Institute for Development of Freedom of Information

Opinion on the Bill Registered for the Execution of the Judgment N1/4 /693,857 of June 7, 2019, of the Constitutional Court of Georgia

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Introduction

Judgment N1/4/693,857 of June 7, 2019 of the Constitutional Court of Georgia (hereinafter referred to as the "Judgement" or the "Judgement of the Constitutional Court"), majorly shifted the balance between availability of the judicial acts and the right to protection of personal data. Namely, the disputed, later to be declared unconstitutional norms prohibited the disclosure of judicial acts containing personal data. [1]

The standards set by the Constitutional Court's judgment have not been implemented by the Parliament of Georgia so far. In addition to the fact that the implementation of the extremely important principles of transparency of justice is an obligation under the Constitution of Georgia, additionally, it is one of the clauses of the so-called "President Charles Michel Agreement". It should be noted that the registration of the bill was preceded by the workshop of June 16, 2021, organized by IDFI in Borjomi, which was attended by the Legal Issues Committee of the Parliament. The bill was registered by several members of that very same committee.

Judgment N1/4/693,857 declared the norms of the "Law of Georgia on Personal Data Protection" and the "General Administrative Code of Georgia" to be unconstitutional, as the disputed norms violated two independent elements of the principle of proportionality.

In this opinion, the bill initiated is analyzed in parallel with the standards set by the Constitutional Court at different steps of the principle of proportionality.

The opinion also covers those parts of the bill that are not directly derived from the judgment, nevertheless, the proposed solutions give rise to legal troubles.

1. The Established Constitutional Rule for Availability of Judicial Acts

The Constitutional Court noted that non-disclosure of judicial acts adopted due to an open court session is a valuable legitimate aim if the intention is to protect personal data reflected in the act. However, the Court later found a violation of the two elements of the proportionality test ("necessity" and "proportionality").

Each element of the principle of proportionality has an independent content. Accordingly, we must analyze separately the reasons that were considered by the Constitutional Court to be the underlying cause of the violation of those elements of proportionality.

[1] The exception was the consent of the subject of personal data protection. Also, if personal data were not in a special category, it would theoretically be possible to obtain a judicial act containing such data.

1.1. Necessity: A Flexible Mechanism that will Ensure to Identify Will of a Personal Data Subject

The protection of personal data reflected in judicial acts has been assessed as such a valuable aim, that for sake of it, restricting access to the full text of the judicial act is allowed. At the same time, the Court considered this restriction as a "suitable", "useful" mean to achieve the named legitimate aim. Yet, the Court found that the same legitimate aim could be achieved by using less restrictive means. Otherwise: The Court found a violation of the requirements of another element of proportionality - "necessity".

The Constitutional Court drew attention to the circumstance that the will of the personal data subject was not clarified at all within the scope of the disputed legislative norms. In particular, the norms protected the personal data of those people too who did not even want to protect their data. Moreover, the norms obligatorily protected personal data when persons concerned proactively, expressly wanted to disclose their information.

According to the Constitutional Court, when an informed decisionmaker and a person with the ability to make an informed decision has no interest in protecting himself/herself from the disclosure of data, there is no need to protect information reflected in the act.[2]

To solve this problem, the Constitutional Court noted that:

> *"The law does not provide for a flexible mechanism for identifying concerned person's interest in data privacy protection."[3] According to the court, "it is possible to create mechanisms by law, within the framework of which, as far as possible, the public institution will determine to what extent a person has an interest in protecting his/her personal information. In particular, a system may be set up according to which, if possible, the court itself will determine whether the data subject wishes to protect the confidentiality of data and, consequently, the protection of it reflected in the judicial act will depend on the will expressed by the data subject."[4]*

In other words, the Constitutional Court has indicated that the court should determine whether data subjects want to protect their data. If the person concerned does not want to protect data from disclosure, the refusal to issue the relevant act on the grounds of protecting data is disallowed.

[2] Judgment of the Constitutional Court N1/4/693,857 of 7 June 2019, Para 31.
[3] Ibid, Para 32
[4] Ibid, Para 33

Accordingly, access to the judicial acts may be restricted in the name of protecting personal data only if the data subject does not refuse the will to protect such info. It should be emphasized that the determination of the will of the person concerned serves the purpose of clarification of the legal problem existing at the stage of necessity, whether the person has an interest in protecting their data or not. [5]

1.1.1. Compatibility of the Proposed Bill with the Standards set by the Court

Article 13[5] of the proposed bill regulates the issues related to the availability of judicial acts adopted after January 1, 2022. According to paragraph 2 of this article, "with the adoption of its latest decision on the case, based on the principle of the rational balance between the human rights guaranteed by the Constitution of Georgia, in particular the right to protect human life, health, finances, family life and/or other personal matters, and, on the other hand, the right to access judicial acts, the court decides on the admissibility to issue fully or partially depersonalized judicial act. The ruling on that issue must be reasoned." This article establishes a balance between conflicting constitutional interests, or a kind of standard according to which a judge should be guided in deciding the issue of availability of a judicial act.[6]

Under paragraph 3 of the same article, "in order to resolve the issue provided for in paragraph 2 of this Article, the court shall, following paragraph 4 of this Article, clarify the will of the person reflected in the judicial act on the issuance of information in the form of public information". According to Paragraph 4 if a person "does not provide for substantiated, written refusal in writing to disclose information reflected in the judicial act in the form of public information, it is considered that person concerned agrees to disclose this information as public information."

This provision poses a threat to the real confusion of the issues to be assessed at the stage of determining the will of the person and in the narrow proportionality. In particular, the proposed bill identifies the will of the person, although it is intertwined with the interest of the person to protect himself/herself from the disclosure of data and the circumstances that may become the basis for restricting access to judicial acts. Also, the bill does not separate the interests for which the Constitutional Court declared the disputed norms

[5] Refusal to protect personal data does not necessarily mean that the court has to discuss the issue of protecting of personal data.
[6] The cited standard for determining the balance is not in line with the decision of the Constitutional Court. The issue will be discussed below.

unconstitutional at the stage of the "necessity" and the interests, which became the basis for declaring the disputed norms unconstitutional at the stage of narrow proportionality.

Mere expression of a person's will - in other words, the answer to the question "Do you want your data to be available as public information" is relevant only to find out whether there is an interest of the personal data subject to protect their data. Otherwise, whether there is a legal interest that would challenge the right of access to judicial acts.

For more specifics, the standards established by the Constitutional Court at the stage of narrow proportionality strike a balance between the transparency of the judiciary and the right to privacy. At the stage of necessity, the sole purpose of determining a person's will is to ascertain whether there is an interest in the protection of privacy that would challenge the right to a court order. Willingness is a prerequisite for shifting to a narrow proportionality balance, although it does not affect the balance at this stage at all.[7]

Therefore, the determination of a person's will is an act of legal significance, which is to be decided entirely by the subject of personal data protection. His answer should automatically determine whether the issue of publicity of the judicial act will end at the "stage of necessity" or if "it will move to the stage of narrow proportionality" and the standards set by the Constitutional Court at the stage of "narrow proportionality" will come into force.

Recommendations:

- Determining a person's will should not go beyond a simple "yes" or "no" answer. The data subject should be able not to state their position at all. This mechanism by its very nature should be simple, flexible. If judicial act contains personal data of a person whose will cannot be identified but the data subject himself does not participate in the court session (for example, this person is simply mentioned by any participant of the court session), the data subject's will should not be necessarily determined in such cases. Here it can be assumed that a person does not want to disclose their personal data and the issue of access to this data must be resolved at a narrow proportionality stage.
- A distinction between a person's will and a reasoned written request must be distinguished from each other. [8] Failure to submit a reasoned written request shall not affect the legal perception of the person's will.

[7] The situation may be the reversed if the bill is modified to go beyond the general interest in the protection of personal data.

[8] Under the proposed regulation, unless a data subject submits a substantiated written request to the court, it is presumed that he or she agrees to disclose his or her personal data in the form of public information even if he or she refuses to disclose his or her personal data. These two mechanisms must be separated from each other.

- If the determination of a person's will is given the function which the Constitutional Court has "given to him at the stage of necessity", the court system itself will better define the technical rule for determining the will of the person and will no longer need a textual burdening of the Organic Law.

1.2. Narrow Proportionality: Constitutional Standards set by the Constitutional Court

First of all, we need to understand clearly what legal givens were assessed by the Constitutional Court at the stage of narrow proportionality and, in general, why the Court transferred the issue to be discussed on this exact stage, when the disputed norms were already considered unconstitutional at the previous, i.e., "stage of necessity".

After the court had concluded its consideration of a flexible mechanism (namely, its necessity) for determining a person's will, it was explained that:

> ***"Restriction set by the disputed legal norms about availability of judicial acts that reflect the data of another person whose owner has an interest not to disclose information meets the requirement of necessity and the Constitutional Court assesses its proportionality in a narrow sense."***[9]

More specifically, if a person asserts the will to cover personal data, the standards established by the Constitutional Court at the narrow proportionality stage begin to function.

1.2.1. Narrow Proportionality - Standard N1: Initial Constitutional Balance Between Availability of the Judicial Acts and Protection of Personal Data

The decision of the Constitutional Court links the availability of judicial acts to the following constitutional interests: a) Transparency of the judiciary; [10] B) accountability of the justice

[9] idem.

[10] Judgment of the Constitutional Court of 7 June 2019, para. 43-45; For example: "A vital source of legitimacy for the exercise of judicial branch is public trust, which is inconceivable without a transparent judiciary. It is a transparent, open judiciary that has the power to have high public confidence and the ability to make decisions on behalf of the public. "

system; [11] C) the right to a fair trial; [12] D) Legal safety. [13] Referring to the mentioned interests, the Constitutional Court concluded that:

> *"Given the role of judicial acts in a democratic state governed by the rule of law and the importance of the information provided in them, it is clear that judicial acts belong to the type of information available in a public institution to which there is increased public interest, regardless of what the legal issue is, to whom it is addressed, what significance it has in on each case at a particular time or under specific circumstances. Acts passed within the framework of justice are in themselves the subject of pressing public interest."*[14]

The quote shows that according to the Constitution of Georgia, there is an increased constitutional interest to access judicial acts. The fact that the initial balance established between the protection of personal data and the publicity of judicial acts has been decided by the Constitutional Court in favor of transparency of justice is indicated by the fact that the Constitutional Court also declared those norms to be unconstitutional, which allowed the court to adopt an act if the plaintiff showed that he had an increased interest in the relevant act. [15]

> *According to the court, "the inconsistency of the balance established by the disputed norms with the Constitution cannot be ruled out by the fact that at the request of the interested person, in case of substantiated interest, it is possible to release personal data in the form of public information. As mentioned, the initial (default) balance established in favor of personal data is not compatible with the order of values recognized by the Constitution of Georgia. Under such regulation, the degree of public oversight over the judiciary and, consequently, public trust is somewhat reduced. In many cases, it is impossible to justify an increased interest without direct access to*

[11] Ibid, para. 46-47 "In this regard, it is important that the full text of judicial acts, including reflected personal data, is available to interested parties. Access to personal data provides an opportunity for stakeholders and the public to properly exercise public oversight over justice. In some cases, without personal data, it is impossible to fully assess how objectively and impartially the court decided on the case. It is through personal data, the identification of the persons involved in the case, that the public has the opportunity to form a belief in the impartiality of justice and the absence of selective justice. "

[12] Ibid, para. 48 "Maximum transparency of the court's activities, including public access to its acts, is one of the most important legal components of a fair trial guaranteed by the Constitution of Georgia. The first paragraph of Article 31 of the Constitution of Georgia strengthens the right to a fair hearing. Everybody has the right to have the opportunity to make known to the public the acts adopted against him in the framework of the ongoing legal proceedings, and for the public to exercise control over his case."

[13] Ibid, para. 49 „Any normatively established rule of conduct becomes viable in and through court practice. The judiciary is the branch of government in the architecture of the bodies established by the Constitution of Georgia, which has the final say in the definition and application of legislation. "

[14] Ibid, para. 50

[15] Ibid, para. 63-65.

personal data. The requirement to justify the compelling interest in each case when requesting the acts reflecting personal data, excludes the random control of judicial acts, effective public oversight of possible errors, tendencies of certain bias or selective justice."[16]

1.2.2. Compatibility of the Proposed Bill with the Initial Constitutional Balance Between the Availability of Judicial Acts and the Protection of Personal Data

The bill is designed in such a way that if the person concerned does not express the will not to protect data, interests of availability of judicial acts and protecting personal data are automatically equated. Afterward, the balance between those two interests must be struck per Paragraph 2 of Article 13[5]. Such a solution, in addition to leading to overloading the judiciary, substantially undermines the default balance established by the Constitutional Court in favor of the transparency of the judiciary.

The bill does not recognize this balance. None of the provisions of the bill establishes the general rule of openness of judicial acts. This leads to the fact that in all cases the court will have to consider acts' openness to the public if there is no consent of the data subject to the disclosure of data in the form of public information. The court should consider closing the act adopted as a result of the open court session if there is such a legal basis.

1.2.3. Narrow Proportionality - Standard N2: Possibility to Shift the Initial Constitutional Balance

The Constitutional Court has indicated that the initial, so-called "default" constitutional balance (that is in favor of transparency of the judicial acts) may be reversed in favor of data protection, but only in exceptional cases.

„The Constitutional Court does not rule out the legitimate possibility of the legislator to establish such a balance in relation to a certain category of information about a person, within the framework of which, as a rule, personal data reflected in judicial acts are not disclosed directly without the will of the subject. Such a regime can be established in cases where the disclosure of information, depending on the content, subject, form of disclosure, term, method, or other circumstances, has a particularly intense impact on personal life. For example, such a category could include data on minors, information about intimate life, etc. In such cases, the growing interest in

[16] Ibid, para. 65.

protecting the confidentiality of information may outweigh the public interest in overseeing justice through acquaintance with judicial acts."[17]

Thus, the Constitutional Court has allowed the possibility of reversing the balance in favor of personal data protection in exceptional cases. Such exceptions may be based on a substantiated written request from the data subject. In individual cases, even the disclosure of seemingly "harmless" data can cause significant damage to one's privacy. If the person concerned wants to protect personal data reflected in judicial acts adopted due to open court sessions, s/he must be obliged to substantiate this interest. Data subject knows the best what are those grounds condition the need to protect the data from disclosure. Accordingly, the subject must also justify why one's interest outweighs the increased interest in the transparency of the judiciary.

The standards set by Constitutional Court do not prohibit the establishment of special conditions for the Parliament, when the court, on its initiative, without a data subject's substantiated written request, discusses the protection against data disclosure. The proposed bill does not address such cases at all. Special/exceptional circumstances to which the Constitutional Court has indicated should preferably be prescribed by law (for example, when the minor's data is reflected or intimate spheres of life are mentioned in the acts, etc.).

The cases mentioned acknowledge that the interest in confidentiality may in some cases outweigh the implicit, overriding interest in the transparency of judicial acts. However, the Constitutional Court has noted that even in that case, the decision must not be blanket and final.

„When refusing to issue such information, decision-makers should take into account whether there is particularly heightened public interest concerning the case, which in turn outweighs the interest in data confidentiality, considering the category of the case, the participants in the proceedings, or other circumstances. For example, an increased public interest might exist in political/government officials and therefore, the grounds for closure of the data may be ruled out." [18]

The proposed bill does not provide for the procedure for issuing a "closed" judicial act in the form of public information.

Recommendations:

- The general rule for judicial acts by default being open needs to be defined.

[17] Para.66.
[18] idem

- Exhaustive legal grounds should be defined when the court has to consider the closure of the judicial act. In all other cases, the acts adopted due to open court sessions should be publicly available. The court should not function as notaries by certifying the openness of the acts.
- One of the legal grounds for restricting access to a judicial act must be upon satisfying a substantiated written request of the data subject;
- The court should be able to assess on its initiative the issue of protecting the data of persons who are not aware their data is reflected in the judicial acts, may not have the ability to make informed decisions, or if the issue concerns particularly sensitive personal information.
- The possibility of opening a closed judicial act should be considered if circumstances change and it becomes a subject of increased public interest.
- The possibility of closing an open act should be considered if circumstances change and a particular need for personal data protection arises.

2. Terms for Resolving the Issue and the Right to Appeal

Naturally, the Constitutional Court has not established a specific model for the implementation of constitutional standards set by itself. In particular, the defined constitutional standards can be enforced regardless of whether the court acts as a judicial body or as an administrative body.

The Parliament of Georgia has chosen the first option - the court decides on all issues related to the availability of judicial acts and, per the judge's decision, relevant public official ensures the publicity of it.

2.1. Terms

The Constitutional Court's judgment is silent concerning the terms of resolving the issue, but the terms proposed by the bill substantially undermine the legitimate goals for which the Constitutional Court has set a high standard of availability of judicial acts. In particular, the procedure and timing of the material guarantees set out in the first part of this document are defined in such a way that it substantially complicates the realization of the legitimate interests of transparency and accountability of the judiciary.

For instance, according to Paragraph 5 of Article 13^5 of the bill, **during a year after the judicial act is adopted, it is impossible to receive it in the form of public information,** unless all the persons reflected have not already refused to protect their data. Besides, an additional restriction on obtaining the judicial act is imposed by paragraph 2 of Article 13^3, according to which only those fully or partially depersonalized judicial acts can be issued on

which the final court decision has entered into force. Such provisions not only do not improve access to the transparency of the judiciary but in some respects worsen the existing rules for requesting and receiving public information.

Recommendation:

- Terms need to be curtailed. Obtaining judicial acts after such a long time cannot be evaluated as an effective mechanism for the transparency and accountability of the judiciary. Solutions that are built in such a way as to create the need for those long terms[19] need to be changed themselves.

2.2. Right to Appeal

The proposed bill restricts the right to appeal the ruling on the depersonalization of judicial acts. In particular, according to Paragraph 5 of Article 13[5], "a person, whose data was reflected in the judicial act that was allowed to be issued as public information per paragraph 2 of this Article, has the right to file an appeal against this ruling." Under this paragraph, before the ruling enters in force (that might take up to 1 year), the only part that can be appealed is where the court has decided in favor of publicity, at the same time, only the personal data subject has the right to appeal. Accordingly, within 1 year after the ruling is adopted (unless all of the data subjects have given their consent to the disclosure), no one has the right to challenge closed acts to be open to the public.

Not only the person concerned can be entitled to appeal, but any interested party who believes and justifies the ground for publicity must be given priority.

Both the right to close an open act and the right to request its closure, depend on circumstances that may arise at different times, including instantaneous and unexpected. Quantitative and temporal determination of these circumstances is impossible. Naturally, the interest of protecting the court from caseflow should be taken into account, but this can be insured by tightening material standards.

The judge's decision to close the act should not impede the right of the recipient of public information to appeal in court if the act is not issued, even if the respective ruling of the judge in favor of protecting the data is final. This risk of restriction of the right to appeal is created by the fact that the issue is decided by the court as a judicial body. There should be a clear record of this.

[19] For example, the fact that the court adopting the last act has the power to discuss the publicity of all previous acts adopted in this case.

Overall, the appeal procedure is inflexible and may lead to violations of the right to receive the judicial acts, the right to personal data protection, and a right to a fair trial.

Although the Constitutional Court has not established a model for enforcing its judgment, it has set out the basic principles of implementation.

> *According to the court, "the legislator should create a flexible system that will allow interested parties to receive judicial acts speedily. The right to receive public information will become ineffective if, upon its request, the resolution of the issue of disclosure of personal data contained in it is unreasonably delayed. This can be accomplished by the trial judge himself/herself and/or in finalized cases within a reasonable time after the request of the data subject and/or within another model that ensures rapid and effective realization of public access to judicial acts ".*[20]

Overall, the procedural rules proposed by the bill are inflexible and unjustifiably lengthy, making it impossible to effectively exercise the right to access judicial acts.

Recommendation:

- The Parliament should ensure the establishment of flexible and efficient procedures. If it fails to do so for reasons of protecting the judiciary from case overload or for other reasons, it is possible to develop a much simpler and more effective legal model in which relevant decisions are made by the court as an administrative body under a special procedure.

3. Access to Acts Before the Implementation of Standards set by Constitutional Court

Before the judgment of the Constitutional Court entered into force (May 1, 2020), legislation *a priori* protected the personal data in the judicial acts. Although such regulation was declared unconstitutional, individuals had a legitimate expectation that their data would be protected in any case and they did not use proactive legal mechanisms to protect their data.

It is valid that the proposed bill envisages a transitional period when the issue of access to acts adopted during this period should be clarified. Nevertheless, the proposed model for the implementation of constitutional standards during the transition period is problematic.

3.1. Terms for Appeal and Review

The bill provides for 1 year for people concerned to request protection of their data from disclosure in the acts adopted before January 1, 2022. The Constitutional Court's judgment,

[20] Para. 67.

which reversed the balance in favor of publicity, was adopted in 2019, while execution was postponed till May 2020. Accordingly, at least interested parties will have at least 18 months to consider the issue whether apply to a court or not. 6 months is a completely real and sufficient time for concerned people to make up their mind around the matter and if wanted, submit written requests not to disclose their data. According to the bill, the requests will be accepted until 2023, and during the next 1 year (till 2024) the court will review them. At the same time, according to paragraph 8 of Article 13^4 "before January 1, 2024, it is inadmissible to issue a full or partially depersonalized text of a judicial act adopted before January 1, 2022."

The named legislative amendment implies that the issuance of judicial acts in the form of public information is automatically prohibited until 2024, regardless of whether the data subject submits the request to depersonalize their data. It is completely unclear motivation and argumentation, why on one hand, receiving/reviewing requests for personal data protection and on the other hand, issuing the judicial acts as public information are independent processes. Why should the court be prevented from issuing acts in the form of public information in respect of which the court has not received a written request for closure at all, or why is it not considered in parallel with the receiving applications?

Overall, the regulatory terms for the transition period are unjustifiably protracted and inefficiently distributed, creating artificial obstacles to the proper realization of the right of access to judicial acts.

3.2. Exceptions for Officials and Cases of Particularly High Public Interest

Public officials, whose cases were heard in open court sessions, as well as other persons mentioned in relevant judicial acts, naturally have low legitimate expectations of the protection of their data. Access to judicial acts concerning current and former officials should not be hampered by the transitional period. A mechanism should be provided by which interested parties will be able to familiarize themselves with the acts that reflect the data of these officials. To summarize, although it is necessary to adjust the transition period, the proposed model creates artificial obstacles. terms should be reduced, and the standard by which the decision-maker should be guided should be properly established, per the explanations made by the Constitutional Court at the stage of "narrow proportionality". During the transition period, different arrangements should be made for judicial acts that concern officials and former officials.

Not only for the officials but generally, the mechanism should be developed to ensure that the acts adopted before January 1, 2022, can be issued if there is a special public interest in

a particular act. In such a case, the person requesting public information may be required to substantiate such interest.

Recommendations:

- The blanket ban on the issuance of judicial acts adopted before January 1, 2022, by 2024 should be lifted. The deadline for submitting written requests should be reduced. Deadlines for reviewing written requests should be set differently.
- Exceptions to cases on the personal data of officials should be allowed;
- In the case of compelling public interest, the possibility of issuing a judicial act should be considered.

4. Common Court Resources

Adoption of the current version of the bill will place a significant burden on the common courts. The obligation of a judge to discuss the balance between the availability of judicial acts and the right to protection of personal data in every case is an incredibly large burden.

The court overload must be minimized not by extending the terms for reviewing the cases and restricting the right to a fair trial, but by the uplifting unnecessary obligations. In this case, the heavy burden imposed on judges is not only unnecessary but also contrary to the standard established by the judgment of the Constitutional Court.

According to Article 2 of the proposed bill, "Before January 1, 2022, the High Council of Justice of Georgia shall adopt the relevant legal acts defined by the Organic Law of Georgia on Common Courts and provide other necessary measures." Depending on which path is chosen by the High Council of Justice, the implementation of appropriate measures may require the allocation of additional financial resources for administrative, technical, and/or developmental action.

5. Publication of Judicial Acts

The Constitutional Court's judgment does not concern the publication of judicial acts at all. It is focused solely on issuing these acts in the form of public information. However, this obligation is provided for in Paragraph Article 3^1 of the Article 13 of the "Organic Law of Georgia on Common Courts" according to which, "The judicial act adopted as a result of open court session of the substantive hearing of the case is published in full on the court's website, and in the case of the closed session, only the operative part of the decision is published on the court's website. The issue of disclosure of personal data of a person included in judicial acts is resolved following the law."

Common courts regularly published their decisions in the depersonalized form at https://ecd.court.ge. However, the day before the judgment of the Constitutional Court entered into force, courts ceased to publish acts. The decisions are still published by the Supreme Court on its website, although the decisions of the first instance and appellate courts have not been published since 30 April, 2020.

As noted, the judgment of the Constitutional Court does not even concern the proactive publication of judicial acts. Thus, it is unclear what prompted the courts to terminate the publication of the depersonalized decisions. However, it is essential that the publishing of the judicial acts is resumed immediately. As the Constitutional Court emphasized legal security and knowledge of case-law are essentially interrelated.

> *According to the Constitutional Court, "in addition to public confidence in the judiciary and public oversight over it, it is important to take into account the interests of legal security. Any normative rule of conduct becomes viable in and through court practice. The judiciary is the branch of government in the architecture of the bodies established by the Constitution of Georgia, which has the final say in the definition and application of legislation".*[21]

Proactive publication of judicial acts relieves the court from public information requests. This is particularly important in so far as, in the interests of legal security, the right of access to judicial acts has been given a particularly high constitutional significance and guarantee by the Constitutional Court:

> *"The intensity of the restriction increases even more in cases when the issuance of the depersonalized the judicial acts cannot be ensured and the act is completely unavailable to the interested parties, which not only precludes accidental control but also - ignores the requirement of legal certainty - to make available to the public the reasoning given in court decisions - an authoritative interpretation of applicable law. ".*[22]

6. Various, Non-Systemic Problematic Issues

the proposed bill envisages several problematic and vague provisions. The reason for the introduction of such norms as a whole is unclear and poses risks of impeding access to judicial acts. For example, according to Paragraph 1 of Article 13^3, "A full or partially depersonalized text of a judicial act in the form of public information is issued under the rules established by this Chapter only to a person who cannot receive the full text of the

[21] Ibid, para 49-50.
[22] Ibid, para 65

same judicial act based on other legal norms in force in Georgia." It is unclear what is the goal beyond this limitation. At the same time, this norm may give rise to other legal problems.

Paragraph 3 of Article 13^3 stipulates that "the rules established by this Chapter to decide on the issue of issuing a full or partially depersonalized text of a judicial act in the form of public information shall apply only if the court has not decided to close the court session or its relevant part." The partial closure of the court session should be the basis only for the protection of the information voiced at the closed session and not for the protection of the entire act of the court. The cited norm allows it to be interpreted in such a way that the act adopted following the partially closed session is not issued at all in the form of public information.

Same Article orders “The rules laid down in this Chapter shall not apply to the disclosure of a part of the text of a judicial act in the form of public information which contains a commercial, professional or state secret or the disclosure of which may lead to the disclosure of such secrets."

The issues listed in the cited norm are regulated by other normative acts. This record has no legal value at best (it is clear from the bill that it regulates the protection of personal data in judicial acts), and in the worst-case, its interpretation may unlawfully restrict access to acts.

Paragraph 5 of Article 13^4 regulates the availability of the acts adopted before January 1, 2022- "To receive the full or partially depersonalized text of the judicial action in the form of public information, a person may apply to the court that issued this court act or, if the said court is liquidated, to another relevant court operating in its former territory. The applicant has the right to substantiate the need and motivation of the request in the form of public information of the full or partially depersonalized text of the court act.” It is unclear what the declaration of the applicant's right to substantiate claim serves. This right is already guaranteed. Given that the proposed bill violates the basic standards of the Constitutional Court's judgment, the existence of such records creates additional risks.

The few problems listed are a non-exhaustive list of non-systemic legal problems associated with the bill. Systemic problems need to be resolved to be able to discuss detailed legal issues and refine the proposed legislative technique of the proposed project to properly implement the judgment of the Constitutional Court and standards established by it.

Conclusion

The bill initiated by the members of the Parliament to enforce the decision of the Constitutional Court of June 7, 2019, partially reflects the constitutional standards established by the above-mentioned judgment. Nevertheless, the model of enforcement (procedures and terms) is designed in such a way that it becomes impossible or substantially difficult to achieve the legitimate goals for which high standards of transparency of constitutional justice have been set.

The bill imperfectly implements the increased (implicit) constitutional interest in accessing common court acts. Adoption of a bill will fail to ensure even the near-full implementation of the judgment. Moreover, in some instances, the bill might even oppose it. the current version of the bill creates risks to the right of access to judicial acts and violation of the right to protection of personal data. At the same time, it poses a real threat to the clogging of the common court system.

The bill needs to be significantly advanced. It is of critical importance that the rules of review and appeal procedures and terms, as well as the availability of acts adopted before January 1, 2022, are reformulated. These processes need to become more flexible and efficient. The existing formulation will undermine the access to judicial acts and the numerous constitutional benefits in its favor.

In conclusion, the bill should be evaluated negatively. It neglects the standards established by the Constitutional Court's judgment and it fails to ensure the effective exercise of the right to access to judicial acts.

Annex N1: A revised version of the registered bill; The bill was drafted by the Institute for Development of Freedom of Information (IDFI) based on the model proposed by the members of the Legal Issues Committee.

Annex N2: Draft law developed by IDFI.