

**CONCLUSION OF THE CONSTITUTIONAL  
COURT OF GEORGIA  
ON VIOLATION OF THE CONSTITUTION OF GEORGIA  
BY THE PRESIDENT OF GEORGIA**

No 3/1/1797

Batumi, 16 October 2023

**Composition of the plenum:**

Merab Turava – chairperson of the session;  
Eva Gotsiridze – member, reporting judge;  
Giorgi Tevdorashvili – member;  
Irine Imerlishvili – member;  
Giorgi Kverenchkhiladze – member;  
Khvicha Kikilashvili – member;  
Manana Kobakhidze – member;  
Vasil Roinishvili – member;  
Teimuraz Tughushi – member.

**Secretary of the court session:** Darejan Chaligava.

**Title of the case:** A Constitutional Submission by the Members of Parliament of Georgia (Irakli Kobakhidze, Shalva Papuashvili, Mamuka Mdinaradze and others, 80 in total) on the Alleged Violation of the Constitution of Georgia by the President of Georgia.

**Subject matter:** Possible violation of Article 52(1)(a) of the Constitution of Georgia as a result of exercising representative powers in foreign relations by the President of Georgia without the consent of the Government of Georgia, which was manifested by working visits abroad and by holding official meetings and negotiations with officials.

**Participants in the consideration of the constitutional submission:** Representatives of the authors of the constitutional submission (the members of the Parliament of Georgia (MPs), 80 in total): Irakli Kobakhidze, Anri Okhanashvili, Giorgi Kakhiani and Tengiz Sharmanashvili; the President of Georgia, who had been invited to the consideration of the constitutional submission on the merits, did not attend the session, therefore the representatives of the President of Georgia, Maia Kopaleishvili and Tamar Chugoshvili, participated in the consideration of the constitutional submission; the representative of the Government of Georgia: the Parliamentary Secretary of the Government of Georgia, Vakhtang Bachiasvili.



## I DESCRIPTIVE PART

1. On 14 September 2023, the MPs (Irakli Kobakhidze, Shalva Papuashvili, Mamuka Mdinardze and others, 80 in total) submitted a constitutional submission (registration No 1797) to the Constitutional Court of Georgia. Constitutional submission No 1797 was transferred to the Plenum of the Constitutional Court of Georgia on 15 September 2023 to resolve the issue of admitting the case for consideration on the merits. The preliminary hearing of the Plenum of the Constitutional Court of Georgia was held on 22 September 2023, without an oral hearing. According to the record of session No 3/2/1797 of 22 September 2023 of the Constitutional Court of Georgia, the constitutional submission was admitted for consideration on the merits. The consideration of constitutional submission No 1797 on the merits was held on 3, 4 and 5 October, at an oral hearing.
2. The legal grounds for applying to the Constitutional Court of Georgia, as specified in constitutional submission No 1797, are as follows: Article 48 of the Constitution of Georgia, Article 19(1)(h) and Article 31(3) of the Organic Law of Georgia on the Constitutional Court of Georgia, and Article 178 of the Rules of Procedure of the Parliament of Georgia.
3. In accordance with Article 52(1)(a) of the Constitution of Georgia, the President of Georgia shall ‘with the consent of the Government, exercise representative powers in foreign relations, negotiate with other states and international organisations, conclude international treaties, and accept the accreditation of ambassadors and other diplomatic representatives of other states and international organisations’.

### 1. CONTENT OF THE CONSTITUTIONAL SUBMISSION

4. Constitutional submission No 1797 states that, under the applicable version of the Constitution of Georgia, the only body implementing the domestic and foreign policies of the country is the Government of Georgia, and the President of Georgia no longer has the right to carry out and implement the domestic and foreign policies of the country. The constitutional norm establishing the status of the President of Georgia states that ‘the President of Georgia shall represent Georgia in foreign relations’, which is the minimum standard for a parliamentary republic and a parliamentary monarchy. The authors of constitutional submission No 1797 state that the said provision of the Constitution of Georgia determines only the status of the President of Georgia, not his/her powers. All three components of the status of the President of Georgia are strictly limited by the norms of the Constitution of Georgia, which directly regulate the powers of the President of Georgia.
5. According to the authors of the constitutional submissions, Article 54(1) of the Constitution of Georgia grants the Government of Georgia the exclusive authority to have executive power and to carry out the domestic and foreign policies of the country. This is confirmed by Article 52(1)(a) of the Constitution of Georgia, according to which the President

of Georgia may exercise representative powers in foreign relations and negotiate with other states and international organisations only with the consent of the Government of Georgia. The constitutional submission also emphasises that the President of Georgia, like all other constitutional bodies, can participate in the achievement of foreign policy objectives provided for by Article 78 of the Constitution of Georgia only within the scope of his/her powers, i.e. only with the consent of the Government of Georgia.

6. According to the constitutional submission, the applicable version of the Constitution of Georgia very clearly delimits the competences of the President of Georgia and the Government of Georgia in matters of exercising representative powers in foreign relations and conducting international negotiations, which does not allow for an ambiguous interpretation. According to the Constitution of Georgia, the President of Georgia needs the consent of the Government of Georgia not only to conduct international negotiations and conclude international treaties, but also to exercise representative powers in foreign relations in any form.
7. According to constitutional submission No 1797, the President of Georgia, Salome Zourabichvili, paid three working visits (to the President of the Federal Republic of Germany, on 31 August 2023, to the President of the European Council, on 1 September 2023, and to the President of the French Republic, on 6 September 2023) without the consent of the Government of Georgia, and held official meetings during those visits, by which she violated the requirement of the Constitution of Georgia.
8. According to the constitutional submission, on 12 July 2023, the President of Georgia applied in writing to the Government of Georgia to obtain consent to pay a working visit to the Federal Republic of Germany and to meet the President of the Federal Republic of Germany. However, despite the fact that the Government of Georgia refused in writing to grant the application, the President of Georgia still paid the said working visit, and on 31 August 2023, held an official meeting with the President of the Federal Republic of Germany. The President of Georgia visited the President of the Federal Republic of Germany, at the presidential palace, in her capacity as the President of Georgia. The President of the Federal Republic of Germany met her in observance of all the rules of official protocol and an official meeting was held between them, which means that negotiations were conducted between the two Presidents.
9. According to the authors of the constitutional submission, the President of Georgia, Salome Zourabichvili, did not apply to the Government of Georgia to obtain consent to pay a working visit to Brussels and to hold an official meeting with the President of the European Council, and despite the absence of mandatory consent, on 11 September 2023, she paid a working visit to and held an official meeting with the President of the European Council in her capacity as the President of Georgia. The meeting with the President of the European Council took place at the office of the President. The President of the European Council met the President of Georgia in observance of all rules of official protocol. In



particular, the meeting was preceded by an official welcome of the President of Georgia and a photo shoot against the background of the flags of the European Union and Georgia.

10. According to constitutional submission No 1797, the President of Georgia also did not apply to the Government of Georgia to obtain consent to pay a working visit to the French Republic and to hold an official meeting with the President of the French Republic, and despite the absence of mandatory consent, on 6 September 2023, she paid a working visit to the French Republic in her capacity as the President of Georgia. She held an official meeting with the President of the French Republic. After the official meeting, their joint video message was disseminated.
11. According to the authors of the constitutional submission, by the said actions the President of Georgia exercised representative powers in foreign relations and conducted international negotiations without the consent of the Government. Thus, she acted contrary to the requirements of Article 52(1)(a) of the Constitution and in all the above three cases she deliberately and grossly violated it.
12. Based on the above, the authors of the constitutional submission request that the Constitutional Court of Georgia confirms by its opinion that the President of Georgia has violated Article 52(1)(a) of the Constitution.
13. The authors of the constitutional submission have submitted respective evidence in order to support their arguments.

## **2. ORAL HEARING OF THE CONSTITUTIONAL SUBMISSION, PARTICIPANTS' OPINIONS**

### *2.1. Authors of the constitutional submission*

14. The co-authors of the constitutional submission, the MPs Irakli Kobakhidze, Anri Okhanashvili, Giorgi Kakhiani and Tengiz Sharmanashvili, who represented the other 76 MPs of the constitutional submission, participated in the oral hearing of the constitutional submission. I. Kobakhidze explained that the history of recent amendments to the Constitution of Georgia and the will of the constitutional legislator should have been taken into account in order to resolve the matter. In particular, he noted that, after the entry into force in 2013 of the amendments made in 2010, the President of Georgia no longer has the authority to carry out and implement the domestic and foreign policies of the country, nor the status of the supreme representative of the State in foreign relations. Instead, the constitutional norm establishing the status of the President of Georgia stipulated that 'the President of Georgia shall represent Georgia in foreign relations', which implied the minimum standard characteristic to a parliamentary republic and expressed the recognition of the President, as a symbolic figure, in the parliamentary system of governance.

15. I. Kobakhidze explained that the representative powers of the President of Georgia are determined only by Article 52(1)(a) of the Constitution of Georgia, and Article 49 of the applicable version of the Constitution determines the status of the President, which does not, and cannot, envisage any powers. He stated that the status of the Head of the State does not mean the President's authority to govern the State. In addition, the status of the supreme commander-in-chief does not imply that the Defence Forces of Georgia are subordinated to the President of Georgia, nor does the third component of the status established by Article 49(3) of the Constitution of Georgia, 'the President of Georgia shall represent Georgia in foreign relations', imply that the President has any competence to act on her own initiative, disregarding the provisions of Article 52(1)(a) of the Constitution of Georgia, and to represent Georgia in foreign relations without the consent of the Government of Georgia. According to I. Kobakhidze, Article 78 of the Constitution of Georgia does not give rise to any additional powers of the President in foreign political relations either, since it only obliges the constitutional bodies to take appropriate measures 'within the scope of their competences' for the purpose of the full integration of Georgia into the European Union and the North Atlantic Treaty Organization.
16. Irakli Kobakhidze stated that the text of the Constitution regarding the foreign policy powers of the President of Georgia was further clarified under the 2017 constitutional reform, in order to add more clarity to it. In particular, the words 'in agreement with the Government', which in some cases became the basis for varying interpretations, were replaced by the words 'with the consent of the Government'. According to Irakli Kobakhidze, the President of Georgia always needs the consent of the Government to exercise representative powers in foreign relations; any official visit to a foreign country, even non-political and ceremonial in nature, and the establishment of contacts with the officials of foreign countries and international institutions by the President in her capacity as the President, mean the exercise of representative powers and require the Government's consent under Article 52(1)(a). He also stated that, since the implementation of the foreign policy of the country was the exclusive authority of the Government of Georgia, the consent for representation in foreign relations was given based on political expediency, and therefore, a refusal to give consent was not subject to the obligation of justification. However, he noted that the reason for the Government's refusal to give consent to pay a visit to the Federal Republic of Germany was the President's different views and attitudes from those of the Government of Georgia, which she had on the issue of the fulfilment of 12 priorities by the Government of Georgia in the context of European integration. Irakli Kobakhidze also explained that the implementation of foreign policy also implied the determination of its strategic and tactical issues, which were also the prerogative and responsibility of the Government. On the other hand, the rule of direct election of the president, established in some constitutional systems of parliamentary governance, does not imply increased competences of representative powers in foreign relations.



17. I. Kobakhidze stated that Article 52(1)(a) of the Constitution includes all types of representative powers and does not leave beyond the scope of this Article any cases, in which the President of Georgia would be able to exercise any kind of representative power without the consent of the Government of Georgia. Thus, the requirement of consent is mandatory and the Constitution of Georgia does not leave room for any exception. According to I. Kobakhidze, regarding the content of the constitutional concept of representative powers, under Article 52(1)(a) of the Constitution, it covers any kind of bilateral communication with the officials of a foreign country or international organisation, established on the basis of the active action of the President, irrespective of the content and form of such communication. It includes not only personal meetings, but also remote contact via technical means. In his opinion, ‘international negotiations’, as specified in Article 52(1)(a) of the Constitution, are interpreted autonomously and mean any dialogue or conversation with a representative of a foreign country, which aims to achieve political or legal outcomes. I. Kobakhidze also mentioned a shortcoming in the practice that exists in the country in terms of the mandatory consent of the Government to exercise representative powers, and noted that the practice of requesting and giving consent has not been established and needs to be corrected.
18. I. Kobakhidze explained to the Court that he expects from the Court the confirmation of the fact of violation of the Constitution, and that the intention of the violation of the Constitution, its severity, motivation, consequences, or other subjective and objective factors, which are more relevant to be taken into account when making a political decision on removal from office at the Parliament, should not be taken into consideration, if the Constitutional Court confirms the fact of violation of the Constitution by the President. I. Kobakhidze also emphasised that, despite the initiation of the impeachment procedure against her, the President of Georgia continued visits to foreign countries without the consent of the Government and she understands that she is acting against the constitutional provision, which, according to I. Kobakhidze, is proven by her interview given to the Lithuanian public broadcaster when she stated that she was not officially authorised to pay that visit. In his opinion, the President of Georgia, Salome Zourabichvili, acted against the constitutional governance system of Georgia and grossly violated the Constitution of Georgia, due to which she is no longer suitable for the occupied position. He drew the Court’s attention to the contradiction between the positions of the President and her representatives regarding the legal necessity to obtain the Government’s consent; attention should be paid, on the one hand, to the statement of the President’s representatives, that the President did not request the Government’s consent for the last visits because ultimately she understood that they were not necessary, and on the other hand, the President’s public statement during her visit to Lithuania stating that she did not have official authority to pay that visit. According to I. Kobakhidze, in this case the initiation of the impeachment process served the protection of the constitutional legal order and governance system, and not political



retaliation. In his opinion, it was a serious violation of the Constitution, which required an adequate legal and political response. Therefore, the conclusion of the Constitutional Court should recognise the violation of Article 52(1)(a) of the Constitution of Georgia by the President of Georgia.

## 2.2. *Representatives of the President*

19. The representatives of the President of Georgia, Maia Kopaleishvili and Tamar Chugoshvili, during the oral hearing of the constitutional submission, stated that the authors of the submission had initiated the impeachment procedure based on political motives and that the submission did not have any legal and factual arguments. They explained that the meanings of Articles 49 and 52 of the Constitution should be taken into consideration separately. The representative powers of the President in foreign relations are determined not only by Article 52(1)(a), but also by Article 49 which, despite establishing the status of the President, covers and implies certain powers beyond Article 52(1)(a) of the Constitution. In particular, the provision of Article 49(3) that ‘the President of Georgia shall represent Georgia in foreign relations’ implies not only the status of the President, but also the representative powers which are not included in Article 52(1)(a). Moreover, in their opinion, the meaning of the words in Article 49(3) ‘represent Georgia in foreign relations’ differs in content from the words in Article 52(1)(a) ‘exercise representative powers’. Based on such understanding of Article 49(3) and Article 52(1)(a) of the Constitution, the President’s representatives explained that Article 49(3) of the Constitution implies and allows for the exercise of representative powers in foreign relations by the President without the consent of the Government. In their opinion, the President needs the consent of the Government only if her political activity goes beyond the official course of the Government and the main directions of foreign policy.
20. The President’s representatives did not deny the facts of holding official meetings by the President of Georgia, Mrs. Salome Zourabichvili, with the President of the Federal Republic of Germany, the President of the French Republic, and the President of the European Council, nor the circumstance that the meetings were held without the Government’s permission and in her capacity as the President of Georgia, nor that the meetings were dedicated to supporting the granting to Georgia of candidate status for EU membership. However, they stated that it did not constitute interference in the implementation of foreign policy or ‘a negotiation’ within the meaning of Article 52(1)(a) of the Constitution. According to them, the Government’s permission is required only for negotiations aimed at achieving some political and legal outcomes. They also noted that, when drafting the Constitution, initially, Article 49 of the Constitution might have been actually intended to determine only the status of the President, but later this norm acquired a different normative content, namely, the content that enables the President to act independently in foreign relations without the consent of the Government. They also pointed out that the President of Georgia was exercising her diplomatic powers and that her actions should not be reviewed in the context of Article 52(1)(a) of the Constitution.

The representatives also noted that the President of Georgia meets foreign officials in the territory of Georgia as well, although in that case there is no practice of obtaining the Government's consent, which indicates that representation in foreign relations does not always imply the necessity of the Government's consent.

21. The representatives of the President of Georgia also noted that, although during her presidency, except for the past few months, the President of Georgia has always requested the Government's consent for her every visit abroad, that circumstance did not mean that she actually legally needed such consent, or that the President considered the obtaining of the consent as her constitutional obligation, but only the circumstance that the President was doing so based on the advice of her administration and lawyers, and for the purpose of coordinating visits with the Government, so that the representatives of both the executive authority and the legislature were represented in each of her visits. As for the recent period, in particular, the visits to the French Republic, the Kingdom of Belgium, and the Baltic States, the President did not request the Government's consent because she ultimately realised that she did not need the Government's consent for her visits abroad.
22. The President's representatives negatively assessed the fact that, according to current practice, the Government does not justify its refusal to give consent, and emphasised that despite the parliamentary system of governance, the President of Georgia should not be completely removed from participation in the implementation of foreign policy and should not be completely dependent on the Government, especially considering that the current President of Georgia, Mrs. Salome Zourabichvili, was elected through universal elections and she has high legitimacy. They also stated that the President's disputed visits were positively evaluated by foreign officials and mass media, and that the initiation of the impeachment procedure against her would damage Georgia's democratic reputation.
23. Based on the above, the representatives of the President of Georgia stated that during all three visits, which had been considered as grounds for initiating impeachment, the President of Georgia exercised representative powers in foreign relations not on the basis of Article 52(1)(a) of the Constitution, but on the basis of Article 49(3) and Article 78 of the Constitution, and therefore, the claim of the authors of the constitutional submission regarding the violation of the Constitution by the President was groundless. To support their arguments, they presented respective evidence to the Constitutional Court and referred to the practice of foreign countries.

### *2.3. Representative of the Government*

24. On its own initiative, the Constitutional Court of Georgia invited a representative of the Government of Georgia to the hearing of the case on the merits. The Parliamentary Secretary of the Government of Georgia, Vakhtang Bachiashvili, explained to the



Court that according to the Constitution of Georgia, the Government of Georgia has the exclusive authority to implement foreign policy. Therefore, foreign relations are the area of public relations where the President needs the consent of the Government of Georgia, regardless of where (within the country or abroad) and in which form (during a telephone conversation, remote meeting, or otherwise) the representation in foreign relations takes place. According to the representative of the Government, in order for the exercise by the President of representative powers in foreign relations to be considered as compliant with the Constitution, the consent of the Government of Georgia is necessary, the practical expression of which is the provision of Article 52(1) (a) of the Constitution of Georgia.

25. Vakhtang Bachiashvili explained to the Court that the referral of the President of Georgia to the Government on the basis of Article 52(1)(a) of the Constitution and the resulting practice demonstrate that the President mandatorily needs the Government's consent to exercise representative powers in foreign relations. He noted that, based on the current practice, the President submits to the Government of Georgia a written proposal, which describes a future visit to a specific country, the dates of the visit, the agenda, and specific officials whom the President would meet, and based on that, the President of Georgia requests the consent of the Government. Vakhtang Bachiashvili further stated that when applying to the Government, in addition to narrative and information, the President's proposal generally contains legal preconditions as well, based on which the President requests the Government's consent. In particular, all written proposals submitted so far start with a reference to Article 52(1)(a) of the Constitution of Georgia, which proves that the President herself is aware of the requirement of the Constitution regarding all such visits, and that all visits abroad are mandatorily subject to the respective consent of the Government of Georgia.
26. As for the issue, beyond Article 52(1)(a) of the Constitution of Georgia, as to whether the President of Georgia can carry out representative relations in the area of foreign relations without the consent of the Government, Vakhtang Bachiashvili explained that the Constitution of Georgia does not allow for such interpretation and there is no room left in the current constitutional order to draw such a conclusion. Therefore, in accordance with the requirements of Article 52(1)(a) of the Constitution of Georgia, there are no elements of foreign policy that could be carried out by the President without the Government's consent.
27. The representative of the Government of Georgia formally distinguished the carrying out of foreign representative relations by the President of Georgia abroad and within the country. He explained that when foreign representative relations are carried out in the territory of a foreign country, the prior consent of the Government is issued in the form of a decree of the Government. Regarding carrying out such foreign policy activities within the country, although an act of the Government, as a collegial body, is not issued



in that case, the Prime Minister of Georgia issues a legal act in the form of an order. Therefore, although a uniform form is not established, in both cases the will and the decision of the executive authority is clear, and the President of Georgia is aware of that.

28. The representative of the Government of Georgia, Vakhtang Bachiashvili, also explained the criteria according to which it should be determined in which cases a specific action of the President can be considered as the implementation of foreign policy. According to his position, in such cases it is irrelevant to focus on the form of the relations, as the content of the relations is what matters. At the same time, the identification of a specific goal is absolutely sufficient for determining the content. In particular, if the President's activity was aimed at the implementation of foreign policy, it was absolutely sufficient to consider it as the actual implementation of foreign policy.

*Friend of the Court (amicus curiae)*

29. In relation to constitutional submission No 1797, Tinatin Erkvania, Professor at the School of Law and Politics of the Georgian Institute of Public Affairs (GIPA), Giorgi Sioridze and the political union of citizens 'Lelo for Georgia', as well as Remzi Sharadze, submitted to the Constitutional Court of Georgia the written opinions of the friend of the court on the basis of Article 21<sup>4</sup>(1) of the Organic Law of Georgia on the Constitutional Court of Georgia.
30. In the written opinion of the friend of the court, T. Erkvania develops her position in several directions. She states that 'the President is *a priori* a representative in foreign relations by virtue of her mandate and does not require the consent of the Government in any case'. 'Prior consultation with the Government is required only for the issue of determining the foreign policy course and only those activities of the President which may have legal outcomes.' Also, in her opinion, the words 'with the consent of the Government' (in Article 52) should not be interpreted in isolation from Article 49 and the structural principles of the Constitution, and that the Constitution should not be interpreted as if the President is removed from all foreign policy functions. According to the position of the friend of the court, during all three visits the President was implementing the political will, which had already been declared and defined by the Government. At the same time, she observed the foreign policy course directly recognised by the Constitution under Article 78 of the Constitution, according to which the constitutional bodies shall take all measures within the scope of their competences to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organization.
31. In the opinion of the friend of the court, the President *de facto* violated the Constitution, but violated an unconstitutional norm. According to her position, 'the provision violated by the President (Article 52(1)(a)) should not be written in the Constitution in the first

place’, and that the President ‘violated only the norm that was incorrectly included in the Constitution as a result of the 2017-2018 constitutional reform’. The friend of the court states that as the current President was directly elected, she has high legitimacy, so she should have more rights. Therefore, ‘the constitutional provision is not fair in relation to the directly elected president and very much diminishes the institution of the president’. According to the author of the written opinion, Article 52(1) of the Constitution, which directly determines that foreign representation by the President must be carried out with the consent of the Government, does not correspond to the functions of the President, as the head of state, even in the parliamentary system of governance, the example of which is the Federal Republic of Germany, where the text of the constitution does not provide for such consent for the foreign policy representation of the country. She also points out that although the Constitution was violated *de facto*, *de jure* it is disputable, because in her opinion, ‘the correlation of these norms has not been interpreted anywhere, and the President is not a lawyer to interpret and correctly perceive all this’. According to her, ‘the President could not perceive what she is violating and whether she is violating it at all’. At the same time, the friend of the court drew attention to the issue of whether the ground for impeachment implies only the intentional violation of the Constitution and posed the question of ‘whether the subjective side of the constitutional violation – a mistake and misinterpretation, should be considered as a violation’. As a result of analysing the above issues, the friend of the court comes to the conclusion that the President of Georgia has not materially violated the Constitution and that the impeachment procedure is groundless.

32. Giorgi Sioridze and ‘Political Union Lelo for Georgia’ stated in the opinion of the friend of the court that it is of vital importance that, when evaluating the possible unconstitutionality of an impeachable action, the Constitutional Court of Georgia explains the interrelation between Article 49(3) and Article 52(1)(a) of the Constitution. According to their position, the President represents Georgia in foreign relations and that is an immanent function of the institution of the President, whose action is abstracted from the Government’s consent. Although, based on Article 54 of the Constitution, the President cannot sign a specific international treaty or implement the Government’s intended foreign policy, this does not mean that the Government can prohibit the President from any communication with representatives from other countries or international organisations. He also stated that not allowing the President to pay visits abroad is not justified in the Government’s decrees. According to their argument, the Government formally exercised its political discretion and performed an arbitrary act in the exercise of that discretion, which was not based on actual legal grounds and contradicted Article 78 of the Constitution, the observance of which is mandatory for every constitutional body, including and in the first place, the President of Georgia. The friend of the court also states that, when preparing its conclusion, the Constitutional Court should take into account the structure inherent to a constitutional delict, and its objective and subjective elements, and by taking into consideration the



principle of proportionality, resolve on the merits the matter raised before it. The opinion of the friend of the court also analyses a dispute on competence and an impeachment procedure in relation to each other, and refers to the expected difficulties that may be caused by the partial overlap of these procedures.

33. An opinion of the friend of the court was also submitted to the Constitutional Court by Remzi Sharadze. In his opinion, the constitutional submission is groundless and unsubstantiated, because the Constitution of Georgia neither prohibits visits of the President of Georgia to foreign countries, nor meetings with high-ranking officials within the framework of such visits. He explained that the official meetings of the President with European leaders cannot be the basis for impeachment, because she was fulfilling the requirements of Article 78 of the Constitution of Georgia.

## II REASONING PART

### 1. SCOPE OF CONSIDERATION AND STANDARD OF PROOF

1. The Constitutional Court, first of all, considers it necessary to determine the scope of consideration of the present constitutional submission and the examination of its validity. The Constitutional Court explains that, in general, within the framework of the impeachment procedure, in the case of establishing the legal grounds for an impeachment, when issuing a conclusion determined by the Constitution and the Organic Law on the Constitutional Court of Georgia, the goal of the Court is to establish whether the official provided for by Article 48(1) of the Constitution, when carrying out public authority, has violated by his/her act (action or omission) the constitutional provision related to his/her constitutional status, powers, obligations or responsibility, and/or whether he/she has committed an action that contains signs of crime. The Constitutional Court explicitly and clearly states that its role does not entail evaluation, if the legal grounds for an impeachment are verified, of whether a certain official deserves to be removed from office due to the violation (the violation of the Constitution and/or the presence of signs of crime in his/her actions), which, in the case of a positive conclusion of the Constitutional Court, will be decided upon by the Parliament of Georgia according to the relevant political considerations. Thus, the authority of the Constitutional Court of Georgia is limited to submitting a conclusion to the Parliament of Georgia, in which the constitutionality of the actions of the persons specified in Article 48 of the Constitution of Georgia, and/or the presence of signs of crime in their actions, is either confirmed or denied. Therefore, in relation to the submission under consideration, the Constitutional Court will determine whether the President of Georgia has violated the provisions of the constitutional norm specified in the submission and whether there are legal grounds for her removal from office by means of impeachment.

2. The Constitutional Court of Georgia states that despite the above, since the present case is the first precedent in the Georgian practice of constitutional justice for the Constitutional Court to exercise its constitutional authority within the framework of the impeachment procedure, the Court will use this case to clarify the constitutional norms related to impeachment, including by establishing common principles and criteria that will contribute to ensuring that each case of removal from office through impeachment is well-grounded and justified, and in general, complies with the purposes of impeachment.
3. The court also explains that when issuing a conclusion on the issue of impeachment, the Constitutional Court will not evaluate the ‘facts’, which the author MPs of this constitutional submission believe to have been established, but the facts which the Court examines by itself, including during the oral hearing of the submission, for the establishment of which the Court will use both documentary or other evidence, submitted by the authors of the submission, and the information available in the public domain. The Court also considers it relevant to note that, when establishing the respective facts, the criminal standard of proof ‘beyond a reasonable doubt’ is not relevant, and in accordance with international practice, it will apply a ‘clear and convincing’ evidence standard. Thus, the Constitutional Court will provide a legal evaluation, from a constitutional perspective, of only the facts that are established in a clear and convincing manner.

## 2. ABOUT THE FACTS

### *Facts specified in the submission and facts considered established by the Court*

4. The authors of the constitutional submission believe that the President of Georgia has violated the Constitution of Georgia. In particular, it is stated in the submission that Mrs. Salome Zourabichvili, contrary to the provision of Article 52(1)(a) of the Constitution of Georgia, exercised representative powers in foreign relations in several cases, without the necessary consent of the Government. In this regard, three facts are emphasised, namely the working visits paid by the President of Georgia to the Federal Republic of Germany, the Kingdom of Belgium, and the French Republic.
5. The constitutional submission states that, on 31 August 2023, in the Federal Republic of Germany, the President of Georgia met her counterpart, the President of the Federal Republic of Germany, on 1 September 2023, in the Kingdom of Belgium, she met the President of the European Council, and on 6 September 2023, in the French Republic, she met her counterpart, the President of the French Republic. In order to prove the specified factual circumstances, the authors of the constitutional submission submitted the following evidence to the Constitutional Court of Georgia: the news stories broadcast by the Georgian Public Broadcaster and the information published on the official website of the Georgian Public Broadcaster; a press release posted on the official website of the Administration of the President of Georgia; the statement made by the President of Georgia on her social media account on the ‘Twitter’ platform, as well as the photos of



the meeting posted on the social media platform ‘Facebook’, and a press release posted on the official website of the Council of the European Union. The Constitutional Court does not have any objectively justified reason to doubt the authenticity and accuracy of the said facts. Therefore, the facts presented in the constitutional submission, which are based on the information disseminated through official sources, are considered as established by the Court.

6. In particular, the fact of the official visit of the President of Georgia to the Federal Republic of Germany, and of the meeting with her German counterpart during that visit, is proven by the following evidence: the information published on the website of and the news stories broadcast by the Georgian Public Broadcaster on 31 August and 1 September 2023; a press release posed on the official website of the Administration of the President of Georgia on 30 August 2023; the photos of the meeting posed on the social media accounts of the President of Georgia on ‘Twitter’ and ‘Facebook’ platforms, on 31 August and 1 September 2023; the information obtained by the Constitutional Court from officially available sources, namely the information published on 7 September 2023 on the official website of the news agency ‘Radio Tavisupleba’, and the information pieces disseminated by the news agency ‘Civil Georgia’ (civil.ge) on 6 and 7 September 2023.
7. The fact of the visit paid by the President of Georgia to the Kingdom of Belgium, and of the meeting with the President of the European Council during that visit, is proven by the following evidence: a press release posted on the official website of the European Council on 1 September 2023; the evidence obtained by the Constitutional Court from officially available sources, in particular the information published on the website of the news agency ‘Radio Tavisupleba’ on 7 September 2023, and the information pieces published on the official website of the Georgian Public Broadcaster on 1 September 2023 and the official websites of the news agencies ‘Civil Georgia’ (civil.ge) and ‘Radio Tavisupleba’ on 6 and 7 September 2023.
8. Regarding the visit paid by the President of Georgia to the French Republic, the fact of her meeting with her counterpart, the President of the French Republic, is proven by the following evidence: the information disseminated by the Public Broadcaster on 6 September 2023 regarding the meetings held by the President; a joint video address of the Presidents of two countries posted by the President of Georgia on her social media account on ‘Twitter’ platform on 6 September 2023; the evidence obtained by the Constitutional Court from officially available sources, namely the information published on the official website of the news agency ‘Radio Tavisupleba’ on 7 September 2023, and on the official website of the news agency ‘Civil Georgia’ (civil.ge) on 6 and 7 September 2023.
9. The circumstance that the President of Georgia, Mrs. Salome Zourabichvili, did not have the consent of the Government of Georgia as provided for by Article 52(1)(a) of the Constitution of Georgia for the above-mentioned three visits, is proven by the following evidence: Decree No 1370 of 3 August 2023 of the Government of Georgia, which did not satisfy the official



proposal of the President of Georgia of 12 July 2023, in which the President addressed to the Government of Georgia in order to obtain consent under Article 52(1)(a) of the Constitution of Georgia to pay a working visit to the Federal Republic of Germany from 31 August to 1 September 2023. Regarding the working visits paid to the Kingdom of Belgium and to the French Republic, according to the constitutional submission, the President of Georgia did not submit respective proposals to the Government of Georgia to obtain consent in this regard. The Court also relies on the information pieces published on the official website of the news agency ‘Radio Tavisupleba’ on 7 September 2023, and on the official website of the news agency ‘Civil Georgia’ (civil.ge) on 6 and 7 September 2023, which include the statement made by the President of Georgia that despite the Government’s refusal, she continued to visit European capitals and had meetings with the Presidents of various countries and international organisations at her own expense.

10. The Constitutional Court also considers it established that, in all three cases, Mrs. Salome Zourabichvili held the meetings with the Presidents of the Federal Republic of Germany and the French Republic, as well as the President of the European Council, in her capacity as the President of Georgia. For the Court, the grounds for such a conclusion are the information about the meetings and certain circumstances.
11. In particular, the President of the Federal Republic of Germany met his Georgian counterpart in observance of all the rules of official protocol, as evidenced by the movement of the escort of the President of Georgia with the official state flag of Georgia, the welcome by the President of the Federal Republic of Germany and the photo shoot on the red carpet, as well as a roundtable discussion (see two news stories broadcast by the Public Broadcaster on 31 August 2023, and the photos of the meeting posted on the personal social media accounts of the President of Georgia on ‘Twitter’ and ‘Facebook’, on 31 August and 1 September). The press release, published on 30 August 2023 on the official website of the Administration of the President of Georgia, states that with her visit to the President of the Federal Republic of Germany on 31 August, in Berlin, the President of Georgia Salome Zourabichvili starts meetings with the European leaders.
12. During the visit to the Kingdom of Belgium, the President of the European Council also met Mrs. Salome Zourabichvili in observance of the rules of official protocol. In particular, the meeting was held in an official environment, at the office of the President of the European Council, which was preceded by the official welcome of the President of Georgia and a photo shoot against the background of the flags of the European Union and Georgia (see the photos of the meeting published on the official website of the news agency ‘Civil Georgia’ (civil.ge) on 6 September 2023, and on the official website of the news agency ‘Radio Tavisupleba’ on 1 September 2023). As for the visit to the French Republic, the French counterpart met the President of Georgia at the presidential palace, with an official welcome, and after the official meeting their joint video address was also disseminated for the public (see a photo of the meeting published on the official website of the Public Broadcaster on 6 September 2023).



13. The circumstances that Mrs. Salome Zourabichvili paid the above-mentioned visits in her capacity as the President of Georgia, that she did not have the consent of the Government of Georgia for any of those working visits, and that the visits were related to the issue of the foreign policy of Georgia, namely Georgia's European integration and the obtaining of international support for it, have also been confirmed by the representatives of the President of Georgia, during the oral hearing of the case.
14. The Constitutional Court also takes into account the history that preceded the visits paid by the President of Georgia to the Federal Republic of Germany, the Kingdom of Belgium, and the French Republic, in ignorance of the Government's refusal in one case, and without the Government's consent in two cases. The documents attached to the constitutional submission demonstrate that, by Decree No 1232 of 30 June 2020, Decrees No 1369 and No 1370 of 3 August 2023, Decrees No 1445, No 1446, No 1447, No 1448 and No 1450 of 9 August 2023, Decree No 1470 of 14 August 2023, and Decree No 1532 of 22 August 2023 of the Government of Georgia, under Article 52(1)(a) of the Constitution of Georgia and Article 7<sup>4</sup> of the Law of Georgia on the Structure, Powers and Rules of Operation of the Government of Georgia, the proposals of the President of Georgia regarding her working visits to the French Republic, Ukraine, the Federal Republic of Germany, Switzerland, Bulgaria, Poland, the Kingdom of Belgium, the Kingdom of Denmark, the United Arab Emirates, Israel, and the Czech Republic, were refused. These circumstances indicate that Mrs. Salome Zourabichvili was periodically submitting proposals to the Government of Georgia to obtain consent to pay visits, in her capacity as the President of Georgia, to different countries at different times, including to the Federal Republic of Germany, the Kingdom of Belgium, and the French Republic.
15. Considering all the above, the Constitutional Court of Georgia considers it clearly and convincingly proven that Mrs. Salome Zourabichvili actually visited the Federal Republic of Germany, the Kingdom of Belgium, and the French Republic, and during those visits she held official meetings, in her capacity as the President of Georgia, with the Presidents of the Federal Republic of Germany, the French Republic, and the European Council, without the consent of the Government of Georgia, regarding the foreign policy matter of Georgia's accession to the European Union.
16. Regarding the issue of whether the above represents the exercise by the President of Georgia of representative powers in foreign relations without the Government's consent, in violation of Article 52(1)(a) of the Constitution of Georgia, and a possible ground for impeachment, this will be assessed by the Constitutional Court by taking into account the above facts, on the basis of the clarification of the content of the said Article of the Constitution, taking into consideration the constitutional status and powers of the President, the Georgian constitutional order of separation of powers, the parliamentary system of governance, and other legal contexts.

### 3. MATTERS OF LAW

#### 3.1. THE MECHANISM OF IMPEACHMENT IN THE CONSTITUTION OF GEORGIA

17. According to Article 4(3) of the Constitution of Georgia, ‘state authority shall be exercised based on the principle of the separation of powers’. The concept of the above constitutional provision implies the division of power in such a manner that neither of the branches or constitutional bodies can exceed the scope of its authority and intrude on the authority of others, nor act without control and without an appropriate legal response. Such a legal situation is supported and ensured by effective constitutional means of restraint and balance, including impeachment. The institution of impeachment, which was introduced by the Constitution of 1995, has assumed an important role in the constitutional system of Georgia, similar to other jurisdictions. As a mechanism for removing from office high-ranking constitutional officials, it performs an important function in the system of restraint and balance between the government branches; it is one of the main levers in the hands of the legislature to control, and in respective cases, to influence other branches of government, and a main balancing mechanism to counter the presidential veto and judicial control. It serves to ensure constitutional order and reflects the political liability of high-ranking officials with public authority for violations committed by them, for which they must be removed from power. Impeachment is a means for an immediate response against high-ranking officials who are appointed to office for a certain guaranteed term. The Georgian constitutional mechanism of impeachment does not result in the legal liability of a violator and its only result is removal from office, which means that the purpose of impeachment is not to punish an individual, but rather to ensure public order, and with it, to protect people from those who arbitrarily embezzle or wrongfully use public authority, and who do not comply with the official duties determined by the Constitution. It should be noted that, during the oral hearing of the submission, the authors of the constitutional submission stated before the Constitutional Court that their motives for initiating the impeachment process were those described above. In particular, it was said that the initiation of the impeachment process served the protection of the constitutional legal order and governance system, and not political retaliation (see paragraph 18 of the Descriptive Part).
18. Article 48 of the Constitution of Georgia determines the grounds and procedure of impeachment, and the officials who may be removed from office by means of impeachment. In particular, according to that article, only persons holding constitutional positions may be impeached, namely: the President of Georgia, a member of the Government, a judge of the Supreme Court, a General Prosecutor, a General Auditor or a member of the Board of the National Bank. According to the Georgian constitutional mechanism of impeachment, similar to other jurisdictions,



the power of impeachment is vested in the representative authority, the Parliament of Georgia. Powers are separated in such a manner that not less than one third of the total number of MPs has the right to raise the question of impeachment, and a majority of the total number of MPs (at least two thirds of the total number of MPs, in the case of the President of Georgia) has the right to make a decision on removal from office. The Constitutional Court of Georgia is involved in the procedure, whose role is to confirm or deny the legal grounds for impeachment: ‘a violation of the Constitution’ and/or ‘the commission of an act containing signs of crime’. If the Constitutional Court does not confirm that an official has violated the Constitution and/or committed an act containing signs of crime, the impeachment procedure will be terminated. The confirmation by the Constitutional Court of the grounds of impeachment is a mandatory condition for the issue of removal of an official from office to be put to a vote in the Parliament. However, in the case of a positive conclusion of the Court, the Parliament has the right not to remove from office a person who has violated the Constitution or committed an act containing signs of crime. Thus, the Constitutional Court uses legal criteria to assess whether there are legal grounds for impeachment, and the Parliament uses political criteria to determine whether the removal of an official from office is politically justified and expedient in the given circumstances.

19. The Constitutional Court clarifies the difference between the intention of a dispute on competence and an impeachment procedure. A so-called ‘dispute on competence’, which is reviewed on the basis of a claim of a constitutional body under Article 60(4)(d) of the Constitution, aims only to add certainty to constitutional powers and to prevent violations, while the satisfaction of the claim results in the recognition as unconstitutional of a legal act or its part, or an action or omission, which has fully or partially violated the constitutional powers of the claimant. The initiation of an impeachment procedure is a political act and reflects the right of the Parliament to demand a political answer from a high-ranking official who has violated the Constitution or committed an act containing signs of crime, and who no longer deserves to be in power due to the committed action. Therefore, the possible outcome of impeachment is only the removal of that person from office. Furthermore, within the framework of the impeachment procedure, the violation of the Constitution may be related only to an individual and not to a collegial constitutional body, such as the government or a representative body. Based on the above, the Constitutional Court considers incorrect the opinion of the friend of the court, according to which the evaluation of an action as unconstitutional within the framework of the dispute on competence can simultaneously become a ground for impeachment, and in such case, the principle of prohibition of double punishment (*ne bis in idem*) will be under risk. The Court does not agree with such probability and explains that neither of these two constitutional processes aims to punish the violator, and as a result, does not lead to or imply his/her legal liability.

### 3.2. GROUNDS FOR IMPEACHMENT AND RESOLUTION OF THE MATTER BASED ON POLITICAL EXPEDIENCY UNDER ARTICLE 48 OF THE CONSTITUTION OF GEORGIA

20. According to the Constitution of Georgia, any violation of the basic law or any act containing signs of crime may legally become a ground for the removal of a person from office by means of impeachment, and the Constitutional Court must evaluate that on a case-by-case basis without focusing on whether, in its opinion, the person committing such an act deserves to be removed from office or not. Article 48(2) of the Constitution, according to its grammatical, historical, logical or teleological interpretations, does not allow that the words used for denominating the grounds for impeachment, namely ‘violation of the Constitution’ or ‘presence of signs of crime’ be interpreted by the Constitutional Court, at the stage of the preparation of the conclusion, more narrowly, broadly, or otherwise, than their literal meaning. The Constitutional Court believes that it would not be correct, within the framework of the given constitutional powers, when the Court is examining the impeachment charge and preparing a conclusion, to give an autonomous meaning to the ‘violation of the Constitution’, or to interpret it narrowly or broadly, and to imply any other violation that does not directly derive from the text of the applicable Constitution, and/or to go beyond the scope of the Criminal Code in terms of the definition of ‘signs of crime’, and/or to establish different approaches to intentional and unintentional actions. The constitutional powers of impeachment are divided into political and legal components, and accordingly, are separated between political and non-political authorities in such a manner that the Court must evaluate the constitutionality of the disputed action based only on legal criteria, and the political authorities must evaluate the necessity, justifiability and expediency of the removal from office of a person committing such action, based on political criteria. Based on these circumstances, since the issue of removal from office is ultimately decided upon by the Parliament, based on political expediency, the Constitutional Court believes that the grounds for impeachment, namely ‘violation of the Constitution’ or ‘presence of signs of crime’, must imply the ordinary understanding of these concepts, and the role of the Court is constrained to either confirming or denying the presence of such grounds as a result of the respective examination and evaluation. According to the Court, the autonomous definition of these terms would be necessary and relevant if the positive conclusion of the Constitutional Court automatically meant the removal from office of a respective official, and/or if it exercised further constitutional control over the Parliament’s verdict.
21. The Court believes that if it had interpreted ‘a violation of the Constitution’ or ‘an action containing signs of crime’ more narrowly, applying the criteria regarding which violation results in the removal from office of the violator and which does not, it would have made the resolution of the issue of removal from office subject to the Court, which, besides not being an intention of the Constitution, would have been a direct intrusion into the





competence of the Parliament, which was entrusted by the Constitution to evaluate the political expediency of the issue and to decide whether or not to remove from power the violator official. In addition, the Court focuses on the following: since, despite the confirmation of the legal grounds for impeachment, it is constitutionally justified not to remove from office the person who committed the impeachable act, it shows that, according to the Constitution, not all ‘violations of the Constitution’ or all ‘actions containing signs of crime’ create the actual need for removal from office, and that the presence or absence of such need should be assessed by MPs based on political criteria.

22. The Court emphasises that, based on the constitutional provision, MPs enjoy full discretion, in the case of a positive conclusion of the Constitutional Court, to make any decision, either to support or not to support the impeachment, and in legal terms, neither of the decisions will violate the Constitution. However, under Article 48 of the Constitution, the resolution of the issue based on political expediency requires that MPs select and apply correct political criteria that are compliant with the purpose of impeachment in order for the verdict of the Parliament on impeachment to be related to adequate cases. In particular, the Constitutional Court believes that the resolution of the issue based on political expediency, as provided for by Article 48(2) of the Constitution, when voting on the issue of removal from office, should be interpreted in terms of the purpose and goals of the institution of impeachment. This means that, before voting, MPs must determine whether this is really a case where it is no longer justified, and it is inexpedient, that the respective official remains in the occupied position due to the act committed by him/her, and from the point of view of public interest, whether it would be correct to remove him/her from the power or to leave him/her in office. MPs must be convinced that by his/her actions the official has proved that he/she is unfit for the position and that he/she can no longer continue his/her activities in that position.
23. The Constitutional Court considers it important that a correct and uniform vision is established in the Parliament of Georgia regarding the adequate grounds and evaluation criteria for removal from office by means of impeachment, that a political and legal culture and a uniform constitutional standard are formed, which will help MPs, who are politicians, in the case of relevant precedents in the future to exercise their constitutional powers related to impeachment, taking into consideration the essence and objective of the institution of impeachment, and for constitutionally justified purposes. It is important that, when resolving this issue, MPs exercise the constitutional power of impeachment and use the possibility to act in view of political considerations, reasonably and adequately, by understanding the idea of impeachment and taking appropriate responsibility, especially considering that follow-up judicial control over the constitutionality of the impeachment procedure is not envisaged and there is no legal remedy in this regard.



### **3.3. STATUS OF THE PRESIDENT OF GEORGIA AND HER PLACE IN THE SYSTEM OF SEPARATION OF POWERS; THE PRESIDENT AS A POLITICALLY NEUTRAL FIGURE WHO DOES NOT HAVE POLITICAL AUTHORITY**

24. The status of the President of Georgia is determined by Article 49 of the Constitution of Georgia, according to which the President is the Head of the State, the guarantor of the country's unity and national independence, the Supreme Commander-in-Chief of the Defence Forces of Georgia, and represents Georgia in foreign relations. In the constitutional system of Georgia and the parliamentary system of governance, the status of the President, as the head of the state, is largely symbolic in nature, as the President is not the actual ruler and political leader of the country.
25. Within the framework of the governing system and the parliamentary system of governance established by the applicable Constitution, the President does not belong to any of the three branches of public authority, but rather occupies a separate place and plays the symbolic role of an arbitrator between the branches of public authority. The President does not have political power, and his/her functions do not include either determining the main directions of the domestic and foreign policies of Georgia, as this function is assigned to the Parliament of Georgia (see Article 36(1) of the Constitution of Georgia), or implementing those policies, which is the function of the Government of Georgia (see Article 54(1) of the Constitution of Georgia). The President of Georgia does not have political power, and therefore, he/she is not politically responsible for determining and implementing the domestic and foreign policies of Georgia. The Parliament and the Government determine and implement, without the President's involvement, state policy in the areas of foreign relations, state and public security, economy, finance, defence, regional development, environmental protection, education, culture, social protection, sports, etc. The powers of the President are significantly limited: the Government is not subordinated to the President and the latter cannot replace ministers. The President participates in the formation of the Government only symbolically, because it falls within the powers of the Parliament. The President does not have the right to dissolve the Parliament, but he/she may be obliged to do so only in certain cases (see Article 56(3) and Article 58(2) of the Constitution of Georgia). The President neither participates in the formation of the budget nor administers it, which falls under the competence of the Government (see Article 66 of the Constitution of Georgia). The President's function as an arbitrator is also symbolic, because in the case of disagreement between the Parliament and the Government, the President does not have any discretionary power to dismiss the Government or dissolve the Parliament.
26. The idea of a politically neutral President with no political power completely corresponds to the parliamentary system of governance and the scheme of separation of powers, which is usually characteristic of a presidential republic. This idea is embodied in the



norms of the Constitution of Georgia, which explain, on the one hand, the role and functions of the legislative and executive authorities (see Articles 36-47 and 54-58 of the Constitution of Georgia), and on the other, the status and powers of the President (see Articles 49-53 of the Constitution of Georgia).

27. In addition to the above-mentioned norms, the idea of maximally removing the President from politics and his/her exemption from political responsibility is also reflected in a number of constitutional institutions, mechanisms, and approaches. The President is prohibited not only from being the leader of a political party, but also from being a member of any political party (see Article 51(4) of the Constitution of Georgia). The President does not have the right of legislative initiative and most of his/her powers, except for his/her exclusive powers, are exercised upon the nomination and by countersignature of the Prime Minister or the Government, where the President's discretion is minimal and the responsibility for implementation rests upon the countersignatory (in particular, in terms of the President's powers in the area of foreign relations, including the appointment of ambassadors and the heads of the diplomatic missions of Georgia, as well as the appointment and dismissal of the Chief of Defence Forces of Georgia, the nomination to the Supreme Council of the Autonomous Republic of Ajara of a candidate for the Chairperson of the Government and the candidates for ministers nominated by the latter, the appointment of the elections of the Supreme Council and local self-government bodies of the Autonomous Republic of Ajara, the appointment of the first session of a newly elected Supreme Council, the nomination to the Parliament of candidates for the national regulatory bodies, etc. (see Article 52 of the Constitution of Georgia, and Articles 3 and 4 of the Constitutional Law of Georgia on the Status of the Autonomous Republic of Ajara)). With the engagement of the Government and the Parliament, the President participates in making certain decisions, such as declaring a state of emergency and martial law, concluding a peace treaty, using the defence forces during a state of emergency, bringing into the country, using and moving through the country the troops of another state, issuing a decree that has the force of organic law during a state of emergency (see Article 71 of the Constitution of Georgia). The President may also suspend the activity of or dissolve a representative body of a territorial unit with the countersignature of the Prime Minister and the consent of the Parliament (see Article 52 of the Constitution of Georgia).
28. The cases where countersignature is not required are mainly related to the discretionary powers of the President, which are the traditionally exclusive powers of the Head of State. In particular, the matters of pardoning convicts, asylum, and citizenship, granting state awards and rewards, highest military ranks, special ranks, and honorary titles, and the highest diplomatic ranks, and a presidential veto (see Article 53 of the Constitution of Georgia). The Constitution of Georgia also provides for the powers of the President, as regards which, although the countersignature is not required, the powers are still symbolic and can be considered more as obligations. For example, the President appoints

the elections of the Parliament of Georgia according to the procedure established by the Constitution and the organic law (see Article 52 of the Constitution of Georgia), but the case is that the date of the parliamentary elections is determined by the Constitution and its appointment is not only a power, but also an obligation at the same time, the failure of the fulfilment of which may give raise to the issue of violation of the Constitution. Furthermore, the President appoints the first meeting of the newly elected Parliament (see Article 38 of the Constitution of Georgia) and failure to do so would also likely violate the Constitution. The appointment of the Prime Minister by the President is also symbolic in nature (see Article 56 of the Constitution of Georgia), because if the President refuses to appoint the Prime Minister once the Parliament holds a vote of confidence in the composition of the Government and the Government programme, the Prime Minister is automatically considered appointed. The President has a similar symbolic role in the procedures related to the holding of a vote of confidence or a vote of no confidence in the Government as well (see Articles 56 and 58 of the Constitution of Georgia).

29. The procedure of the indirect election of the President by the Electoral College and not through universal elections, which has been established by the Constitution, is the embodiment of the idea that a politically neutral President should not be elected through a procedure which entails the carrying out of the election campaign and giving promises. A candidate for the President should not give election promises, because a person giving election promises cannot be neutral. The Constitutional Court also places an emphasis on Article 52(3), according to which the President is entitled to address the people and annually submit to the Parliament a report on crucial state-related issues. Thus, the President does not present to the Parliament a report on his/her activities, but rather submits a report on crucial state-related issues. In addition, this is only a right of the President and not his/her obligation. Therefore, the President of Georgia is not politically accountable to the Parliament, and on the other hand, the Parliament does not have any leverage against the President except for the impeachment procedure, the grounds of which cannot be related to the ineffectiveness of the President's activities, the shortcomings in his/her work in general, and the dissatisfaction with him/her for a certain reason, but only specific violations, namely the violation of the Constitution and/or the commission of an act containing signs of crime.

The audio recordings of the sessions of the Constitutional Commission convinced the Constitutional Court that the commission, which prepared the latest applicable version of the Constitution, intended to ensure that the President is maximally removed from involvement in politics; that he/she should not have powers, the fulfilment or the failure of the fulfilment of which would create his/her obvious political supporters and opponents; that he/she should be neither pro-government nor pro-opposition, because a parliamentary republic could have only such a President (see the opinions of the members of the Constitutional Commission, the audio files submitted by the authors of submission).



30. In conclusion, the Constitutional Court states that it is in principle characteristic of the parliamentary system of governance to have a system of separation of powers, and the status and powers of the head of state, which will ensure a symbolic role of an arbitrator for the President as the head of state, his/her political neutrality, and his/her separation from the process of policy-making and policy implementation.
31. For the above reasons, the Constitutional Court cannot agree with the opinion of the friend of the court, according to which ‘*the provision violated by the President (Article 52(1)(a)) should not be written in the Constitution in the first place*’, and the President ‘*violated only the norm that was incorrectly included in the Constitution as a result of the 2017-2018 constitutional reform*’. In the opinion of the friend of the court, since a directly elected President has high legitimacy, she should have more rights; and Article 52(1) of the Constitution, which explicitly states that the President must carry out foreign representation with the Government’s consent, does not correspond to the functions of the President, as the Head of State, even under the parliamentary system of governance.
32. In this regard, the Constitutional Court explains that it is beyond its competence to evaluate the constitutionality of the constitutional norm and/or the revision of the choice made regarding the model of governance as a result of the 2017 constitutional reforms. The Court does not deny that the norms of the Constitution in relation to the other norms of the Constitution, as well as to the general spirit of the Constitution, can be, and in appropriate cases, should be interpreted; that the evaluation of some other constitutional norms in relation to the norm-principles of the Constitution (for example, Articles 3 and 5 of the Constitution) can also be relevant, however the context presented by the friend of the court does not imply such a relation. The Court cannot agree with the opinion that the procedure of agreement with the Government and the powers of the President provided for by the Constitution are completely absent from the traditional scheme of separation of powers, which is characteristic of the parliamentary systems of governance. Neither does the Court think that the circumstance, that the President elected through universal elections has the powers characteristic of the parliamentary system of governance, can constitute an argument for the inconsistency of the constitutional norm with the Constitution. The functions of the President were radically limited as a result of the 2010 constitutional reforms, which entered into force in 2013. Since then, the Government of Georgia is the only constitutional body entrusted with the implementation of the domestic and foreign policies of the country. The 2017 constitutional reform only completed the ultimate transition to a purely parliamentary system of governance. Maintaining the procedure of universal elections in the 2018 presidential elections marked the final stage of the transition period, and the constitutional amendments established, from the very beginning, the procedure of the indirect election of the President in all subsequent elections. Thus, the correct balance between, on the one hand, the degree of legitimacy of the President, and on the other, his/her powers and responsibilities, is established in this manner.

### 3.4. NORMS DETERMINING THE POWERS OF THE PRESIDENT OF GEORGIA; THE RELATIONSHIP BETWEEN THE POWERS AND THE STATUS

33. In the Constitution of Georgia, the powers of the President are determined by Article 52 and some other articles of the Constitution (for example, the powers related to the appointment of the Prime Minister, the dissolution of the Parliament, in the procedures of holding a vote of confidence or a vote of no confidence, and a state of emergency are determined by Articles 56-58, 71-72 of the Constitution), and at the same time, the Constitution firmly establishes that the powers of the President can only be determined by the Constitution (see Article 52(1)(i)). Regarding Article 49 of the Constitution, it only determines the status of the President, which is demonstrated by the name of the article itself. In particular, according to the article, ‘the President of Georgia is the Head of the state of Georgia and is the guarantor of the country’s unity and national independence (1), ‘the Supreme Commander-in-Chief of the Defence Forces of Georgia’ (2), and ‘shall represent Georgia in foreign relations’ (3).
34. The Constitutional Court, first of all, emphasises the difference between the status and the powers of an official. The status determines the place of an official in the government system and his/her legal status, while ‘powers’ describe the permissible area of his/her activities, the subject matter of those activities, the actually permitted capacities of his/her actions, and the scope of those capacities. The Court also explains that there is a close link between status and powers, which, inter alia, concerns the status and powers of the President of Georgia.
35. On the one hand, the Constitutional Court states that the powers of the President are based on the status granted to the President under the Constitution. Any power of the President provided for by the Constitution reflects one or simultaneously several components of the President’s status. For example, the power of the President to grant citizenship and asylum reflects his/her status as ‘the Head of the State’ and he/she exercises that power as the head of the state; where appropriate (upon the recommendation of the Government and with the consent of the Parliament), the President exercises his/her power to suspend the activity of or dissolve a representative body of a territorial unit as ‘the guarantor of the country’s unity and national independence’; during a state of emergency, the President takes a decision on the use of the Defence Forces upon the recommendation of the Prime Minister as ‘the Supreme Commander-in-Chief of the Defence Forces of Georgia’; during negotiations with other states, the President acts as ‘a representative of Georgia in foreign relations’, etc.
36. On the other hand, the Constitutional Court clarifies that such connection between the ‘status of the President’ and ‘the powers of the President’ does not mean that a certain constitutional status of the President can be considered as the foundation for any power that is not directly and explicitly determined by the Constitution as





the President's power, whether it is exclusive, shared with other constitutional body/bodies, or completely symbolic in nature. Any ambiguity within the scope of official powers of constitutional bodies, and uncertainty of the limits of their powers, will undermine the efficiency of the system of separation of powers and create a risk of government arbitrariness. Therefore, it is fundamentally unacceptable to consider certain powers of the President under any component of the status of the President only on the basis of Article 49 that is not explicitly provided for by the norms of the Constitution. Clearly, questions may arise in any constitutional system regarding who has a particular competence in the respective system of separation of powers, but in the state based on the rule of law, such disputes on competence between the constitutional bodies are resolved through constitutional procedure, and not arbitrarily, by the appropriation of or making advances to such competences by any of them. The Court explains that none of the components of the status determined by Article 49 of the Constitution can be interpreted as implying freedom of action under the auspices of the status. For example, the fact that the President of Georgia is 'the guarantor of the country's unity and national independence' does not mean that the Constitution allows the President to perform any action or take any step that he/she considers necessary for ensuring the country's unity and national independence. Furthermore, the circumstance that the President of Georgia is 'the Supreme Commander-in-Chief of the Defence Forces' does not mean that he/she has unlimited power in this area, which is not shared with the political government, and can give any command to the defence forces. According to Article 72 of the Constitution of Georgia, during martial law, as well as in the case of natural or technogenic disasters or epidemics, a decision to use the defence forces is taken by the Prime Minister, not the President (paragraphs 1 and 2), and in other cases (during a state of emergency and in order to meet the country's international obligations), a decision to use the defence forces is taken by the President only upon the recommendation of the Government (paragraph 2), and at the same time, it is necessary that such decision is approved by the Parliament (paragraph 3).

37. Similar to the above-mentioned relations, 'the status of a representative in foreign relations' (the third component of the status) does not grant the President the competence to act independently and does not directly give rise to specific powers in foreign relations or other areas, not to mention unlimited powers, or powers that are incompatible with other norms of the Constitution and may contradict the model of separation of powers provided for by the Constitution. Moreover, if Article 49(3) allows for the existence of any specific powers beyond Article 52(1)(a), it will mean that the other additional powers of the President may also be considered allowed under the other components of the status of the President (head of the state, guarantor of the country's unity and national independence, Supreme Commander-in-Chief), which are not explicitly provided for by the articles of the Constitution. The Court has no doubt that such interpretation of



Article 49 of the Constitution will create a great risk to the constitutional order, the idea of limited authority, and the predictability of the scope of powers, on which every state based on the rule of law is based.

38. Therefore, the Constitutional Court believes that Article 49(3) of the Constitution does not itself imply any specific powers of the President, and the powers corresponding to this status are provided for only in Article 52(1)(a) of the Constitution, which states that the President exercises representative powers in foreign relations, conducts negotiations with other states and international organisations, concludes international treaties, and accepts the accreditation of ambassadors and other diplomatic representatives of other states and international organisations. In addition, the said norm entitles the President to carry out those activities only ‘with the consent of the Government’, based on the Government’s responsibility in terms of the separation of powers and the implementation of foreign policy.
39. Taking into account the structure of Article 49 of the Constitution, it is clear that there is no rational basis for the interpretation of the content of this article, which the representatives of the President of Georgia consider correct. In terms of legislative technique, it is improbable that in Article 49 of the Constitution, which is titled ‘Status of the President of Georgia’ and which consists of three paragraphs, the constitutional legislator meant the components of the status of the President of Georgia (‘the Head of the State of Georgia’, ‘the guarantor of the national independence’, ‘the Supreme Commander-in-Chief of the Defence Forces’) in paragraphs 1 and 2, and the powers of the President (‘shall represent Georgia in foreign relations’) in paragraph 3. Such an interpretation would not be reasonable and consistent with the true intent of Article 49 of the Constitution. The Constitutional Court cannot allow an arbitrary interpretation of constitutional provisions which contradicts the logic and spirit of the entire Constitution.
40. Considering the above, the Constitutional Court cannot agree with the assertion of the President’s representatives that allegedly the meaning of the words in Article 49(3) of the Constitution ‘represent Georgia in foreign relations’ differs content-wise from the meaning of the words in Article 52(1)(a) ‘exercise representative powers’, and that Article 49(3) does not determine the status of the President, but his/her representative powers which are not implied in Article 52(1)(a), as a result of which, the President allegedly no longer needs the Government’s consent. Article 49 of the Constitution, which determines the status of the President, cannot change the content of Article 52(1)(a), which explicitly provides that the President exercises representative powers in foreign relations with the consent of the Government, and cannot deprive the words ‘with the consent of the Government’ of their true essence and meaning. The Court states that any other definition of the mentioned norms, besides being artificial and groundless, and leading to a confusion between the status and powers of the President as well as the powers of the President and the Government, is also illogical and unreasonable. It is



impossible to reach such a conclusion by a systematic, logical, historical, grammatical or teleological interpretation of the norms. It is practically impossible to imagine more or less adequate cases where the President ‘represents Georgia in foreign relations’ but ‘does not exercise representative powers in foreign relations’, and vice versa, ‘exercises representative powers’ but ‘does not represent Georgia’, and at the same time, the difference between them to be so significant that one group of cases requires the Government’s consent, and the other does not.

The Court also states that Article 78 of the Constitution of Georgia cannot be considered as establishing the powers of the President or any other constitutional body as well. The said article only obliges constitutional bodies to take all measures ‘within the scope of their authority’ to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organisation. Thus, it obliges the President of Georgia to ‘take measures’ only within the scope of ‘his/her authority’ (i.e. within the scope of the competence of the President as determined by the Constitution) and cannot be considered as a constitutional mandate for free activity without the agreement of the Government.

- 41. Based on the above, the Constitutional Court concludes that the representative powers of the President in foreign relations are envisaged only in Article 52 of the Constitution, while Article 49 of the Constitution, which determines the status of the President, does not grant the President of Georgia any specific powers, including the powers to perform a representative function in foreign relations, hold official meetings, and conduct negotiations, in ignorance of Article 52(1)(a) of the Constitution (i.e. without the Government’s consent).**

### **3.5. EXERCISING REPRESENTATIVE POWERS IN FOREIGN RELATIONS WITHIN THE MEANING OF ARTICLE 52(1)(A) OF THE CONSTITUTION OF GEORGIA**

42. The Constitutional Court states that, within the scope of the present submission, there is no need to fully and comprehensively define the formulation ‘exercising representative powers in foreign relations by the President’, although the Court describes its main components and characteristics.
43. The representative powers of the President are based on the status of the Head of the State. Regardless of the system of governance and his/her actual powers, the Head of the State is always (with rare exceptions) the highest official and has the highest status. In addition, the Head of the State is the representative of the state in foreign relations in all systems of governance. However, the representative powers may differ depending on the system of governance. In the constitutional system of Georgia, similar to other parliamentary systems of governance, the representative powers of the President, as the

Head of State, are largely symbolic in nature. They imply formal and not substantive powers in the area of foreign relations, and in essence, are expressed by presenting the will of Georgia before the subjects of international law (with the prior consent of the Government). The President lost the status of the highest representative of the country as a result of the constitutional amendments that became effective in 2013. The Venice Commission had a similar viewpoint as well, according to which the role of the President in the area of foreign relations should be reduced to symbolic powers (see the Opinion of the Venice Commission of 15 October 2010 on the issue of the 2010 constitutional amendments, § 37).

44. The Court believes that, within the meaning of Article 52(1)(a) of the Constitution, the exercise by the President of representative powers in foreign relations means, in particular, acting on behalf of the state of Georgia and its people in relations with the subjects of international law, such as foreign states, international organisations, or individual officials and their representatives, irrespective of the form of such relations. These may include meetings, conversations, official telephone contacts or written correspondence with the heads of foreign states or officials from international organisations, as well as working visits and negotiations; in addition, participation in forums and gatherings on behalf of Georgia, delivering speeches at such gatherings, participation in ceremonies and receptions in the capacity of the President, and some other cases, which may be subject to the requirements of Article 52(1)(a) based on specific circumstances. At the same time, the Court explains that for the purposes of Article 52(1)(a) of the Constitution, the subject of the communications must concern or be directly related to foreign political issues and the foreign relations of Georgia, influence those relations, or be intended to demonstrate a position on or the attitude of Georgia towards foreign policy issues, to represent Georgia in a certain arena, to act on behalf of Georgia, etc. Within the meaning of Article 52(1)(a) of the Constitution, the exercise by the President of representative powers in foreign relations is not limited to the cases referred to in this paragraph, such as conducting negotiations and concluding international treaties. At the same time, the Court states that the issue of whether this particular case constituted representation by the President in international relations should be decided upon based on the circumstances of each specific case.

### **3.6. EXERCISING REPRESENTATIVE POWERS ‘WITH THE CONSENT OF THE GOVERNMENT’ WITHIN THE MEANING OF ARTICLE 52(1)(A) OF THE CONSTITUTION**

45. Article 52(1)(a) of the Constitution of Georgia establishes that the President of Georgia shall exercise representative powers in foreign relations, negotiate with other states and international organisations, conclude international treaties, and accept the accreditation of ambassadors and other diplomatic representatives of other states and



international organisations, only with the consent of the Government of Georgia; the same paragraph also envisages that the President of Georgia shall appoint and dismiss ambassadors and other heads of diplomatic missions of Georgia, upon nomination by the Government.

46. The Constitutional Court states that since the above-mentioned activities are directly related to the implementation of the foreign policy of Georgia, which, under Article 54(1) of the Constitution, is the responsibility of the Government of Georgia, it is logical that the President of Georgia needs the Government's consent to exercise these powers, and/or these powers are exercised at the initiative/upon the prior recommendation of the Government. The Constitutional Court states that such a provision is logically and content-wise consistent with the concept of removing the President from real political power and political processes as much as possible, on which the parliamentary system of governance is based.
47. The Court considers it necessary to clarify that neither text of Article 52(1) of the Constitution, nor the role and functions of the President, which are provided for or implied by the Constitution of Georgia, imply that the powers determined by the said norm (exercising representative powers in foreign relations, negotiating with other states and international organisations, concluding international treaties, and accepting the accreditation of ambassadors and other diplomatic representatives of other states and international organisations) may be exercised without the prior consent of the Government, and that in this area the President has the freedom and scope of independent action without the agreement of the Government. During the oral hearing of the constitutional submission, the clear and unambiguous position of the Government on this issue was also presented by the Parliamentary Secretary of the Government of Georgia. The Court emphasises the following: clearly, the President has the right to introduce certain initiatives, but these initiatives must, on the one hand, comply with the main directions of the foreign policy determined by the Parliament of Georgia, and on the other, their implementation must be agreed with the Government of Georgia, as the political authority responsible for implementing the foreign policy. The Constitutional Court cannot agree with the opinion that allegedly the discretion of the President of Georgia in this area is greater than it can be assumed only in minimal dimensions. The Constitutional Court also focuses on the fact that, during the 2017 constitutional reforms, when drawing up the above constitutional provision, the Constitutional Commission replaced the words 'in agreement with the Government', which allowed for varying interpretations, with the unambiguously clear words 'with the consent of the Government', which is also confirmed by the audio recordings of the Commission sessions.
48. The Constitutional Court explains that, clearly, the model of separation of powers established by the Constitution entitles the President to influence the implementation

of the foreign policy of Georgia when carrying out a representative function, including through his/her public statements, position, official or ceremonial meetings and receptions, but only with the reservation that he/she should not intrude into the exclusive competences of the Government and should not try to implement a parallel foreign policy in practice.

49. The Constitutional Court explains that the formulation in the Constitution regarding the Government's consent does not only have a function of separation of authority and competences, but also an operational and practical function. Since the Government is responsible for the implementation of foreign policy, it is necessary that every step is taken in the direction planned by the Government, and according to the strategy and tactics determined by the Government. The President should not hinder the Government from implementing foreign relations at its own discretion, which is not the departmental interest of the Government but rather the interest of ensuring constitutional order, the Government being adequately represented in foreign relations. The Government should not be hindered in the implementation of foreign policy according to its preferences and vision, and in the manner it considers right and efficient, in order to be responsible for the results of its activities. In particular, to plan meetings and negotiations with the leaders or other officials of foreign states or international organisations at an appropriate time and in an appropriate political context, to plan the sequence of meetings with them, the topics for negotiations, tactical issues, the content of political statements, the focuses of the messages, and sometimes the appropriateness and adequacy of the terms and tone to be used, in each specific case and in relation to set political goals. The exercise of representative powers by the President 'with the consent of the Government' practically implies agreement on such deep, fundamental issues, and sometimes even on issues which, at first glance, may be classified as details and nuances, but in practice may have vital political significance. The President's initiatives implemented without agreement with the Government, self-initiated activities, inappropriate messages, and even more so, activities that clearly contradict the Government's vision, can significantly harm the implementation of foreign policy in the manner and form planned by the Government, and create a chaotic situation, blur the adequate perception of Georgia's foreign policy by its partners, contribute to the dissolution of the unity of the policy, and damage ongoing processes in the area of foreign policy. For this reason, there is a need, necessity and an obligation for agreement and effective coordination between the Government and the President.
50. The above should not be understood in the sense that, when exercising a representative function in foreign relations during official meetings, the President of Georgia must agree each word with the Government in advance. However, the President must try to act with political prudence in order for his/her political statements to be coordinated with the Government and not to be perceived as different from the Government's position.



With usurping or excessive actions, the President must not undermine the competence of the Government of Georgia in the area of foreign relations, and the constitutional order of the division of functions.

51. In addition, the Constitutional Court does not agree with the opinion of the representatives of the President of Georgia and the friend of the court that the Government's consent in the area of foreign relations is required only for the activities of the President that are not compliant with the main directions of the policy determined by the Government, and when the President's actions are in full compliance with them, such prior consent is no longer necessary, and the requirement of Article 52(1)(a) becomes invalid. The Constitutional Court cannot in principle agree with this approach. The right of the President to carry out political activity that is not compliant with the main directions of the foreign policy determined by the Government does not exist, either with or without the Government's consent. Policy-making, either determining or implementing policy or making certain corrections to it, is not the President's function. The President is always obliged to follow the political strategy and tactics determined by the Parliament and the Government. The Constitution does not provide that the President can exercise a representative function in foreign relations in the cases where his/her views and actions are not consistent with the Government's declared goals, and as if he/she needs the Government's consent only in these cases, and in other cases he/she is completely free and may act on the basis of Article 49 of the Constitution and engage in the implementation of foreign relations without the Government's consent. Article 52(1)(a) of the Constitution does not envisage that the Government should give consent to the President if the President's activity is inconsistent with the declared goals of the Government. It is also not clear why the Government would give consent to the President if it believes that the President's actions are inconsistent with the main directions of foreign policy. When the President's foreign policy action is beyond the main directions of the policy determined by the Government, this means that the President is creating a new policy, different from that of the Parliament, or is implementing a policy differently from the Government, thus intruding into the powers of the Parliament and the Government at the same time, and in addition, violating Articles 36(1) and 54(1) of the Constitution. Therefore, the Court emphasises that the requirement to obtain the Government's consent applies only to the cases where the President's actions are in full compliance with the directions of the foreign policy determined by the Parliament, and activities outside the scope of such directions are not permitted for the President under the Constitution. The Constitutional Court cannot support the interpretation of the powers of the President of Georgia which contradicts the constitutional order characteristic of the parliamentary system of governance and reflects stereotyped views on the institution of the President that inertially remained from the period of the presidential system of governance.



52. The Court is also skeptical about subjecting any and absolutely all types of contacts of the President with officials from foreign countries or international organisations, every telephone conversation with them, and other similar cases, to the obligation to obtain prior official consent from the Government. None of the provisions of the Constitution may be interpreted beyond the scope of reasonableness, and read inflexibly, unrealistically and with excessive scrupulousness. During the oral hearing of the constitutional submission, it was observed that the practice of holding official meetings by the President with the officials from foreign countries or international organisations in the territory of Georgia, and in other similar cases, is different despite the fact that they may really constitute representation in foreign relations, and usually consent is not requested or given, and/or requested or given in writing and officially. According to the authors of the constitutional submission, in such cases the President has the Government's tacit consent. According to the explanation provided to the Court by the Representative of the Government, in such cases the Prime Minister issues an act in the form of an order, which practically ensures the approval of the will by the Government, its involvement and awareness. The Constitutional Court believes that a geographical location of carrying out representation in foreign relations cannot be decisive, and that the practice should be consistent and reasonable. The Court does not consider it necessary to continue reasoning on this issue, and within the scope of the present submission, to evaluate the relevance of subjecting all theoretically possible cases to the requirement of Article 52(1)(a) of the Constitution. The present submission concerns three specific cases, namely the working visits held by the President of Georgia abroad, and official meetings with the leaders of states and an international organisation in her capacity as the President, at her own initiative and without the Government's consent. Therefore, the Court will provide a conclusion only on the above.
53. Thus, the Court thinks that the reference to the exercise of representative powers by the President of Georgia 'with the consent of the Government' is an important constitutional formulation which serves the legitimate interests of both the separation of powers and effective foreign policy-making, and implies coordination on strategic and tactical issues, and the formulation of Article 52(1)(a) of the Constitution cannot be interpreted as implying a fundamental departure from that requirement. The Court also explains that the exercise of representative powers by the President without the consent of the Government will always violate Article 52(1)(a) of the Constitution, regardless of whether the positions, public statements, or actions of the President were consistent with the vision and tactics of the Government of Georgia on specific matters of foreign relations, or were different from them.
54. The Court also explains that it cannot agree with the position of the President's representatives, that during the mentioned three visits the President did not act in accordance with Article 52(1)(a) of the Constitution because this norm applies only if a working visit and negotiation serve to achieve a specific political and legal outcome,



and the President's official meetings did not have such an objective as they were aimed at providing assistance in terms of European integration. According to the Court, such reasoning is contradictory. Georgia's aspiration to European Union integration is both a political and a legal goal which must have a result, and this event, namely granting Georgia the status of a candidate country for European Union membership, is a political and a legal outcome at the same time. Moreover, obtaining the support of the relevant persons in this matter, which will be expressed by voting in favour of Georgia when deciding upon this matter, is an interim political and legal outcome, at which the President's foreign political activity was probably aimed. Thus, the argument presented by the President's representatives does not exclude the applicability of Article 52(1)(a) of the Constitution and the necessity of the Government's consent, but on the contrary, proves it.

55. In addition, the Constitutional Court clarifies that it is beyond its jurisdiction to assess whether the Government's refusal to give consent to the President of Georgia to pay a visit to the Federal Republic of Germany was well-grounded, and/or whether the arguments submitted by the authors of the submission to explain that refusal were relevant. We refer to the President's public statement that the Government of Georgia was only formally fulfilling the twelve-point agreement, which is required to be fulfilled in order to obtain candidate status. According to I. Kobakhidze, such statements could result in the mistrust of Western partners towards Georgia and harm the interests of European integration.

#### **1.1. WHETHER OR NOT THE PRESIDENT EXERCISED REPRESENTATIVE FUNCTIONS IN FOREIGN RELATIONS WITHOUT THE GOVERNMENT'S CONSENT DURING THE THREE WORKING VISITS**

56. The Court has already established that the President of Georgia paid working visits to foreign countries without the Government's consent, held meetings and conducted negotiations with the President of the Federal Republic of Germany, the President of the French Republic, and the President of the European Council, in her capacity as the President, on the foreign policy issues of Georgia's accession to the European Union. However, in order to accurately identify whether these facts fall under Article 52(1) (a) of the Constitution, the Court will consider each component of legal significance separately.

##### ***a) Whether it was a matter of foreign relations or not***

57. According to the submission, the meetings of the President of Georgia with the President of the Federal Republic of Germany, the President of the French Republic, and the President of the European Council were dedicated to the issue of granting Georgia the status of a candidate country for European Union membership. The goal to support the obtaining of the status of a candidate country is publicly declared by the

President of Georgia, and evidently her representatives confirmed this circumstance as well when they explained that the President of Georgia was acting in accordance with Article 78 of the Constitution. The accession of Georgia to the European Union is essentially a matter and main direction of the foreign policy of Georgia, which, inter alia, is reflected in the Government's programme. Namely, the Government 'Program for 2021-2024 Towards Building a European State'. Moreover, integration into European and North Atlantic structures is the most important direction among the main directions of foreign policy, since taking all measures to achieve it is considered as a constitutional obligation (Article 78). Thus, the subject matter of the relations was actually the main direction of the foreign policy of Georgia, the obligation for the implementation of which through foreign relations is, first of all, imposed on the Government.

***b) Whether it was a matter of representation in foreign relations or not***

According to the constitutional submission, Mrs. Salome Zourabichvili carried out representation in the area of foreign relations by holding official meetings and negotiations with the presidents of foreign countries and an international organisation in her capacity as the President.

***(b.a) Working visits***

58. The circumstance that the meetings were held within the framework of 'working visits' was also confirmed by the representatives of the President of Georgia during the oral hearing of the submission. In the Court's opinion, paying working visits to the presidents of foreign countries and an international organisation, regardless of the specific positions expressed and supported by the President of Georgia during those official meetings, should be considered as the exercise of representative powers by her. The Court emphasises that they were not private personal meetings and positions and opinions expressed during such meetings, but rather official meetings on foreign policy issues with officials who are directly involved in the process of making a decision on granting Georgia the status of a candidate country for European Union membership. The expression by the President of Georgia of the positions and opinions regarding this important matter during those official meetings, which were held in accordance with due protocol, obviously means the expression of positions and opinions on behalf of the State of Georgia and the people of Georgia, and they would have been perceived and understood as such by the above-mentioned officials. Furthermore, they were perceived as such by the President of Georgia herself, which is demonstrated by her public comment. For example, the information disseminated by Radio 'Tavisupleba' on 7 September 2023 states that the President addressed the people and said: 'They know that I was elected by you and that this future was chosen by you. That is why I am greeted with such respect... And I am proud to represent you in different European capitals.'



59. The Constitutional Court cannot agree with the opinion of the friend of the court that, since the President made the visits at her own expense, they could not have ‘the status of a formal visit’. The Court believes that making working visits at her own expense cannot invalidate the fact of representing the State and the people, in her capacity as the President, during working visits to the presidents of foreign countries and an international organisation.
60. The Court also refers to the expressed opinions that, during the above official meetings and negotiations, the President was not exercising representative powers but was just acting within the scope of freedom of expression. The Constitutional Court cannot agree that the President’s speech on behalf of the State and the people can be considered as an ordinary case of expressing an opinion by an individual, which falls within the scope of the individual right to freedom of expression. Speaking and expressing positions on behalf of the State and the people means the representation of the State and the people, and the will of the people in the international arena, which goes far beyond the scope of individual freedom and is related to the presidential status and the responsibility of the State.

*(b.b) Negotiations*

61. In respect of whether the representation in foreign relations was carried out ‘by conducting negotiations’ within the meaning of Article 52(1)(a) of the Constitution, the Court states the following: during the oral hearing of the submission, the President’s representatives denied this circumstance and stated that, during the said meetings, the President did not conduct negotiations with the presidents of foreign countries and international organisations, and that this context implies ‘negotiations’ within the meaning of international law, primarily the 1969 Vienna Convention on the Law of Treaties, which means that ‘negotiations’ are usually associated with reaching an international treaty. But the authors of the submission explained that, within the meaning of the above norm of the Constitution, ‘negotiations’ mean any conversation, discussion, and/or reasoning with a view to achieving a specific political or legal outcome. The Constitutional Court agrees with the authors of the submission and states that, for the purposes of Article 52(1)(a) of the Constitution, ‘negotiations’ may imply any conversation, exchange of opinions, giving promises, undertaking obligations, or any other communication, which serves to achieve a legal or political outcome, including an international treaty, and in its essence, represents the implementation of foreign policy, the exclusive power of which is granted to the Government. The Court also states that even if the Court agreed with the position of the President’s representatives on the issue of ‘negotiations’, paying working visits and holding formal meetings with officials by the President in any case constitute the exercise of representative powers in foreign relations by the President for the purposes of Article 52(1)(a) of the Constitution.
62. Therefore, taking into consideration the facts established in this case and the

above-mentioned circumstances, the Court considers it established that, during the official meetings held with the President of the Federal Republic of Germany, the President of the French Republic, and the President of the European Council, the President of Georgia represented the State of Georgia and the people of Georgia in foreign relations without the consent of the Government of Georgia, which was manifested by the fact that despite the Government's direct refusal in one case (the meeting with the President of the Federal Republic of Germany), and without applying to the Government to obtain consent in the other two cases (meetings with the President of the French Republic and the President of the European Council), on 31 August, 1 September, and 6 September 2023, the President of Georgia paid working visits to foreign countries, and in all three cases conducted negotiations with the presidents of foreign countries and of an international organisation on a foreign policy issue, namely the integration of Georgia into the European Union, in her capacity as the President of Georgia and in observance of formal protocol.

*c) Whether the President was aware of the mandatory  
nature of the Government's consent*

63. According to the Court, there is no need for a serious in-depth deliberation on whether the President of Georgia was aware that she was acting in violation of the Constitution. The Court proceeds from a completely reasonable and justified presumption that the President of Georgia thoroughly understands her constitutional status, and the essence, meaning and scope of the powers granted to her under the Constitution, as well as the harm that may be caused by exceeding the constitutional powers and excessive actions, even when they have good intentions. In addition, the Court takes into consideration the circumstance that traditionally the President had always applied to the Government to obtain consent for every visit to be paid abroad, and she had requested consent based on Article 52(1)(a) of the Constitution. This circumstance was also confirmed by the representative of the Government during the oral hearing of the submission. According to the constitutional submission and the attached materials, Mrs. Salome Zourabichvili has requested the Government's consent for 38 visits over the past two years, including for ceremonial visits as well (for example, participation in the ceremonial events related to the death of Queen Elizabeth II of the United Kingdom of Great Britain and Northern Ireland, and the coronation of King Charles III). She requested consent for the visit to the President of the Federal Republic of Germany as well, however her request was not granted. All the above indicates that the President was well aware of the obligation to obtain the Government's consent in each of the above cases under Article 52(1)(a) of the Constitution, and the circumstance that, during each of those visits, she was representing the State and the people of Georgia in foreign relations. It is also noteworthy that the President paid the disputed working visits at her own expense and avoided using budgetary funds, which indicates that,





at least, she was not sure of the constitutionality of the visits and the legitimacy of spending budgetary funds on them.

Regarding the statement of the representatives of the President of Georgia that during her presidency (except for the recent period), the President of Georgia had applied to the Government to obtain consent for each of her visits abroad not because she considered the obtaining of such a consent as her constitutional obligation, but only upon the advice of her administration and lawyers and for the purpose of coordinating such visits with the Government. And recently, she no longer requested the Government's consent for the visits to the French Republic, the Kingdom of Belgium and the Baltic States, because she was convinced that she no longer needed such consent. The Constitutional Court considers that the argument, that several refusals of the Government to give consent, convinced the President of Georgia that in fact she did not need the Government's consent, is not serious and convincing. The Court takes into consideration the publicly available information that the President continued working visits to the political leaders of other states, namely, she visited the Baltic States after the initiation of the impeachment procedure against her due to the visits not being agreed with the Government (see information disseminated via the official website of Radio 'Tavisupleba' on 27 September 2023); as well as the statement made during her interview with the Lithuanian public broadcaster, which was published by the authors of the submission during the hearing of the submission at the Constitutional Court, during which the President confirms that she 'was not officially authorised to pay that visit', but she was acting in the belief that the people of Georgia had given her that mandate and she had to do it (see information disseminated via the official website of the Public Broadcaster on 29 September 2023).

64. Taking into account the above, the Court does not consider convincing the assertion of the friend of the court that, although the Constitution has been violated de facto, de jure it is disputable, because in her opinion, '*the correlation of these norms has not been interpreted anywhere, and the President is not a lawyer who could interpret and correctly perceive all this*'. According to her, '*the President could not perceive what she is violating and whether she is violating it at all*'. The response of the Court to the opinion that 'the President could not perceive what she is violating and whether she is violating it at all, because the respective norm of the Constitution has not been interpreted by anyone before', and that the President 'is not a lawyer' herself, is as follows: firstly, the requirement regarding the 'consent of the Government' is not just implied, but explicitly stated in the text of Article 52 of the Constitution; secondly, the circumstance that, during her presidency, the President had systematically applied to the Government to obtain consent when she was going to exercise a representative function in foreign relations, as stated above, indicates that she was aware of the essence of the respective provision of the Constitution; thirdly, the Court is not of the opinion

that the President has accidentally, negligently violated the requirement of the Constitution, to seriously deliberate on whether the culpability of negligence, not knowing the Constitution, or uncertainty about her powers, are circumstances that exclude ‘the violation of the Constitution’ by the President within the meaning of Article 48 of the Constitution, which determines grounds for impeachment. Such reasoning leads to an assumption that not being a lawyer would make it excusable for an official to violate the Constitution.

## 1.2. POSSIBLE INFLUENCE OF ARTICLE 78 OF THE CONSTITUTION OF GEORGIA ON THE EVALUATION OF THE CONSTITUTIONALITY OF THE PRESIDENT’S ACTIONS

65. Under Article 78 of the Constitution of Georgia, *‘the constitutional bodies shall take all measures within the scope of their competences to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organization’*. The Constitutional Court has already explained above that the mentioned article of the Constitution does not establish any new powers of any constitutional body. However, this time the Court will examine the influence of Article 78 of the Constitution on the evaluation of the constitutionality of the President’s actions in the context of Article 52.
66. According to the facts in the case, three visits paid by Mrs. Salome Zourabichvili, the constitutionality of which is disputed by the MPs, were related to the issue of granting Georgia the status of a candidate country for European Union membership. According to several public statements made by Mrs. Salome Zourabichvili and the explanations provided by her representatives during the oral hearing of the case at the Constitutional Court, the above-mentioned meetings with the presidents of the Federal Republic of Germany and the French Republic, as well as the President of the European Council, aimed to support that issue. Despite certain doubts and negative opinions expressed in this regard by the authors of the constitutional submission, the Constitutional Court does not have any solid opposing evidence that those meetings did not serve the goals declared by the President. The Court also states that, during the review of the submission, the President’s representatives submitted to the Court, as evidence, positive evaluations by certain officials from the countries supporting Georgia regarding the constitutionally disputable visits. In this regard the Constitutional Court explains that the evaluation of the specific outcomes of the President’s working visits is a political matter, it does not fall within the Court’s competence, and the Court cannot deliberate on that matter based on legal criteria. In this context, it is important for the Court to examine the interrelation between Article 52(1)(a) and Article 78 of the Constitution, and based on that, to determine whether or not, in the respective circumstances, Article 78 can influence the evaluation of the constitutionality of the President’s actions in the context of Article 52 of the Constitution. In particular, if it is not considered disputable that



the President was acting for the purpose of fulfilling the obligations under Article 78 of the Constitution, whether or not this circumstance can neutralise the violation of Article 52 or reduce the severity of such violation.

67. Although the Court does not deny that Mrs. Salome Zourabichvili's visit can be considered as 'taking all measures' by the President, as a constitutional body, for the purposes of European integration, it states that, under Article 78, the requirement that such measures should have been taken 'within the scope of their competences' has been violated, which, according to the Court, must be interpreted only on the basis of Article 52 of the Constitution, since that article defines the powers of the President of Georgia and establishes that, in the area of foreign relations, the President exercises representative powers with the Government's consent.
68. In addition, even if there was no direct reference in Article 78 of the Constitution to 'taking all measures' 'within the scope of their competences', based on the logic of the Constitution it would have been implied, since the norms of the Constitution cannot contradict each other, nor can Article 78 be interpreted without taking into account Article 52, or even more so, contrary to it. According to the Court, in any case, it would be completely unjustifiable to seriously deliberate on whether the violation of any norm of the Constitution can be justified on the grounds of the observance of another norm, even more so, to justify the violation of the main norm of the Constitution on the grounds of a norm included in temporary, transitional provisions. Even if it is hypothetically assumed that the Government had not taken sufficient measures 'to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organization', it would not have granted the President a right to act on behalf of others (in this case, the Government), in excess of her constitutional authority, and arbitrarily. The Constitutional Court cannot be tolerant of cases of exceeding the scope of powers strictly determined by the Constitution, regardless of who committed them, because 'no one is above the law' in the state based on the rule of law and the constitutional order of Georgia is based on the so-called principle of limited authority, which means that the official powers of the entities holding public authority have strict limits and their violation cannot be left without an appropriate legal response.
69. The Court takes into account that the President of Georgia and her representatives refer to the importance of the legitimate purpose, which, according to them, the President's foreign policy activities served. This is truly a very important purpose of Georgia's accession to the European Union and obtaining the status of a candidate country for European Union membership. The Court cannot rely on the logic that since the President's actions served the most important and legitimate purpose for the future of the country, which is provided for by the Constitution itself, there is no violation of Article 52 of the Constitution, and/or such violation is justified on the grounds of the importance of this legitimate purpose, and/or such violation

is so insignificant, that in principle, it cannot become a constitutional ground for impeachment charges.

70. The Constitutional Court believes that the great and noble purpose, or good intention, of the failure to observe the constitutional requirement, which was probably the President's intent, cannot legally cancel the fact of the violation by her of the constitutional provision. The Court cannot express a conciliatory attitude towards a violation of a constitutional provision on the grounds that the violation served a good purpose. The Constitutional Court cannot create a precedent of declaring a violation of the Constitution by an official as admissible by referring to good intentions. The motives of the President's actions may be taken into account by MPs individually when deciding upon the issue of her removal from office, in which the Constitutional Court does not participate. However, the Constitutional Court cannot agree that acting in ignorance of the scope of constitutional authority and the principles of the rule of law is an acceptable, useful and justified mean on the way towards the European Union, which comprises constitutional systems based on the values of the separation of powers and the rule of law. It would be very difficult to prove that a violation of one norm of the Constitution can be justified at the expense of observance of another. This would be a recognition that the purpose of obtaining the status of a candidate country for European Union membership justifies the violation of the Constitution by constitutional bodies. Not to mention the absurdity that by violating the principles of the rule of law, we can approach European values.
71. Thus, the Constitutional Court establishes that the circumstance that the President of Georgia was acting with the legitimate purpose provided for by Article 78 of the Constitution of Georgia cannot influence the evaluation of the constitutionality of her actions in the context of Article 52 of the Constitution. The evaluation cannot be critically influenced either by how successful these visits were in practice and whether they will play a positive role in granting Georgia the status of a candidate country for European Union membership. The Court explains that these circumstances cannot be evaluated based on legal criteria applicable by the Court, especially now that the issue of granting the status of a candidate country has not been decided yet, the specific results of the disputed visits of the President are not known and may never become known, in particular, whether the impact of the President's efforts on this process is positive or negative, and/or whether there is any impact at all. However, the Court reiterates that the President's motives can be taken into account by MPs, at their discretion, when voting on the issue of her removal from office, when answering the question of whether there is an express need to remove the President from office.
72. Carrying out working visits and conducting negotiations by the President irrespective of the absence of the Government's consent can neither be constitutionally nor legally justified by referring to the presidential oath. (Reference is made to the



President's statement made during an interview with Radio 'Tavisupleba' on 7 September 2023, according to which her disputed actions constituted her 'highest constitutional obligation' and 'observance of the oath', to which she would remain faithful to the end). In this regard, the Constitutional Court states that the text of the oath of the President of Georgia, provided for in Article 51(1) of the Constitution, obliges the President of Georgia, inter alia, to defend the Constitution of Georgia. Although, within the meaning of Article 51(1) of the Constitution, the 'obligation to defend the Constitution' implies the President's obligation to care for the protection of constitutional order in Georgia, and in this regard, it is a general and broad obligation, but clearly it implies the President's obligation to defend the Constitution as well. In addition, clearly, the fulfilment of other obligations specified in the oath of the President (defending the independence, unity and indivisibility of the country, faithfully performing the duties of the President, caring for the security and welfare of the citizens of the country and for the revival and might of the nation and homeland) implies the fulfilment of these duties only in compliance with constitutional requirements, and there is no space in the Constitution for any, even minor, departures from the principle of rule of law.

### **1.3. WHETHER THERE IS 'A VIOLATION OF THE CONSTITUTION' WITHIN THE MEANING OF ARTICLE 48 OF THE CONSTITUTION OF GEORGIA**

#### *Final evaluation*

73. The Constitutional Court considers that the President of Georgia, Mrs. Salome Zourabichvili, failed to comply with the requirements of Article 52(1)(a) of the Constitution of Georgia, when in three cases, namely on 31 August, 1 September, and 6 September 2023, she paid working visits to the President of the Federal Republic of Germany, the President of the French Republic, and the President of the European Council, and exercised representative powers in foreign relations without the Government's consent. The Court confirms that the violation of the said constitutional provision means the intrusion into the exclusive powers of the Government in the area of the implementation of foreign policy, and for that reason, it poses a threat in terms of the separation of powers, the effective functioning of the parliamentary system of governance, and the maintenance of the stability of the existing constitutional system.
74. At the same time, the Court states that the existence of the legal grounds for removing the President from office by means of impeachment does not oblige MPs to support a verdict on impeachment. When deciding upon this issue based on political expediency, they should act according to the political criteria corresponding to the idea of impeachment, and make a decision accordingly.



### III OPERATIVE PART

On the basis of Article 48 and Article 60(4)(j) of the Constitution of Georgia, and Article 19(1)(h), Article 21(1), (5), (7) and (11), Article 23(7), Article 26(4), Article 27<sup>3</sup>(2), Articles 41 and 43, Article 44(2) and (4), and Article 47, of the Organic Law of Georgia on the Constitutional Court of Georgia,

#### THE CONSTITUTIONAL COURT OF GEORGIA RULES:

1. The President of Georgia, Mrs. Salome Zourabichvili, exercised representative powers in foreign relations during the working visits paid abroad on 31 August, 1 September, and 6 September 2023, without the Government's consent, by which she violated the provision of Article 52(1)(a) of the Constitution of Georgia. The Court concludes that this is 'a violation of the Constitution' for the purposes of Article 48 of the Constitution of Georgia.
2. This Conclusion enters into force from the moment of its publication on the website of the Constitutional Court of Georgia.
3. This Conclusion is final and is not subject to appeal or revision.
4. The dissenting opinions of justices Irine Imerlishvili, Giorgi Kverenchkhiladze, and Teimuraz Tughushi, shall be attached to the Conclusion.
5. Copies of the Conclusion shall be forwarded to the Parliament of Georgia, the President of Georgia, the Government of Georgia, and the Supreme Court of Georgia.
6. The Conclusion shall be immediately published on the website of the Constitutional Court of Georgia and forwarded to the Legislative Herald of Georgia.

#### Composition of the plenum:

Merab Turava  
Eva Gotsiridze  
Giorgi Tevdorashvili  
Irine Imerlishvili  
Giorgi Kverenchkhiladze  
Khvicha Kikilashvili  
Manana Kobakhidze  
Vasil Roinishvili  
Teimuraz Tughushi