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## BOOK REVIEW

**L. Izoria/K. Korkelia/K. Kublashvili/G. Khubua, Comments on the Constitution of Georgia: Fundamental Human Rights and Freedoms**, Tbilisi, 2005, 426, ISBN 99940-46-04-7

For the first time in the Georgian reality, the comments on the Constitution of Georgia have been published with the purpose to assist Georgian readers in the comprehension of the values reinforced by the Constitution. The book does not focus on all the provisions of the Constitution of Georgia but, rather, on one of its most important parts; that is, fundamental human rights and freedoms. Focusing on this part of the Constitution was conditioned by the particular role of human rights and freedoms within the framework of Georgian justice.

The protection of human rights is the priority task of the European states. This priority, moreover, is important for those European states which were not able to independently develop their judicial system and traditions and adapt them to the realities of modern life for a certain period within their histories. Subsequently, the comments on the Constitution are particularly important in that it is not only the first work published in the Georgian language but also because of the issues which are considered therein.

The purpose of this publication is, on the one hand, to familiarise Georgian readers with the content of the fundamental human rights and freedoms provided for by the Constitution and, on the other, to give an overview of the practical interpretation and application of these provisions by the courts of the other European states and by the European Court of Human Rights. The publication aims at rendering assistance to readers to correctly understand the content of the provisions of the Constitution. As stated by Giorgi Khubua, one of the authors of the publication: "Well and comprehensively formulated word of law is a half-done work. A half of the word belongs to the one who says it and other half to the one who hears it".

The publication gives an overview of nearly all the rights and freedoms envisaged by the Second Chapter of the Constitution and offers an analysis of the judicial practice of other states in the field of interpretation of similar provisions of the Constitution of Georgia and the positions which were upheld by these courts as a result of the interpretation of the provisions concerned. In particular, the publication focuses on such rights and freedoms as: the prohibition of discrimination, right to life, prohibition of torture, right to liberty and personal security, freedom of thought, conscience, confession and religion, right to respect for private and family life, property right, right to free movement, right to receive and impart information, freedom of assembly and association, right to elect and be elected, right to education, right to marry, right to the protection of health and the right to a fair trial.

The publication presents not only the interesting theoretical deliberations concerning various aspects of fundamental human rights but also contributes significantly to the adminis-

tration of justice with respect to the issues related to the protection of human rights. In this light, the publication gives many noteworthy examples concerning the ways of resolution of court litigations by the courts of foreign countries. Furthermore, the reader will learn about the opinions of the authors on the ways of interpretation of the provisions of the Constitution, the deficiencies of the Georgian judicial practice and the means for their removal.

It should also be mentioned that the reader has the opportunity to learn more about the judicial practice of the European states concerning the principles and methods of interpretation of the Constitutional provisions, amongst them the principle of adequacy, in addition to familiarising himself with the content of the provisions of the Constitution. In the West, the methodology of examination of the rights reinforced by the Constitution has been developed through the established practice and covers the protected field of human rights and freedoms, interference into the protected field and the constitutional law justification of the interference into the protected field.

It should be stressed that the publication is well documented with examples from the case law of the European Court of Human Rights and, additionally, the judicial practice of other states which will enable readers to correctly understand the provisions of the Constitution of Georgia.

Even though Georgian legal literature accords particular attention to the case law of the European Court of Human Rights,<sup>1</sup> it is not, unfortunately, an established practice for the national and administrative authorities to apply the case law of the European Court of Human Rights. Irrespective that the reputation of the European Court of Human Rights is ever more increasing in Georgia, which is proven by the mass media and the increasing number of applications filed with the European Court by the Georgian citizens, the actual role of the case law of the European Court is still unclear for quite a large number of lawyers to say nothing about the representatives of other professions.

Consequently, it is necessary to explain what conditioned the application of this variety of examples from the judicial practice of the European Court and its case law in the publication by the authors of Comments on the Constitution of Georgia. According to the European Convention on Human Rights (1950), under which the European Court of Human Rights was established, the Court judgements are binding only for the states which are the parties to the court proceedings concerned. The states which are not the parties, however, apply the case law of the European Court for pragmatic reasons in specific proceedings. It is a matter of principle for the High Contracting Parties to the Convention – and amongst them for the European Courts – that the European Court of Human Rights as the body supervising the observance of the Convention gives the competent interpretation of the European Convention.

Even though the European Court of Human Rights makes judgements with respect to specific cases, it interprets the content of the rights and freedoms envisaged by the Convention through the judgement (precedent) concerned. By virtue of the interpretation of the European Convention, which is reflected in the case law, the European Court dis-

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<sup>1</sup> Also see *Korkelia*, Application of the European Conventions on Human Rights in Georgia, 2004.

charges its function to establish human rights protection standards. With respect to this function, the European Court stated that “The Court’s judgments, in fact, serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties”.<sup>2</sup>

Taking account of the fact that the case law of the European Court identifies the content and the limits of specific provisions of the Convention – and also the scope of its application – the national courts of the European states do not separate the European Convention on Human Rights from the case law of the European Court of Human Rights. As the President of the European Court of Human Rights stated: “The national law accords particular importance to the text of the Convention. The same importance, however, is to be accorded to the relevant judicial practice which is based on the text of the Convention”.<sup>3</sup>

The human rights standards of the European Convention are specified not only by the Convention text but also by the case law based thereon. In other words, the human rights standards of the European Convention cover not only the standards provided for by the Convention text but also the standards developed on the basis of the European Court case law. These very factors provided for the position of the authors of Comments on the Constitution of Georgia as shown within their numerous examples from the case law of the European Court of Human Rights.

We hope that the first attempt to comment on the Constitution will not escape the attention of the legal society of Georgia and will make a new contribution to the development of both human rights and judicial practice in Georgia which remains of particular importance.

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<sup>2</sup> *Ireland v. the United Kingdom*, 18 January 1978, Series A, no. 25, Paragraph 154.

<sup>3</sup> *Wildhaber*, Human Right: How Should It Be Protected by the Strasbourg and National Court, “Human Being and the Constitution,” №1, 2002, 63.