

## CONSTITUTIONAL REFORM IN GEORGIA AS A RESULT OF ITS POLITICAL INSTABILITY

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### *Introduction*

In the twenty years that have elapsed since Georgia gained its independence, it has failed to stabilize its political system; the republic is busy looking for an adequate model of political governance and territorial-administrative division; there is no flexible and effective electoral system acceptable to all.

Year after year, the Constitution acquires amendments and addenda which never resolve the political contradictions and merely add to the confusion.

For over twenty years now, Georgian politicians have been discussing and disagreeing about the new electoral systems and constitutional amendments and addenda; they prefer to call their disagreements “nation-building.” The republic’s citizens have become lost in a dense forest of legal formulas and political regulations.

In fact, these disagreements are the outcrop of a never-ending power struggle that does not allow the republic to stabilize its political system.

### **Traditions of Georgian Constitutionalism and the Quest for an Optimal Form of Governance**

Georgia awakened to the need to limit executive power and increase the role of the parliament even before England acquired the Magna Carta in 1215. It was under the rule of Queen Tamar (the

12th century) that the Georgian aristocracy and commoners formulated the idea of a new branch of power, a Georgian parliament. K. Arslan, the leader of the 12th-century opposition, devised a two-chamber parliament:

1. Darbazi, one of the two chambers staffed with aristocracy and respected commoners, was expected to meet from time to time to discuss the situation and pass decisions: the decision execution belonged to the king.
2. Karavi was the chamber expected to function between the Darbazi's sessions.

The idea was not realized either in the 12th century or later. Georgia acquired a functioning parliament in 1918-1921.

From the very first days of independence Georgia has been looking for the best form of state governance. The dilemma, however, remains unresolved: the public and the elite have not yet agreed either on a parliamentary or a presidential republic. This means that the traditions of Georgian constitutionalism are inseparable from the quest for the optimal form of governance.

Elected in October 1990, the Supreme Soviet of Georgia (the name inherited from the Soviet Union) amended the still valid Constitution of the Soviet Socialist Republic of Georgia of 1978. It removed the words "Soviet Socialist" from the Constitution, while in November 1990 it passed a law on a "transition period in the Republic of Georgia."

On 9 April, 1991, the Supreme Soviet passed the Law on Operation of the Constitution and Legislation of the Republic of Georgia, under which the Constitutional Commission set about writing a new Constitution based on the Constitution dated 21 February, 1921; for the first time in its history Georgia acquired a president.

Very soon Zviad Gamsakhurdia, who filled the post of chairman of the Supreme Soviet of Georgia, was elected president. For a long time, the Georgians could not agree on whether he should call himself the first president of Georgia. His opponents insisted that this honor belonged to Noe Zhordania, who headed Georgia in 1918-1921 (the first republic), even though under the 1921 Constitution the government was the highest executive power structure headed by a chairman with broad powers<sup>1</sup> elected by the parliament for one year; the number of consecutive terms for one person was limited to two.<sup>2</sup> Since the 1921 Constitution did not say anything about the post of president, Gamsakhurdia's supporters prevailed.

His opponents, who obviously preferred the traditions of the parliamentary republic of 1918-1921, demanded that the newly introduced presidency be abolished as unacceptable for Georgia: concentration of supreme power in the hands of one person bordered on usurpation of power.

Gamsakhurdia was removed from his post in 1992, while the Law on State Power essentially acted as the constitution until 1995 when a new Fundamental Law (which many compared to the American Constitution) was adopted. In the next 15 years, until the Rose Revolution, the new Constitution acquired 23 amendments and addenda.

Starting in 1999, the Constitution was amended every year (except for 2007) (it acquired 6 amendments and addenda under President Shevardnadze).

The first two amendments and addenda to the Fundamental Law introduced on 20 July, 1999 envisaged that parties running for parliament should receive no less than 7 percent of the votes (instead of the previous 5 percent).<sup>3</sup>

At first the people in power intended to write and enact a new Fundamental Law; later, however, they limited themselves to amendments and addenda which radically changed the political system and

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<sup>1</sup> See: *The Constitution of the Republic of Georgia of 1921*, Art 70.

<sup>2</sup> See: *Ibid.*, Art 67.

<sup>3</sup> See: *The 1995 Constitution of Georgia*, Art 50.2 (1999 amendments).

the form of governance. Between November 2003 and 2010, the Constitution acquired 17 amendments and addenda, the first of which came into effect on 6 January, 2004. The latest, and most important, amendments and addenda were introduced on 15 October, 2010.

Some of the regulations (protection of labor rights, the state's obligation to encourage the physical upbringing of teenagers and young people, protect the environment, and inform citizens about the state of the environment) added a humane touch to the Fundamental Law. Enactment of most of the articles and new revolutionary amendments related to the political sphere was postponed until 2013.

Georgia's political establishment considers the European model of a parliamentary republic to be the ideal, however Georgia still remains a presidential republic even though the numerous amendments changed the head of the executive power branch's scope of power.

The 1995 Constitution followed the classical tradition of the division of power, although in fact it reinforced the system of presidential rule (even though the executive powers were split between the president and the government).

Before that the collective form of governance was actively discussed; President Shevardnadze and his supporters convinced the country that a strong presidential power was indispensable in Georgia; the "strong arm" thesis was very popular at the grass-roots level.

## **The Coming Fateful Election and a New Post: "The Queen of England"**

Under the original 1995 Constitution, the President of Georgia, as head of the Georgian state, doubled as head of the executive power branch; the Rose Revolution radically changed the Constitution, which caused quite a stir among certain political groups.

The amendment that passed on 6 February, 2004 read as follows: "The President of Georgia shall be the Head of the State of Georgia,"<sup>4</sup> while executive functions belonged to the Government. Art 4 of the Constitution, "The President of Georgia," acquired a new section called "The Government of Georgia." The presidential administration was separate from the government, which meant that the amended Constitution strengthened the institution of presidency in Georgia.

According to the amendments of 15 May, 2010, after 2013 the president will be called the "guarantor" of the state's unity and independence rather than "head" of the Georgian state. In 2013, the president will lose his right to initiate referendums: this right will either be the prerogative of the parliament, or citizens (on the strength of 200 thousand signatures of voters collected across the country), or the government. Thus, the president's powers will be considerably trimmed and the prime minister's extended (see "The President of Georgia" Section in the Constitution).

Under the 2004 amendments, the government was just one of the links in the executive power branch and was accountable to the president and the parliament. Under the 2010 amendments, in 2013 it will become the supreme body of executive power accountable to the parliament. In 2013, the prime minister will acquire the right to appoint and dismiss members of the government (until now, he has needed the president's consent) and will be described as "the head of government" instead of the current "chairman of the government."

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<sup>4</sup> Ibid., Chapter 4, Art 69.1.

After 2013, the parliament will retain its right to declare a vote of no confidence in the government with a two-fifth majority (instead of the previous one-third).

Under the latest constitutional amendments, after 2013, the President of Georgia, very much like the Queen of England, will essentially be a figurehead; real power will belong to the prime minister.

This means that Georgia will have to pass a couple of endurance tests: the parliamentary elections in 2012 and the presidential election in 2013.

In view of the constitutional addenda of 2010, the riddle of who will rule the country will be solved by the parliamentary rather than the presidential elections. In 2012, the newly elected legislative structure will appoint a prime minister, which means that each and every one of the 150 parliamentary deputies will acquire special functions. It should be said that those members of the ruling party who fail the political loyalty test will find it hard to be elected to parliament.

Today, few in the country doubt that the ruling party will nominate President Mikhail Saakashvili to the post of prime minister. The 1995 Constitution limits the time one person may be president to two consecutive terms but says nothing about the terms in office for heads of government.

The presidential election of 2013 will hardly correspond to Georgia's political tradition, while the election campaign will look more like an entertainment show than a political event.

The passions around the presidency will not subside soon for the simple reason that in Georgia this post is associated with power; the political community is discussing all possible candidates for the post.

It is expected that one of the representatives of the so-called moderate opposition—leader of the Christian Democratic Party Giorgi Targamadze or head of the Free Democrats Party Irakli Alasania (who represented Georgia in the U.N.)—might be elected to the post.

The Christian Democrats, who are in the minority in the parliament, actively cooperate with the government, while Irakli Alasania publicly congratulated a candidate of the ruling party on his election as mayor of Tbilisi (even though the other opposition groups and parties intended to go to court to contest the election results).

The post might go to a member of the ruling party: if the post is filled by a member of opposition, the ruling elite will gain political points by demonstrating to the rest of the world that Georgia is a democratic country; on the other hand, this might undermine the legitimacy of both its own and the prime minister's power because under the new Constitution the prime minister, the top executive, will be elected by the parliament (rather than by popular vote) as distinct from the president, who will be elected directly by the people. If direct elections put a member of the moderate opposition in the president's seat, the nation might wonder under what mandate the prime minister, who has been approved by parliament, is acting.

This means that if Mikhail Saakashvili becomes prime minister (if his party wins in 2012), the post of president will go to one of the members of his party, a person without undue political ambitions happy to become part of the country's history (albeit as a president without any power).

If the new form of governance is realized, for the first time in Georgia's history as an independent country the same person will remain in power for more than two consecutive terms.

It should be said that both previous presidents were removed from their post. Mikhail Saakashvili had to resign before his first term had expired (in November 2007), however he not only won the pre-term elections, he also managed to remain in power. If he survives as president to the end of his second term, the tradition of regime change by popular unrest will be buried.

There is another alternative: he could abandon his post before his second terms expires to run for parliament in 2012.

If Saakashvili takes a post of prime minister, Georgia will acquire a new tradition of one and the same person remaining in power indefinitely.

## Territorial Division

Territorial division has been and remains one of the most sensitive issues; the 1995 Constitution does not even mention it. At that time, Georgia's jurisdiction did not extend to the republic's two breakaway regions (Abkhazia and South Ossetia), so the leadership decided not to define the state's territorial structure. Hoping for reunification, the political elite chose to leave this question open and did not touch upon it in the 1995 Constitution.

The 1995 Constitution ruled: "The territorial state structure of Georgia shall be determined by a Constitutional Law on the basis of the principle of circumscription of authorization after the complete restoration of the jurisdiction of Georgia over the whole territory of the country."<sup>5</sup> So the country's administrative-territorial division into districts remains as it was in Soviet times.

Meanwhile, Shevardnadze established the institution of regional representatives of the president; the regions were formed in keeping with Georgia's historical-ethnographic map: Kakhetia (with a population of 404.5 thousand); Lower Kartli (499.9); Inner Kartli (310.6); Mtskheta-Mtianeti (108.8); Imeretia (700.4); Samtskhe-Javakhetia (211.3); Racha-Lechkhumi and Lower Svanetia (47.6); Samegrelo-Upper Svanetia (474.1); and Guria (139.8); the autonomous republics—Ajaria (386.9) and Abkhazia, as well as the capital city of Tbilisi (1,152.5)—were treated as regions.<sup>6</sup> Former South Ossetia was included in Inner Kartli, to which it belonged even before Soviet power was established.

This arrangement was not confirmed either by the Constitution or by any other law; President Shevardnadze's decision described the heads of the regions as the president's plenipotentiary representatives; the people always called them governors.

Ajaria, with all the rights of an autonomous republic, remained for a long time outside the scope of the Georgian Constitution; the same applies to Abkhazia, which did not comply with Georgian jurisdiction; Tbilisi, however, always regarded it as an inalienable part of the Georgian state.

The fact that the Georgian legislators forgot about Ajaria and Abkhazia when drawing up the first post-Soviet Georgian Constitution of 1995 can be described as legal nonsense, which was corrected on 20 April, 2000 when Ajaria, as an autonomous republic, was added to the Constitution. On 10 October, 2002, the Constitution confirmed the status of the Autonomous Republic of Abkhazia, while the Abkhazian language was described as the second state language (together with Georgian) in the territory of Abkhazia.

The regime brought to power by the Rose Revolution tried to finally settle the issues of the country's administrative-territorial division. Beginning in 2004, attempts were made to arrive at a new administrative-territorial division; it was decided to decrease the number of districts by joining some of them together. As a result, 75 administrative units became 25 districts, which eliminated 9 territories.

By the same token, the huge army of bureaucrats (9 governors and 75 district heads) could have been trimmed to 25 local "bosses," but nothing changed: their number in the vertical of power remained the same (central, regional, district and village bosses).

On 11 March, 2008, the Constitution acquired amendments which specified the status of the institution of governors and the division of the country into territories.

The latest and most extensive constitutional amendments and addenda revived the discourse of federalization in the political and expert communities in the context of the conflicts in Abkhazia and South Ossetia. It was repeatedly suggested that these historical areas become federal units within Georgia, the idea being buried by repeated bouts of conflict settlement efforts.

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<sup>5</sup> *The Constitution of Georgia*, original version, 1995. Chapter 1, Art 2.3.

<sup>6</sup> [[http://www.geostat.ge/?action=page&p\\_id=472&lang=geo](http://www.geostat.ge/?action=page&p_id=472&lang=geo)].

During the discussions of the latest constitutional amendments, The Freedom Institute, an NGO commonly viewed as the intellectual base of the Georgian rulers, came forward with states as new administrative-territorial units based on the existing historical territories.

The idea of a United States of Georgia was dismissed as obviously absurd. Art 81 of the Constitution was amended with the understanding that the amendments would come into force after the presidential election of October 2013.

Another attempt to revise the country's administrative-territorial division was intercepted by a decision that, after 2013, governors would be appointed by the government, not the president. This did nothing to improve the country's territorial division: it merely stressed that after 2013 the prime minister would be in charge.

The problem of administrative-territorial division is part of another issue—a two-chamber parliament. Today it consists of one chamber, but the 1995 Constitution says: “After the creation of appropriate conditions and the formation of local self-government bodies throughout the whole territory of Georgia, two chambers shall be set up within the Parliament of Georgia: the Council of the Republic and the Senate.”<sup>7</sup> Today, the deputies elected by party lists and on a majority basis still work together in the one-chamber parliament.

It should be said that the reputation of the deputies elected on a majority basis is dubious: they are known not so much for their political convictions as for being the wealthy owners of large businesses.

Before the Rose Revolution, 150 of the 235 deputies of the Georgian legislature were elected by the proportional system, while 85 by the majority system. The 2004 constitutional amendments and addenda reduced the number of deputies: 100 out of 150 seats were intended for deputies elected on a proportional basis and 50 on a majority basis for the simple reason that the healthy rating of the party brought to power by the Rose Revolution did not need a “crutch” of majority deputies.

On 12 March, 2008, having lost some of its rating points, the ruling party initiated another amendment to the Constitution under which the Georgian parliament remained a one-chamber structure with 150 deputies, half of them (75 seats) elected on a proportional and the other half on a majority basis.<sup>8</sup>

Some of the opposition members object to the majority system: they demand that the parliament be elected by party lists.

## Decentralization of Power as an Anti-Revolutionary Measure

For over 20 years now Tbilisi has been the center of the republic's political life; it was in the capital that President Gamsakhurdia and later President Shevardnadze were removed from their posts. Unwilling to repeat their fate, the present rulers decided to decentralize power: the Constitutional Court was moved from Tbilisi to Batumi, on the Black Sea shore. In 2009, the Georgian parliament ruled that the new parliament elected in 2012 would hold its plenary meetings in Kutaisi (the second largest city), which would split the parliament between Tbilisi and Kutaisi.<sup>9</sup>

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<sup>7</sup> *The Constitution of Georgia*, original version, Chapter 1, Art 4.1.

<sup>8</sup> See: *The 1995 Constitution of Georgia*. Art 49.1; amendments of 12 March, 2008.

<sup>9</sup> See: *Ibid.*, Art 48.1; amendments of 24 September, 2009.

The amendment was not enacted because, on 17 May, 2011, the parliament surprised the nation with a decision to move the legislature from the capital to Kutaisi; the Constitution would be amended accordingly.

Relocation of the parliament planned for 2012, as well as relocation of the government and the prime minister, who in 2013 will head the state, will deprive Tbilisi of its status as the country's political center; the president, however, will remain in Tbilisi.

It is expected that Kutaisi will become the republic's new capital, a logical surmise in view of the planned relocations. Tbilisi might no longer be the capital.

On 15 July, 2010, when speaking at the Georgian National Manuscript Center, Catholicos-Patriarch of All Georgia Ilia II objected to the planned relocation on the grounds that the parliament should be closer to people (Tbilisi is home to over 1,152 thousand people, while the population of Kutaisi is about 150 thousand). The people in power have obviously set about "depoliticizing" the capital: the Auditing Chamber of Georgia and several other state structures have already been moved to Kutaisi; a new glass building for the parliament costing over 80 million is being built in Kutaisi.

Refugees from Abkhazia and South Ossetia who lived in the vacated official buildings were moved from Tbilisi on the pretext of their political passions: refugees were the active core of all the protest rallies.

Since the dawn of the Georgian national-liberation movement, the square in front of the parliament in the very center of the Georgian capital has been and (so far) remains the favorite place of all those wishing to protest in public. By the 2012 elections, the huge structure, one of the best examples of Soviet official architecture, will have been sold to foreigners (several foreign companies are contemplating the deal). This means that those wishing to contest the results of the 2012 elections will have nowhere to go.

The Central Election Commission previously housed in the building of the former Museum of Marxism-Leninism, another favorite place of the discontented which has already been sold to foreigners, is scattered across the city; some of its offices can be found in the well-guarded building of the Tbilisi Department of Internal Affairs.

This means that the people at the top have learned the bitter lessons of the past and are preparing for the coming elections in earnest.

## Singapore-ization of Georgia and the Lee Hypothesis

Together with political modernization, economic development is another headache for the country's leaders. In the last few years, they have been frequently referring to Singapore as the best possible economic model Georgia might borrow, with the emphasis on tourism as one of the main sources of wealth in the near future.

The recent turmoil in the Arab states (in Egypt, the tourist Mecca, in particular) deprived what was said about future tourism-based prosperity of much of its sense.

The 15 May, 2010 amendments to the Constitution are recommended as a "foreword" to the new economic policies: they guarantee economic liberalization and stronger protection of the rights of private owners. These amendments and addenda were passed to defuse what the opposition said about infringements on the rights of ownership after the Rose Revolution.

The prospects of Singapore-ization caused a lot of concern: former President of Singapore Lee Kuan Yew (who formulated the hypothesis now known as the Lee hypothesis)<sup>10</sup> linked rapid economic development with a harsh political regime. At his meeting with the teaching staff of a provincial school, the president of Georgia had to explain that while the economic model of Singapore was perfect for Georgia, its political system would never strike root because of the Georgians' national character.

Those members of the academic community who side with the government are convinced that democracy needs economic freedom, but never fail to add: "On the other hand, a free economy may flourish for some time in an authoritarian expanse but, in the final analysis, only a free economy can serve as the foundation of a strong civil society."<sup>11</sup> They also declare: "So far we cannot say whether Georgia's political reality tends toward authoritarianism or whether it is inclined toward democracy; it is a hybrid regime. They say that the Rose Revolution failed to confirm the democratic expectations of Georgian society. This is not true: the revolution was caused by corruption and inadequate democracy and won under the banner of 'Georgia without corruption'."

During the years of independence, the conception of nation-building in Georgia did not change much. The first president formulated it as, "First independence, then democracy"; the second president as, "First stability, then democracy;" while the "revolutionary government" came up with, "First modernization and reforms, struggle against corruption, economic prosperity and security, then democracy."

The leaders of the Rose Revolution proceed from the idea that no radical reforms in any sphere are possible in the conditions of absolute democracy: "Democracy is the will of people who sometimes oppose reforms." This is often said by those who side with the people in power and who are displeased with the "aborted" reforms (in the sphere of education, for example).

The opposition, in turn, insists that the revolutionary leaders have digressed from their original goal: democratization of the country.

The above suggests that Georgia might follow one of the modernization scenarios: either "Westernization" or "Singapore-ization."

## Conclusion

So far, the future of Georgia's political system is vague even if we know that after 2013 it will no longer be a presidential republic.

At the same time, the revolutionary wave in the Arab countries stirred up Georgian society. The political establishment wonders whether the Rose Revolution supplied the pattern or whether another revolution is in store for Georgia.

While the latest constitutional amendments were being drafted, one of the regime supporters insisted that democracy in Georgia needed no revolution but a good Constitution, "because our Constitution falls short of the standards of democracy."<sup>12</sup> He referred to the Constitution which had been fundamentally amended in 2004, in the wake of the Rose Revolution. It should be said that the opposition resolutely objected to the constitutional amendments of 2004 as undemocratic.

In any case, starting in 1999, the fundamental provisions of the Constitution of Georgia were changed practically every year, which means that the political system and the process of nation-building remain vulnerable in the face of various challenges.

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<sup>10</sup> See: A. Sen, "Democracy as a Universal Value," *Journal of Democracy*, Vol. 10, No. 3, July 1999, p. 6.

<sup>11</sup> G. Nodia, "What is Needed to Build Democracy," *Tabula* (Tbilisi), 26 April- 2 May, 2010, p. 13 (in Georgian).

<sup>12</sup> *Ibid.*, p. 12.



Even though some of the latest extensive amendments and addenda of 15 October, 2010 have not yet been enacted, the political establishment is talking about new changes in the country's Fundamental Law. This means that Georgia's political system will be subjected to new tests.

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