Judicial Independence in Georgia and Germany – Comparative Analysis of Constitutional Courts

By Niko Tatulashvili

LL.M. SHORT THESIS

COURSE: Judicial Independence and Administration

PROFESSOR: Gar Yein Ng

Central European University

1051 Budapest, Nador utca 9.

Hungary

TABLE OF CONTENTS

Abstract

This thesis examines the degree of judicial independence in the constitutional courts of Germany and Georgia. In this respect three main aspects of judicial independence are discussed – appointments, disciplinary sanctions and dismissals. The fact that the constitutional courts of both countries are very similar in their functions and composition serves as an incentive for choosing this topic. In the system of both constitutional courts one can see gaps in regard to appointments, disciplinary sanctions and dismissals, but the idea of this thesis to recommend some changes for the Georgian Constitutional Court in order to strengthen its independent status. Though the German Constitutional Court system is often subject to criticism, still the independent status of constitutional judges are on a very high level and therefore examples can be taken from them. In addition to this, I refer to theoretical issues related to judicial independence in order to argue the need for an independent judiciary. Also the standards of judicial independence guaranteed by international instruments are mentioned in the following thesis. This helps the reader compare on the one hand the relation of international society towards the independence of judiciary and, on the other hand, the attitude of particular states, in our case Germany and Georgia towards the issue. The thesis concludes by making recommendations for Georgia.

Introduction

Judicial independence is considered to be one of the cornerstones of democratic society and is very often examined to measure the quality of democracy in a country. Different countries have different approaches to this principle and the understanding of independence of judiciary varies from country to country.[1] In order to understand how it works in a particular country, one has to look at the history and traditions of that country, the mentality of the people who live there and the form of government.[2]

Judicial independence can be understood in two ways – personal independence of a judge and institutional independence of a court, both must be present for judicial independence to be substantial.[3] When we speak about personal independence, we speak about the independence of a judge. In order to make fair decisions judges must be independent from any kind of undue influence, from inside, as well as from outside of the judicial organization.[4] In this respect it is important to know the method of their appointment and dismissal, if they are appointed for lifetime or for limited term, what the disciplinary sanctions are and by whom they are enforced, when and in what way they are dismissed.[5]

[1] G.Y. Ng, *Quality of Judicial organisation and checks and balances*, 2007 Intersentia, Antwerpen, p.20.

[2] Ibid. see also Shimon Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges* in Shimon Shetreet, Jules Deschenes, *Judicial Independence: the Contemporary Debate*, 1985, Martinus Nijhoff Publishers, p. 590.

[3] Ibid, p. 118-119.

[4] Ibid.

[5] Peter H. Russell, *Toward a General Theory of Judicial Independence* in Peter H. Russell and David M. O'Brien, *Judicial Independence in the Age of Democracy, critical perspectives from around the world*, 2001, The University Press of Virginia, p. 16.

In addition, a judge's personal independence is incomplete unless it is accompanied by the institutional independence of the judicial branch[6], which as an institution in general must be independent from other branches of government. In this respect it is important to refer to the separation of power issue.[7]

When speaking about judicial independence one also has to mention the accountability principle. In order to avoid arbitrary decisions, judges must be accountable to the public or in some countries to the representatives of other branches.[8] The key point here is to strike a balance between independence and accountability, so as not to hinder the proper functioning of independent judiciary.[9]

The issue of substantial independence is of a crucial importance. Many countries, especially in the transitional period have no problem on the level of legislation, but one thing is what is written on paper and another is how it works in reality.

Both countries, Georgia and Germany are civil law countries. One can find many common aspects in these two legal systems. This is explained by the fact that in the formation period of the Georgian state the model of Germany has been used extensively. This is one reason why I have decided to write on these countries. Another reason for choosing Germany to compare with Georgia is that of the practice it has in judicial

[6] Aharon Barak, *The Judge in a Democracy*, 2006, Princeton University Press, p. 80.

[7] Ibid, p. 35-37.

[8] Supra note 1, p.14.

[9] Ibid, p.20, see also Andras Sajo, *Judicial Integrity*, 2004, Koninklijke Brill NV, p.155.

independence as a developed country and mature democracy.[10] Germany is a country with a long history of judicial independence. It is a federal state with a complicated structure of courts, with Federal Constitutional Court as the highest federal judicial authority.

On the other hand, Georgia is a state in transition. Many problems have been solved after gaining independence in 1991 but many are still to be solved in order to make the state accommodating for democracy and the rule of law. With its autonomous regions, it can be considered a federation.[11] Also the status of Constitutional Court of Georgia is very similar to the German Constitutional Court. In this respect Georgia resembles Germany and this is one more reason for comparing them to each other.

Taking into account the limited space of this thesis that does not allow me to discuss the whole judicial system of both countries and the guarantees for their independence I choose only constitutional courts for comparison. The high status of both constitutional courts and similar functions justifies my decision.

Though independence of constitutional judges is guaranteed by the Constitution, some problems still exist in reality in Georgia. The question that will be answered in this thesis is the following:

- What kind of measures must be taken in general, by whom and to what extent to achieve substantial independence of the constitutional court judge in Georgia?

[10] Van-Hoa To, *Judicial Independence: A Legal Research on its Theoretical Aspects, Practices from Germany, The United States of America, France, Vietnam, and Recommendations for Vietnam* , 2008, Juristforlaget I Lund, p. 8-9.

[11] Though, nothing is said about it in the Constitution of Georgia.

The aim of this paper is to shed light on the existing problems in Georgia in regard to the constitutional court and its independence, to compare it to the situation existing in Germany and to make suggestions on how to improve the situation in Georgia relying on examples from German practice. The clear identification of problems existing in the Georgian judiciary will help us to find ways out of the existing situation and make suggestions on how to improve it. In this respect I will discuss the aspects guaranteeing the independence of constitutional judges – appointments, disciplinary sanctions and dismissal.

The main body of the thesis is divided in three main parts. In the first part I discuss theoretical aspects related to judicial independence, like Separation of powers, organs with adjudicating functions, rule of law, human rights, internal and external threats to the independent judiciary and individual and institutional independence together with accountability principle. In the second part of the thesis I discuss appointment issue of constitutional judges in Germany and Georgia. I compare German and Georgian practices and also discuss their compatibility to international standards. In the third part I refer disciplinary action and dismissal of constitutional judges in Germany and Georgia. I compare the practices of the two countries and their compatibility to international standards. The final recommendations for the improvement of Georgian system will be end of this thesis.

Material that I use here contains all kind of information about the judiciary in Georgia and Germany. The primary sources are books that contain very important information about the issues interesting for our topic. Shimon Shetreet's book "*Judicial Independence: The contemporary Debate*" was published more then twenty years ago but contains valuable information about the international standards on judicial independence

adopted that time. It contains the texts of international instruments as well as their explanatory articles. Aharon Barak's book "*The Judge in a Democracy*" contains valuable information about the theoretical aspects like rule of law, separation of powers, human rights in relation to judiciary, personal and institutional independence of a judge etc. Peter H. Russell and David M. O'Brien's book "*Judicial Independence in the Age of Democracy, Critical Perspectives from around the World*" contains useful information on the internal and external threats to the independent judiciary. The book "*Appointing Judges in an Age of Judicial Power*" edited by Kate Malleson and Peter H. Russell is very interesting for those who are interested in the appointment procedure of constitutional judges in Germany and are ready to hear critical remarks on it.

A legal research that I use extensively in my thesis is "*Judicial Independence: A Legal Research on its Theoretical Aspects, Practices from Germany, The United States of America, France, Vietnam, and Recommendations for Vietnam "* conducted by Van-Hoa To. It contains detailed information on theoretical aspects, international instruments, and on judicial independence in Germany. The main reason why I have decided to use this material so extensively is that this is the most recent, comprehensive study of judicial independence.

Other materials used for this thesis are international instruments and the legal documents of the countries. I also use dissertation works of scholars and articles. Internet sources can also be considered as an import source of information while on the sites you can find most recently updated information.

Part 1 Theoretical framework

1.1 Separation of Powers and Checks and Balances

The concept of separation of powers has a vital role in democracy. It is said to be "the backbone in the constitutional system".[12] Its purpose is "to strengthen freedom and prevent the concentration of power in the hands of one governmental actor in a manner likely to harm the freedom of the individual."[13] Though separation of powers means that "each branch is independent within its zone"[14], it does not imply "the absolutism of each branch but only as long as they act according to the law."[15] The principle of checks and balances is widely used in the modern separation of powers,[16] maintaining the efficient functioning of the governmental branches and creating a democratic soul in the state. In the following chapter these issues are discussed in connection with one of the branches of government – judiciary.

1.2 Organs, other than Courts with Adjudicating Functions

Speaking about the judiciary and its independence it is worth clarifying what the judiciary is and who exactly needs to be independent.

The criterion for the judiciary is that of its function. The judiciary "as a structural whole is vested with the function of adjudicating disputes between individuals, or

[12] *Cooper v. Canada*, 1996, 3 S.C.R. 854, 867 in Aharon Barak, *The Judge in a Democrac*y, 2006, Princeton University Press, p. 35.

[13] H.C. 3267/97, *Rubinstein v. Minister of Def.*, 52(5) P. D. 481, 512; (1998-9) IsrLR 139 in Aharon Barak, *The Judge in a Democracy*, 2006, Princeton University Press, p. 35.

[14] Supra note 6, p. 41.

[15] Ibid.

[16] Ibid, p. 42.

between individuals and state agencies."[17] Another, more exact definition of judiciary is given by other scholars, in particular the judiciary is defined "as the organ of government not forming part of the executive and legislature, which is not subject to personal, substantive and collective controls and which performs the primary function of adjudication".[18] From these definitions one is clear that adjudicating is the main function of the judiciary and with this function it can be distinguished from other branches of government.

It is not enough to use mere names like, "court" or "judge" as criteria for judiciary because, it is possible to transfer adjudicating functions from the independent court to other, more dependant organs, arguing that the independence of the judiciary is not harmed.[19] In this case, we may have independent judiciary without adjudicating functions.

While we consider judiciary with its adjudicating functions, it is also important to know what adjudication means: "adjudication is the provision of the authoritative settlements of disputes about legal rights and duties".[20]

1.3 The Rule of Law

One may ask why we need an independent judiciary at all. In order to answer this question we have to look at the concept of the rule of law which is recognized as one of the most fundamental principles of a democratic community.[21]

[17] Supra note 10, p. 67.

[18] Supra note, p. 597-598.

[19] Supra note 5, p. 8.

[20] Ibid.

The term "rule of law" was first used by the English scholar, A. V. Dicey, in the 19th century. According to him "the rule of law means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of the arbitrary power, and excludes the existence of the arbitrariness, or prerogative or even of wide discretionary authority on the part of government."[22] As we see from this definition, Dicey has a narrow understanding of rule of law, making emphasis only on the government.

The concept was developed over decades and in 21st century Aharon Barak gives a modified definition of the rule of law, particularly, "all actors in the state, whether private individuals and corporations or branches of government, must act according to the law, and violations of the law must meet with the organized sanction of society."[23] Unlike Dicey, Barak refers not only to government, but also to private individuals.

It is therefore clear that one of the main aspects of the rule of law is that government must be constrained by the laws.[24] The problem here is that even if the law is very good, it is often infringed. The law itself is not able to protect itself, it is just "an inanimate creature produced by human beings."[25] There is a need of proper power able to protect the rule of law in the state.

---

[21] Supra note 10, p. 27.

[22] A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 1950, Macmillan and Co., 9th ed., p. 202.

[23] Supra note 6, p. 53.

[24] Ibid. see also Supra note 22.

[25] Supra note 10, p. 43-44.

Theoretically, the bearers of such power are all three branches of the government, but "the rule of law leads to the conclusion that the final interpreter of the law should be the court."[26] The judiciary, which has no power of making legislation and executing it, must have the power to enforce the law,[27] "judicial independence is obviously a requisite for the maintenance of rule of law in the legal system."[28]

From all the abovementioned, we see that the judiciary is an important element in the enforcement and protection of law in the state and in order to be able to fulfill this important task accordingly, the judiciary must have strong guarantees of independence from other branches of government.

1.4 Human Rights

Human rights are considered to be important fundamental values of a democratic society. With "taking human rights out of democracy, democracy loses its soul."[29]

Human rights are often protected in the national constitutions but only words even if they are mentioned in the main law of the country are not enough to protect them.[30] If they are not supported by an independent judiciary they might be limited to such an extant as to eliminate them.[31]

[26] Supra note 6, p. 56.

[27] Supra note 10, p. 44.

[28] Ibid, p. 45.

[29] Supra note 6, p. 81.

[30] Curtis Francis Doebbler, *International Human Rights Law: Cases and Materials*, 2004, CD Publishing, p. 81.

[31] Ibid.

But human rights are not absolute and sometimes are subject to limitations,[32] meaning that legislature and executive sometimes can limit the rights in the constitution. Independent judiciary might be a protection against arbitrary limitations.[33]

Unlike the legislative and sometimes executive branch, judges usually are not elected by the people[34] and because of that do not have to follow the will of the majority in order to gain support in the following elections. No fair of majority gives the court resources to protect minority by writing decisions without taking into account the popular ideas and judge only according to law. [35]

In addition, the executive is usually seen as a potential source of human rights violation while applying laws and devising policy, they might elaborate a policy that does not guarantee the proper protection of human rights.[36]

As we have seen, for the protection of human rights, it is of a paramount importance for the judiciary to be independent. With enforcing, interpreting, implementing the law, an independent judiciary creates a powerful shield behind which human rights can feel safe from any kind of undue influence.

[32] Supra note 6, p. 83-84.

[33] Supra note 30.

[34] In Germany and Georgia they are appointed by the different bodies. I will discuss this question later.

[35] Supra note 10, p. 62-63.

[36] Ibid.

1.5 Internal and External Threats

The influence on judicial independence may come from different sources, like education, training, law literature, ideology, religion, socialization, working experience, the opinion of the senior judge or just a colleague, the press, etc.[37]

Influences can be sorted into two groups: "external category refers to all of those forces – governmental and non-governmental, public and private – outside of the judiciary itself that can encroach on the autonomy of the judiciary collectively or of the individual judge"[38] and "internal dimension refers to sources of influence and control within the judiciary itself."[39]

However, not all influences categorized in these two groups are considered as threat to judicial independence. For instance, writings of legal scholars or exchange of ideas with colleagues on the conferences can not be regarded as violating the principle of judicial independence.[40] In identifying undue influence, we have to look at the main function of the judiciary – adjudication. "Judicial independence is at risk when influences undermine the judge's capacity to adjudicate."[41]

According to the sources of threats, judicial independence is described as "… the status of courts and their judges to be free from undue influence from any one,

[37] Ibid, p. 76.

[38] Supra note 5, p. 11.

[39] Ibid.

[40] Ibid, p. 12.

[41] Ibid.

particularly the legislature, executive, and parties to the case before them, so that they can discharge their adjudicative function on the basis of facts and laws only."[42]

1.6 Individual and Institutional Independence, Accountability

Individual independence is described by scholars as crucial condition for the judicial independence.[43] This is a constitutional principle guaranteeing independence of a judge from the external pressure, regardless of the source like friends, relatives, parties of the case, other judges, officeholders in other two branches of the government,[44] but as we have already mentioned not all kind of influences can be regarded as threat to judicial independence.

Conditions of employment and salaries can be successfully used against the independence of the judge.[45] In order to avoid this protection of these elements must be guaranteed on the first place, so that there must be no improper removal from the office, without the sufficient reason and "exclusively through a proceeding that guarantees the independence of the judge in his tenure".[46]

Salary and conditions of service should not be set by the executive branch and parliament.[47] For Aharon Barak, the ideal model is to create an independent body, chosen by a parliament, with particular duty to set salaries for judges.[48] He does not say anything

[42] Supra note 10, p. 77.

[43] Supra note 6, p. 78.

[44] Ibid.

[45] Ibid, p. 79.

[46] Ibid.

[47] Ibid.

[48] Ibid.

about the composition of the body but while he does not trust Parliament, we have no reason to think that representatives of the executive branch are those, whom he will be glad to see in the body. In my opinion, there are two options: the body is to be composed either by representatives of the judiciary only or the representatives of all the branches of the government.

Judges must be independent not from the other branches only, but also from the administration of the court itself. In this regard changing permanent location of the judge sit, can amount to the threat to independence of the judge.[49] At first sight it does not seem to harm the independent status of the judge in fact but if the judge is moved from high court to lower court, where the salary is also low or from city court to the less prestigious court located in province, it might easily be a case.

Disciplinary sanctions may also be considered as the threat to the independence of a judge[50] even if it is executed inside the judiciary itself. As Aharon Barak explained "judicial independence is not a license for administrative lawlessness."[51]

As we can see, the "threats to the individual judge are manifold".[52] It could be very dangerous, because it is directly addressed to the individual person[53], with family responsibilities behind and with the fear of losing everything that was created by him/her for decades.

[49] Ibid. p. 79-80.

[50] Supra note 10, p. 81.

[51] Supra note 6, p. 79.

[52] Supra note 10, p. 81.

[53] Ibid.

However, individual independence is not enough if there is no place for institutional independence. Judges can not be independent individually if the whole judiciary is not free from the undue influence of the executive and/or legislative branch.[54]

Very often, "executive takes part in the administration of the judiciary with supervising and controlling over judicial staff, like court clerks, bailiffs, administrative officers, with preparing and disbursement of courts' budget or the maintenance of the courts building."[55] Though this can be considered as interference, still it is not a threat to the independence of the judiciary, unless, it has some influence on the adjudication process.

Intervention from the legislature is different from that of the executive and is mainly connected to the finances, particularly – budget. In many countries after the bill of the judiciary's budget is prepared, it goes to the legislature for approval.[56]

Institutional and individual independence are closely related and can not be considered without each other. It is a shift from general to particular and returning back to the general again. Individual independence of every judge creates the judicial independence of the institution in general, and on the other hand if the institution is not independent, the individual independence of every judge is under serious threat.

As we may conclude, "institutional judicial independence and individual judicial independence should be seen as the two halves of a total whole."[57] Threats to one of them endanger also the other.

---

[54] Supra note 6.

[55] Supra note 10, p. 80.

[56] Ibid.

However, when we speak about the judicial independence, we have to think about the extant to which judiciary needs to be independent. Some of the supporters of the judicial independence are of the idea that judiciary must be as independent as possible in order to serve justice better.[58]

There are some counterarguments to that opinion. One of them is that, while judiciary has very important duties, like upholding rule of law and protecting human rights, there must be some ways "to hold the judiciary and judges accountable should they be violating their duties."[59]

Another argument against the "more independent the better"[60] is that, while no one is infallible, what if the court also does something wrong? If we guarantee the judiciary absolute independence, they would be able to do whatever they wanted to do and no one will be able to stop them from wrongdoing.[61] In other words, it might easily become a new form of tyranny.

From the abovementioned, it is clear that together with judicial independence there is a need for judicial accountability. "Judges and courts provide a public service. In a democracy there should be some public accountability for how well that service is provided and how public funds devoted to that are spent."[62] In the democratic society, there is no place for unrestricted power; even if it is about judiciary, there must be some

---

[57] Ibid, p. 82.

[58] Ibid, p. 84.

[59] Ibid.

[60] Ibid.

[61] Ibid.

[62] Supra note 5, p. 19-20.

elements of control. Judicial accountability and judicial independence is considered to be "different sides of the same coin"[63].

Once we agree that there is a need of judicial accountability in one line with judicial independence, we have to decide what kind of accountability is that we need and where are the limits of accountability. There are several models of accountability developed by scholars: the "responsive consumer-oriented model"[64], is a mixed model containing in itself the control of judges from the political branches of the government and also from judiciary itself.[65]

In order not to harm the judicial independence judicial accountability must have some limits. It "should be minimized by such reforms that increase judicial accountability and at the same time take the appropriate measures to safeguard judicial independence."[66]

Part 2 Appointments

In the first part of this thesis I tried to show the reader the importance of the independent judiciary in a democratic society, in the maintenance of the rule of law and protection of human rights. Once it is without doubt that independent judiciary is an indivisible part of democracy, it is important to consider the key aspects that make judiciary independent in order to know what we have to look at while evaluating its degree of independence. One of the aspects that can be looked at is appointment of judges, but before going to that I would like shortly to discuss international standards in

[63] Stephen B. Burbank, Barry Friedman, *Reconsidering Judicial Independence* in Stephen B. Burbank, Barry Friedman, *Judicial Independence at the Crossroads: An Interdisciplinary Approach*, 2002, SAGE, p. 15.

[64] Supra note 2, p. 655.

[65] Ibid.

[66] Ibid.

relation to appointments. This will give the reader the opportunity not only to be aware of the similarities and differences between Germany and Georgia, but also to know if they are compatible with international norms.

2.1 International Standards

In the beginning of the 1980s the international community decided that for better functioning of an independent judiciary, there was a need to formulate draft principles on the independence of the judiciary.[67] Judges and jurists from different regions and legal systems met in Syracuse, Sicily on 25th-29th May and wrote down the Syracuse draft principles on the independence of the judiciary[68] (hereinafter, Syracuse principles).

Syracuse principles state that "applicants for judicial office should be individuals of integrity and ability, well-trained in the law and its application and that these principles apply whatever the method of selection and appointment of judges."[69] The idea of these rules is to ensure that only the best qualified candidates are appointed as judges.[70]

The working group took into consideration that different countries have different approaches in the judge selection process stating that "no international norms give preference to any of the methods and that each is capable of sustaining a competent, independent and impartial judiciary."[71] In this statement one can see the attempt of

[67] Ibid, p. 414.

[68] Ibid.

[69] Syracuse Draft Principles on the Independence of the Judiciary adopted at Syracuse, Sicily, on 25th-29th May, 1981, part III, Article 3, 6.

[70] Supra note 2, p. 423.

[71] Supra note 69, Article 6.

making the Syracuse principles workable for all the regions and countries with different legal systems or the recognition that there cannot be one general method of appointing judges without broader consequences. Another attempt by working group to make the principles flexible is that instead of "appointment" or "election" they use the word "selection", again taking into account the different methods used by different countries.

Other international document on judicial independence, interesting for our purposes, was created two years later after the Syracuse principles. In 1983 The Universal Declaration on the Independence of Justice was adopted in Montreal at the First World Conference.[72] Twenty-six international bodies, represented by citizens of thirty-four countries participated in it. The United Nations, the four International Courts and organizations were included.[73]

The Universal Declaration on the Independence of Justice repeats the same rules on the selection process of judges as was already stated in the Syracuse principles and in addition to that states that "participation in judicial appointments by the Executive or Legislature is consistent with judicial independence, so long as appointments of judges are made in consultation of members of the judiciary and the legal profession, or by a body in which members of the judiciary and the legal profession participate."[74]

[72] Supra note 2, p. 446.

[73] Ibid.

[74] The Universal declaration of the Independence of Justice adopted at the final plenary session of the First World Conference on the Independence of Justice held at Montreal, Quebec, Canada on 10 June, 1983, part II at section 2.14.

One may ask if the Universal Declaration also applies to constitutional judges. But while they speak about national judges in general not specifying anything, we have no reason to think that constitutional judges are excluded.

One more international document about judicial independence was adopted by the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985.[75] Basically the document repeats the same rules about judicial appointments, already mentioned in the previous documents stating that "persons selected for judicial office shall be individuals of integrity and ability with appropriate training and qualifications in law."[76]

2.2 Germany

The Federal Constitutional Court of Germany (Bundesverfassungsgericht) is the "highest court of the German court system"[77]. Its main task is to safeguard the federal constitution and basic rights.[78] For proper functioning, it is very important for this court to be independent and in fact it has the "highest independent status" [79] as compared to other courts in the system. One of the elements guaranteeing its independence is appointments.

[75] Ben Olbourne, "Independence and Impartiality: International Standards for National Judges and Courts" in "The Law and Practice of International Courts and Tribunals" 2: 97-126, 2003, Kluwer Law International, printed in the Netherlands, p. 106-107.

[76] The UN Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, section 10.

[77] Supra note 10, p. 166.

[78] Ibid.

[79] Ibid.

The Basic Law for the Federal Republic of Germany states that, "the Federal Constitutional Court shall consist of Federal judges and other members."[80] The Federal Constitutional Court (Bundesverfassungsgericht) consists of sixteen judges sitting in two divisions or Senates.[81] They are appointed for a fixed term of twelve years.[82] Half of them are elected by the Parliament's upper house (the Bundesrat) and half of them are elected by the Parliament's lower house (the Bundestag).[83] Finally they are officially appointed to the office by the Federal President.[84]

The appointment procedure starts with the drawing up of two lists of eligible candidates by the Ministry of Justice.[85] One of the lists consists of the judges from the highest Federal Courts and the other list consists of persons proposed by the parties in the Federal Parliament or by the various Lander governments.[86] However, "how the short listing is done and which criteria are relevant in this process is not public knowledge."[87] Afterwards, the lists will be referred to the Bundesrat or the electoral committee of the

[80] The Basic Law for the Federal Republic of Germany promulgated by the Parliamentary Council on 23 May, 1949, Article 94 § 1.

[81] John Bell, *Judiciaries within Europe: A Comparative Review*, 2006, Cambridge University Press, p. 159.

[82] Ibid.

[83] Ibid.

[84] Federal Constitutional Court Act, Article 10 in Carl Christoph Schweitzer, "*Politics and government in Germany, 1944-1994: basic documents*", 1995, Berghahn Books, p. 290.

[85] Supra note 81.

[86] Ibid.

[87] Christine Landfried, *the Selection Process of Constitutional Court Judges in Germany* in Kate Malleson and Peter H. Russell, *Appointing Judges in an Age of Judicial Power*, 2006, University of Toronto Press, p. 202.

Bundestag of the Parliament, depending on whose turn it is to select a constitutional judge.[88]

In the selection process of judges the following criteria are taken into account by the selecting bodies: "the judges must have reached the age of forty, be eligible for election to the Bundestag … qualified to exercise the function of a judge."[89] Qualification requirement means that "judges must have successfully passed the first and second major state bar examinations."[90] A title of professor of law is considered to be a substantive advantage for a candidate.[91]

The Bundesrat elects the candidate in a plenary session.[92] But according to John Bell, "this is a formality, while all the preparatory work of selection has been done by a committee made up of the Ministers of Justice of the different Lander."[93]

Unlike the Bundesrat, the election of the judges in the Bundestag is made by the committee, composed of twelve members, who are selected by parliamentary groups in the Bundstag, according to the proportional representation in the house.[94] As described by Bell, "the parties usually come to an arrangement on whose turn is to nominate a candidate."[95] The election of highest court judges by the twelve members of the

---

[88] Supra note 10, p. 169.

[89] Supra note 84, Article 3 § 1, 2.

[90] Donald P. Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 1997, Duke University Press, p. 20.

[91] Supra note 10, p. 169.

[92] Supra note 81.

[93] Ibid.

[94] Supra note 10, p. 168.

[95] Supra note 81.

Bundestag, who are selected by the criteria of party affiliation, is often a subject to criticism.[96] In the book edited by Kate Malleson and Peter H. Russell reference is made to article 94 of the Basic Law stating that, "the constitutional provision … that Parliament as a whole should elect the judges has been changed into the rule that twelve MEPs should decide who is going to the court in Karlsruhe."[97]

Some of the scholars are more optimistic. Referring to the fact that two thirds of the votes are needed to elect a judges in both the Bundesrat and the Bundestag's electoral committee, Van-Hoa To argues that, "such an absolute majority rule … ensures that a judge is selected with a substantial agreement among the members of the German parliament and that he/she is therefore neither subject to, nor responsible for, any courtesy or patronage of any particular political groups."[98]

Because of the two third majority requirement the election process in the election committee of the Bundestag is described by some authors as "a collaborative exercise between the ruling coalition and main opposition parties in both houses."[99]

In my opinion, the fact that the "ruling coalition", as was mentioned above, is not able to decide on judicial appointment cases by itself, without opposition support, indicates that the country is a strong democracy, where those who rule are not able to do whatever they want and need the support of those who do not rule. The two third majority

[96] Ibid.

[97] Supra note 87, p. 201.

[98] Supra note 10, p. 169.

[99] Supra note 87, p. 201.

strikes a balance of power, ensuring that even the interests of those who are not ruling are represented.

However, it is argued that the formal procedure of the selection of judges is "marred by deficiencies in the democratic structure and in the transparency of the selection arrangements."[100] The secrecy of decision making inside the parliamentary committee is subject to criticism.[101] In the book edited by Kate Maleson and Peter H. Russell reference is made to the Federal Constitutional Court law, which states that "members of the Committee are obliged to keep secret what has become known about the personal circumstances of candidates."[102] According to them, as a result of the bargain struck between political parties represented in the parliament usually those who are "middle-of-the roaders"[103] have a chance to be elected.[104]

The lack of democracy, transparency and diversity are the main problems in the election process of the constitutional judges.[105] For a proper functioning of the Federal Constitutional Court, the election of judges must be more democratic, by shifting this power, from the election committee to the Parliament as a whole, more transparent, by holding public hearings of the candidates; and more diverse, by guaranteeing a wide range of professional and educational experience of the judges.[106]

[100] Ibid, p. 207.

[101] Ibid, p. 201.

[102] Ibid.

[103] Ibid, p. 207.

[104] Ibid.

[105] Ibid, p. 208.

[106] Ibid, p. 207-208.

However, there are two aspects in the process of appointments of constitutional judges that might be considered as a guarantee for the independence of the constitutional judge in Germany. The first is that "a judgeship of the Federal Constitutional Court is the top position in the career of the German judge,"[107] meaning that promotion can not jeopardize the "independent status of German Federal Constitutional judge."[108] The second one is that re-appointments are impossible[109] and therefore "constitutional court members may be more insulated from short-term political pressures."[110]

As we have seen, the appointment procedure of constitutional judges is strictly dependant on the will of the political parties in the parliament and also on the executive - Ministry of Justice but because of abovementioned guarantees the independent status of a constitutional judge is hardly damaged because of that.

2.3 Georgia

The Constitutional Court of Georgia was established in 1996.[111] It is "the judicial body of constitutional review, having the greatest significance with the view of securing constitutional provisions, separation of powers and its accomplishment within the constitutional framework, protecting human rights and freedoms, recognized and guaranteed by the Constitution, enhancing public stability in the country."[112]

---

[107] Supra note 10, p. 169.

[108] Ibid, p. 169-170.

[109] C. A. J. M. Kortmann, J. W. A. Fleuren, Wim Voermans, Miluše Kindlová, *The Constitutional Law of 10 EU Member States: The 2004 Enlargement*, 2006, Kluwer, p. 36.

[110] Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, 2003, Cambridge University Press, p. 122.

[111] Brief History of Constitutional Court of Georgia available at http://constcourt.ge/index.php?lang_id=ENG&sec_id=13 (last visited March 23, 2009).

[112] Ibid.

According to the Constitution of Georgia, "the Constitutional Court of Georgia shall consist of nine judges – the members of the Constitutional Court."[113] Unlike Germany, where only executive and legislative branches take part, in Georgia all three branches of government participate in the formation of the Constitutional Court,[114] particularly, "three members of the Constitutional Court shall be appointed by the President of Georgia, three members shall be elected by the parliament by not less than three fifths of the members of the Parliament on the current nominal list, three members shall be appointed by the Supreme Court."[115]

When deciding on the members of the Constitutional Court the selecting bodies must ensure that the candidate is at least 30 years old with high legal education.[116] They must also take into account "the professional experience of the candidate, which shall be appropriate for the high status of a member of the Constitutional Court."[117]

As we see, the requirements for the selection of a constitutional judge in Georgia are very similar to those of the constitutional judges in Germany. In both cases legal education along with certain age limit is required. Necessary qualification, to perform their duties is also very important.

The only difference in requirements is the age limit. In Germany, as we have already mentioned, the candidate must be at least 40 years old, whether in Georgia this limit is quite low – 30 years. At first sight, this kind of difference in age does not seem to

[113] The Constitution of Georgia adopted on 24 August, 1995, Article 88 § 2.

[114] Supra note 111.

[115] Supra note 113.

[116] Organic Law of Georgia on the Constitutional Court of Georgia, 31 January 1996, Article 7 § 1.

[117] Ibid.

be important for the independence of the constitutional judge, they are appointed for a fixed 10 year term and they cannot be re-appointed.[118] But, in my opinion, this is not enough to ensure the independence of the constitutional judge in Georgia.

For instance, let us assume that a person at age thirty is appointed as a constitutional judge[119]. In ten years, after finishing their term he/she will be forty years old, a young professional, far from retirement age[120], looking for a job. The former constitutional judge cannot work as a clerk at a law firm, the appointments on the jobs he/she is looking for, are very often in the hands of either executive or legislative branch. In other words, to continue his/her career in a proper way, he/she needs to have a good relationship with the representatives of other branches. Of course, it is desirable that a constitutional judge does not think about this while deciding on cases, but we should bear in mind that they are also men/women, with ambitions and family responsibilities.

The same problem may also exist in Germany, where the retirement age of Constitutional judge is sixty-eight.[121] If the German judge starts to work at forty after finishing the term of office he/she will be fifty-two years old, also not close to the retirement age. But if we compare the average age of the present German Constitutional

[118] Ibid, Article. 8.

[119] If we look at the age of constitutional court judges in Georgia, this is more then possible, information available at: http://constcourt.ge/index.php?lang_id=ENG&sec_id=14 (last visited March 24, 2009).

[120] According to the "Law of Georgia on Public Service" 31 October, 1997, the retirement age for public servant is sixty-five.

[121] Supra note 84, Article 4 § 3.

Court judges[122] to the Georgian ones[123], we see that the danger in the case of Georgia is more actual.

As I have already mentioned the Supreme Court of Georgia appoints three members of the Constitutional Court of Georgia. The procedure is the following: the president of the Supreme Court of Georgia nominates candidates at a sitting of a plenum of the Supreme Court.[124] Candidates must obtain two thirds of the votes.[125] Three members who satisfy this requirement will be appointed as a member of the Constitutional Court.[126]

In the case of Parliament, the following have the right to nominate the candidates: "the President of the Parliament, a parliamentary faction and a group of not less then ten members of the Parliament that is not affiliated with any faction."[127] A secret ballot will be held and a person obtaining the most votes but not less than three fifths of the number of the members of the Parliament of the current nominal list, will be appointed as Constitutional Court member.[128] The remaining three members are directly appointed by the President, without any approval of any other bodies.[129]

---

[122] The average age of German Constitutional Court Judge varies from fifty-four to sixty, available at http://www.bundesverfassungsgericht.de/en/judges.html (last visited March 18, 2009).

[123] From nine judges, six are thirty-three to thirty-six years old; two of them are above 50 years and only one above sixty, available at http://constcourt.ge/index.php?lang_id=ENG&sec_id=14 (last visited March 18, 2009).

[124] Supra note 116, Article 7^3 § 2.

[125] Ibid.

[126] Ibid.

[127] Ibid, Article 7^2 § 2.

[128] Ibid, Article 7^2 § 2, 5.

[129] Ibid, Article 7^1.

One may argue that the system of nominating and appointing candidates to the office of a member of the Constitutional Court in Georgia is very different from the system in Germany. The differences exist without doubt, but there are many similarities as well. I will start this discussion with similarities.

The similarities that can be traced in both systems of appointment in Germany and Georgia is that the lack of transparency in the process of selection of candidates for the judgeship. The President of the Supreme Court of Georgia nominates candidates who are then elected by a sitting of a plenum of the Supreme Court. In the selection process of the nominees the President of the Supreme Court is only bound by the age and legal education requirements. The vague provision requiring "professional experience of a candidate"[130] does not say much. As in the case of Germany, there is no public hearing and it is unknown for the people who are those deciding on important constitutional cases very often having important political meaning. The same problem with transparency exists with three candidates who are appointed by the President, while only President decides who will take this one of the most responsible positions.

The problem with transparency is that, when there is no public control, the representatives of executive or legislative branches can act more freely and endanger the independent status of the constitutional judge.[131] The lack of transparency is not a problem of Georgia only, but as I have already mentioned it is also a subject to criticism in Germany.

[130] Ibid, Article 7 § 1.

[131] Supra note 1.

The main difference in appointing the constitutional judges in Germany and Georgia is the influence of political parties on the process of appointment. Party affiliation is of a vital importance in Germany[132], "… people within the political parties participate in selecting and electing the judges."[133]

However, party affiliation is strictly forbidden in Georgia. According to the main law of the country "a judge shall not be a member of a political party or participate in a political activity."[134] The same rule is repeated in the Organic Law on the Constitutional Court of Georgia, stating that "a member of the constitutional court shall not be a member of a political party or engage in political activity."[135]

The two elements that guarantee the independence of the constitutional judge in Germany also exist in Georgia. Constitutional judges in Georgia are also not allowed to be re-appointed[136] and the judgeship in the Constitutional Court is the top position in the career of the Georgian judge as well.

After discussing the appointment procedures in Germany and Georgia, we see that all the requirements that are enumerated in the Syracuse and UN Basic Principles regarding appointments are taken into account in both countries. In both countries, the selection requirement is legal education and high professionalism in order to be able to perform duties properly.

[132] Supra note 87, p. 202-206.

[133] Ibid, p. 207.

[134] Supra note 113, Article 86 § 3.

[135] Supra note 116, Article 17.

[136] Ibid, Article 8.

On the other hand, the requirement of Universal Declaration on the Independence of Justice that participation of executive or legislative branch is consistent with judicial independence, if only "appointments are made in consultation with of members of the judiciary and the legal profession, or by a body in which members of the judiciary and the legal profession participate"[137] does not really seem to be followed by the countries. In Germany, the Bundesrat as well as the Bundestag's electoral committee are not officially required to consult members of the judiciary, nor in Georgia is the President of Georgia required to consult anyone.

To sum up, the independence of the constitutional court judge from the appointment point of view is generally guaranteed in both countries, but there are some gaps that must be filled. Otherwise, the independence of the constitutional judge might be seriously endangered. I will refer to this issue again in the concluding part of this thesis.

Part 3 Discipline and Removal

Other aspects, important for evaluating the level of independence of judiciary are discipline actions and removal of judges. In the following part of my thesis I will discuss the process of disciplinary action and removal of constitutional judges in Germany and Georgia comparing them to the international standards related to these issues.

3.1 International Standards

Speaking about disciplinary action, the Syracuse Principles set two main rules, firstly, "any disciplinary action should be based upon standards of judicial conduct

[137] Supra note 74.

promulgated by law or in established rules of court",[138] and secondly, "the decision of the disciplinary board should be subject to appeal to a court."[139] Syracuse Principles state that disciplinary sanctions can be of different character "ranging from censure and reprimand to the most drastic action of removal."[140]

Article 16 of the Syracuse Principles speaks in more detail about removal, stating that, "a judge should not be subject to removal unless, by reason of a criminal act or through gross or repeated neglector physical or mental incapacity, he has shown himself manifestly unfit to hold the position of judge."[141]

The Universal Declaration on the Independence of Justice repeats the same standards established in the Syracuse principles but additionally states that "the proceedings for judicial removal or discipline, when such are initiated, shall be held before a court or a board predominantly composed of members of the judiciary and selected by the judiciary."[142] However, at the same time stating that "the power of removal may be vested in the legislature by impeachment or joint address, preferably upon a recommendation of a court or a board."[143] Unlike Syracuse Principles, the Universal Declaration on the Independence of Justice gives more powers to the legislative and executive branch in relation to the judiciary.

[138] Supra note 69, part V, Article 13.

[139] Ibid, Article 15.

[140] Ibid, note to Article 15.

[141] Ibid, part V, Article 16.

[142] Supra note 74, at section 2.33, a).

[143] Ibid, b).

UN Basic Principles states that "decisions in disciplinary, suspension or removal proceedings should be subject to an independent review."[144] But, as an exception to the rule it says that "the principles may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings."[145]

3.2 Germany

Removal procedures of constitutional judges in Germany are of little relevance and happens only rarely in cases of serious illegal behavior or incapacity to fulfill the duties of a judge. [146]

The Basic Law does not say anything about the removal and disciplinary sanctions of the constitutional judges. Article 98.2 refers only to the Federal judges.[147]

Disciplinary and removal issues of the constitutional judges are regulated by the Law on Federal Constitutional Court, stating two vaguely-defined circumstances in which the constitutional judges can be disciplined or retired.[148] These circumstances are the following: firstly, "he/she has been proven permanently unfit for service as a result of his or her improper behaviors", [149] and secondly, "he/she has been sentenced without

[144] Supra note 76, section 20.

[145] Ibid.

[146] H. Stephen Harris, Calvin S. Goldman, *Competition Laws outside the United States*, 2001, American Bar Association, p. 21.

[147] Supra note 10, p. 170.

[148] Ibid, p. 171.

[149] Ibid.

appeal because of a dishonorable act or to over six months in prison or, if he has committed a gross breach of duty so that remaining in office is ruled out."[150]

The first circumstance is a reason for the judge to be forced to retire and the second – removed.[151] In both cases the procedure consists of several steps. The First step is that, "the Plenum of the *Bundesverfassungsgericht* shall decide whether or not to institute a disciplinary proceeding. If the proceeding is instituted a procedure similar to that of the Federal President's impeachment will be followed. Then, the decision may only be made with a majority of at least two thirds of the members of the court."[152] The last step is that "the Court will authorize the Federal President to declare officially that the judge in question is forced to retired or dismissed."[153] The main rule here is that "decision on a forced retirement or dismissal shall be decided by the *Bundesverfassungsgericht* only."[154]

As we have seen, any influence on the procedure of the impeachment of the constitutional judge from other branches of government is excluded. The fact that the decisive word in the impeachment procedure belongs to the court of the accused judge makes the procedure almost impossible,[155] but it can be considered as one more element of guaranteeing independence of the constitutional judge in Germany.

[150] Ibid.

[151] Ibid.

[152] Ibid.

[153] Ibid.

[154] Ibid.

[155] Ibid.

3.3 Georgia

The Constitution of Georgia states that "the removal of a judge from the consideration of the case, his/her pre-term dismissal or transfer to another position shall be permissible only in the circumstances determined by law."[156] Article 16 of the Organic Law of Georgia on the Constitutional Court of Georgia provides an exhaustive list of grounds on which the office of a member of the Constitutional Court shall be pre-term terminated particularly, if he/she:

> "a) is unable to discharge official duties for six consecutive months or fails to discharge official duties for three months in a year without a good reason; b) has occupied a post incompatible with the status of a member of the Constitutional Court or engages in the political party activity; c) reveals the gist of the deliberations held by adopting judgment by the constitutional court or the position held by a member of the Constitutional Court; d) committed an act incompatible with a status of a judge; e) lost the citizenship of Georgia; f) a court has recognized him/her as legally incapable; g) a final judgment of conviction is rendered by a court against him/her; h) has died or a court recognized him/her to be missing or declared to be dead; i) resigned from the post."[157]

In all cases, the decision must be taken by the Constitutional Court itself, but the procedure is different. In the cases from subparagraph "a-d", "the office of a member of a Constitutional Court shall be pre-term terminated by a resolution of the Plenum of the Constitutional Court."[158] In order to be adopted, the resolution needs to be supported by more than half of the votes of the constitutional judges.[159] In the cases from subparagraph "e-i" "the plenum of the Constitutional Court, in accordance with the procedure laid down in the Rules of the Constitutional Court, shall examine the documents submitted to it and if the facts contained therein are confirmed to be true, the pre-term termination of

[156] Supra note 113, Article 84 § 2.

[157] Supra note 116, Article 16 § 1.

[158] Ibid, § 2.

[159] Ibid.

the office of a member of the Constitutional Court shall be set out in a decree of a President of the Constitutional Court."[160] Both documents, a resolution of the Plenum and decree of the President of the Constitutional Court must be immediately communicated to the President, Parliament and Supreme Court of Georgia.[161]

As we have seen, the procedures of discipline and removal are very similar in those of the German and Georgian cases. In both cases, the constitutional court itself is the one who takes decisions and decides on a case. In both cases, other branches of the government or their representatives only formally participate in this procedure, which means that the independent status of judges is guaranteed at least formally.

One can argue that the legislation regarding discipline and dismissal in Germany and Georgia is not compatible with international standards. The requirement of Syracuse Principles, that disciplinary actions should be described by law is followed by both countries, but the second and no less important requirement, that there must be a possibility to appeal the disciplinary board decision in the court seems to be not followed, while none of the laws of the countries says anything about it.

On the other hand, the UN basic Principles states that for highest courts there is no need for review.[162] The high status of the constitutional court can serve as an explanation for this decision. Allowing other courts to change the judgment of the constitutional court, would threaten the independent status of the constitutional court and the constitutional judge. Also, the rule that the decisions of the constitutional courts in

[160] Ibid.

[161] Ibid, § 3.

[162] Supra note 76, section 20.

Germany and Georgia are final[163] and sometimes even have the force of law[164] does not allow any other institution, including courts, to change their decision.

The main requirement of the Universal Declaration on the Independence of Justice that judiciary must be involved in the proceedings for judicial removal or discipline is strictly followed.

Conclusion

As we may conclude, the independent status of the Georgian Constitutional Court is high but there are still some gaps. In order to fill these gaps and to create better guarantees for the independence of a constitutional judge it is desirable to make some changes.

In the previous chapter I have already discussed the problems related to the young age of constitutional judges in Georgia. The desire to continue their career in a proper way may have some negative influence on their decision-making process. One may also argue that thirty years is not a sufficient age to have the experience needed to become a constitutional judge, as is required by international standards and the national law of Georgia.[165] Therefore, to improve the existing situation it is desirable to raise the age limit by at least ten years for constitutional judges in Georgia as with constitutional judges in Germany.

Another change that must be made in the selection process of the judges is connected with transparency. In my opinion, in order to make the appointment procedure

[163] Supra note 113, Article 89 § 2.

[164] Supra note 80, Article 94 § 2.

[165] Supra note 116.

more transparent it would be desirable to have some more requirements for appointments of Georgian constitutional judges, rather than only age and education. Instead of vague provision[166] experience in the judicial sphere must be written in the law as one more requirement in the selection process of constitutional judge. A former judge, who is more aware of the importance of the independent judiciary, and who is a part of judicial system can better protect the independent status of the constitutional court rather than those who have no such experience. This might be also important from the separation of powers perspective. While in Georgia all branches of government participate in the formation of the constitutional court, it is important to be sure that the borders between judiciary and the other branches are not erased. In other words, the judiciary must stay in the hands of its members and not the members of executives and/or legislatives.[167] On the other hand, it will limit the executive and legislature in the selection process and make their choice more predictable, therefore more transparent.

Georgian Constitutional Court was established only thirteen years ago;[168] unlike German Constitutional Court, history of which counts more then fifty years[169]. I want to finish my thesis on an optimistic note and hope that as time passes, Georgian Constitutional Court will gain more experience and reach the same substantial independent status that German Constitutional Court enjoys now.

---

[166] Ibid.

[167] The present President of Constitutional Court of Georgia was a Minister of the Ministry of Justice and Minister of Environment Protection and Natural Recourses in 2004-2005, available at: http://constcourt.ge/index.php?sec_id=29&lang_id=ENG (last visited March 23, 2009).

[168] Supra note 111.

[169] Ralf Rogowski and Thomas Gawron, *Constitutional Litigation as Dispute Processing comparing the US Supreme Court and the German Federal Constitutional Court* in Ralf Rogowski and Thomas Gawron, *Constitutional Courts in Comparison: the US Supreme Court and the German Federal Constitutional Court*, 2002, Berghahn Books, p. 3.

Bibliography

I – Books

Shimon Shetreet and Jules Deschlnes, *Judicial Independence: The Contemporary Debate*, 1985, Martinus Nijhoff Publishers.

Peter H. Russell and David M. O'Brien, *Judicial Independence in the Age of Democracy, critical perspectives from around the world*, 2001, The University Press of Virginia.

Aharon Barak, *The Judge in a Democracy*, 2006, Princeton University Press.

A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 1950, Macmillan and Co., 9th ed.

Curtis Francis Doebbler, *International Human Rights Law: Cases and Materials*, 2004, CD Publishing.

Stephen B. Burbank, Barry Friedman, *Judicial Independence at the Crossroads: An Interdisciplinary Approach*, 2002, SAGE.

John Bell, *Judiciaries within Europe: A Comparative Review*, 2006, Cambridge University Press.

Kate Malleson and Peter H. Russell, *Appointing Judges in an Age of Judicial Power*, 2006, University of Toronto Press.

Donald P. Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 1997, Duke University Press.

C. A. J. M. Kortmann, J. W. A. Fleuren, Wim Voermans, Miluše Kindlová, *The Constitutional Law of 10 EU Member States: The 2004 Enlargement*, 2006, Kluwer.

Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, 2003, Cambridge University Press.

H. Stephen Harris, Calvin S. Goldman, *Competition Laws outside the United States*, 2001, American Bar Association.

Andras Sajo, *Judicial Integrity*, 2004, Koninklijke Brill NV.

Ralf Rogowski and Thomas Gawron, *Constitutional Courts in Comparison: the US Supreme Court and the German Federal Constitutional Court*, 2002, Berghahn Books.

II – Articles, Legal Researches and cases

Ben Olbourne, *Independence and Impartiality: International Standards for National Judges and Courts* in "*The Law and Practice of International Courts and Tribunals*" 2: 97-126, 2003, Kluwer Law International, printed in the Netherlands.

G.Y. Ng, *Quality of Judicial organization and checks and balances*, 2007 Intersentia, Antwerpen.

Van-Hoa To, *Judicial Independence: A Legal Research on its Theoretical Aspects, Practices from Germany, The United States of America, France, Vietnam, and Recommendations for Vietnam* , 2008, Juristforlaget I Lund.

Cooper v. Canada, 1996, 3 S.C.R. 854, 867 in Aharon Barak, "*The Judge in a Democracy*", 2006, Princeton University Press.

H.C. 3267/97, *Rubinstein v. Minister of Def*., 52(5) P. D. 481, 512; (1998-9) IsrLR 139 in Aharon Barak, "*The Judge in a Democracy*", 2006, Princeton University Press.

III – Legal documents

Syracuse Draft Principles on the Independence of the Judiciary adopted at Syracuse, Sicily, on 25th-29th May, 1981.

The Universal declaration of the Independence of Justice adopted at the final plenary session of the First World Conference on the Independence of Justice held at Montreal, Quebec, Canada on 10 June, 1983.

The UN Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985.

The Constitution of Georgia adopted on 24 August, 1995.

The Basic Law for the Federal Republic of Germany promulgated by the Parliamentary Council on 23 May, 1949.

Federal Constitutional Court Act in Carl Christoph Schweitzer, *Politics and government in Germany, 1944-1994: basic documents*, 1995, Berghahn Books.

Organic Law of Georgia on the Constitutional Court of Georgia, 31 January 1996.

IV – Internet Resources

Official site of Federal Constitutional Court of Germany - www.bundesverfassungsgericht.de

Official site of the Constitutional Court of Georgia – www.constcourt.ge