
BOOK REVIEW

Translations

András Sajó, *Limiting Government, an Introduction to Constitutionalism* (translated by Marina Maisuradze), Tbilisi, 2003, 358, ISBN 99928-0-748-2

Herman Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe* (translated by Ketevan Aleksidze), Tbilisi, 2003, 488, ISBN 99928-0-710-5

The Events that occurred in Georgia at the end of the 20th century substantially changed the content of the legal system, a fact that has been adequately manifested in legal literature and lawmaking practice. The establishment of a Georgian legal consciousness is a long-term process. According to the historical chronometer, the past years make a rather short period for attaining perfect results. Until now, the shelves of the libraries have been suffering from a material shortfall of legal literature in the Georgian language. A particularly grave situation is in the public-law field, the area which has changed its content most explicitly. Consequently, any commendable study offered to legal society is of invaluable importance. In this respect, particularly important is the publication of the works of the outstanding researchers of world constitutionalism, *András Sajó* and *Herman Schwartz* in the Georgian language. One of the merits that commend them to Georgian lawyers as well as the general society, their both being in the process of transformation, is that their professionalism and vigour have greatly contributed to the development and adoption of the current Constitution of Georgia.

The Georgian translation of the “smart and thoughtful” work of the Hungarian Professor *András Sajó* “*Limiting Government*” is a valuable acquisition for those who are interested in the theory of constitutionalism. It is also a desk-book for those who are interested in governance and its promotion.

Particular mention should be made of the part of the book, which concerns the art of study of control and balancing of the branches of state power. This dynamic balance is promoted through appealing to numerous normative and factual materials from world practice and demonstration of the study of fatal links. The magnetism of each of the branches of state power, and the hazard of misuse of power are analysed as examples.

The part of the study where the constitution is presented as a result of fear and recognition gives the most interesting opinions. The twofold nature of a constitution is revealed – on the one hand, it plays the role of a fighter against tyranny, while on the other hand it is a mechanism for combating anarchy, paralysis, corruption, and the “foolishness of politicians”. Based on two centuries of the history of constitutionalism, the author defines the limits of a democratic constitution, which sets binding barriers for both elected officials

and the public, thereby providing a source for the legitimisation of state power. The reader becomes familiar with the author's vision of "taming" democracy, which gives a very interesting picture of "watered-down" popular sovereignty as well as the undesired outcomes of weak democracy, a fact which may be related to the authority of the majority, the constitutional limitation of democracy, and likelihood of destabilisation posed by the use of referenda.

In addition, "Limiting of Governance" is an interesting book in light of the study of basic human rights. The third part of the book gives the author's opinions on such vitally important issues for the regulation of basic rights as the role of the concept of freedom within the political system of a state, the stages of "taming" human rights before transformation into positive law, the boundary between a positive and indispensable, inherent natural right, the essence of "discriminated" human beings, and the challenges of regulation. The book accords certain attention to the study of such dilemmas, as they are the basic principles of precise determination of constitutional rights, as well as the scope of and conditions for their limitation.

Together with scientific and theoretical depth, it is impossible not to mention the lucidity and flexibility of Sajo's language in communication of such diverse information, a feature that makes the process of familiarisation with the study so interesting.

Even among the opponents of the current Constitution, there is a uniform attitude towards the efficiency of the establishment of constitutional control in Georgia. However, a certain period is required for this fundamental and new-born institute of the governmental system to become perfect. Development of conceptual provisions is of particular importance for strengthening its status and practical role. In this respect, it is interesting to become acquainted with world practice, its comparative analysis, assessment and implementation-realisation in Georgian reality following a certain filtration. The experience of those states, which underwent similar to that of Georgia, is particularly important. For this reason, the work of *Herman Schwartz* "Establishment of Constitutional Justice in Post-Communist Europe" is exceptionally valuable. It gives a legal analysis of constitutional control of five East European countries – Poland, Hungary, Russia, Bulgaria and Slovakia against the background of political cataclysms of the respective countries. The study is express evidence of *Herman Schwartz's* considerable efforts in this field. The book brings together very rich and diversified information related to the processes ongoing in the post-Communist space in the given periods of time and social-political climate that served as a background for the development of constitutional justice and its peculiarities. The author investigates its role in the transformation of "authoritarian communism into constitutional democracy", in securing the rule of law, and combating legal nihilism so deeply enrooted in the region. Particular attention is paid to the analysis of the achievements and failures of the bodies concerned, in addition to the disclosure of the preconditions of these achievements and failures. In his book, *Herman Schwartz* gives his opinions concerning the scope of efficient performance of the bodies of constitutional justice with respect to their actual role in the distribution of power. Also analysed is the necessity of their isolation from political life, and the challenges of carrying out these principles. The author studies the

quality of outstanding decisions made by the “guard of the constitution”, as well as possible cases where changes might be required.

The Georgian translation of the works of *András Sajó* and *Herman Schwartz* is of invaluable importance not only for those members of the legal community, who are interested in the theory and practice of constitutionalism. It would be desirable for similar books to be made widely available in the Georgian legal space, what will become a certain precondition for the revival and development of the constitutional science in Georgia.

Nana Chigladze,
Professor of the Constitutional Law
of the Tbilisi State University