The Role of the Constitutional Court of Georgia in Aligning Criminal Procedure Legislation with European Standards

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Abstract: *The obligation for Georgia to integrate into European and Euro-Atlantic structures is imposed on constitutional bodies within their competences, according to Article 78 of the Constitution of Georgia.* ***The Constitutional Court of Georgia plays a significant role in refining the criminal procedural legislation and aligning it with European standards. This paper focuses on this area, highlighting the key factors that make the Constitutional Court's work particularly effective in interpreting individual provisions of the Criminal Procedure Code of Georgia in line with European standards, compared to other methods of improvement. The trends characteristic of the process of decision-making regarding the constitutionality of various provisions of the Criminal Procedure Code of Georgia by the Constitutional Court have been analyzed and assessed, including the relevance of the issues considered, the dynamics of intensity, and the effective reflection of the judgments on the practice of common courts.***
Keywords: *Constitutional Court; judgment; normative content; constitutionality; Criminal Procedure Code; European standard.*

INTRODUCTION

One of the main preconditions for integration into the European family is a well-functioning justice system that operates according to European standards, which creates a solid guarantee for the effective realization of the essential provisions stipulated by the European Convention on Human Rights[2] (hereinafter referred to as the European Convention).

In the process of adjusting the Criminal Procedure Code[3] (hereinafter referred to as CPC) in accordance with European standards, a significant place is held by the amendments introduced based on judgments of the Constitutional Court of Georgia. The Constitutional Court serves as a kind of bridge in the establishment of European standards within the CPC.

The strengthening of the standards of the European Convention in the CPC has occurred periodically since its adoption, and this trend is increasing. Since the entry into force of the CPC on October 1, 2010, hundreds of amendments have been made through both legislative and constitutional control: from 2010 to the present, 139 laws have been adopted by the Parliament of Georgia, based on which amendments/additions have been introduced to various articles of the CPC; from 2014 to the present, the Constitutional Court of Georgia has made 25 judgments, resulting in 35 amendments to the CPC. The involvement of the Constitutional Court in the process of establishing European standards in the CPC has been characterized by a stable pace. Over the past 10 years, the Constitutional Court has contributed annually to this direction.[4]

The main goal of this work is to highlight the role of the Constitutional Court in the process of integrating European standards into the CPC.[5] Taking into consideration the format of the article, we

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To the memory of my former supervisor, Professor Apollon Paliashvili, dedicated to his 100th Anniversary!
[2] European Convention on Human Rights, European Convention on Human Rights, Accessed: 29.11.2024;
[3] Criminal Procedure Code of Georgia, CRIMINAL PROCEDURE CODE OF GEORGIA | სსიპ "საქართველოს საკანონმდებლო მაცნე" (matsne.gov.ge), Accessed: 29.11.2024;
[4] The amplitude of the judgments made annually ranges from 1 to 4. For example, in 2015, 4 decisions of the Constitutional Court served as the basis for amendments to the CPC; in 2019 and 2023, there was one judgment each; in 2014, 2016, 2017, 2020 and 2024 there were two judgments each; and in 2018, 2021, and 2022, there were three judgments each;
[5] The aim of the work is not to evaluate the issue from the perspective of constitutional law. The paper analyzes the role of the Constitutional Court specifically in the interests of the criminal procedure. For a direct discussion of the issue within the

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have tried, on the one hand, to create an overall picture around the researched issue, addressing all the judgments made by the Constitutional Court from various perspectives, and on the other hand, to select several significant judgments of the Constitutional Court for analysis, which, among other issues, relate to a probable cause (as the initial standard of proof) and the current issues of its application at various stages of the criminal procedure (prosecution; investigative actions; preventive measures), which have contributed to the refinement of various procedural institutions in criminal justice and the implementation of updated judicial practices in accordance with European standards.

1. THE CONSTITUTIONAL COURT OF GEORGIA AS AN EFFECTIVE SOURCE OF IMPLEMENTING EUROPEAN STANDARDS IN THE CPC

The obligation for Georgia to integrate into European and Euro-Atlantic structures is imposed on constitutional bodies within their competences, according to Article 78 of the Constitution of Georgia (hereinafter, the Constitution).[6] The Constitutional Court of Georgia is a judicial body of constitutional review which ensures the supremacy of the Constitution and the protection of constitutional human rights and freedoms in a legal state. [7] According to paragraph 3 of Article 26 of the Organic Law on the Constitutional Court of Georgia (the version of December 23, 2022): "When determining a disputed matter, the Constitutional Court may also take into consideration the interpretations provided in the judgments of the European Court of Human Rights on similar legal issues."

The ratification of the European Convention on Human Rights by Georgia took place in 1998, entering into force on May 20, 1999, thereby obligating Georgia to ensure the rights and freedoms protected by the Convention. In the hierarchy of sources of criminal procedure, the European Convention holds superior legal power compared to the Criminal Procedure Code (Article 4, paragraph 5 of the Constitution). When interpreting unclear provisions in the Criminal Procedure Code and/or addressing defects, the approach must align with the European Convention and the standards established by the European Court. At the same time, the European Court is not part of the state's internal judicial system; it does not serve as a fourth-instance court and operates in accordance with the principles of subsidiarity and the margins of appreciation.[8]

The law on amendments to the CPC, passed by the legislative body of Georgia, the Parliament, contains provisions that directly reflect European standards for conducting criminal proceedings. The 16th Protocol to the European Convention came into force on August 1, 2018, which activated the amendment made to the CPC by the law of May 29, 2015, adding Article 304[1]: applying for an advisory opinion of the European Court of Human Rights. According to the law on amendments to the CPC dated October 18, 2022, it was established that a court's ruling/judgment/appeal may reference the norms of the European Convention and its additional protocols, as well as the case law of the European Court of Human Rights on a similar legal issue that the court has relied on. Additionally, the new wording of sub-paragraph "f" of paragraph 3 of Article 303 of the CPC

framework of the Constitutional Court's powers, see, for example: Paata Javakhishvili, "Constitutional Court of Georgia and *de facto* Real Control", in *Journal of Law,* N1, 2017, p.264-276, View of No. 1 (2017): Journal of Law, Accessed: 29.11.2024.

[6] Constitution of Georgia, CONSTITUTION OF GEORGIA | სსიპ "საქართველოს საკანონმდებლო მაცნე", Accessed: 29.11.2024;

[7] Organic Law of Georgia on the Constitutional Court of Georgia, Organic Law of Georgia on the Constitutional Court of Georgia | სსიპ "საქართველოს საკანონმდებლო მაცნე" (matsne.gov.ge), Article 1, Accessed: 29.11.2024;

[8] Jeremy McBride, Levan Meskhoradze, *Guide for Lawyers on the Application of Human Rights Standards in Criminal Proceedings*, 2021, pp. 4-6. (in Georgian), 1680a4516c (coe.int), Accessed: 29.11.2024; Jeremy McBride, *The Doctrines and Methodology of Interpretation of the European Convention on Human Rights by the European Court of Human Rights*, 2021, pp.6,7,31. 1680a20aee (coe.int), Accessed: 29.11.2024;

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introduced a criterion for the admissibility of cassation appeals: a cassation appeal is permissible if "the decision of a court of appeal contradicts the Convention for the Protection of Human Rights and Fundamental Freedoms and/or its Additional Protocol(s) and the case law of the European Court of Human Rights on similar legal issues."

According to established practice, judges of common courts and parties often reference precedents from the European Court in their decisions and motions/appeals. However, this is considered and remains within the specific criminal case at hand and does not significantly impact the overall picture of court practice, except in certain cases where the precedential rulings are made (for example, rulings by the investigation panel of the court of appeals that established judicial practice regarding reviewing the admissibility of evidence based on the judge's own initiative). It is particularly important to note the significance of important interpretations made by the Supreme Court of Georgia in the process of establishing uniform judicial practice, which is the subject of separate study. The role of common courts is more important in another respect. Common courts serve as the main link in the administration of justice, directly identifying problems. If an issue exceeds the competence of the common courts, the court suspends the hearing of the specific case and refers the issue to the Constitutional Court through a constitutional reference, thereby initiating the consideration/resolution of the procedural issue in the context of constitutional law through the Constitutional Court as an effective resource.[9]

The effective implementation of European standards in the CPC through the Constitutional Court of Georgia is determined by several factors: the Constitutional Court is an internal resource of the state that is not part of the system of common courts[10]; in discussing and adopting judgments on issues, the Constitutional Court acts in accordance with the spirit of the European Convention and the standards established by the European Court; when a judgment is adopted declaring a disputed norm unconstitutional, this judgment is reflected as an amendment in the CPC, and the reasoning part of the judgment serves as a guideline in the development of judicial practice on similar issues. Such outcomes can also be observed in cases where the Constitutional Court does not establish the unconstitutionality of a disputed norm through its judicial act (therefore, the act is not reflected in the CPC), but the discussion provided in the reasoning part of the document has a "non-written" effect in judicial practice. In this regard, we would highlight **the Judgment of the Constitutional Court of Georgia No. 3/2/1478 dated December 28, 2021**[11], which noted that the unconstitutionality of certain disputed norms was not confirmed overall; however, it provided very important clarifications regarding the right of the accused to remain silent and the right of giving (a false) testimony as a witness.

It is particularly important to note the "dual" effect of judgments established by the Constitutional Court in certain cases, where the Court identifies and points out a defect in the CPC and calls on the legislative body to initiate relevant amendments. For example, in its **judgment No. 1/4/809 dated December 14, 2018**,[12] the Constitutional Court declared paragraph 10 of Article 120 of the CPC unconstitutional (regarding the right of the prosecution to initial examination of objects, which have been obtained at the request of the defense). The invalidation of this norm was postponed until June 30, 2019, to provide the respondent (the Parliament) with a reasonable opportunity to align criminal legislation with the judgment and rectify the defect. Based on this, a draft law on

[9] Organic Law of Georgia on the Constitutional Court of Georgia, Organic Law of Georgia on the Constitutional Court of Georgia | სსიპ "საქართველოს საკანონმდებლო მაცნე" (matsne.gov.ge), Article 19, paragraph 2, Accessed: 29.11.2024;

[10] Constitution of Georgia, ; CONSTITUTION OF GEORGIA | სსიპ "საქართველოს საკანონმდებლო მაცნე", Article 59, paragraph 1, Accessed: 29.11.2024;

[11] სასამართლო აქტები (constcourt.ge), Accessed: 29.11.2024;

[12] https://www.constcourt.ge/en/judicial-acts?legal=1172, Accessed: 29.11.2024;

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amendments to the CPC was submitted on June 12, 2019, which explicitly indicated the Judgment of the Constitutional Court as the aim and necessity for adopting the norm. The law on amendments to the CPC was adopted on October 17, 2019.[13]

2. Following the amendments made to the Criminal Procedure Code of Georgia by the Judgments of the Constitutional Court of Georgia

The subject matter scope of the judgments made by the Constitutional Court, both during the initial phase and in more contemporary periods of the implementation of the CPC, is quite broad and consistently maintains the relevance of the issue.

2.1. The judgment of the Constitutional Court of Georgia on May 23, 2014, No. 3/1/574 (Citizen of Georgia Giorgi Ugulava v. the Parliament of Georgia)[14] was the first precedent through which an amendment was made to the existing CPC based on the Constitutional Court's decision.

On the constitutional complaint of February 11, 2014 (N574), Giorgi Ugulava challenged the constitutionality of Article 159 and the second sentence of the paragraph 1 of Article 160 of the CPC. Among other circumstances, the claimant argued that the second sentence of the paragraph 1 of Article 160 of the CPC, which stated: "The court may review the motion without an oral hearing," represented a restrictive norm in relation to the accused. In the claimant's view, this provision violated the right to access a fair trial, which is guaranteed not only by the Constitution but also by Article 6 of the ***European Convention on Human Rights.*** The claimant supported his position by referencing precedents from the European Court of Human Rights.

During the consideration of the case by the Constitutional Court, the experts invited to the proceedings emphasized European standards when presenting their opinions. The Constitutional Court itself, in deliberating the issue, relied on the ***European Charter of Local Self-Government*** and also discussed the European Convention's approaches regarding oral hearings and the presence of the person. The Court paid particular attention to European case law regarding the interpretation of the right to defense. As a result, according to the ruling part of the judgment, the contested provisions were declared unconstitutional: *"***Following acts shall be found unconstitutional: a)***...that normative part of Article 159 of the Criminal Procedure Code of Georgia which provides for dismissal from the office (workplace) of the officials of local self-government elected as a result of universal, equal and direct elections through secret ballot; b) second sentence of section 1 of the Article 160 of the Criminal Procedure Code of Georgia with respect to paragraphs 1 and 3 of Article 42 of the Constitution of Georgia."*

[13] Additionally, in its **judgment No. 1/4/557, 571.576 dated November 13, 2014 ,** JUDICIAL ACTS (constcourt.ge), Accessed: 29.11.2024**,** the Constitutional Court of Georgia declared unconstitutional the normative content of paragraph 3 of Article 329 of the CPC, which prohibited the application of the maximum 9 month pretrial detention term before the preliminary hearing for criminal prosecution cases that had begun before the enactment of this Code. However, considering the interests of objective investigation and fair justice, the Court postponed execution of the decision until May 1, 2015, to allow the relevant authorities time to adopt additional legislative regulations. On April 30, 2015, amendments were made to the CPC, adding paragraph 3^1 to Article 329. According to the explanatory note of the draft law, the procedural legislation was aligned with the judgment of the Constitutional Court and simultaneously established a reasonable time frame for a thorough investigation. In discussing the importance of effective investigation, the Constitutional Court referenced this decision in its **judgment No. 1/4/1330 dated September 23, 2021**, სასამართლო აქტები (constcourt.ge), Accessed: 29.11.2024, in which it declared certain normative content of sub-paragraph "a" of paragraph 6 of Article 33 of the CPC unconstitutional. This decision addressed the restriction of the prosecutor's rights regarding investigative jurisdiction, taking into account the principle of effective investigation.

[14] decisions_2014_I_eng.pdf, Accessed: 29.11.2024;

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This judgment was later cited multiple times by the Constitutional Court. In **the judgment No. 2/2/1428 on July 15, 2021**[15], the Constitutional Court relied on this previous judgment, playing a significant role in the reviewing judgments due to newly revealed circumstances under the CPC.[16] The Court reinforced the rights guaranteed under Article 6 (fair trial) and Article 13 (effective remedy) of the European Convention. Following the adoption of the judgment, the developed judicial practice has shown that the amendments introduced did not lead to an overload of cases or significant delays in proceedings, thereby not hindering the proper administration of justice.

Both of the above-mentioned judgments were of decisive importance in **the judgment of the Constitutional Court of Georgia of April 13, 2022, No. 2/2/1506**.[17] According to the ruling part of the judgment: The words 'the motion shall be reviewed without an oral hearing' and 'the decision made may not be appealed' in the second sentence of the paragraph 1of Article 180 of the CPC were declared unconstitutional in relation to the paragraph 1 of Article 31 of the Constitution of Georgia. This ruling undeniably refined the relevant provision of the CPC, especially in terms of ensuring the effective remedy and fair trial rights guaranteed by the European Convention.

2.2. The judgment of the Constitutional Court of Georgia, dated November 20, 2024 No. 1/4/1300 (Giorgi Gulaberidze and Badri Shushanidze v. the Parliament of Georgia)[18]

On March 14, 2018, Giorgi Gulaberidze and Badri Shushanidze filed a constitutional complaint (No.1300) with the Constitutional Court of Georgia. On October 19, 2018, the court partially accepted the constitutional complaint for consideration on merits under the recording notice No. 1/6/1300, specifically regarding the constitutionality of Article 184 of the CPC in relation to paragraph 1 of Article 42 of the Constitution of Georgia. An Amicus Curiae opinion was presented in the case, authored by the Public Defender of Georgia.

In the reasoning part of its decision, the Constitutional Court extensively discussed the right to a fair trial as a composite of various components and emphasized the special role of the right to an oral hearing, its direct connection with the judge's direct examination of evidence, the formation of their inner conviction, and ultimately, the rendering of a fair decision. **According to the ruling part of the Constitutional Court's decision, the normative content of Article 184 of the CPC (as in force until June 29, 2021) was declared unconstitutional. Specifically, it was deemed unconstitutional in cases where the substitute judge, who had not been appointed at the stage of transferring the case to the judge who would hear it, was deprived of the opportunity to anew hear/examine the case or specific evidence when: a) the evaluation of the reliability of evidences which had been examined before the judge's involvement in the case, required his/her direct, personal participation in the hearing; and b) there was a need to clarify a particular issue/evidence, and the substitute judge could not fully evaluate the evidence examined before his/her involvement through reviewing the case materials.**

This is the latest judgment on the basis of which the CPC was amended. However, several months prior to this decision, the Constitutional Court also deliberated on the right of the defendant

[15] https://www.constcourt.ge/ka/judicial-acts?legal=11826, Accessed: 29.11.2024;

[16] The Constitutional Court has also ruled on other problematic issues related to the proceedings in higher courts. Based on **the judgment of September 29, 2015, No. 3/1/608, 609**, the Constitutional Court declared unconstitutional the normative content of the paragraph 4 of Article 306 of the CPC, which excluded the possibility for the Supreme Court of Georgia to rule beyond the scope of a cassation appeal and to release a person from responsibility in cases where a law enacted after the commission of an act decriminalizes the offense. Additionally, the Constitutional Court declared unconstitutional the normative content of the "g" subparagraph of Article 297 of the CPC, which excluded the appellate court's ability to rule beyond the scope of an appeal in cases when there is double jeopardy for the same crimes. https://www.constcourt.ge/en/judicial-acts?legal=744, Accessed: 29.11.2024. See also the **judgment of the Constitutional Court of Georgia of April 13, 2016, No. 3/1/633, 634.** https://www.constcourt.ge/en/judicial-acts?legal=1105, Accessed: 29.11.2024;

[17] https://www.constcourt.ge/ka/judicial-acts?legal=13439, Accessed: 29.11.2024;

[18] https://constcourt.ge/ka/judicial-acts?legal=17416, Accessed: 29.11.2024;

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to participate in a hearing, as part of the right to a fair trial in **the judgment of the Constitutional Court of Georgia of July 12, 2024, No. 3/4/1543**[19] (The Constitutional Submission of Telavi District Court on the constitutionality of paragraph 3 of Article 34 of the Criminal Code of Georgia and paragraph 3 of Article 191 of the Criminal Procedure Code of Georgia). The author of the submissions was relying on arguments supported by European Court's case law. The Constitutional Court placed particular emphasis on assessing the compatibility of convicting "procedurally disabled" accused and issuing a judgment of conviction in the absence ("in absentia") of the accused, with the right to a fair trial. According to the ruling part of the decision: **the paragraph 3 of Article 191 of the CPC was declared unconstitutional in relation to the paragraph 1, the first and second sentences of the paragraph 3, and the paragraph 4 of Article 31 of the Constitution. The invalidation of the contested norm was postponed until December 1, 2025**.

It is clear that in the cases examined by the Constitutional Court, important judgments have been made regarding the essential procedural rights of the main participant in the criminal process, the accused, which at the same time represent fundamental principles protected by the European Convention and remain constantly relevant. Simultaneously, the Constitutional Court has also made significant contributions in strengthening the victim's rights guarantees to the adversarial criminal procedure. In this regard, the Constitutional Court has made several important decisions: **the judgment No. 2/12/1229, 1242, 1247, 1299 of December 14, 2018,**[20] which corrected the defect in the CPC related to the unjust differentiation (discrimination) of victims, based on the category of crime, and declared certain provisions of the CPC unconstitutional; **the judgment No. 1/3/1312 of December 18, 2020,**[21] which strengthened the guarantees for the victim in the CPC concerning accessibility to information about the victim himself/herself (despite legitimate interests of the investigation); and **the judgment No. 1/5/1355, 1389 of July 27, 2023,**[22] which established guarantees in the CPC in line with European standards regarding equality and accessibility to the court in relation to victims.

The paper below analyzes the judgments of the Constitutional Court, which, among other issues, concern the first standard of proof, the initial stage of criminal prosecution – probable cause – and its application in various aspects.

2.3. The judgment of the Constitutional Court of Georgia, dated January 22, 2015 No. 1/1/548 (Citizen of Georgia Zurab Mikadze v. the Parliament of Georgia)[23]

The Constitutional Court of Georgia, by its recording notice No. 1/4/548 dated June 28, 2013, accepted for consideration on merits the constitutional claim N548 dated December 21, 2012. The subject of the dispute was the constitutionality of the paragraph 2 of Article 13, the paragraph 3 of Article 76, and the paragraph 1 of Article 169 of the CPC in relation to the paragraph 3 of Article 40 of the Constitution (as amended – the paragraph 7 of Article 31). The disputed norms concerned the standards for recognizing a person as an accused and the grounds for convicting judgments, as well as the criteria for the admissibility of indirect testimony (hearsay).

In the part concerning the compliance of Article 76 of the CPC with the Constitution, the court terminated the proceedings due to amendments made to the CPC. As for the evidentiary standards provided by the paragraph 2 of Article 13 and the paragraph 1 of Article 169 of the CPC (whereby indirect testimony, as provided in Article 76, could be considered one of the valid grounds for bringing charges or for recognizing a person as guilty), and the compatibility of these norms with the Constitution, the court examined the role of evidence as a vital means in criminal proceedings.

[19] https://www.constcourt.ge/ka/judicial-acts?legal=16658, Accessed: 29.11.2024;
[20] https://www.constcourt.ge/en/judicial-acts?legal=1843, Accessed: 29.11.2024;
[21] https://www.constcourt.ge/ka/judicial-acts?legal=10395, Accessed: 29.11.2024;
[22] https://www.constcourt.ge/ka/judicial-acts?legal=15638, Accessed: 29.11.2024;
[23] https://www.constcourt.ge/en/judicial-acts?legal=975, Accessed: 29.11.2024;

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In analyzing the substance of the constitutional standard of trustworthiness of the evidence, the court assessed the evidentiary value of hearsay as provided in Article 76 of the CPC (its "direct" or "indirect" character in relation to the fact of the crime)[24] and emphasized the necessity of its thorough scrutiny. The court definitely noted the need to define clear, strict, and precise norms and conditions for the admissibility of indirect testimony. The court thoroughly deliberated on the objectively existing and potential risks and dangers related to indirect testimony, and deemed its automatic admissibility unjustifiable, arguing that its use should only be considered a justified approach in exceptional cases. In its judgment, the court relied on the European Court's case law and the established minimum standards regarding indirect testimony, citing several important precedents, including the judgment in the case of ***Al-Khawaja and Tahery v. The United Kingdom***.[25] In this case, the European Court made significant clarifications concerning Article 6(3)(d) of the European Convention. In its judgment, the Constitutional Court defined the standard of proof beyond a reasonable doubt as being "vital" to reducing the risk of an unfair and unreasonable conviction and to building public trust in the judiciary. In determining the reliability of indirect testimony, the court concluded that the disputed norms could not exclude this risk. Regarding the use of indirect testimony as a basis for reasonable probable cause in criminal prosecution, the court noted that the CPC did not specify the weight to be given to hearsay when recognizing a person as an accused. Furthermore, even in such cases, there was a basis for doubting the reliability of indirect testimony, which contradicted the constitutional standard of trustworthiness.

According to the ruling part of the judgment, the court declared unconstitutional: the normative content of the second sentence of paragraph 2 of Article 13 of the CPC, which provided for the possibility of passing a judgment of conviction based on the indirect testimony as defined in Article 76 of the same Code; and the normative content of the paragraph 1 of Article 169 of the CPC, which allowed for the recognition of a person as an accused based on indirect testimony as defined in Article 76 of the same Code.

The case discussed above is a clear example of how the results of a judgment visibly impact judicial practice. With this combined decision, the substantive scope of the standards of proof was fundamentally altered, and the entire process of evidence evaluation was reset to a new framework. The judgment posed new challenges to criminal justice. There was much discussion in both practical and academic circles regarding the boundaries of the interpretation of "criminal law" mentioned in paragraph 'd' of Article 310 of the CPC (whether it referred to the norms of the CPC, which undoubtedly it did!), as well as whether the new approach to the evaluation of evidence (in cases involving hearsay) applied to cases conducted under the CPC of 1998, dated February 20. In this regard, the practice of the Supreme Court of Georgia is particularly interesting. Immediately after the judgment of the Constitutional Court, there were diverse opinions on the matter. Between November 16, 2015, and August 9, 2016, the Supreme Court filed submissions to the Constitutional Court 11 times, with the main request being the compatibility of the standard of trustworthiness of the evidence provided by Article 10, Paragraph 3 of the CPC of 1998 (in the submission N820, the reference was to the normative content provided by Article 301 of the 1960 CPC, dated December 30) with paragraph 3 of Article 40 of the Constitution.

[24] We agree with this explanation. In both practice and theory, we often encounter ambiguous interpretations regarding indirect testimony. It is important to note that in this case, the term 'indirect' specifically refers to the source of the information, meaning not direct and immediate (for example, eyewitness testimony), but rather as derived from another primary source. It does not necessarily refer to testimony containing information about circumstances indirectly related to the fact of the crime;

[25] ***Al-Khawaja and Tahery v. The United Kingdom (***Applications nos. 26766/05 and 22228/06***)***, https://hudoc.echr.coe.int/eng?i=001-108072, Accessed: 29.11.2024;

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By the ruling of the Constitutional Court Plenum on September 29, 2016 (No. 3/3/685, 686, 687, 688, 689, 736, 737, 758, 793, 794, 820),[26] the constitutional submissions were not accepted for consideration on merits. In the reasoning part of the ruling, the court focused on several factors: The court noted that the author of the constitutional submission had failed to indicate why the disputed norm was 'a law or other normative act, which the court must apply when resolving the case'[27]; the court considered that by the submission, the Supreme Court was asking the Constitutional Court to establish the factual grounds for resuming the case[28], rather than to declare the regulatory provisions unconstitutional that were restricting the resuming of the case. The court pointed out that the request for declaring the disputed norm unconstitutional could not become the subject of the Constitutional Court's deliberation because it was not within the competence of the Constitutional Court to examine any law based on the submission. The Constitutional Court is authorized only to examine the law that the court hearing the specific case should apply in resolving that case. As for which legal norm the Supreme Court should apply in a particular case, the Constitutional Court stated that it did not question the Supreme Court's ability to determine this.

Immediately after the adoption of this ruling by the Constitutional Court and in contemporary judicial practice, an approach was established that the judgment of the Constitutional Court No. 1/1/548, dated January 22, 2015, does not constitute grounds for reviewing judgments in criminal cases conducted under the CPC of February 20, 1998.[29]

Probable cause is a universal standard and is used in criminal procedure not only for conviction and accusation but also for the imposition of preventive measures and/or the conduct of investigative actions. In the judgment discussed above, the court did not deliberate on and no amendment was made in the CPC regarding the general norm defining probable cause (Article 3, Paragraph 11 of the CPC). However, later, the standard of probable cause became a subject of discussion by the Constitutional Court multiple times.[30]

2.4. The judgment of the Constitutional Court of Georgia, dated September 15, 2015, No. 3/2/646 (Citizen of Georgia Giorgi Ugulava v. the Parliament of Georgia)[31]

The Constitutional Court, by recording notice N3/5/646, dated June 26, 2015, accepted the constitutional complaint N646 for consideration on merits, in the part that concerned the constitutionality of the following provisions: The normative content of paragraph 2 of Article 205 of the CPC, which allowed for the possibility of a 9-month detention period in each criminal case in which a person was accused of committing a crime prior to their detention; The constitutionality of the normative content of paragraph 11 of Article 3 and paragraph 2 of Article 198 of the CPC, which provided for the use of detention based on probable cause; The constitutionality of third sentence of

[26] https://constcourt.ge/ka/judicial-acts?legal=1074, Accessed: 29.11.2024;

[27] Organic Law of Georgia on the Constitutional Court of Georgia, Organic Law of Georgia on the Constitutional Court of Georgia | სსიპ "საქართველოს საკანონმდებლო მაცნე", Accessed: 29.11.2024, Paragraph 2 of Article 19;

[28] In this part, we may not fully agree with the assessment made by the Constitutional Court that, the stage of reviewing judgments due to newly revealed circumstances, in criminal prosecution cases initiated under the CPC of February 20, 1998, is a resuming of the case rather than its continuation. (See the ruling, paragraph 4).

[29] See, for example: The Ruling of the Supreme Court of Georgia of October 28, 2016, sisxli_7-9_2016.pmd (supremecourt.ge), Accessed: 29.11.2024, pp. 176-187; The Ruling of the Supreme Court of Georgia of October 19, 2022, საქმე N:37აგ.-2022 (supremecourt.ge), Accessed:29.11.2024;

[30] The standard of 'probable cause' was repeatedly addressed by the Constitutional Court in its **judgment of February 25, 2022 (No. 2/1/1434, 1466),** სასამართლო აქტები, Accessed: 29.11.2024, which led to the declaration of the following provisions of the CPC as unconstitutional: The phrase 'or/and a crime has been committed with regard to this property or/and it has been obtained through criminal means' in the paragraph 3 of Article 151 of the CPC; Certain normative content of Article 158 of the CPC; Following this judgment, the CPC was amended by the law of September 23, 2022, thereby aligning the legislation with the Constitutional Court's judgment;

[31] JUDICIAL ACTS, Accessed: 29.11.2024;

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paragraph 8 of Article 206 of the CPC; The constitutionality of the phrase "or will commit a new crime" in paragraph 2 of Article 198 of the CPC, as well as the constitutionality of the subparagraph "c" in paragraph 1 of Article 205 of the CPC.

In relation to the case (the disputed normative content of paragraph 2 of Article 205 of the CPC), on July 30, 2015, the Georgian Young Lawyers' Association (GYLA) presented an 'Amicus Curiae Opinion' (Nac646), in which it urged the Constitutional Court to consider the European Court's and the United States Supreme Court's practices with respect to paragraphs 1 and 6 of Article 18 of the Constitution, given that the Constitutional Court's case law on these provisions was not extensive.

An Amicus Curiae Opinion was also presented in the case by 'Transparency International – Georgia' (July 9, 2015, Nac646). The opinion extensively discusses the standards of proof, particularly the standard of probable cause, and the author of the opinion frequently cites European case law.

In interpreting the content of pretrial detention as specified in paragraph 6 of Article 18 of the Constitution, the Constitutional Court took into account the 'autonomous' legal meaning of terms such as 'accused', 'pretrial', and 'detention'. The Court did not adopt its previous practice and provided a new, human-rights-oriented interpretation. The Court referred to international norms and the European Court case law, noting that the key feature of the contested issue was that detention is applied to a person who is presumed innocent, regardless of the stage of the criminal process—whether before trial or during the first-instance court proceedings. **The Court explicitly stated that manipulation of the 9-month pretrial detention period is impermissible!** As a result, the Court concluded that the norms were unclear and indeterminate (for example, the norm did not define a limit of duration on pretrial detention in cases involving multiple independently conducted criminal prosecutions), which was incompatible with the practice of the European Court (Sebalj v. Croatia[32]). Ultimately, the Court sided with the applicant's position, finding that the contested norm, due to its ambiguous content, violated the rights protected under paragraphs1 and 6 of Article 18 of the Constitution.

In its deliberation on the constitutionality of the contested norms regarding the use of detention based on probable cause, the Constitutional Court made an important and correct interpretation of who qualifies as an 'accused person' for the purposes of the Constitution. The Court stated that an accused person is one against whom, on the one hand, the presumption of innocence applies, and on the other hand, there exists evidence-based suspicion (probable cause) that they have committed a crime. Along with reviewing the legitimate purposes, necessity, and proportionality of detention, and the standard of probable cause as the criterion for its use (a lower standard in comparison to other standards), the Court also considered different levels of invasion into the right protected under Article 18 of the Constitution during detention, pretrial detention, and the imposition of imprisonment as a sentence. Regarding the standard of probable cause outlined in paragraph 11 of Article 3 of the CPC, the Court correctly noted that, overall, it did not contradict the Constitution. However, it considered as problematic the lack of clear and unambiguous definition of the contested norm and emphasized the importance of objective factors in its application. Finally, the Court concluded that, **under conditions of good faith interpretation and application**, the contested norms did not violate paragraph 1 of Article 18 of the Constitution.

Regarding the constitutionality of the phrase 'or will commit a new crime' in paragraph 2 of Article 198 of the CPC, as well as the subparagraph 'c' of paragraph 1of Article 205 of the CPC, the Court determined that there was no basis for declaring the contested norms unconstitutional,

[32] Sebalj v. Croatia (Application no. 5432/15), https://hudoc.echr.coe.int/eng?i=001-222898, Accessed: 29.11.2024;

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considering that the relevant provisions of the CPC envisioned not an abstract, but a real threat of committing a new crime.

According to the ruling part of its judgment, the Constitutional Court declared unconstitutional the normative content of paragraph 2 of Article 205 of the CPC in relation to paragraphs 1 and 6 of Article 18 of the Constitution. Specifically, the Court found unconstitutional the provision that: 'allows the detention of an accused on a certain criminal case, if after the accusation or emergence of sufficient grounds for presenting an accusation on this criminal case he/she has in unity spent 9 months under the detention on any criminal case conducted against him/her.'

The Constitutional Court has previously discussed the regulatory norms regarding preventive measures in the CPC and the standard of probable cause as the criterion for applying preventive measures. In addition to one of the precedents discussed here**, the Constitutional Court also issued a judgment on June 24, 2022 (No. 3/5/1341, 1660)[33],** which declared unconstitutional the normative content of the first sentence of paragraph 6 of Article 200 of the CPC, which excluded the possibility of a judge releasing a defendant on bail before the defendant deposited bail. In this judgment, when discussing the contested norms, the court frequently references the aforementioned decision (No. 3/2/646).

Based on the Constitutional Court's judgment of September 15, 2015, No. 3/2/646, significant changes were made at both the legislative and judicial practice levels concerning the regulation of the substantive rights of the accused, in accordance with European standards on the restriction of the right to liberty, even for legitimate purposes. In relation to the criminal cases cited in the constitutional complaint, there is also a judgment by the European Court (Ugulava v. Georgia (N2))[34], in which the court found violations of paragraphs 1 and 3 of Article 5 of the Convention. In this case, the European Court relied on the explanations provided in the aforementioned judgment of the Constitutional Court of Georgia when interpreting the content of Article 205 of the CPC.

2.5. The judgment of the Constitutional Court of Georgia, dated December 25, 2020, No. 2/2/1276 (Giorgi Qeburia v. the Parliament of Georgia)[35]

In its recording notice of October 24, 2019, with case file N2/11/1276, the Constitutional Court accepted for consideration on merits the constitutional complaint of November 10, 2017, N1276, in the part that concerned the constitutionality of paragraphs 1 and 4 of Article 119, the paragraph 1of Article 121, and the second sentence of the paragraph 2 of Article 13 of the CPC.

2.5.1 When discussing the constitutionality of paragraphs 1 and 4 of Article 119 of the CPC, the Constitutional Court once again emphasized the importance of the right to private life and described it as "vital for the freedom, identity, and self-realization of a person". The court considered: the procedure for involving a "confidant" and "informant" in a criminal case, as regulated by the Law on Operative and Investigative Activities[36]; the rules for access to information about these persons, treated as state secrets, regulated by the Law of Georgia on State Secrets[37]; and the prosecutor's authority to declassify documents and materials related to operative and investigative activities for use as evidence.[38] The court clarified that: paragraphs 1 and 2 of Article 15 of the Constitution protect

[33] https://www.constcourt.ge/ka/judicial-acts?legal=13808, Accessed: 29.11.2024;

[34] Ugulava v. Georgia (N2) (Application no. 5432/15), https://hudoc.echr.coe.int/eng#{%22itemid%22:[% 22001-222898%22]}, Accessed: 29.11.2024;

[35] https://www.constcourt.ge/ka/judicial-acts?legal=10430, Accessed: 29.11.2024;

[36] Law on Operative and Investigative Activities, https://matsne.gov.ge/en/document/view/18472?publication=52, Accessed: 29.11.2024;

[37] Law of Georgia on State Secrets, https://matsne.gov.ge/en/document/view/2750311?publication=1, Accessed: 29.11.2024;

[38] **The judgment of the Constitutional Court of Georgia, dated July 31, 2015 (No. 2/2/579)**, regarding the admissibility of using information obtained through operative and investigative activities as evidence, is of interest. Based on this

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two components of private life - an individual's personal and family life, and the inviolability of their personal space and communication, where a person has a reasonable expectation of privacy. The court considered that the case in question concerned only paragraph 2 of Article 15 of the Constitution. The court ruled that the right under this paragraph is not absolute and that one of the prerequisites for interference with this right is the requirement for a court decision as a neutral authority (apart from urgent necessity as an exceptional circumstance, in which case judicial review would still be available ex post). This creates an important safeguard for the protection of the right to privacy. Thus, the contested norms met the formal criteria set out in paragraph 2 of Article 15 of the Constitution. The court confirmed that the objective of the search under the contested norms was in line with the legitimate aims for restricting the right set forth in paragraph 2 of Article 15 of the Constitution, and that the search itself was appropriate for achieving that objective. In assessing the necessity of restricting the right, the court considered the proportionality between the scope of the restriction and the legitimate aim. The court clearly distinguished, on one hand, an anonymous person (as a source of information, verification of which is, in fact, impossible) and, on the other hand, an operative source, noting that since there was no measure that would simultaneously ensure the judge's access to the primary source and protect the interests of the investigation, the contested norm was a necessary means for achieving the goal. In its discussion of the "fair balance," the court explained that in the cases under consideration, it was important to adequately verify the information to a certain degree, and only in such cases could it be considered that the interests of the search outweighed the constitutionally guaranteed right to the inviolability of personal space and communication. In its final conclusion, the court ruled that the contested norms did not violate the Constitution.

The Constitutional Court reached a different conclusion regarding the issue of using the results of the conducted search as the ground for establishing the probable cause necessary for the search. The Court ruled that this practice violates Article 15, Paragraph 2 of the Constitution, and justified its decision with the following reasoning: The Court pointed out that in practice, the contested legal norms could be interpreted in a way that the results of a search were used as a precondition for conducting a search, i.e., as the ground for establishing probable cause. This interpretation raised the need to assess the constitutionality of such a normative approach. Article 15, Paragraph 2 of the Constitution guarantees the right to personal inviolability, and this provision implies that any limitation on such a right should be based on a court decision. The purpose of this constitutional provision is to allow the court to determine the necessity of a restriction. Therefore, before any restriction is imposed, the relevant authority must justify the need or reasonableness of such a limitation. In cases of urgent necessity, the authority must separately justify the need for such urgency before conducting the search. In this context, the Court explicitly deemed the use of search results as a precondition for the justification of a search to be irrelevant and constitutionally unacceptable. Thus, the Court emphasized that any limitation on constitutional rights, including searches, must be clearly and adequately justified before being carried out, and that using conducted search results as grounds for the search violates this constitutional requirement.

2.5.2. In the consideration of the compliance of the second sentence of paragraph 2 of Article 13 of the CPC with paragraph 7 of Article 31 of the Constitution, the Constitutional Court emphasized the universally recognized principle of ***in dubio pro reo*** as an important guarantee for the protection of human rights. In the process of examining this and other circumstances, the Court frequently referenced the judgment No. 1/1/548 from January 22, 2015, which we discussed in Section 2.3 of the presented work. When evaluating the constitutionality of using evidence from a

judgment, the words "of this Code" in paragraph 1 of Article 72 of the CPC were declared unconstitutional. https://www.constcourt.ge/en/judicial-acts?legal=1018, Accessed: 29.11.2024;

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law enforcement officer's testimony based on information provided by an operative source or an anonymous person, the Court again emphasized the importance of the interpretation of norms by common courts and particularly highlighted the interpretation of the norm by the Supreme Court. The Constitutional Court agreed with the position that while the use of such testimony as evidence is not excluded, its objective significance for establishing guilt is minimal. The Court pointed out the clear inequality faced by the defense, as the defense does not have the ability to directly examine the person providing the information. The court concluded that the normative content of the second sentence of paragraph 2 of Article 13 of the CPC was in conflict with paragraph 7 of Article 31 of the Constitution.

In conclusion, the Court examined the constitutionality of using physical evidence obtained through a search based on information provided by an operative source or an anonymous person, and the subsequent evidence leading to a conviction. The Court determined that the ineffectiveness of the disputed norm was not due to the standard set forth within it, but rather the risks that the norm entailed (it did not safeguard against these risks), particularly in cases where an untrustworthy police officer might manipulate or fabricate facts. Regarding *"fabricated cases"* (by planting an object to an accused), the Court focused on whether the defense had adequate means of defense and what possibilities the Court had to "dispel doubts about the defendant's innocence". In cases where the use of an item obtained during a search as evidence relies solely on the testimony of a police officer, the Court identified the cause of such situations and considered that if the police officer had the opportunity to obtain other evidences corroborating the reliability of the search result (e.g., video recording, even with a mobile phone) and did not do so, the credibility of his/her actions would be significantly diminished. Finally, the Court declared the normative content of the disputed provision unconstitutional.

According to the ruling part of the judgment, the following were declared unconstitutional: the normative content of the second sentence of paragraph 2 of Article 13 of the CPC, which allowed the use of illegal items obtained during a search as evidence, when the possession of the item by the accused was confirmed solely by the testimony of police officers, and at the same time, the officers could have, but did not take measures to obtain other neutral evidence to corroborate the reliability of the search, in relation to paragraph 7 of Article 31 of the Constitution; the normative content of the second sentence of paragraph 2 of Article 13 of the CPC, which allowed the use of testimony from a police officer based on information provided by an operative source or an anonymous person in convicting an accused, in relation to paragraph 7 of Article 31 of the Constitution; the normative content of paragraphs 1 and 4 of Article 119 and paragraph 1 of Article 121 of the CPC, which treats the outcome of a search as one of the necessary grounds for probable cause required to conduct a search, in relation to paragraph 2 of Article 15 of the Constitution. Taking into account the significant threat to the state's interests, the Court decided to give the relevant authorities a reasonable period to ensure the necessary legislative or other institutional changes related to the disputed norms, and postponed the invalidation of the normative content of the second sentence of paragraph 2 of Article 13 of the CPC until July 1, 2021.[39]

The extent of the implementation of the Constitutional Court's judgment in contemporary judicial practice is particularly noticeable with regard to the inadmissibility of using the results of a search as the basis for conducting the search. In the rulings of the common courts concerning the legalization of the results of a search and seizure carried out under urgent necessity, it is clearly evident that the court first separately assesses the circumstances that led to the need for action under

[39] Based on the mentioned judgment, by the law of June 28, 2021, amending the CPC, a new paragraph 3 was added to Article 13 of the CPC, which established an obligatory standard for corroborating the credibility of the testimony of a police officer regarding the accused's possession of an illegal item obtained during a search, with other neutral evidence, except in exceptional cases where it is objectively impossible to obtain or present other evidence.

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urgent necessity, without considering the fact of the illegal item obtained during the search. The court then proceeds to evaluate the circumstances that, in their totality, should determine the legality of the action performed and the admissibility of the results as evidence.

The Constitutional Court has issued several other important judgments regarding investigative actions. For example: in relation to the procedure for conducting covert investigative actions**, the judgment of the Constitutional Court of April 14, 2016, No. 1/1/625/640,**[40] declared unconstitutional paragraph 31of Article 3 of CPC and paragraph 4 of Article 143^3 of the same Code; **the Constitutional Court's judgment of January 27, 2017, No. 1/1/650,699**,[41] declared unconstitutional the normative content of paragraphs 1 and 4 of Article 136 of the CPC, which excluded the possibility for the defense to request a court ruling for the retrieval of information or documents stored in a computer system or on a computer data carrier; **the Constitutional Court's judgment of October 24, 2019, No. 2/12/1237**[42], where the Court ruled that the disputed norm (paragraph 2 of Article 114 of the CPC, which allowed only the prosecution to examine a witness before a magistrate judge during an investigation) replicated the content of the norm declared unconstitutional by **the judgment of December 14, 2018, No. 2/13/1234/1235**.[43] The Court found that there was no need for consideration on merits of the complaint and declared paragraph 2 of Article 114 of the CPC void, with the invalidation postponed until March 31, 2020, to give the Georgian Parliament a reasonable opportunity to ensure the equality of the parties in criminal proceedings. Based on this, an amendment was made to the CPC by the law of March 20, 2020, and Article 114 of the Criminal Procedure Code was substantially revised.[44]

Conclusion

Based on the analysis presented in this work, we have tried to provide an overview of the involvement and significant role of the Constitutional Court of Georgia in the development of criminal procedure legislation in accordance with European standards, from the adoption of the Criminal Procedure Code on October 9, 2009, to the present. It is clear that over these years, the judgments made by the Constitutional Court have addressed nearly every stage and procedural institution of the CPC, correcting and clarifying numerous gaps and refining the law. As a result of the work carried out by the Constitutional Court, the CPC has significantly changed its "appearance and character" for the better and has become more in line with European standards.

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[43] https://www.constcourt.ge/en/judicial-acts?legal=1842, Accessed: 29.11.2024;
[44] By **the Constitutional Court's ruling No. 1/20/1219, 1236 dated October 13, 2017,** https://www.constcourt.ge/ka/judicial-acts?legal=1739, Accessed: 29.11.2024, the Court also rejected the constitutional complaint for consideration on merits (due to the existence of overriding norms) and declared the words "This order is not subject to appeal" in Article 91, paragraph 8, and "This order cannot be appealed" in paragraph 1 of Article 240 of the CPC invalid. With this decision, the Constitutional Court corrected the gap in the CPC regarding the right to appeal a judge's order imposing a fine on a process participant for failure to attend a hearing without a valid reason.

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