



By DR. JUR. KLAUS KAMMERER

Column 1

Article 78. Integration into the European and Euro-Atlantic structures

The constitutional bodies must, within the scope of their own powers, take all necessary measures required for the full integration of Georgia into the EU and the Euro-Atlantic organization.

The Georgian constitution, in its structural principles, with its postulates and its federal order, largely corresponds to the constitution of the Federal Republic of Germany, the so-called Basic Law. According to its constitution, Georgia is also a democratic and social constitutional state. Fundamental rights are guaranteed.

With the planned accession, the state of Georgia will transfer sovereign rights to the European Union - by means of a treaty binding under international law - whose regulations correspond to the supranational character of the EU. The consequence is that the Union, with its independent legislative power, will in some cases directly create national law or subordinate regulations that the Georgian parliament must transpose into national law and which - likewise - must be observed by all courts in Georgia.

With the European Court of Justice (ECJ – *in German: EuGH*), the Union guarantees comprehensive legal protection for everyone. It is the "guardian of the constitution" of the Union. The national courts and in particular the national constitutional court - in Georgia this would be the constitutional court according to Article 59, Number 2 of the

constitution - are obliged to cooperate with the ECJ, and this would only be possible within the framework of a trusting cooperation based on mutual respect, although not without occasional tensions.

The Federal Republic of Germany has had a long constitutional history since its founding. The Federal Constitutional Court (*in German: BVerfG*) as a constitutional court is a globally respected institution with its jurisdiction, which ensures a balanced balance between the democratic centers of power – parliament, executive and jurisdiction..

The Federal Constitutional Court can claim to have a fruitful cooperation with the ECJ. In the past, this was not without misunderstandings, because, as a national constitutional court, it claims jurisdictional sovereignty without compromise in individual cases where - in its opinion - legislative acts of the Union and their safeguarding by the corresponding interpretation by the ECJ are no longer covered by the Treaties, i.e. the Union is unduly expanding its powers.

For you as citizens of Georgia, it is therefore of interest

- what direct access you have to the ECJ to obtain legal protection and enforce your individual rights,
- and how reliably the national courts - the ordinary and also specialized courts (see Article 59, Number 3 of the Georgian Constitution) - apply EU law and guarantee your rights as citizens.

This refers to the civil and criminal courts, and specialized courts include administrative, social and labor courts.

I would like to present to you, in loose series and in columns, the constitutional reality in the Federal Republic of Germany, with regard to the - sometimes tense - cooperation of the Federal Constitutional Court as a constitutional court with the ECJ, and how the cooperation of the national courts with the ECJ works in detail, from the perspective of the citizen seeking legal redress.

Of course, the individual chapters that will be the subject of the columns do not meet the claim of completeness. But it is important that you get an overview - and this in the mirror of the complementary constitution of Georgia, your country.

The fact that the case law of the ECJ is only mentioned occasionally and in a correspondingly factual context should be mentioned - with the request for your understanding. Less is more. Of course, you will get an overview of the Union's treaties and their significance for the jurisdictions of the ECJ and the Federal Constitutional Court.

The general topic should therefore be:

The cooperation relationship between the Federal Constitutional Court (BVerfG) and the European Court of Justice (ECJ) and the cooperation of the national courts with the ECJ in the constitutional reality of the Federal Republic of Germany - an overview in the mirror of the Georgian constitution.

(signed.) Dr. Kammerer