
BOOK REVIEW

Bessarion Zoidze, Constitutional Control and the Order of Values in Georgia, Tbilisi, 2007, ISBN 978-99940-63-60-4

Constitutional control plays an important role in the legal development of every country and in the perfection of their legal systems. The new book by Bessarion Zoidze, *Constitutional Control and the Order of Values in Georgia*, addresses this topic now with the Constitutional Court of Georgia having ten years of standing judicial practice. The author believes that constitutional law has a great impact upon the development of private law institutions within a country. The book aims at the disclosure of the problems of the judicial practice of the Constitutional Court of Georgia for its readers.

The first chapter of the book describes the role of constitutional control in the development of private law. Herein, the author reviews judicial practice in the field of private law and cites, for example, the legal importance of mandatory contracting and discussing the approach of the Constitutional Court as concerns this issue within the practice of mandatory motor-vehicle insurance. The same chapter deals with the topical problems of the adjustment of agreements to changed circumstances in relation with the attraction of investments. A separate paragraph is dedicated to the necessity of the creation of equal investment conditions and a uniform legal regime for Georgian and foreign investors.

Further the author also discusses the validity of the declaration of will in the case of the violation of the mandatory form of an agreement in relation to modern European trends and arrives at the conclusion that the declaration of actual will is of primary importance for private law relationships whilst the observance of form is a mere formality, having just evidencing importance.

On the basis of Article 529 of the Civil Code of Georgia, the author discusses the interrelationship between morality and law as a separate problem. He reviews one of the decisions of the Constitutional Court of Georgia wherein the Court proved the correctness of restitution of a donated thing by a donor in the case of the cancellation of a gift agreement.

The author discusses the problems of delimitation between private and public law legal entities by the example of the decisions of both the Constitutional Court of Georgia and the European Court of Justice and reveals the functional differences between these two institutions. He also touches upon the definition of the concept of an entrepreneur.

The second chapter of the book deals with the problem of legal order and legal security. The author believes that a state is to be guided by universally recognised legal values and, in its turn, the law should uphold the other values as well (ethics, habits, traditions) to the extent they will promote the development of a legal mentality of the individual

society. The state should provide for the harmonisation of the legal system and ensure its stability. The development of public and private law should be mutually promoting.

The author considers that the Constitutional Court plays an important role in striking an equilibrium between the rights of the participants of private law relationships and the establishment of absolute values. Each branch of state power should make every effort for the reinforcement of legal order within the terms of its reference and should not try to transpose its own responsibility to the Constitutional Court.

Herein the author offers the discussion of the problematic aspects of the relationship between the Constitutional Court and the legislative body; in particular, the correction of statutory shortcomings – detected by the judiciary – on a legislative level, the; reasonability of the adoption of general or private rules and the frequent postponement of the entry into force of the laws which is a problem of *symbolic law*. The author also touches upon the essence of *abstract* and *specific* constitutional control and speaks about such aspects of the activity of the Constitutional Court as the problems of understanding a normative act, the retroactive force of a law and the development of the fictitious legal concepts.

The third chapter of the book deals with important issues of constitutional proceedings, in particular; the comparative analysis of the importance of the motivation part of court decisions being based upon German and Georgian laws with the problem of a lack of consistency in the resolution part also being stressed. The author also considers the reasonability of the final nature of court decisions and the necessity of respecting the court decisions. In his explanation, the dissenting opinion of a judge is of wider importance and is not only limited to expressing a different opinion during the decision-making process.

The author criticises the case of the violation of the rules of ethics by judges in courtrooms.

The fourth chapter of the book is dedicated to property right within the Constitutional Court practice. In the first place, the author offers an overview of the basis of property right in Georgia and then discusses the guarantees of recognition and protection of this right upon a legislative level with the admissibility of actions related to the protection of property.

This chapter also deals with the essence of the property right itself from the point of view of both private and constitutional law. The author speaks about the scope of guaranteeing this right by the state wherein property right may only be restricted upon the basis of public interest and legal control over the foregoing may be exercised by the Constitutional Court only within the framework of the constitutional law. In the author's opinion, however, there is hitherto no adequate practice in this respect. The book contains a critical assessment of the constitutional court practice in relation to the delimitation between and protection of property rights of natural persons and legal entities. The author touches upon the essence of the property right as guaranteed by Article 21 of the Constitution of Georgia. In his opinion, for the purposes of this Article, not only the rights which express the existence of property (contractual rights) but also the rights which derive from this property should be subject to protection.

The constitutionality of the seizure of property in relation to Article 21 of the Constitution of Georgia is also discussed in this chapter of the book. Further, the author addresses the equality of persons in relation to property right and condemns the existence of preferential legislative attitude to state property.

He offers a review of one of the actions filed with the Constitutional Court under which Article 21 of the Constitution of Georgia is in conflict with Article 1323 of the Civil Code of Georgia (Opening of Estate in an [Agricultural] Household). Due to the absence of similar decisions in the judicial practice of the Constitutional Court, the author proves the unlawfulness of the former upon the basis of the resolution of the Constitutional Court of Russia. He also speaks about privatisation as the grounds for acquiring property.

The book is annexed with articles related to this issues discussed within which were written by the author for various academic publications and conferences.

Zoidze's book is a valuable study of judicial practice of the Constitutional Court of Georgia. He discusses specific issues in light of German and European judicial practice using the comparative law method. The book offers a scientific analysis of the most crucial issues of private law which will serve to promote the further development of private law institutions in Georgia in the future.

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