

UNCONSTITUTIONAL LEGISLATIVE OMISSION AND THE STATUS OF THE AUTONOMOUS REPUBLIC OF ABKHAZIA

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Abstract. The article deals with a legal problem such as a legal gap, in particular unconstitutional legislative omission. Georgian legislation does not recognize unconstitutional legislative omission, although examples of such shortcomings can be found here. This article focuses on the Article 7(3) of the Constitution of Georgia, which requires the adoption of a constitutional law on the Autonomous Republic of Abkhazia, although this requirement has not been fulfilled for almost twenty years. The article shows the large vacuum related to the constitutional regulation of the Autonomous Republic of Abkhazia, and negative consequences related to it. The article also reviews the approach of several countries to unconstitutional legislative omission and expresses an opinion on resolving this problem in the Georgian reality.

Keywords: legal gap, unconstitutional legislative omission, Constitution of Georgia, constitutional court, Autonomous Republic of Abkhazia

INTRODUCTION

The Autonomous Republic of Abkhazia is a territorial unit of Georgia, which territory, as a result of full-scale military aggression in August 2008, is occupied by Russian Federation and factually Georgian legislation is not implemented there. Legal authorities (both representative and executive body) of this autonomous unit are in exile and located in the capital of Georgia. Therefore, territorial integrity and de-occupation are the main problems of the Georgian state. The existence of a durable legal framework is very important for solving these problems. Unfortunately, we have a different picture. The Parliament of Georgia has been showing indifference and inaction for many years regarding the issue of Abkhazia. This inaction is, first of all, reflected in the legislative inaction, which violates the Constitution of Georgia because the constitution of Georgia requires the adoption of a constitutional law on the ARA, although this requirement has not been fulfilled for almost twenty years.

The article shows the large vacuum related to the legal regulation of this autonomy, and negative consequences related to it. The article also reviews the approach of several countries to unconstitutional legislative omission and expresses an opinion on resolving this problem in the Georgian reality. However, before moving directly to the issue of Abkhazia, it would be advisable to start by talking about the legislative gap and especially about unconstitutional legislative omission, as the problem addressed in this article is related to this issue.

1. LEGAL GAP AND LEGAL OMISSION

One of the problematic issues in law is a legal gap, which is defined as the case when “the issue demanded consideration and solution is not provided and regulated in any legal norm” [Intskirveli 2003, 169]. Any system of positive law, to one degree or another, has gap [Nersesiantc 2004, 429]. This provision does not contradict “Dworkin’s key proposition that law is a «gapless» system” [Wacks 2006, 41], because I am talking about a gap in positive law and not filling it with a court interpretation, which together (positive law, legal principles and case law) form a legal system. By the way, like Dworkin but unlike his reason, in the Soviet period particularly Soviet law factually was also considered “gapless.” Domestic lawyers tried not to mention gaps in the law. The explanation was simple: Soviet law was considered perfect and superior to all other. The terms “gap in the law” or “gap in laws,” as a rule, were not used. It used to say only about the absence of a norm regulated these or similar relations [Nersesiantc 2004, 429].

Legal gap can be visible or invisible. The reason for the visible gap may be that at the time of the issuance of the norm, the legislator could not foresight the situation arose as a result of the development of social relations, or the legislator simply “missed” the regulation of this issue. In contrast, the lawmaker knows an invisible gap, but it does not deliberately correct that flaw. An invisible gap is often calling as an “intentional imperfection of law” (qualified silence of lawmaker) [Khubua 2015, 217]. In such a circumstance, lawmaker refrains from enacting a norm and lets it be understood that the key to the resolution of the problem lies in ethics as opposed to the law (or another legal act).¹

Other terms are also used in the scientific literature. for example, invisible gaps are the same as “Oversights” and visible gaps – “Legislative Omissions.” Both of them are unified in the term “Legal gaps” – the same as “Incomplete Regulations” as it is called by Professor Radziejewicz [Radziejewicz 2019, 38–49]. The US scientists more prefer to use “Legislative Inaction” Instead of “Legislative Omission.”²

Our focus this time will be on Legislative Omissions Moreover Unconstitutional Legislative Omissions. The criteria of legislative omission are as follow: 1) an obligation to legislate a specific law or rules is required as it is explicitly set forth in the constitution or by adopting the necessary implications from the existence of a constitutional right; 2) there is a need for that legislation to render the constitutional rules executable or to protect constitutional rights; 3) the legislative branch intentionally fails or omits to carry out that obligation; 4) the failure or omission leads to constitutional violation [Al–Dulaimi 2018, 89–90].

¹ The Venice Commission, General Report of the XIVth Congress of the Conference of European Constitutional Courts on Problems of Legislative Omission in Constitutional Jurisprudence. The Bulletin. Strasbourg 2008, <https://www.venice.coe.int/files/Bulletin/SpecBull-legislative-omission-e.pdf> [accessed: 07.06.2021], p. 8–9.

² For example, see: Schapiro 1989, 231–50; Eskridge 1988, 67–137.

It should be mentioned, that two sorts of legislative omissions can generally be distinguished: absolute and relative omissions. Absolute omissions exist in cases of the absence of any legislative provision adopted with the purpose of applying the Constitution or executing a constitutional provision, in which case a situation contrary to the Constitution is created. Relative omissions exist when legislation has been enacted but in a partial, incomplete, or defective way from the constitutional point of view [Brewer–Cariás 2011, 125–26].

The law of some countries such as Brazil, Venezuela, Spain, Italy, Portugal etc. distinguishes unconstitutional omission from other legislative gaps and provides legal mechanisms for its elimination. Of course, the best way to overcome unconstitutional legislative inaction is a parliament with high legal awareness and responsible members. However, on the other hand, no less important is the existence of legislative mechanisms that will protect the Constitution from legislative omission. Several countries of the world show us such example.

In some countries unconstitutional legislative omission may be referred to by the constitutional control institution as improper execution of obligations named in the Constitution to enact legal regulation.³ The law of some countries recognizes the concept of unconstitutional legislative omission which is solely results “when the Constitution imposes on the legislator the need to issue rules of constitutional development and the legislator fails to do so.”⁴

The legal doctrine of Brazil further expands the concept of unconstitutional legislative omission. As Gilmar Mendes explains, unconstitutional omission presupposes the failure to comply with the constitutional obligation to legislate, which is based both in explicit directives of the Constitution and fundamental decisions under the Constitution identified in the interpretation process [Mendes 2008, 1–20]. It should be noted that according to the Brazilian Constitution, an unconstitutionality lawsuit can be brought before the Supreme Federal Court of Brazil in connection with unconstitutional inaction. According to the Article 103(2) of the Constitution, “When unconstitutionality is declared on account of lack of a measure to render a constitutional provision effective, the competent Power shall be notified for the adoption of the necessary actions and, in the case of an administrative body, to do so within thirty days.”

According to the Federal Supreme Court of Brazil, The Federal Supreme Court has considered that once the legislative process is initiated, no issue will be raised regarding unconstitutional omission by the legislator, although this does not mean that the consideration of the bill should be delayed indefinitely. By the decision of May 9, 2007, the Federal Supreme Court of Brazil declared that legislative process could also constitute omission that could be considered as unconstitutional, if the legislative bodies did not discuss the bill of law within a reason-

³ The Venice Commission, General Report of the XIVth Congress, p. 8.

⁴ Paper from the Constitutional Court of Spain, The Problems of Legislative Omission in Constitutional Jurisprudence, XIVth Conference of Constitutional Courts of Europe, Vilnius, https://www.confueuonstco.org/reports/rep-xiv/report_Spain_en.pdf [accessed: 07.06.2021], p. 27.

nable period of time. In this case consideration on the bill more than 10 years was recognized as unconstitutional legislative omission, which has led to many negative consequences over this long period [ibid.].

Like Brazil, the Constitution of Venezuela also recognizes unconstitutional omission. According to the Article 336(7), one of the functions of the Constitutional Division of the Supreme Tribunal of Justice is “to declare the unconstitutionality of omissions on the part of the municipal, state, national or legislatures, in failing to promulgate rules or measures essential to guaranteeing compliance with the Constitution, or promulgating it in an incomplete manner; and to establish the time limit and, where necessary, guidelines for correcting the deficiencies.”⁵ However, neither the Constitution nor the Organic Law of the Supreme Tribunal of Justice regulated any of the procedural aspects of said constitutionality for omission control, but it was limited to enunciate the competence of the Constitutional Chamber [Urosa Maggi 2011, 843–87].

Several European countries (Hungary, Portugal, Italy and Spain) exercise constitutional control over legislative omission, as well.⁶

Hungary is one of the countries that has recognized unconstitutional legislative omissions in its legal order. According to the Act on the Constitutional Court of Hungary of 1989 (was in force until January 1, 2012), if the Court established *ex officio* or on anyone’s petition that a legislative organ had failed to fulfill its legislative tasks issuing from its lawful authority, thereby bringing about unconstitutionality, it was able to set a deadline and instructed the organ that committed the omission to fulfill its task. The Court interpreted this competence expansively and practiced it not only in the cases of unconstitutional failures of fulfillment of legislative obligations resulting from particular legal authorization but also when the legislator failed to establish a statute necessary for the emergence of a fundamental right, designated in the Constitution. In this competence, the Court not only established the omission of legislation but also heard reference to what the contents of the norm to be adopted should be. In such cases, the unconstitutional situation was caused by the very lack of a provision with a specific content (typically making it impossible to exercise one of the fundamental rights) [Csink, Petrétéi, and Tilk 2011, 575–85].

While declaring legislative omissions was not unknown during the Sólyom (first president of the Constitutional Court of Hungary during 1990–1998) period (first ruling in 1990), it was more favored in the post-Sólyom era from 2003 to 2009 (54.3 percent of all omissions from 1990 to 2015). The Sólyom Court made use of declaration of omission rather in the second half of its functioning, but even from 1994 to 1998 omissions accounted for only 8.3 percent of all rulings per year on average. Omissions became quite constant elements of the Court’s

⁵ Constitution of the Bolivarian Republic of Venezuela of December 1999.

⁶ The Venice Commission, General Report of the XIVth Congress, p. 8–9.

rulings from 1999 to 2011 (12 percent per year on average) [Pócza, Dobos, and Gyulai 2019, 96-125].

It should be mentioned and is very interesting that the Sólyom Court transformed itself (with the exception of the year 1996) rather rarely into a positive legislator by declaring omission and giving some kind of positive prescription. After the Sólyom era, however, the most frequent form of omission turned out to be the “strong omission,” meaning that the HCC was strongly inclined to include in its rulings positive prescriptions on how unconstitutionality should be remedied, or it gave a strict deadline for unconstitutionality to be corrected [ibid.].

After constitutional reform in 2011 was adopted new Act on the Constitutional Court of Hungary (in force from January 1, 2012). According to the Section 46 (1) of this act, if the Constitutional Court, in its proceedings conducted in the exercise of its competences, declares an omission on the part of the law-maker that results in violating the Fundamental Law, it shall call upon the organ that committed the omission to perform its task and set a time-limit for that. Very interesting is Paragraph 3 of the same Section which provides that: “The Constitutional Court, in its proceedings conducted in the exercise of its competences, may establish in its decision those constitutional requirements which originate from the regulation of the Fundamental Law and which enforce the constitutional requirements of the Fundamental Law with which the application of the examined legal regulation or the legal regulation applicable in court proceedings must comply.”

How it is fairly mentioned in legal literature, to fill the legal gap created by ULOs, section 46(3) charges the constitutional court with more extended jurisdictions to exercise legislative powers. The constitutional court, by this jurisdiction, substitutes itself for the legislator by enacting the required constitutional requirements [Al-Dulaimi 2018, 123].

It should be mentioned Section 32(1) which stated that the Constitutional Court of Hungary shall examine legal regulations on request or *ex officio* in the course of any of its proceedings. The Constitutional Court used this power *ex officio* in its decision N. 6/2018. (VI. 27.). The court rejects the constitutional complaint against the ruling No. 36. Kpk. 45.927/2016/4 of the Budapest-Capital Administrative and Labor Court, but same time the Constitutional Court – acting *ex officio* – established the existence of a situation contrary to the Fundamental Law, violating Article II and XV (2) of the Fundamental Law, manifested in a legislative omission to regulate the procedure of the change of name of lawfully settled non-Hungarian citizens. Therefore, the Court called upon the National Assembly to meet its legislative duty by 31 December 2018.⁷

In Spain, for example, the basis for a constitutional claim may be legislative omission. According to Article 41 of the Organic Law of Spain “on the Constitutional Court,” initiating human rights proceedings (Amparo appeal) shall be available against violations of the rights and freedoms resulting from provisions,

⁷ Decision of the Constitutional Court of Hungary N. 6/2018 (VI. 27).

legal enactments, omissions or flagrantly illegal actions by the public authorities of the State, the Autonomous Communities and other territorial, corporate or institutional public bodies, as well as by their officials or agents.⁸ According to the same law, the Constitutional Court shall have jurisdiction in constitutional conflicts of jurisdiction between the State and the Autonomous Communities or between the Autonomous Communities themselves. Grounds for initiating conflicts of jurisdiction shall be Decisions, resolutions and acts by State bodies or by bodies of the Autonomous Communities or the omission of such decisions, resolutions or acts.⁹

Article 283 (“Unconstitutionality by omission”) of the Constitution of Portugal directly refers to unconstitutional legislative omission. According to this article, at the request of the President of the Republic, the Ombudsman, or, on the grounds of the breach of rights of the autonomous regions, presidents of the Legislative Assemblies of autonomous regions, the Constitutional Court shall consider and verify whether there is a failure to comply with the Constitution due to the omission of legislative measures needed to make constitutional norms executable. When the Constitutional Court verifies that an unconstitutionality by omission exists, it shall notify the competent legislative entity thereof.¹⁰ On this basis Portuguese legal theory distinguishes between legislative omission on the one hand, and unconstitutional, or constitutionally significant, legislative omission on the other. The distinction between them involves the type of constitutional rules towards which the legislative authorities have been disobedient or displayed inertia or passivity. This means that the majority of writers associate this topic with that of the typology of constitutional rules, and seek to establish their own classification, so as to then determine which types give rise to a constitutionally significant omission if the ordinary legislative authorities do not comply with them.¹¹

However, as underlined by Portuguese legal doctrine, the decisions regarding unconstitutionality by omission have no binding effect, purely providing a sort of formalized critical publicity on breaches of the Constitution [De Sousa Ribero and Mealha 2011, 721–33]. Despite all that, the pending of such a procedure in the Constitutional Court has been encouragement enough for legislative authorities to overcome the omission of legislative measures in question [ibid.].

Regarding Poland it’s constitution does not recognize the power of the Constitutional Tribunal to review legislative omission. Article 188 of the Constitution of Poland enumerates the normative acts that are subject to adjudication by the Constitutional Tribunal of Poland. Those acts in the catalogue must not be bro-

⁸ Organic Law of Spain “on the Constitutional Court” of 3 October 1979, Article 41(2).

⁹ Ibid., Article 2(c) and 61.

¹⁰ Constitution of the Portuguese Republic of 25 April 1976, Article 283(1–2).

¹¹ Portuguese Paper from the Constitutional Court, The Problems of Legislative Omission in Constitutional Jurisprudence, of XIVth Conference of Constitutional Courts of Europe, Vilnius, 2008, https://www.confueconstco.org/reports/rep-xiv/report_Portuguese%20_en.pdf [accessed: 07.06.2021], p. 10–11.

adly interpreted and the Tribunal itself may not infer its powers [Radziewicz 2019, 38–49].

As Radziewicz mentions, in its jurisprudence, the Constitutional Tribunal has failed to carry out an in-depth analysis of the substantiation for the absence of grounds for a constitutional review of a legislative omission. However, the Tribunal limited itself in this respect to legislative oversights, in a principled way questioning the possibility of controlling for omissions [ibid.]. Radziewicz also notes that the constitutional review system that exists in Poland requires only a slight adjustment in order to be capable of coping effectively with infringements of the Constitution engendered by the legislator's inactivity. Therefore, he requires to add an additional subsection to Article 188 of the Constitution to directly vest the Constitutional Tribunal with power of control the constitutionality of a legislative omission [ibid.].

2. UNCONSTITUTIONAL LEGISLATIVE OMISSION IN THE LEGISLATION OF GEORGIA

Georgian legislation and legal doctrine do not recognize the concept of unconstitutional omission. Consequently, neither the Constitutional Court of Georgia has a power to consider the constitutionality of legislative omission.

The powers of the Constitutional Court of Georgia are established by the Constitution and by the Organic Law “on the Constitutional Court of Georgia.” The relevant articles of the mentioned acts do not confer the power to the Constitutional Court to conduct investigations of legislative omissions, consider their constitutionality and conduct a priori or a posteriori, concrete or abstract constitutional control. The Constitutional Court examines the conformity of a disputed act with the Constitution, but it exceeds the powers of the Court to consider the constitutionality of inexistence of the norm (legal omission) regulating certain legal relationship. If the object of the petition is an existence of a legal omission than the Court will not admit the case to be examined.¹² For Example, the Court declared the case “Citizens of Georgia – Nato Natriashvili, Djeneta Pataridze and Nino Gvardjaladze vs. the Parliament of Georgia” inadmissible and stated that it is not in the jurisdiction of the Court to consider the constitutionality of a legal omission.¹³

The Constitutional Court considers constitutional claims only in relation to the constitutionality of normative acts. However, throughout the consideration of

¹² Response of the Constitutional Court of Georgia, Problems of Legislative Omission in Constitutional Jurisprudence, The Problems of Legislative Omission in Constitutional Jurisprudence, XIVth Conference of Constitutional Courts of Europe, Vilnius, 2008, https://www.confueconstco.org/reports/rep-xiv/report_Georgia_en.pdf [accessed: 07.06.2021], p. 15.

¹³ Judgement N1/9/325 of 3 May 2005 of the Constitutional Court of Georgia on the case “Citizens of Georgia – Nato Natriashvili, Djeneta Pataridze and Nino Gvardjaladze vs. the Parliament of Georgia.”

a case, if the Court identifies certain legislative omission in legal acts it can give recommendations to the Parliament, but these types of recommendations of the Constitutional Court of Georgia are not mandatory.¹⁴

Thus, Georgian lawmakers may not pass a law even when it is explicitly required by the Constitution of Georgia. There is exactly the same case regarding the ARA. The Parliament of Georgia does not pass not only norm but also a whole law, which should determine powers of this unit.

In 2002, the constitutional law was amended to the Constitution of Georgia the main essence of which was to determine the status of Abkhazia as Autonomous Republic.¹⁵ Earlier, only “Abkhazia” was mentioned in the Constitution without a name denoting its autonomy. The same constitutional law had established that the status of the ARA would be defined by the Constitutional Law of Georgia “on the Status of the Autonomous Republic of Abkhazia.”

This situation lasted until 2017. In 2017–2018 Parliament of Georgia made substantial amendments to the Constitution of Georgia, but no qualitative changes were provided in terms of territorial arrangement and the main provisions remained the same. Only minor changes were made, which included the correction of individual terms and formation several norms regarding territorial arrangement in one article, previously were scattered in two different articles.

As a result of the amendments, the issue of territorial arrangement was formed in Article 7 (“Fundamentals of Territorial Arrangement”) of the Constitution. Paragraph 2 of this article states that “the powers of the Autonomous Republic of Abkhazia and the Autonomous Republic of Ajara, and procedures for exercising such powers shall be determined by the constitutional laws of Georgia that are an integral part of the Constitution of Georgia.” According to this provision, separate constitutional laws should determine the powers of the Autonomous Republics of Ajara and Abkhazia, but not their status as it was previously written in the Constitution. Legally, this provision is more correct because the Constitution of Georgia statuses of Ajara and Abkhazia are already defined – they are autonomous republics. However, what constitutes autonomy that is what kind of powers these republics will have in the state, must be determined by constitutional laws. There is such a law regarding the AR of Ajara,¹⁶ but the constitutional law, which would define the frames of powers of the ARA, has not been adopted. And this is when, as it mentioned above, the adoption of a law with similar content has been required by the Constitution since 2002.

Unfortunately, the society and the political elite that come to power in Georgia are constantly trying to change the constitution. The reason for this is the constant shortcomings in the constitution, its impracticality and the need for innovations [Gegenava 2017, 106–24]. However, the ambition of politicians obsessed with

¹⁴ Response of the Constitutional Court of Georgia, p. 16.

¹⁵ See Constitutional Law of Georgia “on Additions and Amendments to the Constitution of Georgia” of 10 October 2002.

¹⁶ See Constitutional Law of Georgia “on Autonomous Republic of Ajara” of 13 October 2017.

the idea of changing the constitution is not aimed at organizational, structural or political improvement of the basic law, to deal with challenges and rational solutions, but their real goal is to guarantee its power. For this reason, even in the pre-election promises of the parties, the issue of constitutional amendments is a necessary precondition for the Georgian political agenda [ibid.], but no one talks about abovementioned issue.

It is not an argument that abovementioned constitutional law is not or cannot be adopted due to the lack of the jurisdiction of Georgia over Abkhazia and that such a law will be adopted after complete restoration of the jurisdiction over the entire territory of the country. This argument is legally unjustified, because the Constitution of Georgia does not link the issue of the adoption of this constitutional law to the restoration of the jurisdiction of Georgia over ARA. There are some articles in the Constitution where certain events are linked to the restoration of territorial integrity. For example, according to the Article 37, “following the full restoration of Georgia’s jurisdiction throughout the entire territory of Georgia, two chambers shall be established within Parliament: The Council of the Republic and the Senate.”¹⁷ However, regarding to the constitutional law on the ARA, the Constitution demands adoption of this law without any condition.

Nor the existence of the Law of Georgia “on the Occupied Territories” justify such inaction because with other regulations, this law declares territory the ARA as an occupied territory and establishes a special regime here. However, it does not affect the status and powers, cancel or suspend neither the Constitution and legislation, nor the activities of the legitimate authorities of the autonomy.¹⁸

Thus, to be normative, the adoption of the Constitutional Law on the ARA is mandatory on the basis of Article 7(2) of the Constitution. In addition, Georgia, as a sovereign state, must declare its position on the powers of the autonomous entities. If the occupied Crimea is still included in the Constitution of Ukraine and the scope of autonomy is legally defined, why shouldn’t it be the same in the case of Georgia with regard to the autonomy of Abkhazia? [Goradze 2018, 101–16].

Adoption of such a law is also necessary to prevent legal nihilism, because if the lawmaker does not fulfill the duty imposed on him by a supreme legislative act and, therefore, shows disrespect for the constitution, then it is difficult for the ordinary citizen to respect the constitution and a law in general.

It is most important that the non-adoption of the abovementioned law has created a huge legislative vacuum, which has a negative impact on the legal security of Georgia. Especially, this vacuum enabled the Supreme Council (in exile) of the ARA to incorporate norms into the Constitution of the ARA that were in direct conflict with the Constitution of Georgia.

¹⁷ Constitution of Georgia of 24 August 1995, Article 37(1).

¹⁸ See Law of Georgia “on the Occupied Territories” of 23 October 2008.

3. WAYS TO RESOLVE AN UNCONSTITUTIONAL LEGISLATIVE OMISSION

The problem with Georgia can be considered on two levels: legislative omission in general and legislative inaction in relation to the ARA in particular. Let's start with a specific issue.

There are two problems with eliminating this constitutional inaction – political and legal. As it seems, the political problem is that the Georgian government does not have a specific vision, a specific plan for Abkhazia. Such a political vision was to some extent held by the government of 2004–2012, although it must be said that this vision was mainly manifested in political statements and never has the frames of law. It is true that the law on the Occupied Territories was adopted at that time (in 2008), but it was a legal confirmation of the fact of occupation and had nothing to do with the constitutional law on ARA, which was required by the Constitution of Georgia then and still requires today.

It is clear that the issue of Abkhazia is even highly dependent on international political processes too, but this does not mean that the sovereign government, the legislature of the sovereign state of Georgia does not express its political will and does not reflect it in the law. Therefore, the Parliament of Georgia has to adopt a law, which will state its territorial policy, will state the position of the Georgian state regarding the competence of the autonomy of Abkhazia.

As for the legal side, the fact is that in this case we are dealing with the so-called “Qualified silence of the legislator,” the same strong omission or non-adoption of a given constitutional law is intentional. The Parliament may prefer silence on certain political issues, but this should not violate the Constitution. If any law and, moreover, the Constitution requires the existence of a specific normative act, its non-adoption cannot be justified by political expediency. If we assume that the adoption of a normative act is not really politically expedient, then it can be done not at the expense of violating the Constitution, but there are two ways to do it: one, to amend the Constitution itself and remove the requirement or, second – to adopt such required constitutional law.

I think the second way is more correct. As the Constitution does not provide specific norms and regulations for this Constitutional Law, the legislator may adopt a constitutional law and take into account the provisions of the current Constitution of the ARA. In addition, the norm should be taken into account in the law, that this law will be revised after the de-occupation or so on.

As for the problem in general, as it was mentioned above, Georgian legislation does not recognize the concept of unconstitutional omission. Like Radziewicz, I also think that the ideal case would be a constitutional amendment that would increase the function of the Constitutional Court to have the right to exercise constitutional control over unconstitutional legislative omission. In such case, when the Parliament of Georgia has not been purposefully fulfilling the requirements of the Constitution of Georgia for almost twenty years, it would be good to be

amended an “unconstitutional omission” in the Constitution of Georgia, which could be reviewed by the Constitutional Court of Georgia. Decisions made by the Constitutional Court of Georgia in such cases, like its other decisions, shall be binding on any institution or official of the State, and relevant political or legal liability measures should be taken for non-compliance with such a decision. Legal security must be defended by the law. However, there is only one unanswered question: why would a parliament, which feels comfortable in the face of unconstitutional legislative omission, pass such a law? If so, there is another way as well – the Constitutional Court can show the courage and determine this competence itself.

The Constitutional Court of Georgia has a similar experience, when it separated the content of the norm and the norm itself, as a result of which the Constitutional Court began to assess the constitutionality not only of the norm, but also of its specific content [Gegenava and Javakhishvili 2018, 117–41]. In its decision of 22 December 2011,¹⁹ the Court first time repealed the content but not the norm of Paragraph 2 of Article 2 of the Law of Georgia on Military Reserve Service. According to the court, the problem was not the idea and essence of the military reserve system, the obligation established by law, but the rules of its passage and the established practice. A similar approach has been used by the Court many times, thus it has gone beyond the positive legal scope of the powers conferred on it and, through its own interpretation, has acquired new powers to examine the normative content of the norm. By increasing the competence of the negative legislator, by abstracting the normative content from the norm, the court in practice has also assigned itself the function of a positive legislator [ibid.].

CONCLUSION

The Constitution of Georgia is a supreme legal act implementation of which is the responsibility of everyone, including the supreme legislative body that adopts a constitution and other laws. The Constitution of Georgia requires the adoption of a constitutional law on the powers of the ARA and procedures for exercising such powers. The Constitution does not link this issue to the restoration of the jurisdiction of Georgia over ARA or any other event. Thus, it would not be right to blame such a legal policy on the actual situation on the territory of Abkhazia. On the contrary, the Parliament of Georgia as the supreme legislative body of a sovereign state, which “defines the main directions of the country’s domestic and foreign policies,”²⁰ is obliged to define the rights and responsibilities of one of its autonomous republics. Without this law, a vacuum has been existed in the Georgian legislative space, which has a negative impact on legal security.

In order to avoid ignoring the requirements of the Constitution of Georgia, it would be desirable to introduce the concept of unconstitutional legislative omi-

¹⁹ Judgement N1/1/477 of 22 December 2011 of the Constitutional Court of Georgia on the case “Public Defender of Georgia v. Parliament of Georgia.”

²⁰ Constitution of Georgia of August 24, 1995, Article 36(1).

ssion into the Georgian legislative space, and to equip the Constitutional Court of Georgia with the power to review lawsuits related to unconstitutional legislative omission. Decisions made in such cases must be enforceable.

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