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PROTOCOL NO. 16 TO THE CONVENTION, THE PRINCIPLE OF SUBSIDIARITY AND A NEW AUTHORITY OF THE CONSTITUTIONAL COURT

National justice based on the European standards of the human rights and fundamental freedoms is a principal component of a democratic state and the rule-of-law.

One of the basic aims of the Protocol no. 16 to the European Convention for the Protection of Human Rights and Fundamental Freedoms is to achieve approximation of national justice of contracting parties to the Convention with the European standards. The Protocol which has not yet entered into force and which is already ratified by Georgia aims at extending advisory jurisdiction of the European Court of Human Rights. Upon entry into force of the Protocol, Supreme Court and Constitutional Court of Georgia will be authorized to request advisory opinions from the European Court of Human Rights concerning the interpretation and application of the human rights and fundamental freedoms in the context of a case pending before them.

In the article below an essence of advisory opinion and the accompanying results will be discussed. Negative expectations followed to the adoption and ratification of the Protocol by Georgia will be analyzed. Advisory jurisdiction as an effective mechanism for the protection of human rights at national level will be discussed. Besides, new power of the Supreme Court and Constitutional Court of Georgia will be analysed, its positive and negative aspects in terms of effective justice, protection of the human rights and independence of courts in the process of delivery of judgments.

INTRODUCTION

On March 4, 2015 Parliament of Georgia ratified Protocol no.16 to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "European Convention"). This Protocol will enter into force, and consequently the mechanism established under it will became effective upon expiration of a period of three months after the date on which ten Contracting Parties to the Convention have ratified the Protocol.

The Protocol gives authority to the highest courts and tribunals of the Contracting Parties to request the European Court of Human Rights to give advisory opinions. An advisory opinion might be delivered to the requesting court or tribunal in the context of a case pending before it. The request should relate to the interpretation and application of the rights and freedoms defined in the Convention and the protocols thereto.

Elaboration of the Protocol is a part of the reform of the European Court of Human Rights (hereinafter "the ECtHR"). For the first time, the proposal to extend the jurisdiction of the European Court of Human Rights (the Court) to give advisory opinions was made at the Warsaw Summit of the Council of Europe held on May 16-17, 2005. In the report to the Committee of Ministers submitted within the framework of the Action Plan adopted at the summit, the issue of a long-term effectiveness of the ECHR control mechanism was considered. In their opinion, giving authority to the highest courts to request the European Court of Human Rights to give advisory opinions would foster dialogue between the ECtHR and national courts. Apart from this, it would strengthen"constitutional" role of the European Court.

Over the last few years the ECtHR faces an acute problem of a large case load of individual applications. Thus, it is considered that one of the goal of advisory jurisdiction is to reduce the caseload.

Ratification of the Protocol by Georgia caused negative expectations in Georgian reality. To the part of the society effectiveness of advisory jurisdiction as a mechanism is questionable in terms of real protection of rights, fast justice and protection of independence of national court.[1]

Considering the above mentioned, in the first chapter of the present article, the mechanism established by the Protocol no. 16 –jurisdiction of the ECtHR to give advisory opinions will be discussed.

[1] Eva Gotsiridze, Protocol no. 16 to the European Convention on Human Rights – Challenges for Justice, Journal of the Supreme Court of Georgia "Justice and Law", 2015, pg.28.

The second chapter will be devoted to the role of the principle of subsidiarity in the process of implementation of the mechanism. Besides, attention will also be paid to the essence and significance of legal dialogue between the courts. In the third chapter critical opinions/negative expectation followed by the ratification of the protocol will be discussed and positive aspects of advisory jurisdiction will be analysed. In the fourth chapter how the Protocol no. 16 reflected in Georgian legislation will be reviewed and in the conclusion opinions related to the issues discussed in the article will be presented.

PROTOCOL NO. 16 TO THE CONVENTION

Protocol no. 16 to the European Convention was opened for signature on October 2, 2013 in Strasbourg and by today 16 contracting parties have signed, from which 6 of them have already ratified it[2]. The treaty was developed within the framework of the reform of the European Court. It is aimed at improving effectiveness of implementation of the Convention at national level[3] by deepening legal dialogue between the ECtHR and national state authorities in accordance with the principle of subsidiarity.[4]

Protocol no. 16 gives authority to the highest courts and tribunals of the Contracting Parties to request the European Court of Human Rights to give advisory opinions[5]. Advisory opinion might be delivered to the requesting court or tribunal only in the context of a case pending before it[6]. The request should relate only to the interpretation and application of the rights and freedoms defined in the Convention and the protocols thereto.[7]

As noted, according to the Protocol, highest courts and tribunals of the Contracting Parties are considered to be parties to the legal dialogue with the ECtHR. In this case, each of the High Contracting Parties to the Convention decides and at the time of ratification, indicates which high court or tribunal will be authorized to request the ECtHR for advisory opinion.[8] Authors of the Protocol

2 http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/214/signatures?p_auth=Ja7Y8O61 [last time checked - 8/5/2016]

3 https://wcd.coe.int/ViewDoc.jsp?p=&Ref=DC-PR114%282013%29&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&direct=true [last time checked – 8/5/2016]

4 Protocol no. 16 to the Convention on the Protection of Human Rights and Fundamental Freedoms, Preamble.

5 ProtocolN°16, Article 1(1).

6 ProtocolN°16, Article 1(2).

7 ProtocolN°16, Article 1(1).

8 ProtocolN°16, Article 10.

have excluded lower courts from the format of legal dialogue. Limiting the courts eligible to request advisory opinion to the high courts and tribunals is in coherence with the idea of exhaustion of domestic remedies. Only the court(s) decisions of which shell not be subject to revision[9], should be authorised to request the European Court to give an advisory opinion. This limitation also serves avoidance of proliferation of the requests for advisory opinions[10].

The requesting court/tribunal is obliged to give reasons for its request and provide the relevant legal and factual background of the pending case[11]. Paragraphs 2 and 3 of Article 1 underlines that advisory opinion will not include an abstract assessment of national legislation but the Grand Chamber will discuss the legal and factual background of the dispute[12].

Request submitted by national courts should pass an admissibility stage. A panel of five judges of the Grand Chamber decides whether to accept the request for an advisory opinion[13]. If the panel accepts the request, the Grand Chamber of the ECtHR delivers the advisory opinion[14].At the stage of admissibility as well as development of opinion, the panel and the Grand Chamber, include ex officio the judge elected by the European Council in respect of the Contracting Party to which the requesting court or tribunal pertains. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party will sit in the capacity of judge[15].

The Protocol does not contain criteria for the admissibility of the request. Nevertheless, according to one of the explanatory report, criteria similar to those used in relation to requests for referral of cases to the Grand Chamber should be considered as a criteria for the admissibility of the request. Advisory opinion should be delivered if the case evokes important questions related to the interpretation and application of the Convention, or if the case pertains to an important matter of general interest, or if it presents a reason for revision of case law established by the Court[16].

Reasons shall be given for advisory opinions[17] as well as refusal to accept the request[18]. Articles of the Protocol gives a right to the representatives of the Council of Europe Commissioner for Human

9 ECtHR, Reflection paper on the proposal to extend the Court's advisory jurisdiction, para. 26.
10 DH-GDR(2012)020 FINAL, pp. 3, point 8.
11 Protocol №16, Article 1(3).
12 Explanatory Report to Protocol No. 16, Article 1, para. 10.
13 Protocol №16, Article 2(1).
14 Protocol №16, Article 2(2).
15 Protocol №16, Article 2(3).
16 Advisory opinions, preliminary rulings and the new protocol no. 16 to the European convention of human rights, Janneke Gerards, 2014, p. 633; Compare ECtHR, Reflection paper on the proposal to extend the Court's advisory jurisdiction, para. 20, 22 and 30.
17 Protocol №16, Article 4.
18 Protocol №16, Article 2(1).

Rights and the High Contracting Party to which the requesting court or tribunal pertains to submit written comments and take part in the hearing. The President of the Court may also invite any other High Contracting Party or person to submit written comments or participate in the hearing. In this case, the President of the court acts in the interest of the proper administration of justice[19].

Advisory opinions which havea non-binding nature[20] are communicated to the requesting court or tribunal. The opinion is also communicated to the High Contracting Party to which that court or tribunal pertains[21].

Advisory opinions should necessarily be published. If advisory opinion does not represent, in whole or in part, the unanimous opinion of judges, any judge shall be entitled to deliver a separate opinion[22] – "In this respect, the advisory opinions resemble the 'normal' judgments of the Court"[23].

PRINCIPLE OF SUBSIDIARITY AND THE IDEA OF LEGAL DIALOGUE

In its final Declaration on advisory jurisdiction, the Committee of Ministers noted that the said jurisdiction would help clarify the provisions of the Convention and the Court's case-law, thus providing further guidance in order to assist States Parties in avoiding future violations[24]. The latter represents an enhancement of opportunities of national courts, in accordance with the principle of subsidiarity, to deliver judgment considering the European Convention on Human Right and case law before submitting requests to the European Court. This will definitely have a positive impact on the quality of national court judgments and will significantly reduce the risks of violations of rights and freedoms guaranteed by the Convention.

Principle of subsidiarity is guaranteed under paragraphs 1, 13 and 35 of the European Convention though its roots should be sought far away, in the roots of Western values. It is acknowledged that formation of the European Union is significantly based on the idea of principle of subsidiarity[25]. Later, International Criminal Court was also established based on the principle of subsidiari-

19 Protocol №16, Article 3.
20 Protocol №16, Article 5.
21 Protocol №16, Article 4 (3).
22 Protocol №16, Article 4 (2).
23 Advisory opinions, preliminary rulings and the new protocol no. 16 to the European convention of human rights, Janneke Gerards, 2014, pg. 634.
24 Explanatory Report, protocol No. 16 to the Convention for the Protection of Human Rights and fundamental Freedoms, introduction, para.1-2.
25 Francesco De Santis di Nicola, Principle of Subsidiarity and 'Embeddedness' of the European Convention on Human Rights in the Field of the Reasonable-Time Requirement: The Italian Case, pp. 2.

ty[26]. Therefore the principle of subsidiarity is a basic principle of international legal mechanisms as it acknowledges the state sovereignty and primary role of dispute resolution at the national level.

As for the reflection of the principle of subsidiary within the Convention, the Contracting Parties undertake an obligation to ensure the rights and freedoms defined in the Convention for everyone within their competences[27]. Therefore, according to the Convention, the High Contracting Parties has a primary responsibility to protect the right and freedoms guaranteed by the Convention. The mechanism for submitting requests to the European Court is considered as an auxiliary, subsidiary opportunity for the protection of human rights[28].

In spite of the fact, that in some specific context, the Contracting Parties are granted a wide margin of assessment for the usage of Convention, the principle of subsidiarity does not exclude the interference of the ECtHR in the internal procedures of the state for the protection of rights and freedoms guaranteed by the Convention. The ECtHR defines that, despite the principle of subsidiarity, it has a right and moreover – an obligation to interfere and ensure recovery of the rights and freedoms guaranteed by the Convention which have been violated by the internal mechanisms of the state. Besides, the Court defines that it can always interfere, when it considers that the judgment made by the national court diminishes occupation of the mechanisms guaranteed by the European Convention[29].

Existence of a high risk of violation of the rights and freedoms guaranteed by the European Convention is grounded by a large number of individual applications as well as judgments delivered against the states. That's why the necessity to introduce additional mechanism to reduce the risk of violation of the European Convention at the national level arose before the Court[30].

However, approach of the European court to impact on the internal processes at the national level should not be considered as the goal of the Court to have unilateral effect. This process is a part of the legal dialogue taking into account that the European court is very careful toward assessment of the judgments delivered by national courts considering the national constitutional principles and legislation specifics.

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26 Rome Statute of the International Criminal Court, article 17.
27 Convention for the Protection of Human Rights and Fundamental Freedoms, article 1.
28 Case of Kudla v. Poland, para. 152.
29 Case of Cocchiarella v. Italy, para. 57.
30 Helfer, L. R. Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime. European Journal Int'l Law. 2008, pg. 139.

Relationship between different courts should be considered as a dialogue – more broadly, as a format of legal dialogue[31]. Importance of the cooperation between different courts was stressed at the third meeting between the Chairmen of the supreme courts and judges of central and east European countries held in 1996 in Tallinn and Parnu. Participants of the meeting agreed that judicial authorities, who are conscious of their interdependence, should necessarily engage in dialogue at national level as well as with the European Court. In their opinion, this will contribute to the confidence of the citizens in the rule of law and strengthen the protection provided by the courts[32].

The process of legal dialogue does not mean unilateral approaches but this is a bilateral process when the judgments delivered by the courts at national level might even influence the case law of the European Court of Human Rights. In particular, it is possible that the judgments delivered with deviation from the Convention will not be treated by the ECtHR as a violation of the European Convention. On the contrary, the court may change its case law based on it and establish a slightly different standard in order the later to be better adopted with the national practices and used more easily by the national courts[33]. Apart from this, legal dialogue between the courts will contribute to the globalization of the constitutionalism[34].

That is why law is not a static but combination of dynamic processes evolving constantly. In this process, courts have a vital role. In particular, courts give law a concrete meaning by application of it in the cases they decide[35].

We believe, that extending jurisdiction of the European Court of Human Rights to deliver advisory opinions should be perceived considering the context discussed above. Therefore, considering the confidence in competence and qualification of the European Court of Human Rights, possible result of the ratification of the Protocol should be assessed in terms of provision high standards for the protection of the rights and freedoms ensured by the Convention at national level.

31 Elina Paunio, Conflict, power, and understanding – judicial dialogue between the ECJ and national courts, 2010, pp 3.

32 Resolution on strengthening judicial system in the central and east European countries, "Jurisdiction of the Supreme Courts", 1996, Estonia, Tallinn, Parnu.

33 ECtHR, Reflection paper on the proposal to extend the Court's advisory jurisdiction, para.14,16.

34 Advisory opinions, preliminary rulings and the new protocol no. 16 to the European convention of human rights, Janneke Gerards, 2014, pg. 638.

35 http://jelec.iliauni.edu.ge/2015/07/13/protocol_16_full/ [last time checked – 29.06.2016].

WITH RESPECT TO SOME CRITICAL COMMENTS ON THE PROTOCOL NO. 16

Ratification of the Protocol no. 16 to the Convention was accompanied by a number of critical and different opinions.

According to the opinions of German and Norwegian experts expressed in the process of elaboration of the Protocol, non-binding character contained a risk in the sense that domestic court asking for the Court's advice might not base their judgment on the opinions delivered by the ECtHR[36].

Contrary to this, ratification of the Protocol no. 16 by the Parliament of Georgia was perceived very negative lybya small group of society. An assumption has been made that, the Government and Parliament of Georgia had to think prior to the ratification of the Protocol as despite advisory, non-binding nature of the opinion, the ECtHR would influence the process of making decision by the national courts by their inner conviction[37], which would contradict with the principle of subsidiarity.

Advisory jurisdiction of the ECtHR declared in Protocol no. 16 implies the discretion of the courts of the High Contracting Parties to follow the opinion. However, if national court neglect the opinion, the Protocol does not exclude submitting individual application to the ECtHR in the same case[38]. According to the explanatory note to the Protocol, if an individual application implies issues which have been taken into account after delivering advisory opinion, such applications will be declared inadmissible or excluded from the process of hearing casesand the ECtHR will not devote time to such cases.

According to the above mentioned, there might be a risk but seems unlikely to happen, that the High Contracting Parties asking for the ECtHR's advice will not follow the spirit and recommendations declared in the opinion. As already noted, such decisions, delivered with deviation from the interpretation of the Convention might be corrected by the possibility to submit individual applications to the ECtHR.

In this case, the following question arises: how much the advisory jurisdiction will assist the ECtHR that faces a large case load of individual applications, or in contrary, will this competence double

36 Elina Paunio, Conflict, power, and understanding – judicial dialogue between the ECJ and national courts, 2010, pp 2-3.

37 ECtHR, Reflection paper on the proposal to extend the Court's advisory jurisdiction, para.7.

38 Eva Gotsiridze, opinion about ratification of the Protocol no. 16 to the Convention for the Protection of Human Rights by the Parliament of Georgia, pg. 4-5.

its workload? As if we consider cases when national courts will not follow to the advisory opinion and the case will be shifted to the ECtHR based on the individual applications, the court will have to judge the same issue twice.

Extension of the Court's advisory jurisdiction implies increase of the Court's effectiveness within the framework of the continuing reform of the Court. It is noteworthy, that an initially increased workload is a characteristic of every reform. In this specific case, it is also possible the workload of the ECtHR to be increased considering its new competence. However, the reform will definitely be fruitful in a mid- or long-term perspective and help reduce the workload of the Court's system[39].

It is especially important that ECtHR not to deviate from the principles declared in advisory opinion. This refers to the cases when the national courts will not follow the provisions established in advisory opinions and the person will submit an individual application to the Court. In such cases, the Court should make it clear for every contracting party that, at the stage of hearing individual applications, it will not deviate from the principles and interpretations it have already established in its advisory opinion. In a long-term perspective, such approach of the Court will reduce the number of individual applications submitted to the Court as the courts of High Contracting Parties will know that there is an advisory opinion to which they should follow and avoid ECtHR to confirm the fact of violation of the Convention by its judgment[40]. On the other side, existence of advisory opinion and whether or not the courts follow the opinion, will enable potential applicant to the Court to determine possible results of submitting claims and decide accordingly whether or not to continue legal dispute. Such a condition is comfortable also for the contracting state as a party to the proceeding at the ECtHR.

The case discussed above, should not be perceived as a risk for the effectiveness of the right to submit individual applications to the ECtHR[41]. The Protocol no. 16 does not restrict the individual's right to submit its application to the ECtHR even when the domestic courts follow to recommendations declared in the opinion. Apart from this, delivering judgments according to the standards established and explained by the ECtHR contributes to the implementation of the European Convention at national level and minimizes the risk of violation of rights ensured by the European Convention.

39 ECtHR, Reflection paper on the proposal to extend the Court's advisory jurisdiction, para.8.
40 ECtHR, Reflection paper on the proposal to extend the Court's advisory jurisdiction, para.46.
41 Eva Gotsiridze, opinion about ratification of the Protocol no. 16 to the Convention for the Protection of Human Rights by the Parliament of Georgia, pg. 36-37.

Ratification of the Protocol by the Parliament of Georgia was followed by the concern related the ECtHR's influence on making decisions by domestic courts. As noted, an opinion has been expressed that despite its non-binding nature, it will obstruct the decision-making process by the national courts by their inner conviction.

We believe, that it would be unjustified if an attempt to approximate Georgian justice system with the European Standards is represented negatively. However, common opinion does not really exist toward importance of advisory opinion and its influence on national jurisdiction. Besides, is should be noted that we share the spirit of the Protocol no. 16 to help implementation of the Convention at national level.

It should be noted that in most cases, effects of the judgments of the ECtHR delivered on individual applications and advisory opinions will be the same. If we consider that interpretations established in the Court's "normal" judgments are generally considered to have so-cold *res interpretata*, under which principles and interpretations established in the Courts judgments are considered as parts of the European Convention, we will receive the situation when the case-law of the ECtHR is, in fact, binding for the contracting parties as countries are obliged to use the Convention as it is explained by the ECtHR[42].

Despite non-binding nature of advisory opinion, in fact, it will include interpretations of the rights and freedoms guaranteed by the Convention and the Court's approach considering factual and legal aspects of a specific case. Therefore, advisory opinion should be considered as a part of the Convention and *de facto* binding for the contracting party asking for such opinion[43]. In its opinion on Protocol No. 16Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe relies on the following beliefs – "The interpretation of the Convention and the Protocols thereto contained in such advisory opinions would be analogous in its effect to the interpretative elements set out by the Court in judgments and decision". Hence, although advisory opinions will not have a binding character they would nevertheless have "undeniable legal effects"[44].

[42] Advisory opinions, preliminary rulings and the new protocol no. 16 to the European convention of human rights, Janneke Gerards, 2014, pg. 634-635.

[43] ibid, pg. 635.

[44] Draft opinion, draft Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Committee on Legal Affairs and Human Rights, 11 April 2013.

Despite possible effects of advisory opinions discussed above, we believe that independence of domestic courts and the guaranty of making decisions based on their inner convictions till are not endangered. Guarantee for this should be sought not in non-binding nature of the opinion but in the essence of the right to ask an advice. Relevant domestic courts have a rights but not an obligation to ask the ECtHR for advisory opinion. Most likely, domestic courts will make such decisions when it considers that despite its competence it is necessary to comply its decision with the assessments of the ECtHR. Hence, if a national court decides to ask an advice to the competent body, such as ECtHR concerning the human rights, it will be sensible to follow then the recommendations declared in the opinion.

In addition to the above mentioned, it is important to answer the following question - will the national courts abuse their right to ask the ECtHR to deliver advisory opinion? This relates to the cases when national courts are considering cases related to the political grounds or important constitutional matter and they ask the ECtHR for opinion in order to avoid taking sole responsibility for the results of the judgment delivered by them. In such cases, making reference to the admissibility criteria, which has already been discussed within the Article, will be correct. We think, that the ECtHR will avoid getting involved in such delicate debate[45] and refuse requests from the state. Refusal might be justified by the argument that it would be preferable the resolution of a case to be made by the Court's judgment delivered upon consideration of individual application.

RATIFICATION OF THE PROTOCOL NO. 16, AMENDMENTS TO GEORGIAN LEGISLATION AND NEW COMPETENCE OF THE CONSTITUTIONAL COURT

Georgia signed the Protocol no. 16 to the European Convention for the Protection of Human Rights and Fundamental Rights on June 19, 2014. The Parliament of Georgia ratified the Protocol no. 16 under its resolution N3139-II as of March 4, 2015[46]. According to the requirements under article 10 of the Protocol, Supreme Court of Georgia and Constitutional courts have been indicated as having authority to request the Court to give advisory opinions[47].

[45] Advisory opinions, preliminary rulings and the new protocol no. 16 to the European convention of human rights, Janneke Gerards, 2014, pg. 634.

[46] Resolution N3139-II of the Parliament of Georgia as of March 4, 2015. http://info.parliament.ge/file/1/BillReviewContent/65781? – [last time checked – 5.24.2016].

[47] Explanatory Note, Protocol no. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Government of Georgia. http://info.parliament.ge/file/1/BillReviewContent/54725? – [last time checked – 5.24.2016].

In parallel to the ratification, amendments have been made to the Criminal Procedure Code[48], Civil Procedure Code[49] and Administrative Procedure Code of Georgia[50]. Amendments have also been made to the Organic Law of Georgian on the "Constitutional Court of Georgia"[51].

According to the amendments, after a constitutional claim in relation to the issues of Chapter Two of the Constitution is admitted for consideration on the merits, the Constitutional Court of Georgia can apply to the ECtHR for an advisory opinion. The request should be made regarding issues related to the interpretation and application of the rights and freedoms provided by the Convention for the Protection of Human Rights and Fundamental Freedoms and the protocols thereto.

The Constitutional Court should substantiate the request for its application to the European Court of Human Rights for an advisory opinion and submit appropriate case-related legal and factual circumstances to the European Court of Human Rights.Domestic legislation also reaffirms that advisory opinion about request for which parties are notified by the Constitutional Court is not binding.

The Supreme Court of Georgia has been equipped with similar competence in all three branches of law (criminal, civil and administrative). The Supreme Court of Georgia is authorized to apply the ECtHR for advisory opinion after admitting the claim and case for consideration. All the provisions discussed above related to the Constitutional Court equally apply to the Supreme Court of Georgia too, considering its specifics.

The said mechanisms will become effective after Additional Protocol to the Convention will come into force.

The time limit for considering the cases by the Constitutional Court as well as Supreme Court of Georgia is suspended from when they apply to the European Court of Human Rights for an advisory opinion until when the advisory opinion is obtained.

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48 Law of Georgia "On the Amendments to the Criminal Procedure Code of Georgia", Legislative Herald of Georgia 3668-IIr, 05/06/2015.

49 Law of Georgia "On the Amendments to the Civil Procedure Code of Georgia", Legislative Herald of Georgia, 3666-IIr,05/06/2015.

50 Law of Georgia "On the Amendments to the Administrative Procedure Code of Georgia", Legislative Herald of Georgia, 3668-IIr, 05/06/2015.

51 On the amendments to the Organic Law of Georgia on the Constitutional Court of Georgia, Legislative Herald of Georgia3669-IIr, 05/06/2015.

There is an opinion about suspension of time limit for considering the cases that the procedure for delivering advisory opinion might procrastinate the procedural deadlines and obstruct administration of a quick and effective justice[52].There is no doubt, that the time limits for the consideration of the cases will more or less be extended at the national level, though according to the comments to the Protocol, in order to avoid delay in cases before domestic courts as well as in advisory opinion proceedings, it is necessary to mobilize all participants in the process as well as thoroughly accurate actions. Namely, the requesting court should formulate the request in a way that is precise, complete and in compliance with the requirements of the Protocol to avoid spending time for further clarification and submission of additional materials. Then all parties should actively and timely participate in the development of opinion including individuals and representatives of the State invited to oral hearing in the process of delivery of opinion. Separate opinions should be developed and appended to the opinion in a due time. Such approach will be a guarantee for avoiding delay in court proceedings at the national level so that the principles of effective justice and consideration of cases in a reasonable time[53].

CONCLUSION

Protocol no. 16 to the Convention equips the ECtHR with advisory jurisdiction. The High Contracting Parties will be eligible to benefit from the interpretations and recommendations of the Grand Chamber of the ECtHR related to the interpretation and application of the rights and freedomsin the context of a cases pending before it. Extending jurisdiction of the ECtHR is a part of the reform of the Court aimed at the improvement of the Court's effectiveness. Relationship between national court and ECtHR within the format of advisory opinion is considered as an attempt to strengthen legal dialogue between the courts, which will contribute to the implementation of the Convention at national level based on the principle of subsidiarity and in a long-term perspective, will reduce the case load of the Court of Strasbourg.

Advisory opinions delivered by the Grand Chamber will not be binding for the domestic courts, the later will have a discretion to follow or not to follow to the opinion. Despite its non-binding nature, there is a critics in society due to the fact that opinion delivered by the ECtHR will *de facto* have binding nature and will influence the decision-making process by national courts by their

[52] Opinion of the Legal Issues Committee of the Parliament of Georgia #547 about ratification of the Protocol no. 16, 23.01.2015.

[53] Explanatory Report, protocol No. 16 to the Convention for the Protection of Human Rights and fundamental Freedoms, introduction, para. 17.

inner conviction. Such effect of the opinion is considered to be in contradiction with subsidiarity principle (ECtHR is a subsidiary, additional mechanism and not a fourth instance).

We believe that the prevailing opinion about the legal effect of the opinion is not groundless, though we think that this should not be considered as interference in domestic courts' activities and the risk for violation of principle of subsidiarity. This opinion is strengthened by the condition that the contracting parties decide themselves whether or not to ask the ECtHR for advisory opinion.

Noncomplying to the opinion is especially mindless when despite delivery of opinion, individuals still have a right to submit application to the ECtHR in the same case. In this case, the ECtHR will surely be apt not to deviate from the provisions established by the Grand Chamber in its opinion and find violation of the provisions of the Convention, which might be avoided by the relevant decision made at the national level.

Approach of the ECtHR that it is not going to deviate from the provisions established in advisory opinion will reduce the number of individual applications submitted to the Court and the caseload in a long-term perspective. As the national courts will realize that in case of application, the opinion enables them to make judgment in compliance with the standards of the European Court of Human Rights at the national level and thus avoid the cases of violation of the Convention.

We believe, that ratification of the Protocol by Georgia and subsequently, usage of the mechanism of the Constitutional and Supreme Court of Georgia will contribute to the implementation of the Convention at national level and increase the quality of Georgian judicial decisions as it will be grounded by the recommendations based on the European Convention on Human Rights and case law about interpretation and application of human rights and fundamental freedoms.