUHnv; accessed: 27.05.2025.

[233] Recording Notice No. 3/3/1828,1829,1834,1837 of the Constitutional Court of Georgia of 9 October 2024 in the case "President of Georgia; Members of Parliament: Tamar Kordzaia, Ana Natsvlishvili, Levan Bezhashvili et al. (38 MPs in total); 'Institute for Development of Freedom of Information'; 'Rights Georgia'; 'Civil Society Foundation' and others (122 claimants in total); 'Network of Information Centers' and 'Studio Monitor' v. Parliament of Georgia."

[234] Dissenting Opinion of Justices Giorgi Kverenchkhiladze and Teimuraz Tughushi regarding the Recording Notice No. 3/3/1828,1829,1834,1837 of the Constitutional Court of Georgia of 4 October 2024.

According to the Court's established practice, suspension of a contested provision is possible if: its enforcement poses a real risk of irreparable harm, such harm can be prevented by suspension and suspension would not disproportionately restrict the rights of others or the public interest.

The claimants argued for suspension based on three grounds: a) The designation "organization pursuing the interests of a foreign power" is stigmatizing, and being listed under such a label would harm the reputation and hinder the work of affected organizations; b) Under the monitoring and reporting framework, state authorities would gain access to critically sensitive personal data and might disclose it. The process also imposes a heavy administrative burden on the organizations; c) The law as a whole hinders Georgia's EU integration process.

Regarding the first request, at the outset, the Court correctly discussed the public significance of the activities of civil society and media organizations, their credibility, and the public's perception of their independence. However, the Court also noted that while the activities of such organizations may largely align with the interests of Georgia and its citizens - aiming to and in fact serving to protect those interests and promote democracy, the rule of law, human rights, and the legal and social state - this may not always be the case. The Court suggested that such organizations might also engage in punishable acts directed against the state. This part of the reasoning left unclear how the contested law—whose officially declared purpose was transparency—would contribute to the effective legal accountability of such "hostile" organizations, especially when adequate mechanisms, including criminal legislation, already exist for that purpose.

The Court also skillfully refrained from denying that the contested provisions could pose a threat of reputational damage to civil society and media organizations. At the same time, it argued that the severity and prolonged nature of the damage did not in itself constitute sufficient grounds to prove its irreparable character[235]. Specifically, unlike the dissenting justices, the majority did not see why, in the event of a final judgment declaring the contested norms unconstitutional, there would be no possibility to "reverse the adverse consequences and restore the original state for these organizations"[236].

As for the threats arising from the obligation to submit a declaration, the prolonged monitoring period, and the nearly unrestricted access of state authorities to protected information, the Constitutional Court did not find any of these concerns substantiated. According to the judgment, submitting and filing a financial declaration did not constitute an insurmountable accounting burden for the organizations, as the Public Registry representatives indicated that the reporting form, as well as the accounting software used by organizations, was based on Microsoft Excel. Therefore, the data organizations already had through bookkeeping could be easily reflected in the financial report form.

On the matter of monitoring, the Court noted that as of the time of review, no organization had been subject to monitoring, and thus, there was no imminent threat of irreparable harm. Regarding the possibility of fines and potential self-liquidation of organizations upon imposition of penalties, the Court strictly stated that it was the claimants' responsibility to convince the Court that the harm would

[235] Recording Notice No. 3/3/1828, 1829, 1834, 837 of the Constitutional Court of Georgia of 4 October 2024, para. 2.56.
[236] Ibid., para. 2.57.

result from compliance with the contested law, not from the imposition of penalties for non-compliance. Furthermore, the Court did not rule out the possibility of revisiting the issue of suspending the operation of the contested norms if, prior to issuing a final decision, the threats of interference in the applicants' activities became clear and immediate and if a proper basis arose.

The dissenting opinions sharply criticized the Court's reasoning regarding the almost unrestricted access of state authorities to personal data during the monitoring process. The Court had argued that the enforcement of the contested provisions could not override existing special legislation that directly protected the rights of sources of journalistic information, legal aid recipients, or patients. It again found credible the explanation provided by the representative of the Public Registry - the implementing agency of the contested norms - that, for example, organizations were not required to name the source of journalistic information in the financial declaration and could redact such data themselves[237]. Finally, the Court noted recent amendments to the sublegal acts issued under the contested law, which narrowed the list of mandatory data to be included in the financial declarations[238]. Therefore, the Court reasoned that: "*In such circumstances, where a clear trend toward narrower application of the norm is evident and no contrary practice exists, it would be irrational to argue that there is a real, inevitable, and unavoidable risk that, for the sake of financial transparency, specific sensitive personal data—such as sexual orientation, health information, confidential data entrusted to a lawyer, or journalistic sources—will be disclosed and made public."*[239]

The dissenting justices disagreed with the majority's position that the scope and content of the contested law could be limited by subsequent amendments to the sublegal act. Moreover, they argued that the access to protected information in (media) organizations granted by the contested law could not be limited by other legislation, as the contested norms independently regulated the right and scope of information collection. Thus, the dissenting opinion concluded that: *"The Constitutional Court's interpretation of the scope of the restrictions arising from the contested norms and the scope of the information to be obtained/published by the state is fundamentally flawed."*[240]

Lastly, in discussing the possible hindrance to European and Euro-Atlantic integration, the Court also failed to see why its decision-should it declare the contested norms unconstitutional-would not mitigate such outcomes and enable the continuation of the integration process in light of the Court's final judgment[241]. According to the Court, even if it had suspended the law's operation, it could not have removed it from the legal system, nor could it have created a legitimate expectation that it would later be found unconstitutional. As a result, the Court found no substantiated reasoning as to how suspending the law prior to a final decision would reduce the risks of deteriorating relations with the European Union[242].

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[237] Ibid., para. 2.69.
[238] Ibid., para. 2.71.
[239] Ibid., para. 2.73.
[240] Dissenting Opinion, para. 8.
[241] Recording Notice No. 3/3/1828, 1829, 1834,1837 of the Constitutional Court of Georgia of 4 October 2024, para. 2.77.
[242] Ibid., para. 2.78.

With this decision, the Constitutional Court once again completely disregarded the severe political and social context in the country. One of the most alarming aspects is that in the part concerning Article 78 of the Constitution, the Court effectively stripped this vital provision - which defines the country's foreign policy trajectory - of its content and meaning. This aligns fully with the ruling party "Georgian Dream's" now openly anti-Western rhetoric and has sparked the most intense wave of public protest in the country, ongoing for six months.

It is also noteworthy that "Georgian Dream" has not yet enforced this law, citing civil society organizations' refusal to register voluntarily. Furthermore, the Parliament, led by "Georgian Dream," has since adopted an analogue of the American "Foreign Agents Registration Act" (FARA), which imposes a much heavier burden on civil society organizations and introduces the possibility of criminal liability for non-compliance[243]. Parliament has also amended the Law on Grants, making it impossible for organizations to receive foreign funding without government approval[244].

Against this backdrop, it is clear that "Georgian Dream's" political aim is to comprehensively obstruct the work of independent civil society and media organizations, eventually pushing them toward self-liquidation. This will not only harm the EU integration process but will also fundamentally damage the remaining democratic actors and processes in the country-those who continue to resist authoritarian consolidation despite widespread repression.

To this day, the Constitutional Court has not delivered a final judgment on the so-called "Russian Law."

2024: The "Parliamentary Elections Case" – Another Waiver of Mandate to Avoid Responsibility

Amid an intensifying political crisis over the past two years, the parliamentary elections of October 26, 2024, were viewed as a key democratic mechanism to change a political power that had moved beyond the constitutional framework and promised the full consolidation of authoritarianism. Despite Georgian Dream's strong desire and the constraints imposed by the "Russian Law," civic organizations still managed to monitor the elections effectively. Moreover, an unprecedented campaign was launched to involve ordinary citizens in the observation process. International observation missions also closely monitored the process.

Despite the public's strong motivation and mobilization, Georgian Dream secured 89 out of 150 parliamentary mandates. According to the observation missions, October 26 was marked by large-scale and fundamental violations, including systemic breaches of ballot secrecy, undue influence on voters, violations of key voting procedures, and interference with the work of observers[245]-all of which cast doubt on the legitimacy of the elections[246]. The OSCE mission noted that ballot secrecy was often

[243] Social Justice Center, "FARA Does Not Apply to Civil and Media Organizations: The Practice of FARA in the U.S. and Its Safeguarding Constitutional-Legal Standards," 9 March 2025, available at: https://cutt.ly/wrcROxOT; accessed: 27.05.2025.
[244] Social Justice Center, "Amendments to the Law on Grants Aim to Destroy Georgian Civil Society – Assessment," 17 April 2025, available at: https://cutt.ly/PrcROGqx; accessed: 27.05.2025.
[245] Georgian Young Lawyers' Association, "Assessment of the Voting Day of the 26 October 2024 Parliamentary Elections," available at: https://gyla.ge/post/gancxadeba-27octomberi-11saati; accessed: 27.05.2025.
[246] Fair Elections, My Vote, and GYLA, "Joint Assessment – 26 October Parliamentary Elections," 19 November 2024, available at:https://transparency.ge/ge/post/samartliani-archevnebis-chemi-xmisa-da-saias-ertoblivi-shepaseba-26-oktombris-saparlamento; accessed: 27.05.2025.

compromised, and there were widespread reports of intimidation and voter pressure[247]. Opposition parties that crossed the threshold and the President of Georgia did not recognize the election results. According to the European Parliament's resolution of November 28, the elections in Georgia were not free and fair, and the government was urged to conduct new elections[248].

The initial legal disputes regarding the parliamentary elections were brought before the common courts. The Georgian Young Lawyers' Association (GYLA) filed lawsuits seeking to annul the results in all electoral districts due to violations of ballot secrecy, which, if granted, would have required new elections. However, only one out of 24 first-instance courts Tetritskaro District Court recognized the violation. Other lawsuits filed by GYLA and other observers were dismissed, a decision that was upheld by appellate courts.

As a result, the Constitutional Court remained the only formal legal avenue for resolving the post-election political crisis, though expectations were low given previous judicial outcomes. On November 20 and 21, the President and Members of Parliament filed complaints with the Constitutional Court. Alongside requesting the annulment of the disputed norms, they also sought interim measures to suspend the norms to prevent the Central Election Commission's summary protocol from rendering any final court decision unenforceable.

Despite the pending constitutional litigation, the newly elected Parliament convened on November 25 and granted confidence to the government on November 28. The Court's position became clear when, instead of scheduling a public hearing or even formally admitting the complaints, it remained silent on the Parliament's convening. Through this inaction, the Constitutional Court effectively rendered any future deliberation on the case meaningless.

On December 3-amid the backdrop of the government's controversial decision to halt EU integration and subsequent mass protests violently dispersed-the Constitutional Court's Plenum released its decision adopted on November 29[249]. In an extremely unsubstantiated and contradictory judgment, the Court did not even admit the claims for consideration, essentially refusing to exercise one of its most crucial powers: adjudicating election disputes. Judges Teimuraz Tughushi[250] and Giorgi

[247] OSCE, "Georgia's Elections Marred by an Uneven Playing Field, Pressure and Tension, but Voters Were Offered a Wide Choice: International Observers," 27 October 2024, available at: https://www.osce.org/ka/odihr/elections/georgia/579379; accessed: 27.05.2025.

[248] European Parliament, "Georgia's Worsening Democratic Crisis Following the Recent Parliamentary Elections and Alleged Electoral Fraud," 28 November 2024, available at: https://www.europarl.europa.eu/doceo/document/TA-10-2024-0054_EN.html; accessed: 27.05.2025.

[249] Ruling No. 3/7/1848,1849 of the Constitutional Court of Georgia of 29 November 2024 in the case "Constitutional Lawsuit of the President of Georgia regarding the constitutionality of the legal norms regulating the elections of the Parliament of Georgia and the Supreme Council of the Autonomous Republic of Adjara, and the 26 October 2024 elections conducted based on those norms; and Constitutional Lawsuit of Members of Parliament (Tamar Kordzaia, Levan Bezhashvili, Giorgi Botkoveli et al., 30 members in total) regarding the constitutionality of the same norms and elections."

[250] Dissenting Opinion of Justice Teimuraz Tughushi regarding the ConclusionNo. 3/7/1848,1849 of the Constitutional Court of Georgia of 29 November 2024.

Kverenchkhiladze[251] expressed dissenting opinions regarding voting accessibility for citizens abroad and ballot secrecy. Judge Tughushi also dissented on the secrecy of the vote.

As noted elsewhere in this document, adjudicating disputes over the constitutionality of electoral norms and the elections conducted under them is one of the Court's core functions. In the past, this competence has been repeatedly restricted legislatively by political authorities, reflecting their irrational fear of its political magnitude. Yet, in its 28-year history, the Court had never ruled an election result unconstitutional. Thus, this case presented not only an opportunity to help resolve the political crisis but also to define its own constitutional powers-an important test of the Court's independence. Unsurprisingly, the Court not only failed this test but entirely abdicated its responsibility, ultimately confirming the loss of its independence-if any doubts still remained. It was particularly disappointing that Judge Irine Imerlishvili, who had previously issued well-reasoned dissents in several principled cases, aligned with the majority's position and reasoning in this decision.

Alongside the effective rejection of its own constitutional mandate, the Court's reasoning on why it did not admit the cases fails to withstand legal scrutiny.

The claims challenged several issues[252], but the core question was the constitutionality of the 2024 parliamentary election results. Despite the multiple issues raised, the central concern was the possible violation of the secrecy of the vote-a foundational principle of democratic elections. A proven breach would call the constitutionality of the elections into serious doubt, as it allegedly affected around 90% of voters.

The Constitutional Court focused its reasoning on two main assertions: a) The constitutional complaints were unsubstantiated, as the plaintiffs failed to provide adequate evidence; b) The problems with ballot secrecy, if any, stemmed from the actions of the election administration, not from the content of the disputed legal norms. Consequently, the Court claimed it was unable to assess the constitutionality of the norms or the elections conducted under them.

First, the decision lacked even a basic discussion of the constitutional principles of active suffrage or the Court's role in protecting such rights. Rather than analyzing the normative content of the disputed provisions or the constitutional guarantees related to voting rights, the Court focused on listing possible constraints to the exercise of those rights. Paradoxically, it only addressed the state's positive obligations regarding electoral rights in the context of justifying its dismissal, ultimately demanding the plaintiffs prove the state's failure to ensure the voting rights of citizens abroad.

More troubling was the Court's failure to acknowledge the nature and mandate of constitutional adjudication, which allows for active inquiry into constitutional problems through public hearings and

[251] Dissenting Opinion of Justice Giorgi Kverenchkhiladze regarding the Conclusion No. 3/7/1848,1849 of the Plenum of the Constitutional Court of Georgia of 29 November 2024.

[252] On the Right to Vote of Georgian Citizens Residing Abroad, Secrecy of the Ballot, Deadlines for Appealing Decisions of Precinct, District, and Central Election Commissions or Their Officials, Rules for the CEC to Register Newly Elected MPs and Issue Temporary Certificates, and the Declaration of Unconstitutionality of the Summary Protocols of the Election Results Based on These Norms.

evidentiary collection. Constitutional litigation is not a strictly adversarial process limited to party submissions. The Court had both the authority and obligation to examine all relevant matters necessary to resolve the dispute-especially one that fundamentally questioned the constitutionality of elections.

As for concerns about the irreversible consequences of recognizing parliamentary authority before the Court's decision, the Court should have first considered the temporal effect of its judgment -again, a matter tied to its understanding and articulation of its own competence. The Court also remained silent on Georgian Dream's decision to convene Parliament despite the registration of constitutional complaints and the legally limited 30-day timeframe for consideration. Although Court President Merab Turava did not attend the first parliamentary session, he cited his workload—not the political implication of the judgment —as the reason.

Regarding the violation of ballot secrecy, the Court concluded that the issue raised by the plaintiffs concerned the election administration's actions (such as ballot or marker selection), not the substance of the disputed legal norms. The judgment failed to reference the broader litigation on ballot secrecy in general courts or public statements by the election administration—sources that were part of those court cases. These matters could have been examined during a public hearing, which the Court declined to hold.

Thus, the Court again relied solely on the literal interpretation of the norms, failing to meet even the basic standards of constitutional reasoning. Years ago, the practice of interpreting not just the letter but the normative content of laws was established to prevent unconstitutional consequences stemming from manipulative applications. By ignoring these interpretations and relying on superficial reasoning, the Court openly disregarded its own precedent and the goal of constitutional review—to uphold the spirit and principles of the Georgian Constitution.

Ultimately, in this precedent-setting case concerning the constitutionality of the 2024 parliamentary elections, the Constitutional Court's majority responded with shallow and overly formalistic arguments and denied even a public hearing. In doing so, it diminished its own constitutional status and surrendered its core competence of evaluating the constitutional legitimacy of elections in favor of Georgian Dream. The November 29 decision is the logical culmination of recent trends and effectively eliminated the last legal avenue for resolving the acute political crisis. The severe consequences of the Constitutional Court's inaction and political obedience continue to unfold in the country even months after the October 26 elections, with no clear end in sight

Conclusion

Today, the Constitutional Court of Georgia stands as an undemocratic and compliant institution allied with the authoritarian-leaning "Georgian Dream" government. With a majority of sanctioned judges, the Court exhibits all the hallmarks of an advanced form of abuse of constitutional review.

However, unlike the swift takeovers of constitutional courts in Poland, Hungary, Turkey, or Venezuela, the capture of Georgia's Constitutional Court unfolded gradually over time, with varying degrees of complicity from every administration since independence of the country. In the 1990s, during its early years, the Court had to fight for its institutional recognition and public legitimacy. In the years that

followed, it became the target of multiple institutional and personnel reform attempts. Although these reforms were never fully implemented in their original form, the political temptation to subjugate the central institution of constitutional control-or at the very least, keep it weak enough not to pose a threat-was consistently evident.

For example, despite repeated initiatives, the Constitutional Court was never granted the authority to conduct individual, direct constitutional complaints, which would have enabled it to review the compatibility of common courts' decisions with fundamental constitutional rights. Similarly, successive constitutional amendments across various political regimes have persistently narrowed the Court's authority to review the constitutionality of elections and related legislation. As a result, the Court has never evolved into a fully independent and powerful institution, equipped with the kind of constitutional mandate that would allow it to contribute meaningfully to the best traditions of centralized constitutional review.

Despite this, the history of Georgia's Constitutional Court includes a short but significant period of resilience. Following the democratic change of power in 2012, during the transitional phase, the Court demonstrated notable independence by ruling on politically sensitive and important cases. Yet in a country that has not undergone a full democratic transition, it is unsurprising that such developments proved unacceptable-and even threatening-to the ruling political elite of the time.

Consequently, the Constitutional Court was among the first democratic institutions to succumb to political pressure. Despite initial resistance, it gradually gave way: first through legislation that restricted its powers and impeded its operations, and later through a complete reshuffling of its composition. Over time, the Court came fully under the control of political authorities. Its transformation was marked first by ineffective constitutional review and protracted case resolution, and then, as democratic backsliding accelerated, by an increasing disregard for its own precedents and a deterioration in constitutional standards. In the final stage, the Court actively enabled several anti-democratic and unconstitutional legislative initiatives of the ruling party-sometimes at the expense of its own constitutional mandate.

Regrettably, this trajectory of the Georgian Constitutional Court aligns closely with theoretical frameworks developed in contemporary academic discourse on the capture of apex courts and the rising trend of abuse of constitutional review. Georgia now joins a broader group of countries that failed in their democratic transitions and became part of this global pattern. This document's in-depth critical analysis aims to contextualize Georgia's constitutional review model within this troubling trend. It also hopes to serve as a foundation for reimagining and rebuilding this institution in a future where democratic change becomes possible.

We remain hopeful that if Georgia succeeds in overcoming its current democratic crisis, apex courts will once again reclaim the vital and unique role they played in defending constitutional and legal values during the democratic transitions of the late 20th century.