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Special edition

Constitutional Submissions by General Courts in Georgia: Judicial Practice, Procedural Challenges, and Institutional Implications

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[Doi:10.19044/esj.2026.v22n38p289](https://doi.org/10.19044/esj.2026.v22n38p289)

Submitted: 15 December 2025
Accepted: 26 January 2026
Published: 23 March 2026

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Cite As:

Urushadze, T. (2026). *Constitutional Submissions by General Courts in Georgia: Judicial Practice, Procedural Challenges, and Institutional Implications*. European Scientific Journal, ESJ, 22 (38), 289. <https://doi.org/10.19044/esj.2026.v22n38p289>

Abstract

The Constitution of Georgia establishes a centralized model of constitutional review entrusted to the Constitutional Court. Within this framework, courts of general jurisdiction participate in constitutional adjudication through the mechanism of constitutional submission, which allows them to suspend proceedings and refer questions of constitutionality to the Constitutional Court. Despite its structural importance, this mechanism has received limited doctrinal and theoretical analysis in Georgian legal scholarship.

This article examines the procedural requirements, admissibility standards, and institutional implications of constitutional submissions filed by general courts. Employing doctrinal interpretation, comparative constitutional analysis with reference to the German referral model under Article 100(1) of the Basic Law, and case-law analysis of the Constitutional Court of Georgia, the study moves beyond descriptive review and critically evaluates the structural function of constitutional submission within a centralized constitutional system.

The findings demonstrate that the Georgian framework contains interpretative ambiguities concerning the obligation to refer, inconsistencies in admissibility standards, and weaknesses in the legal consequences and enforcement of Constitutional Court decisions. More importantly, the article

argues that constitutional submission should be conceptualized not merely as a procedural safeguard but as a structural instrument of judicial dialogue that directly affects constitutional supremacy and the effective protection of fundamental rights.

By reframing constitutional submission as a mechanism of institutional interaction rather than a purely technical procedural device, the article contributes to constitutional law scholarship and proposes targeted legislative reforms aimed at clarifying referral obligations, strengthening enforcement guarantees, and enhancing the coherence of constitutional review in Georgia.

Keywords: Constitutional Review; Constitutional Courts; Judicial Referral Mechanism; Judicial Dialogue; Rule of Law; Constitutional Supremacy; Separation of Powers; Comparative Constitutional Law; Georgia

Introduction

Constitutional review represents a fundamental mechanism for ensuring the supremacy of the Constitution and maintaining coherence within a hierarchical legal system. In centralized models of constitutional adjudication, authority to invalidate normative acts is concentrated in a specialized constitutional court rather than dispersed among ordinary courts. Georgia has adopted such a model, entrusting constitutional review to the Constitutional Court under Article 59 of the Constitution.

The centralized model reflects the continental European tradition of constitutional justice originally theorized by Hans Kelsen (1942), who conceptualized a specialized constitutional court as a “negative legislator” responsible for removing unconstitutional norms from the legal order. In such systems, ordinary courts lack the authority to set aside statutes on constitutional grounds. However, constitutional supremacy requires that mechanisms exist enabling courts adjudicating concrete disputes to raise constitutional concerns.

The institution of constitutional submission fulfills this function. It enables general courts to suspend proceedings and refer a question of constitutionality to the Constitutional Court when the resolution of the dispute depends on the application of a potentially unconstitutional norm. While this mechanism is procedurally regulated, its broader institutional significance extends beyond technical referral. It constitutes a structural link between general courts and the Constitutional Court and may be understood as a limited form of judicial dialogue within a centralized constitutional framework (Stone Sweet, 2000).

Despite its importance, Georgian scholarship has largely treated constitutional submission descriptively, focusing on formal admissibility

requirements rather than analyzing its theoretical implications for constitutional supremacy, separation of powers, and the rule of law. As Grimm (2016) emphasizes, constitutional adjudication must be examined not only as a procedural practice but also as an institutional mechanism shaping democratic governance.

This article therefore, examines constitutional submission as both a procedural instrument and a structural mechanism of judicial interaction. It argues that clarifying the doctrinal foundations and legislative framework governing constitutional submissions is essential for strengthening constitutional supremacy and ensuring effective protection of fundamental rights.

Research Methodology

This study is grounded in doctrinal legal research. The Constitution of Georgia, the Organic Law of Georgia on the Constitutional Court, and the Organic Law on General Courts are analyzed through systematic interpretation and contextual reading.

A comparative constitutional method is applied, focusing on Article 100(1) of the German Basic Law (Grundgesetz) and related jurisprudence of the Federal Constitutional Court. German constitutional doctrine is particularly relevant because it offers one of the most developed models of judicial referral within a centralized system (Kommer & Miller, 2012; Robbers, 2005).

The article also relies on analysis of decisions of the Constitutional Court of Georgia concerning constitutional submissions filed by general courts. This case-law analysis identifies interpretative trends, procedural inconsistencies, and institutional challenges.

Finally, the study adopts a normative analytical perspective, assessing whether the current legislative framework adequately safeguards constitutional supremacy and supports coherent interaction between courts.

The Constitutional Court as a Special Subject of Constitutional Review

The Constitutional Court of Georgia serves as the guardian of constitutional supremacy and the institutional guarantor of constitutional order. Article 59 of the Constitution designates it as the sole judicial body entrusted with the authority to exercise constitutional review. Within the Georgian constitutional architecture, this institutional design reflects a clear commitment to a centralized model of constitutional adjudication.

The theoretical foundation of centralized constitutional review lies in the Kelsenian model, according to which constitutional adjudication must be institutionally separated from ordinary adjudication in order to preserve uniformity, legal certainty, and hierarchical coherence within the legal system

(Kelsen, 1942). In such systems, the constitutional court operates as a „negative legislator,“ empowered to invalidate statutory norms that contradict the Constitution, thereby maintaining the supremacy of the constitutional text.

The centralized model aims to prevent fragmentation of constitutional interpretation. If ordinary courts were independently empowered to set aside statutes on constitutional grounds, divergent interpretations could emerge, undermining legal certainty and equality before the law. Concentrating constitutional review within a specialized court ensures consistency and institutional authority. At the same time, however, the effectiveness of this model depends on the existence of procedural channels through which constitutional questions arising in ordinary litigation may reach the constitutional adjudicator.

Constitutional supremacy cannot be preserved solely through institutional design. As Grimm (2016) observes, constitutional courts function effectively only when their jurisdiction is meaningfully integrated into the broader judicial system. If constitutional review remains detached from ordinary adjudication, unconstitutional norms may continue to be applied in practice, despite the formal existence of centralized review.

It is precisely in this context that the role of general courts becomes structurally significant. Courts of general jurisdiction are the primary actors applying statutory norms in concrete disputes. They encounter constitutional questions in the course of adjudication and are therefore positioned at the frontline of constitutional application. Although they lack the authority to invalidate statutes, their procedural capacity to trigger constitutional review ensures that constitutional supremacy operates not merely as a theoretical principle but as a practical guarantee.

Comparative constitutional practice illustrates this interaction clearly. In Germany, Article 100(1) of the Basic Law obliges ordinary courts to refer a statutory provision to the Federal Constitutional Court if they are convinced that the provision is unconstitutional and its application is decisive for the outcome of the case. This mandatory referral mechanism reinforces constitutional supremacy and ensures uniform constitutional interpretation (Kommer & Miller, 2012; Robbers, 2005). It also institutionalizes cooperation between judicial instances within a centralized constitutional framework.

Georgia has adopted a similar mechanism through the institution of constitutional submission. However, unlike the German model, the Georgian legislative framework contains interpretative ambiguities concerning the obligation to refer and the admissibility standards governing such submissions. Furthermore, judicial practice has revealed inconsistencies in the application of procedural requirements. These issues raise broader questions about the practical functioning of constitutional supremacy and the institutional relationship between the Constitutional Court and general courts.

Accordingly, an analysis of the Constitutional Court as a specialized body of constitutional review must not be limited to its formal jurisdiction. It must also consider how effectively the procedural mechanisms connecting it with ordinary courts operate in practice. The strength of centralized constitutional adjudication ultimately depends not only on the authority of the Constitutional Court itself, but also on the clarity, consistency, and accessibility of the mechanisms through which constitutional questions are brought before it.

The Essence of the General Court's Constitutional Submission and Its Distinguishing Features

The institution of constitutional submission constitutes one of the most significant procedural guarantees of constitutional supremacy within Georgia's legal system. As the Constitutional Court of Georgia has emphasized, constitutional submission enables general courts to prevent the potential application of unconstitutional normative acts in the course of adjudication (Constitutional Court of Georgia, 2015, Decision No. 3/1/608,609, §5). However, its importance extends beyond procedural technique; it reflects the structural interaction between ordinary courts and the Constitutional Court within a centralized model of constitutional review.

General courts occupy a unique institutional position. They are primarily responsible for the application and interpretation of statutory norms in concrete disputes and therefore encounter constitutional conflicts in practice. Yet, under the centralized model adopted in Georgia, general courts do not possess authority to invalidate or disregard statutory provisions on constitutional grounds. This institutional limitation creates a structural tension: courts must apply the law, but they must also ensure compliance with the Constitution as the supreme legal norm.

The mechanism of constitutional submission resolves this tension. By suspending proceedings and referring a constitutional question to the Constitutional Court, a general court ensures that adjudication does not proceed on the basis of a norm whose constitutionality is reasonably contested. In this sense, constitutional submission operates both as a procedural safeguard and as an institutional bridge within the constitutional order.

A comparative perspective illustrates the structural significance of this mechanism. Under Article 100(1) of the German Basic Law, if a court considers a statutory provision unconstitutional and that provision is decisive for the resolution of the case, the court is obligated to suspend proceedings and refer the matter to the Federal Constitutional Court (Grundgesetz [GG], Art. 100(1)). German constitutional doctrine interprets this provision as imposing not merely an authorization but a duty of referral when constitutional incompatibility is established (Hamdorf, 2011). This mandatory character

reinforces constitutional supremacy and ensures uniform constitutional interpretation across the judicial system.

By contrast, Article 19(2) of the Organic Law of Georgia on the Constitutional Court provides that when a court determines that a law or other normative act to be applied in resolving a case may be unconstitutional, it shall suspend proceedings and submit the issue to the Constitutional Court (Organic Law of Georgia on the Constitutional Court, Art. 19(2)). Unlike the German provision, however, the Georgian formulation does not clearly articulate whether referral constitutes a strict obligation or a discretionary procedural right.

This ambiguity has both doctrinal and practical implications. If interpreted as purely discretionary, general courts may refrain from referring constitutional questions even when the contested norm directly determines the outcome of the dispute. Such reluctance could weaken the practical operation of constitutional supremacy. Conversely, interpreting referral as automatically mandatory whenever a party raises a constitutional objection would undermine judicial independence and procedural discipline.

Georgian scholarship has addressed this issue. Khamaladze (2000) suggests that in certain circumstances general courts may bear not only the right but also the duty to submit a constitutional reference. This position is persuasive to the extent that referral becomes necessary when constitutional review is indispensable for lawful adjudication. However, it cannot be accepted without qualification. A court should not be compelled to refer solely on the basis of a party's motion. While parties must have the right to request constitutional review, the ultimate decision must remain grounded in the court's independent constitutional assessment.

This tension is reflected in the Constitutional Court's practice. In Ruling No. 9/189 of 10 July 2002, the Constitutional Court declined to accept a submission from the Krtsanisi-Mtatsminda District Court of Tbilisi on the ground that the referral had been initiated upon the defendant's motion rather than through the court's independent determination (Constitutional Court of Georgia, 2002, Decision No. 9/189). The Court emphasized that a constitutional submission should arise from the court's own assessment of constitutional necessity.

While the importance of judicial independence is undisputed, the rejection of a submission solely because it followed a party's motion raises broader concerns. The decisive factor should not be the procedural origin of the constitutional doubt but whether the referring court has provided substantiated reasoning demonstrating that the norm in question is materially relevant and potentially incompatible with the Constitution. If a court, upon examining a party's motion, independently concludes that the contested norm may be unconstitutional and decisive for adjudication, referral should be

considered justified. Otherwise, excessive formalism risks weakening the effectiveness of constitutional submission as a safeguard of constitutional supremacy.

The admissibility requirements further illustrate the balance between procedural rigor and substantive protection. Under Article 31(2) of the Organic Law of Georgia on the Constitutional Court, a constitutional submission must be filed by an authorized subject, identify the contested normative act, specify the constitutional provisions allegedly violated, and provide substantiated reasoning supported by relevant evidence. These requirements are essential to ensure that constitutional review is not invoked arbitrarily. At the same time, they must be applied in a manner that does not transform constitutional submission into a purely technical procedural obstacle.

Accordingly, the distinguishing feature of constitutional submission in Georgia lies not merely in its formal characteristics but in its structural function within the constitutional system. It represents a mechanism through which general courts actively participate in safeguarding constitutional supremacy while respecting the centralized nature of constitutional adjudication. Its effectiveness therefore depends on a careful balance between judicial independence, procedural discipline, and substantive commitment to constitutional review.

Object of the Constitutional Submission

The object of a constitutional submission constitutes one of the defining elements of constitutional review in centralized systems. Its determination reflects the institutional boundaries between ordinary adjudication and constitutional control. Different legal systems define the object of judicial referral in accordance with their structural models of constitutional review.

In Germany, Article 100(1) of the Basic Law limits judicial referral to statutory provisions whose constitutionality is decisive for the resolution of a specific case. German constitutional doctrine clarifies that the object of referral may include federal or Land statutes that have been duly enacted and entered into force (Robbers, 2005, pp. 58-59). Furthermore, the referring court must identify the specific legal norm-or set of norms-that materially determines the outcome of the dispute (Schlaich & Koriath, 2004, pp. 108-109). This requirement ensures that constitutional review remains connected to concrete adjudication and does not evolve into abstract or hypothetical review initiated by ordinary courts.

The German system generally excludes subordinate administrative acts from the scope of judicial referral unless they possess the force of law. This restriction reflects the conceptual distinction between constitutional norm

control and ordinary legality review. By limiting referral to general normative provisions adopted through formal legislative processes, the German model safeguards the centralized nature of constitutional adjudication while preserving the functional division of judicial competencies.

The Georgian constitutional framework adopts a similarly restrictive approach. The Constitution of Georgia confers upon the Constitutional Court authority to review only normative acts. This limitation has been consistently reaffirmed in judicial practice. In Ruling No. 2/57/1 (1997), the Constitutional Court declined to accept a constitutional submission on the ground that the contested act did not qualify as a normative act within the meaning of the Law of Georgia on Normative Acts (Constitutional Court of Georgia, 1997). This decision clarified that constitutional review is confined to general normative provisions rather than acts of individual application.

Under the currently effective legislative framework, it is unequivocally established that the object of a constitutional submission may only be a normative act. General courts therefore lack authority to request constitutional review of individual administrative or judicial decisions. This restriction preserves the centralized character of constitutional adjudication and prevents transformation of constitutional submission into a mechanism for reviewing case-specific determinations.

However, the limitation of constitutional submission to normative acts has broader institutional implications. It reinforces the abstract character of constitutional review and ensures that constitutional adjudication addresses systemic normative conflicts rather than isolated disputes. At the same time, it increases the responsibility of general courts to precisely identify the contested norm and articulate its material relevance. An incorrectly formulated object of submission may result in inadmissibility, thereby preventing substantive constitutional examination.

Thus, the object of constitutional submission in Georgia should not be understood merely as a technical admissibility criterion. It represents a structural boundary defining the scope of constitutional review and delineating institutional competencies within the judicial system. By confining constitutional submission to normative acts, the Georgian model safeguards constitutional supremacy while maintaining coherence between ordinary adjudication and centralized constitutional control.

Subject Authorized to Submit a Constitutional Submission

The determination of the subject authorized to submit a constitutional submission is not merely a procedural technicality; it reflects the institutional allocation of constitutional responsibility within the judicial system. By identifying which bodies may initiate constitutional review, the legislature

defines the scope of judicial participation in safeguarding constitutional supremacy.

Under German constitutional law, Article 100(1) of the Basic Law, in conjunction with Article 80(1) of the Federal Constitutional Court Act (Bundesverfassungsgerichtsgesetz), provides that the court adjudicating a case is the entity entitled—and, under certain conditions, obliged—to submit a judicial referral. German constitutional jurisprudence interprets the notion of “court” broadly, encompassing any judicial body exercising adjudicatory authority under statutory law (Umbach, Clemens, & Dollinger, 2005). This includes courts of general jurisdiction, specialized courts established by statute, and even an investigating judge acting in a judicial capacity.

The decisive criterion in German doctrine is not the institutional label of the body, but whether it exercises judicial authority in the context of adjudicating a dispute. Conversely, bodies lacking adjudicatory independence or operating outside the judicial branch are excluded from referral competence. Ecclesiastical courts, whose jurisdiction is confined to internal religious matters, do not qualify. Similarly, arbitration tribunals, court officials performing administrative functions, and judges acting in an executive capacity fall outside the scope of Article 100(1) (Bonner Kommentar, 1967). This distinction underscores a fundamental constitutional principle: judicial referral is an instrument of constitutional adjudication and must therefore remain within the domain of constitutionally recognized courts.

The Georgian legal framework adopts a similarly structured approach. Article 19(2) of the Organic Law of Georgia on the Constitutional Court explicitly provides that the court adjudicating a case is authorized to submit a constitutional submission. Article 42 further clarifies that such submission may be initiated either by a single judge hearing the case individually or by a judicial panel acting collectively.

This legislative formulation reflects an important institutional logic. Constitutional submission is tied directly to concrete adjudication; only the court whose decision depends upon the contested norm may initiate constitutional review. The mechanism therefore preserves the concrete character of constitutional control and prevents abstract or politically motivated referrals.

At the same time, limiting referral authority to adjudicating courts reinforces judicial responsibility. The power to initiate constitutional review is inseparable from the duty to apply constitutional standards in ordinary adjudication. General courts are not merely intermediaries transmitting constitutional questions; they are constitutionally obliged to engage in preliminary constitutional assessment before referral.

The Georgian model, like its German counterpart, excludes non-judicial bodies and entities lacking adjudicatory competence from initiating

constitutional submission. This restriction safeguards institutional coherence and prevents expansion of constitutional review beyond its intended procedural boundaries.

Thus, the identification of the authorized subject is not simply a matter of formal competence. It defines the institutional architecture of constitutional review and clarifies that constitutional submission is a judicial instrument rooted in concrete adjudication. Its legitimacy derives from the adjudicatory function of the referring court and its responsibility to ensure that constitutional supremacy is respected in the resolution of individual disputes.

Reasonableness and Justification of a Constitutional Submission

The requirement of justification constitutes one of the most critical admissibility criteria for a constitutional submission. It operates as a procedural filter designed to ensure that constitutional review is invoked only where a genuine constitutional conflict arises. At the same time, the standard of justification reflects a delicate balance between procedural rigor and effective protection of constitutional supremacy.

In German constitutional law, the requirement of justification is particularly stringent. Under Article 80(2) of the Federal Constitutional Court Act, a judicial referral must clearly identify the contested statutory provision and specify the constitutional norms allegedly violated (Robbers, 2005, p. 62). German doctrine further requires that the referring court be fully convinced of the norm's unconstitutionality; mere suspicion or abstract doubt is insufficient.

The Federal Constitutional Court has repeatedly emphasized that referral is admissible only when the referring court demonstrates that a constitution-conforming interpretation of the contested provision is impossible (Hamdorf, 2011). In other words, constitutional submission is a measure of last resort. The referring court must exhaust interpretative alternatives and provide structured reasoning explaining why the statutory norm cannot be reconciled with constitutional requirements. A submission that merely asserts incompatibility without engaging in systematic legal analysis is considered insufficient (Hamdorf, 2011, p. 304).

This high threshold serves several purposes. It preserves the exceptional nature of judicial referral, prevents excessive constitutional litigation, and reinforces the responsibility of ordinary courts to interpret statutes in conformity with the Constitution wherever possible. At the same time, it ensures that the Constitutional Court is seized only with cases presenting genuine constitutional conflicts.

Georgian legislation similarly requires that a constitutional submission be substantiated. Article 31(2) of the Organic Law of Georgia on the Constitutional Court provides that the submission must identify the contested normative act, specify the constitutional provisions allegedly violated, and

present reasoning supported by relevant evidence. Thus, justification is also an essential procedural requirement within the Georgian framework.

However, an important doctrinal distinction emerges. Unlike German law, Georgian legislation does not explicitly require that the referring judge be fully convinced of the act's unconstitutionality. In practice, it appears sufficient that the court identify reasonable grounds to question the constitutionality of the norm to be applied. This lower threshold reflects a more flexible approach, potentially facilitating access to constitutional review.

The difference between „full conviction“ and „reasonable constitutional doubt“ is not merely semantic; it has structural implications. A stringent standard may safeguard procedural discipline but risk limiting constitutional dialogue between courts. A more flexible standard may enhance access to constitutional adjudication but risks overburdening the Constitutional Court if not accompanied by rigorous reasoning requirements.

The jurisprudence of the Constitutional Court of Georgia demonstrates the practical importance of justification. In Ruling No. 1/8/116 (1999), the Court declined to accept a submission from the Vake-Saburtalo District Court of Tbilisi on the ground that it was insufficiently substantiated (Constitutional Court of Georgia, 1999). Similar decisions reveal a consistent insistence on structured reasoning and evidentiary support.

Nevertheless, the application of the justification requirement must avoid excessive formalism. The decisive consideration should be whether the referring court has engaged in serious constitutional analysis and demonstrated that the contested norm is materially relevant and potentially incompatible with constitutional provisions. If admissibility standards are applied too rigidly, constitutional submission risks being reduced to a procedural obstacle rather than functioning as an effective guarantee of constitutional supremacy.

Accordingly, the principle of reasonableness and justification should be understood as serving a dual function: safeguarding procedural discipline while preserving meaningful access to constitutional review. Its proper application requires careful balancing of institutional efficiency, judicial responsibility, and the overarching commitment to constitutional supremacy within the Georgian legal order.

The Material Significance of the Norm Specified in a Constitutional Submission for Decision-Making

The requirement that the contested norm possess material or decisive significance for the resolution of the case constitutes a central admissibility condition for constitutional submission. It ensures that constitutional review initiated by general courts remains concretely connected to judicial decision-making rather than evolving into abstract constitutional control.

A norm is materially significant when the outcome of the case necessarily depends upon its application. In other words, if the court cannot resolve the dispute without applying the contested provision, the constitutionality of that norm becomes decisive for adjudication. This requirement safeguards the concrete character of judicial referral and prevents constitutional submission from being used as a hypothetical or strategic procedural instrument.

German constitutional law articulates this requirement with particular clarity. Pursuant to Article 80(2) of the Federal Constitutional Court Act, the referring court must demonstrate that the statutory provision in question is decisive (*entscheidungsrelevant*) for resolving the dispute (Hamdorf, 2011, p. 305). The Federal Constitutional Court has consistently emphasized that referral is inadmissible where the contested norm is not determinative of the case's outcome. This decisiveness criterion ensures procedural discipline and preserves the exceptional nature of constitutional referral within a centralized system.

The doctrinal rationale underlying this requirement is closely connected to the distinction between abstract and concrete constitutional review. In centralized systems such as Germany and Georgia, general courts do not possess authority to initiate abstract constitutional control. Their competence is limited to concrete disputes in which constitutional issues arise incidentally. The material significance requirement thus prevents transformation of constitutional submission into an alternative avenue for abstract review.

Georgian legislation reflects the same structural logic. The Organic Law of Georgia on the Constitutional Court confines the right of submission to the adjudicating court and presupposes that the contested normative act is to be applied in resolving the dispute. A court should therefore resort to constitutional submission only where the resolution of the case genuinely depends on the application of the norm whose constitutionality is questioned.

This requirement also reinforces judicial responsibility. Before referring a norm, the general court must conduct a preliminary assessment to determine whether the disputed provision is indeed indispensable to adjudication. If the case may be resolved on alternative legal grounds, referral may be premature or unnecessary. In this sense, the material significance criterion functions as both an admissibility filter and a safeguard against overburdening the Constitutional Court.

At the same time, excessive formalism in assessing material relevance may undermine constitutional protection. The decisive question should not be whether the norm is the sole conceivable legal basis, but whether it plays a determinative role in the judicial reasoning required for resolution of the dispute. A balanced application of this criterion preserves the concrete nature

of constitutional submission while ensuring that constitutional doubts affecting the outcome of a case are not disregarded.

Thus, the material significance of the contested norm represents more than a technical admissibility requirement. It defines the boundary between ordinary adjudication and constitutional control and maintains coherence within the centralized constitutional review system of Georgia.

Formal Legality of a Constitutional Submission

The formal legality of a constitutional submission constitutes a crucial admissibility filter within centralized constitutional review systems. By establishing procedural requirements that must be satisfied before substantive consideration, legislation seeks to preserve institutional order, ensure procedural discipline, and prevent arbitrary or inadequately reasoned referrals.

In German constitutional law, the admissibility of a judicial referral depends upon compliance with clearly defined formal conditions. Among the most important prerequisites are: submission by an authorized court, correct identification of the contested statutory provision, substantiated reasoning demonstrating constitutional incompatibility, and proof that the norm is materially decisive for resolving the case (Hamdorf, 2011, p. 305). These requirements reflect the principle that constitutional referral is an exceptional procedural mechanism and must therefore be exercised with precision and analytical rigor.

The Georgian legal framework similarly establishes formal admissibility criteria. Article 31(2) of the Organic Law of Georgia on the Constitutional Court specifies the substantive elements that must accompany a constitutional submission, while Article 31(3) (formerly referenced as Articles 312–313 in prior legislative numbering) defines circumstances under which a submission will not be admitted for consideration. These provisions require identification of the contested normative act, specification of constitutional provisions allegedly violated, substantiated reasoning, and confirmation that the submission originates from a competent judicial body.

Judicial practice demonstrates that failure to comply with these formal requirements has frequently resulted in the rejection of constitutional submissions. In Ruling No. 1/8/90 (1998), the Constitutional Court declined to admit a submission from the Krtsanisi District Court of Tbilisi because it had been filed in copy form, lacked proper indication of the legal basis authorizing submission, and failed to reference supporting documentation (Constitutional Court of Georgia, 1998). Similar cases reveal the Court's consistent insistence on strict compliance with procedural formalities.

While formal legality is essential for maintaining institutional coherence, its application raises broader constitutional considerations. If admissibility standards are applied excessively rigidly, constitutional

submission risks being reduced to a technical procedural hurdle rather than functioning as an effective safeguard of constitutional supremacy. Overemphasis on minor technical deficiencies may prevent substantive examination of genuine constitutional conflicts.

At the same time, insufficient formal discipline could undermine the efficiency and authority of the Constitutional Court by permitting inadequately reasoned or procedurally defective submissions. The challenge therefore lies in achieving a balanced application of formal legality: procedural requirements must ensure clarity, precision, and institutional responsibility, yet they must not obstruct access to constitutional review where substantive constitutional issues are properly articulated.

Recent developments in the jurisprudence of the Constitutional Court of Georgia suggest gradual movement toward a more functional approach, prioritizing the clarity of the constitutional issue over purely technical defects. Such evolution reflects an understanding that formal legality should serve constitutional supremacy, not impede it.

Accordingly, the formal legality of constitutional submission should be understood not merely as a checklist of procedural conditions but as a structural mechanism that preserves both institutional discipline and meaningful access to constitutional adjudication. Its effective operation requires careful calibration between procedural exactness and substantive constitutional protection within Georgia's centralized constitutional review system.

Obligation to Suspend Proceedings in a General Court When Submitting a Constitutional Submission

The suspension of proceedings constitutes an integral component of the constitutional submission mechanism. Under Article 19(2) of the Organic Law of Georgia on the Constitutional Court, once a general court determines that a constitutional submission is warranted, it must suspend the proceedings and refer the contested norm to the Constitutional Court. The case remains suspended until the Constitutional Court renders its decision.

The obligation to suspend proceedings serves a fundamental constitutional function. It prevents the adjudicating court from resolving the dispute on the basis of a norm whose constitutionality is in doubt. As the Constitutional Court has emphasized, suspension ensures that a potentially unconstitutional provision is not applied in practice before constitutional review is completed (Constitutional Court of Georgia, 2022, Decision No. 3/4/1648, §17). In this respect, suspension operates as a procedural safeguard of constitutional supremacy.

However, judicial practice has revealed practical and doctrinal complexities concerning this obligation. In Ruling No. 1/3/99 (1999), the

Constitutional Court held that a submission may be declared inadmissible where proceedings in the referring court had not formally commenced or where the referral was not accompanied by documentation confirming that suspension had been properly effected (Constitutional Court of Georgia, 1999). This approach underscores the procedural discipline required for constitutional submission to function coherently within the judicial system.

Yet the obligation to suspend proceedings raises broader constitutional questions. Suspension is justified only so long as it serves its protective purpose—namely, preventing adjudication based on a norm whose constitutionality is decisive for the case. Where circumstances change and the contested norm ceases to be applicable or materially relevant to the dispute, continued suspension may become disproportionate.

Prior legislative provisions reinforced rigidity by excluding the possibility of resuming proceedings even where the contested norm no longer constituted applicable law. Specifically, the normative content of Article 7(3), second sentence, of the Organic Law on General Courts and Article 19(2), second sentence, of the Organic Law on the Constitutional Court effectively prevented general courts from resuming suspended proceedings until the Constitutional Court rendered its decision, regardless of changed circumstances.

This rigid approach was reassessed in the Constitutional Court's decision of 21 April 2022 (Decision No. 3/4/1648). The Court clarified that if the norm subject to constitutional control ceases to constitute applicable law due to changes in factual or legal circumstances, the justification for continued suspension disappears (§20). In such cases, preventing the resumption of proceedings lacks a legitimate aim and unjustifiably restricts the right to timely adjudication.

This decision reflects an important doctrinal development. It recognizes that the obligation to suspend proceedings must be interpreted in light of constitutional principles of proportionality and effective judicial protection. Suspension cannot be treated as an absolute procedural consequence detached from its constitutional purpose. Instead, it must remain functionally connected to the protection of constitutional supremacy while simultaneously respecting the right to a fair and timely trial.

By declaring unconstitutional the rigid prohibition on resuming proceedings under such circumstances, the Constitutional Court reaffirmed that procedural mechanisms must serve substantive constitutional values rather than operate mechanically. The suspension requirement therefore embodies a dual constitutional commitment: preventing the application of unconstitutional norms while safeguarding the efficiency and fairness of judicial proceedings.

Accordingly, the obligation to suspend proceedings should be understood not merely as a formal procedural step but as a constitutional safeguard whose application must remain proportionate and purposive within Georgia's centralized system of constitutional review.

Procedure for Considering a Constitutional Submission

The procedure for considering a constitutional submission reflects the institutional design of constitutional adjudication in Georgia and determines the practical effectiveness of the referral mechanism.

Pursuant to Article 31(1) of the Organic Law of Georgia on the Constitutional Court, constitutional proceedings are initiated through the submission of a written constitutional petition. When a submission is filed by a general court, the case is examined by the Plenum of the Constitutional Court, underscoring the importance attributed to judicial referrals within the constitutional framework (Organic Law of Georgia on the Constitutional Court, Art. 31(2)). The legislation further provides that consideration of a constitutional submission must not exceed nine months from its registration (Art. 22(1)), thereby seeking to ensure procedural efficiency and prevent excessive delay in the adjudication of suspended cases.

The procedural position of the referring court is, however, distinctive. Although the judge submitting the constitutional petition formally becomes a participant in constitutional proceedings (Samkharadze, 2019), the Constitutional Court considers the case without the presence of the submitting judge or the authority whose act is challenged (Organic Law of Georgia on the Constitutional Court, Art. 42(1)). This procedural design reflects the understanding that constitutional submission is not adversarial litigation between the referring court and another party, but rather an institutional request for constitutional clarification.

The Constitutional Court has emphasized that general courts act within the constitutional submission framework not as independent parties asserting individual interests, but as institutional actors protecting the public interest in constitutional legality (Constitutional Court of Georgia, 2015, Decision No. 3/1/608,609, II, §6). This characterization highlights the structural function of constitutional submission: the referring court does not seek relief for itself but facilitates constitutional oversight within the judicial system.

Nevertheless, this procedural arrangement raises broader questions concerning institutional dialogue and equality of arms. If the referring court does not actively participate in oral hearings or provide further clarification during proceedings, the Constitutional Court's assessment may rely exclusively on the written submission and the positions of other participants. This may limit the depth of judicial interaction and reduce opportunities for clarification of complex constitutional issues.

Comparatively, the German model offers a more flexible procedural framework. While oral participation of the referring court is not mandatory, the Federal Constitutional Court may solicit written or oral explanations from the referring court and request information from higher federal or Land courts regarding the interpretation and practical application of the contested norm (Bonner Kommentar, 1967; Khubua & Traut, 2001, p. 33). This mechanism enhances institutional communication and supports comprehensive constitutional analysis without transforming the referral procedure into adversarial litigation.

Introducing similar procedural possibilities into Georgian legislation could strengthen the effectiveness of constitutional submission. Allowing the Constitutional Court to request clarifications or supplementary explanations from the referring court would facilitate deeper examination of constitutional questions and enhance institutional coherence. At the same time, such reform must preserve the principle that constitutional submission is an institutional mechanism serving the public interest rather than an adversarial claim between parties.

Accordingly, the procedure for considering a constitutional submission should be understood as a structural component of judicial interaction within the centralized constitutional system. Its design must ensure both procedural efficiency and meaningful institutional dialogue, thereby reinforcing constitutional supremacy and the fairness of constitutional adjudication.

Legal Consequences of Constitutional Submissions and Judicial Practice

According to Article 60(5) of the Constitution of Georgia, the decisions of the Constitutional Court are final. Consequently, such decisions are legally binding, definitive, and not subject to appeal or revision by any other authority (Zoide, 2004, p. 62). This constitutional finality reflects the institutional role of the Constitutional Court as the ultimate interpreter of constitutional norms.

Under Georgian legislation, a normative act or part thereof declared unconstitutional loses its legal force from the moment the relevant decision of the Constitutional Court is officially published, unless the Court determines a deferred effect. Article 20 of the Organic Law of Georgia on the Constitutional Court further provides that when a normative act is declared unconstitutional upon a submission from a general court, prior judicial decisions rendered on the basis of that act are not annulled; rather, only their enforcement is suspended. Accordingly, Constitutional Court decisions do not operate retroactively in the sense of invalidating final judgments delivered before the declaration of unconstitutionality.

In legal doctrine, however, a significant body of opinion supports a broader retroactive effect of constitutional review. It is argued that when a court decision is based on a norm later declared unconstitutional, justice may require reconsideration of that decision as a newly discovered circumstance (Zoide, 2004, p. 62). This approach is grounded in the principle that constitutional supremacy should not remain merely prospective if past adjudication relied upon norms fundamentally incompatible with constitutional standards.

Incorporating such a mechanism into Georgian legislation merits careful consideration. Where a general court has resolved a case on the basis of a normative act subsequently declared unconstitutional, parties should arguably be entitled to request reopening of proceedings on the ground of newly discovered circumstances. Such a reform would enhance substantive justice and reinforce the protective function of constitutional review in safeguarding human rights and freedoms.

At the same time, retroactive effect must be balanced against the principle of legal certainty. The stability of final judgments is a cornerstone of the rule of law. Therefore, any legislative reform allowing reopening of cases would need to establish narrowly tailored conditions to avoid systemic instability. The challenge lies in reconciling constitutional supremacy with legal certainty, ensuring that constitutional justice does not undermine the finality of adjudication without compelling justification.

Another crucial dimension of the legal consequences of constitutional submissions concerns the enforcement of Constitutional Court decisions. Enforcement must not depend upon the goodwill or discretion of the addressees but should be clearly regulated by law and supported by effective procedural mechanisms (Demetrashvili, 2000, p. 206). Without enforceable implementation mechanisms, constitutional review risks becoming declaratory rather than transformative.

Comparatively, German constitutional law provides a more structured approach. The Federal Constitutional Court possesses authority to determine the entities responsible for implementing its decisions and may provide guidance regarding the manner of enforcement (Gabunia, 2019, p. 61). Such regulatory clarity strengthens institutional effectiveness and ensures that constitutional rulings are translated into practical legal consequences.

Introducing similar provisions into Georgian legislation could enhance the practical impact of Constitutional Court decisions. Clear identification of responsible authorities and procedural enforcement mechanisms would reinforce constitutional supremacy and institutional accountability. With respect to judicial practice, the use of constitutional submissions by general courts in Georgia has not been extensive. Nevertheless, existing precedents reveal important tendencies and inconsistencies.

In Decision No. 2/88/1 of 1 April 1999, the Constitutional Court declined to accept the constitutional submission of the Chiatura Court for substantive consideration due to insufficient substantiation (Constitutional Court of Georgia, 1999). A similar outcome occurred in the case of the Vake-Saburtalo District Court of Tbilisi (Constitutional Court of Georgia, 1999, No. 1/8/116). In these instances, the Court focused primarily on technical deficiencies in the submissions. While procedural compliance is necessary, excessive emphasis on formal inaccuracies may undermine the effectiveness of constitutional submission as a mechanism of constitutional protection.

Judicial practice has also demonstrated certain inconsistencies. For example, the Constitutional Court previously refused a submission on the ground that the author was a judge rather than the court itself, yet in its decision of 25 January 2000 it recognized the equivalence between a judge acting individually and the court (Zoide, 2000). Such divergent approaches may create uncertainty regarding admissibility standards and weaken institutional predictability.

A particularly illustrative example is the constitutional submission of the Chughureti District Court of Tbilisi. Although the submission did not fully comply with formal legislative requirements—specifically, it sought an “interpretation” rather than one of the constitutionally prescribed acts (ruling, decision, or conclusion) and failed to specify the legal provisions authorizing submission—the First Chamber of the Constitutional Court nevertheless accepted it for substantive consideration. Ultimately, the Court declared unconstitutional the confiscation of property as an additional penalty under Articles 23 and 96 of the Criminal Code (Constitutional Court of Georgia, 1997, Decision No. 1/51). This decision represents a significant precedent in Georgian constitutional jurisprudence.

Had the Court rejected the submission solely on formal grounds, a normative act inconsistent with the Constitution might have remained in force. This example demonstrates the importance of a functional rather than excessively formalistic approach to admissibility.

Contemporary jurisprudence confirms this development. In Decision No. 3/1/608,609 of 29 September 2015, the Constitutional Court stated:

„The Constitutional Court cannot leave unexamined a constitutional issue raised in a submission solely because the relevant constitutional norm was incorrectly identified due to formal reasons. Otherwise, the constitutionality of the applicable norm would remain in doubt, as the authority to determine the constitutionality of a normative act rests solely with the Constitutional Court. Additionally, the proceedings before the general court would be unduly delayed, creating an additional risk of rights violations. Therefore, refusal to accept a submission for substantive consideration due to an incorrectly identified constitutional norm not only impedes the general

court from resolving the matter but may render the institution of constitutional submission effectively inefficient.“. (Constitutional Court of Georgia, 2015, Decision No. 3/1/608,609, II, §7)

This position reflects a significant shift toward prioritizing substantive constitutional analysis over technical formalities. It illustrates the Court’s recognition that the effectiveness of constitutional submission depends not merely on procedural exactness, but on the meaningful examination of constitutional issues raised by general courts.

Accordingly, modern judicial practice suggests gradual institutional maturation. By focusing primarily on whether the constitutional issue is clearly identifiable rather than on minor technical defects, the Constitutional Court strengthens the practical operation of constitutional supremacy within Georgia’s legal system.

Conclusions and Recommendations

The analysis conducted in this article demonstrates that the constitutional submission mechanism in Georgia has undergone a gradual evolution. Historically, its practical functioning was not sufficiently effective. Although formal deficiencies were present in certain submissions, the Constitutional Court-acting as the ultimate interpreter of the Constitution-possessed the institutional capacity to adopt a more functional approach and prioritize substantive constitutional review over procedural technicalities. Such an approach would have strengthened the practical implementation of constitutional control and enhanced institutional cooperation between general courts and the Constitutional Court.

Recent judicial practice reveals positive developments. General courts have increasingly utilized the constitutional submission mechanism, and the Constitutional Court has demonstrated a greater willingness to focus on the substantive identification of constitutional issues rather than minor formal defects. This evolution reflects growing institutional maturity and a stronger commitment to safeguarding constitutional supremacy.

Nevertheless, further legislative clarification remains necessary. Georgian legislation should explicitly define the circumstances under which general courts, in addition to possessing the right to submit constitutional referrals, may bear a corresponding procedural obligation to do so where constitutional review is indispensable for lawful adjudication. Clearer regulation would enhance procedural predictability, judicial accountability, and coherence within the constitutional review framework.

To ensure the full effectiveness of constitutional submission, legislative reform should also address the legal consequences of Constitutional Court decisions. In particular, consideration should be given to introducing narrowly tailored mechanisms permitting the reopening of finalized cases

where judgments were based on norms subsequently declared unconstitutional. Such reform must carefully balance constitutional supremacy with the principle of legal certainty, but it would significantly strengthen substantive justice and the protection of fundamental rights.

Equally important is the establishment of explicit normative guarantees ensuring the effective enforcement of Constitutional Court decisions. Enforcement mechanisms should be clearly regulated by law and not left to administrative discretion. Strengthening implementation procedures would enhance the practical authority of constitutional review and reinforce institutional accountability.

Furthermore, procedural reform could improve institutional dialogue by allowing for more structured participation of the referring judge in constitutional proceedings. Direct engagement of the submitting court, where appropriate, would contribute to a more thorough examination of constitutional questions while preserving the non-adversarial character of constitutional submission. Such reform would simultaneously uphold procedural fairness and enhance the quality of constitutional adjudication.

Overall, the effectiveness of constitutional submission depends on a coherent interaction between general courts and the Constitutional Court. Ensuring the proper functioning of this mechanism reinforces constitutional supremacy, minimizes the continued application of unconstitutional norms, and strengthens the rule of law in Georgia. The constitutional submission mechanism should therefore be viewed not merely as a procedural instrument but as a structural guarantee of constitutional governance and fundamental rights protection within the Georgian legal order.

AI Usage Statement

During the preparation of this manuscript, the author used ChatGPT (OpenAI) and DeepL to a limited extent (approximately 20%) for translation purposes and minor language refinement, primarily to assist in translating portions of the text from Georgian into English and improving linguistic clarity. All AI-assisted outputs were carefully reviewed, edited, and verified by the author to ensure accuracy, originality, and compliance with academic and publication standards.

Conflict of Interest: The author reported no conflict of interest.

Data Availability: All data are included in the content of the paper.

Funding Statement: The author did not obtain any funding for this research.

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