
BOOK REVIEW

Konstantin Kublashvili, *Fundamental Rights*, Tbilisi (GCI) 2003, 356, ISBN 99940-17-27-6

The principles of protection of human rights and freedoms are gradually becoming established in Georgia, although with great difficulty. This volume is particularly important because while the basic legal acts on human rights have been adopted in Georgia, there is insufficient practice in the proper implementation of human rights norms. Given this lack of such practice, there is a danger of misinterpretation and inappropriate implementation of universally recognised rights and freedoms. This book will certainly assist persons working in this field in understanding fundamental human rights and freedoms, guaranteed under the Constitution, and the establishment of the correct practice of their implementation.

The book is also significant because research of constitutional rights and freedoms has not been carried out yet in Georgia. Unlike other books which cover concrete constitutional rights or one of its aspects, this book covers almost all fundamental rights.

The methodology of the book is based on the fundamental human rights and freedoms provided under the Constitution. It is similar in structure to Western textbooks and makes it easier for the reader to study the contents of fundamental rights. One of the challenges of the book is the fact that fundamental human rights and freedoms are examined not just in theory but in practice as well. The book includes a number of examples that provide details of the mentioned rights. These cases are both hypothetical and based on reality. The author also successfully shares the experience of countries that have the long traditions in the protection of human rights.

The book covers court practice in Europe and the United States in the interpretation of these rights and freedoms. This allows the Georgian reader to learn methods of settlement of legal problems. This is very significant for the development of a high-level legal culture for the protection of human rights.

Despite it being a textbook, the author also succeeded in drawing attention to problems existing around the rights concerned. Such a balance can be quite difficult to maintain. The structure of the book is such that before considering each right, there is analysis of important issues without the particular understanding of which, the profound study of the problems related to the protection of human rights would be very difficult. The volume is written in a style of language that makes it accessible to the lay reader as well as specialised lawyers.

The first part of the book deals with several key issues that create a fundamental basis for the study of concrete human rights. The author starts by analysing such key issues as state and law. This approach seems reasonable for a proper understanding of the concept of human rights. In this part, the author defines a number of notions and concepts that have played a great role in the establishment and development of human rights law. Such interpretations will serve for those interested in human rights law.

The author reviews the Constitution of Georgia of 1995 and its fundamental principles. Such a review is definitely important to understand those principles on which the Constitution is based. The interpretation of such principles as “democratic republic”, “people’s sovereignty”, “rule-of-law state” is important not only for persons interested in human rights law, but also for all lawyers as the Constitution is built on these principles as is the legal-political system of the country.

The author discusses the historical development of fundamental human rights in the first part of the book. He reviews all the basic legal acts, which provide the ground for the establishment of the concept of the human rights protection. These include Magna Carta, Act of Habeas Corpus, Virginia declaration of 1776 and the French Declaration on human and citizen’s rights of 1789. This gave impetus to the European development of constitutional rights of the human rights protection. He also reviews the issues related to the concept of fundamental human rights and their types. The author classifies fundamental human rights according to the goods protected (rights to freedom, equality rights and procedural rights).

In sub-chapter 5 of the first part of the book, the author considers the place of fundamental human rights within the legal system of Georgia. The issue concerning the grounds for restricting fundamental rights is considered in some detail. He states that: “according to the Constitution of Georgia, the restriction grounds for some of the fundamental rights are not stated. Such a kind of fundamental right is considered to be absolutely provided and the state, cannot under any circumstances, even on the basis of the law itself, restrict this right”.

In addition, the author examines so-called qualified rights and singles out those requirements that the state should satisfy for the legitimate restriction of human rights. The author mentions that some of the articles of the Constitution foresee certain conditions for the restriction of human rights (for example, the restriction shall be made based on the law; the restriction shall be necessary in a democratic state). While the author considers the case-law of the European Court of Human Rights as very important, it would have been worth drawing attention to Articles 8 to 11 of the Convention as well as the third element of the restriction of the relevant rights under the Constitution of Georgia, namely that the restriction of human rights should serve a legitimate purpose (national security interests, public safety and etc). Although the author analyses the issue of restriction of human rights based on these conditions, it might have been useful to draw more attention on this issue in the introductory part.

The author builds a structure that gives an opportunity to observe the meaning of fundamental rights and to examine violations of such rights. A similar scheme of legality of restriction of human rights is applied at the international level. Namely, the European Court of Human Rights uses this methodology in determining whether fundamental human rights and freedoms are violated.

The second part of the book is devoted to the study of specific fundamental rights. It considers the right to respect human dignity, right to free development of a person, right to life, right to liberty and security, freedoms of belief, conscience and religion, rights to respect for private life, home and correspondence, right to property, freedom of movement, freedom of art, freedom of thought, freedom of information, freedom of mass media, freedom of assembly and manifestation, freedom of establishing association and political parties. The author examines each right and freedom in the light of the above mentioned structure. This makes it more understandable and easy to systemise. Numerous practical examples enrich the book. In addition to the examples of Georgia and other countries, the author presents the case-law of the European Court of Human Rights.

Several issues need to be mentioned that would have further enhanced this volume. On the first page of the book, the author mentions: "only such "state" may be the subject of international law from international law point of view." Despite the fact that some lawyers share this opinion, reference to the existence of other criteria for the recognition of a state as a subject of international law would have been valuable. These criteria are the ability to establish international relations and recognition.

While the author has considered numerous issues related to the protection of human rights in detail, the principles, upon the basis of which constitutional provisions on human rights are interpreted, could have been discussed. In terms of fundamental rights in particular, analysis of the practice of the Constitutional Court of Georgia on the freedom of manifestation is important. It is clear that the author is familiar with the relevant decision of the Constitutional Court (since it is mentioned in a footnote). However, his opinion on the interpretation of the relevant Article of the Constitution would have been interesting.

Technically, although the author used numerous references, additional citation of the more frequent sources would be useful in terms of obtaining further information on the issues concerned.

These quibbles aside this volume will significantly contribute to the study of human rights law and the establishment of a proper practice for the protection of the human rights in Georgia.

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Gela Bezhuashvili, *International Legal Aspects of Georgia's Foreign Policy*, Tbilisi (RAOE), 2003, 133, ISBN99928-30-46-8

Georgia is in the process of building a democratic state, identifying its home and foreign policy and their adjusting. The country is establishing itself in the international community.

Meanwhile, undoubtedly significant role is granted to the identification of the country's foreign policy precisely reflecting Georgia's interests and its place in the international community. Therefore, while identifying the foreign policy international legal aspects of formation of country's foreign policy carries major significance. To this topic is dedicated Bezhuashvili's work "International Legal Aspects of Formation of Georgia's Foreign Policy".

The work examines in a complex manner not only international legal aspects of foreign policy, but its link and interaction with home policy because the latter plays a significant role in the formation of the country's foreign policy.

Many significant subjects are discussed in the work. However, some of them deserve particular attention. Namely, the author substantiates the necessity of elaboration of Georgia's foreign policy concept and underlines international law related problems within this concept. The author rightfully notes that without such a concept the policy will lack the strategy and be an unsuccessful remedy for the protection of national interests.

In addition the work discusses the issue of formation of the Georgia's international law concept as a part of the country's foreign policy concept. In his book the author rightly draws attention to the increasing impact of international law over the Georgian legislation and practice. The role that Georgian legislation and principally Georgian Constitution grants to international law and particularly to the international treaties serves as substantiation of the above said.

Other interesting issues of Georgia's foreign policy are considered in the book, including the principles and objectives of foreign policy, diplomacy as an instrument of foreign policy and country's security strategy, perspectives of development of the international private law, constitutional law basis of foreign policy. The latter issue is particularly important since it touches the role of legislative and executives branches in the formation of foreign policy and application of the principle of separation of powers in terms of foreign policy. The author's views are worthy of attention and will contribute to the reasonable separation of powers.

Finally the author expresses several remarkable opinions with regard to the perspectives of development of international relations and Georgia's foreign political guidelines.

As a conclusion it should be noted that the work carries not only theoretical worth but practical as well in finding the ways of resolution of international law related problems of the country's foreign policy.

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