

Givi Luashvili

A NEGATIVE FINALE OF THE BUDGET PROCESS AND ITS FEATURES

Givi Luashvili

Doctoral Student

Faculty of Law (Constitutional Law)

Ivane Javakhishvili Tbilisi State University.

INTRODUCTION

This paper examines the characteristic features of the legislators' failure to approve the state budget. I would like to point out that we have chosen the term "negative finale" of the budget process since we believe it simply and clearly describes the situation we are going to examine.

The paper will analyse the 1921 Constitution of Georgia and examine the regulations of the current Constitution. It will also review the initial version of the current Constitution as well as new regulations adopted after the 2004 constitutional reform. We will try to identify the role and importance of the negative finale of the budget process within the constitutional system of Georgia.

THE 1921 CONSTITUTION OF GEORGIA

The budget regulations in the 1921 Constitution are vague and, it could be said, incomplete. In our opinion, this assessment is not something unexpected since some criticisms concerning the 1921 Constitution already exists, specifically related to the state system it created.¹

The real model of the negative finale is demonstrated in the appropriate manifestation of the separation of powers. We agree fully with the prevailing opinion, which holds that the 1921 Constitution does not set forth broad mechanisms to restrain the executive power by the legislative one or vice versa.² This created an anomalous model of governance which can hardly be called a parliamentary system. The concept of the 1921 Constitution has been described as: “The composition of the parliament is to be changed by means of new elections, but its operation shall be continuous, as a supreme ruler of the state, it shall be permanent. Therefore, it is obvious that while parliament does not dissolve itself neither it can be dissolved by any other branch of power”.³ It is a concept of the parliament’s supremacy that is reflected in the budget processes. Since that parliament, as the highest representative body, is inviolable, the question of its dissolution was not even considered even if it failed to pass the state budget. The Constitution did not put the issue in the agenda.

Under the Article 54 (“f” paragraph), the budget was approved by the parliament. The Constitution ignored pivotal issues related to the adoption of the budget law. For instances, Article 72, which defined the authorities of the government, did not directly state that the initiation of the budget bill was the government’s competence. Instead, the government’s role is addressed in Article 89, which implicitly indicates that it is the government that submits the budget bill to the parliament. The Constitution did not explicitly state ways out of a negative finale situation. Article 89 only stated that, if the parliament failed to pass the budget bill before the start of a new budget year, the government could have been authorized by the parliament to cover the expenses under the previous budget’s arrangements before the parliament passed a new budget. Even in this situation, the government needed the consent of the parliament.

When we look closely at these regulations, the question arises as to how we reached a stalemate. If no one goes home, what happened?(It should be noted that the legislature did not have a right to table a motion of no confidence against the entire government. According to the Article 73 of the 1921 Constitution, a censure motion could be moved against individual ministers.) The situation presented the two branches of government opposed to the budget and the budget, which failed to pass. Yet, not all was lost. The balance between the powers was tilted in favour of the parliament, as we had the government that was elected for a year by the parliament. Consequently,

1 Collection, second revised ed.; Constitutional Law of Georgia; Tbilisi 2014.

2 G. Papuashvili; The 1921 Constitution of the Democratic Republic of Georgia; Batumi, 2009, p. 13 (პაპუაშვილი გ., საქართველოს დემოკრატიული რესპუბლიკის 1921 წლის კონსტიტუცია 21-ე საუკუნის გადასახედიდან, ბათუმი, 2009 წ., გვ. 13).

3 M. Matsaberidze; The Concept of the 1921 Constitution of Georgia, 1996 (მაცაბერიძე მ., საქართველოს 1921 წლის კონსტიტუციის კონცეფცია, 1996 წ.).

any stubborn behaviour from the side of the government would not bring any benefits because, if the budget bill failed, the government would not have been able to renew the composition of the parliament and ***it would have been forced to go home***. Then the parliament would have elected a new leader of the cabinet to approve the budget bill proposed by the majority.

Under the 1921 Constitution, the parliament could defeat the budget bill without endangering its supremacy. This power indicates that processes related to budget development took place in one branch of the government. In this situation, the government's initiation of was nothing more than a formality. While it appears that the budget process was divided between two branches (the government submits the bill and the parliament approves it) but the manner in which the negative finale was solved clearly shows the reality and the essence of the problem. It should be noted that the founding fathers who played a decisive role in formulating the 1921 Constitution's wording had idealistic views of the parliament as a representative body and supreme ruler. For example, Giorgi Gvazava observed that, "although the budget authority is a powerful tool in the hands of the parliament, it will never hinder the state's operation".⁴ However, despite his optimism he added that if disagreements concerning the budget occur, the government would be compelled either to succumb to the parliament's will or resign. Social-democrat Razhden Arsenidze clearly described the views of the then Georgian political elite in his scholarly work "Democratic Republic". He argued that political elite of the First Republic sought to create "a responsible cabinet system"⁵ which would be not only accountable and responsible to the representative body, but would also lack any "tools" and would therefore silently obey the parliament. They believed that this system would create a government as an equal branch of power on the same horizontal level with other branches of government. How the constitution regulated the budget issue was a vivid example of their intent.

2. PRESIDENT'S ROLE

A country's president always plays a role at the end of the budget process, based on the state's constitutional system and constitutional traditions. This chapter will highlight the president's place and role according to systems of governance. This is an interesting issue due to the fact that Georgia changed its constitutional system of power from presidential to a mixed model after the 1995 Constitution was drafted and is now heading towards a parliamentary system.

4 G. Gvazava, *Main Principles of Constitutional Right*, Tbilisi, 2014, p. 64 (გვაზავა გ., ძირითადი პრინციპები საკონსტიტუციო უფლებებისა, თბილისი, 2014 წ. გვ. 64).

5 R. Arsenidze, *Democratic Republic*, Tbilisi, 2014, p. 27 (არსენიძე რ., დემოკრატიული რესპუბლიკა, თბილისი. 2014 წ., გვ. 27).

2.1. In a Presidential Republic

The presidential republic was created as an alternative to the parliamentary system and monarchy.⁶ Unlike the parliamentary system and monarchy, it was a product of the theoretical deliberations of the founding fathers. Its main doctrine is based on the strict separation of powers, which makes the formation of the branches of the government rather inflexible. The executive and legislative branches are formed independently.⁷ They acquire their own legitimacy separately in the presidential system, unlike in a parliamentary system where the parliament is the direct conductor of legitimacy. This means that no branch of power can dissolve the legislative body in a presidential republic. Likewise, the system does not allow for the possibility to question the political responsibility of the executive power. The system described above has been widely used in newly founded states, including Georgia. However, it's difficult to say how successfully the system works in these countries because of differences in variations of the system they use. Sometimes the variations created a system that violated the major principles of a presidential republic.⁸ Regardless of the changes made to the individual systems of government, the dissolution of the parliament and possibility of raising a question of political responsibility of the executive are issues which have been tabooed everywhere this system is used.

These main characteristics of the presidential republic are also reflected in the budget process. One of the US Congress' most powerful tools is its authority over the budget process. The US president, as a representative of the executive branch, does not have the right of legislative initiative (unlike Georgia's president), consequently the president cannot submit the budget bill to the legislative body. Moreover, the president cannot use any funds from the budget without approval from Congress and, as a result, he won't be able to exercise his powers and functions. This is a serious tool of influence for the Congress. "While the US Constitution has not so far recognized the institution of presidential accountability and responsibility before the legislative body, the Congress found possibilities for controlling the executive power within its legislative and budget authorities".⁹ It is indisputable that the founding fathers granted budget prerogatives to Congress in order to counterbalance presidential powers. This power has become an indispensable part of the presidential system. By ignoring it we reject the major principles of the presidential model and eventually we'll get unclear variations of a presidential republic. And there are many versions indeed. One of them is the presidential model presented in the Georgian constitution (Georgian constitution from 1995 to 2004), which has become known in the world's constitutionalism as "a mixed Georgian-American presidential institution".¹⁰ A clear example of the Georgian approach was the right of legislative ini-

6 Collection, second revised ed.; Constitutional Law of Georgia; Tbilisi 2014.

7 In some states even judiciary is formed through elections.

8 Georgia's case illustrates that presidential system was not successful in 1995-2004.

9 L. Izoria, Parliamentary, Presidential or Semi-Presidential? Toward Democratic Consolidation, Tbilisi, 2010, p. 18 (იზორია ლ., საპარლამენტო, საპრეზიდენტო თუ ნახევრადსაპრეზიდენტო? გზა დემოკრატიული კონსოლიდაციისაკენ, თბილისი, 2010, გვ. 18).

10 Z. Jibgashvili, Weak and Strong President's Phenomenon in European Constitutional Systems, Law Journal, 1999, N3 p. 21; citation in H. A. Сахаров, Институт президентства в современном мире 1994, ст 27. (ჯიბლაშვილი ზ., სუსტი და ძლიერი პრეზიდენტის

tiative granted to the president. According to the Article 93 (1st paragraph) of the Constitution, before the 2004 major constitutional changes, only the president was authorized to submit a budget bill to the parliament (this was a vivid demonstration of how the balance was tilted in president's favor). Georgian legislators introduced the norm that was characteristic of a parliamentary system into a presidential one, which suggests that the budget prerogative was divided between the executive and legislative branches. However, under this system, if the parliament did not obediently pass the budget bill, a political crisis could have developed because both the president and parliament were able to remain in power.¹¹ As this is a main requirement for a presidential model, it was impossible to ignore. However, the 3rd paragraph of the Article 93 of the 1995 Constitution offered a way out of this possibly precarious situation. The article stipulated that a president could accept the parliament's remarks and make the appropriate amendments to the budget bill. Although this was certainly the only way out, it depended on the president's opinion and the political situation. The presidential system requires actions that both parties agree to, which is a characteristic feature of this model. In addition, it is also advantageous that the president and legislative body have good working relations since, unlike the parliamentary system, the presidential system does not provide institutional levers to resolve a conflict between the president and legislative body.¹²

Famous constitutionalist Wolfgang Babeck observes that "the president can agree to the amendments made to the budget submitted by him (Article 93, 3rd paragraph of the Constitution) so, there is a visible need for constructive relations between the parties. If the president and parliament are political opponents, then the remaining days before the start of a new budget year will be used for negotiations and seeking a compromise".¹³ Surely, negotiations and compromise are necessary for agreed-upon actions to be successful, but was that possible in Georgia in the 1990s or even today? In an unstable political situation, it is difficult to look for ways to avoid a negative finale.

The problem of a negative finale is resolved in presidential systems by granting budget authority to the legislative power, which requires collaboration and agreed-upon actions to fulfill its obligations. Otherwise, the executive power will be compelled to make a compromise in order to carry out its duties. This is the main formula of the presidential system, which is manifested in the regulations concerning the budget. If the formula does not work, it will result in vague formations and end in a crisis. The crisis will be even more serious in countries where political and party cultures, as well as the relevant traditions, are not yet developed.

ფენომენი მმართველობის ევროპული სისტემის ფონზე, იურიდიული ჟურნალი, 1999 წ. N3 გვ 21.

11 This is a taboo for the presidential republic.

12 P. Pakte, F. Melan-Sukramanian; Constitutional Law; Translation; Tbilisi 2012, p.351 (პაქტე პ., მელან-სუკრამანიანი ფ., კონსტიტუციური სამართალი, თარგმანი, გ. კალატოზიშვილი, რედაქტორი: ა. დემეტრაშვილი, თბილისი, 2012 წ., გვ. 351).

13 Wolfgang Babeck, Developing Constitution and its Adoption in Georgia (1993-1995)

2.2. In the Parliamentary Republic

Separation of powers in the parliamentary system is based on the principle of the parliament's supremacy. Power is concentrated in the parliament, the only source of popular sovereignty and the conductor of governance, which exercises legislative authority. It creates the executive government, controls its activities and, as a rule, elects a president.¹⁴ This definition clearly shows that the legislative branch in the parliamentary system has a leading role and power. That's why the budget authority is divided between the executive and legislative powers (Germany, England, Lithuania, and Estonia).¹⁵ This tendency has its origins in British parliamentarism. "The government's privilege in the budget issues has been preserved most of all in Great Britain. Only the executive is authorized to submit the budget initiative, as for the budget bill it's a secret of the minister of finances. The members of the parliament do not have sufficient time to examine complex initiatives and plenary sessions become more like committee hearings where the members can only propose budget reduction schemes".¹⁶ The House of Lords does not have the budget authority.¹⁷ "The budget rejection in parliamentarism has always been considered to be a final sanction to be imposed on the executive for breaching political responsibility";¹⁸ consequently, disagreements over budget issues have always been followed by calls for political responsibility. At this point, the existence of the government depends on the constitutional regulation for a vote of no confidence. This is the stage when the president, whose role in parliamentary models is formal, intervenes; he/she only accepts/signs the product adopted by the parliament. In *Zerna Jahia v Punjab State*, the Supreme Court of India noted that the president is a formal head of the executive government¹⁹ whose power is limited to registering a decision officially. The same limitation exists in the process of a negative finale of the budget in a parliamentary republic, where the president's power is restricted to a mere formality. As we have mentioned above, this is often contingent on a constitutional regulation of a vote of no confidence. The president, who in reality is the head of the state, has been disengaged from the process. In this situation, the president's role fits the pattern of the parliamentary republic. "During a legal crisis the president becomes an actual guarantor in filling the vacuum in the executive power and consequently, also a guarantor in avoidance of political crisis, the only legal lightning conductor".²⁰ And indeed, the rights granted to him for filling legal vacuum even in a negative finale

14 Collection, *Constitutional Law of Georgia*, second rev. edition, Tbilisi 2014, p. 94 (see citation: K. Kandelaki, I. Rukhadze, V. khmaladze, Z. Jibgashvili; *Constitutional Systems and Constitutional Process in Georgia (1995-2009) Perspectives of its Development*, Tbilisi, 2009, p.13. (ავტორთა კოლექტივი, საქართველოს საკონსტიტუციო სამართალი, მეორე გადამუშავებული ვერსია, თბილისი 2014 წ. გვ. 94. იხილეთ ციტირება: კანდელაკ კ., ლოსაბერიძე დ., რუხაძე ი., ხმალაძე ვ., ჯიბლაშვილი ზ., კონსტიტუციური სისტემები და კონსტიტუციური პროცესი საქართველოში (1995-2009) მისი განვითარების პერსპექტივა, თბილისი, 2009, გვ.13).

15 Collection, *Constitutions of Foreign States*, Tbilisi, 2006, V 1.2.3. (ავტორთა კოლექტივი, საზღვარგარეთის ქვეყნების კონსტიტუციები, თბილისი, 2006 წ., ტომი 1. 2. 3).

16 Sajo A., *Self-Restraint of Government*, translated by M. Maisuradze., edited by T. Ninidze, Tbilisi, 2003, 235 (in Georgian შაიო ა., ხელისუფლების თვითშეზღუდვა, თარგმანი: მ. მაისურაძე, რედაქტორი: თ. ნინიძე, თბილისი, 2003 წ., გვ. 233.).

17 Ibid, citation: C.J. Boulton et al., *Erskine May, Treatise on the Law, Privileges, proceedings and Usage of Parliament* (London Butterworths, 1989), გვ. 733-734.

18 P.Lovo, *Parliamentarism*, Tbilisi, 2005, p.118 (ლოვო ფ. პარლამენტარიზმი, თბილისი, 2005 წ., გვ. 118).

19 A. Demetrashvili, I. Kobakhidze, *Constitutional Law*, Tbilisi, 2014, p.231.

20 Z. Jibgashvili, *Weak and Strong President's Phenomenon in European Constitutional Systems*, *Law Journal*, 1999, N3 p. 24; (ჯიბლაშვილი ზ., სუსტი და ძლიერი პრეზიდენტის ფენომენი მმართველობის ევროპული სისტემის ფონზე).

of the budget process are more of a mandatory nature than discretionary. Hence, a president's impartiality is secured by the constitution.

2.3. In the Mixed (Semi-presidential) Republic

The name of this system of governance, the mixed model, suggests combined models of the presidential and parliamentary governance systems.²¹ "The laboratory of the constitution", the offspring of the Fifth Republic of France, is a rich subject for research. The Constitution of the Fifth Republic combined the most important elements of two earlier models, which greatly affected the president's role in a negative finale of the budget process and, at the same time, provided it with special features. We will divide the issue in two parts and examine premier-presidential relations and the presidential-parliamentary variation separately, following Constitutionalists Mate Shugart's and Kerry Kovington's classification.

2.3.1. Premier – Presidential Relations

According to the Shugart and Carey classification, in a premier-presidential variation the president has, to a degree, a formal role in the forming the government. Another defining feature of this variation is the clear accountability of the government to the legislative body. These features enable us to state that, as a result of the 2010 constitutional reforms, Georgia has become a mixed republic with a premier-presidential variation in the Constitution's current wording. Accordingly, we will examine this model based on the Georgian Constitution.

According to the Article 93 (4¹ paragraph) of the Constitution, "If Parliament fails to give the Government a vote of noconfidence... the President shall dissolve the Parliament...and call extraordinary elections". It appears that this norm clearly states that the president has mandatory competence;²² if the parliament fails to complete a constructive vote of no confidence process, the president shall be required to dismiss the parliament. However, let's closely look at the 4th paragraph of the same article, which states, "if the Parliament fails to adopt the State Budget within two months after the beginning of a new budget year, this shall be regarded as raising the issue of a vote of no confidence and the procedures under the Article 81(2-5) of the Constitution shall continue".²³ This implies the initiation of a vote of no confidence under the Article 81 (1st paragraph) of the Constitution does not enter into force and the procedure will continue with the proposal of new

21 G. Gogiasvili, *Comparative Constitutional Law*, Tbilisi, 2014, p. 173.

22 Z. Jibgashvili, *Weak and Strong President's Phenomenon in European Constitutional Systems*, *Law Journal*, 1999, N3 p. 24; (ჯიბლაშვილი ზ., სუსტი და ძლიერი პრეზიდენტის ფენომენი მმართველობის ევროპული სისტემის ფონზე).

23 Constitution of Georgia; see English text: https://www.constituteproject.org/constitution/Georgia_2013.pdf?lang=en (last seen on 18.12.2017).

prime minister candidates by two fifths of MPs on the current party list. In this case, the president's delaying veto power under the Article 81 (3 paragraph) gains importance. Actually, the president's obligation under Article 93 (4¹ paragraph) is a smoke screen; he/she can veto the candidate for the position of prime minister which earlier had the support of the majority of members on the current nominal list and greatly affect the process, because the president can dismiss the parliament at this stage, as overcoming a veto with the same candidate and three fifths of MPs is in fact, impossible. In this situation, a general principle of constitutionalism, "The one who appoints, also dismisses"²⁴, is really under threat because it "forms the most general and fundamental principle"²⁵ of responsibility and accountability which is used in any situation with a few exceptions".²⁶

The situation described above may cause further criticism of the Constitution's provision allowing a president to delay his/her veto under the Article 81 (3rd paragraph) of the Constitution (The Venice Commission has already criticized the norm).²⁷ While in theory the president's veto can serve as a basis for the parliament's dismissal, under Article 93 (4¹ paragraph) of the Constitution, the dissolution will actually be inevitable as the president has an obligation and not the discretionary authority²⁸ to dismiss the parliament in the case of a negative finale of the budget process.

It should be noted that a mixed model with the premier-presidential variation is a logical version, and is believed to be a positive version, of the mixed model. It is undeniable that the Constitution of Georgia has been fundamentally changed and the president's powers in forming the government have been diminished, but in the case of a negative finale of the budget process – resulting from the constructive vote of no confidence – his/her role conflicts with the premier-presidential variation. These norms make the government accountable, albeit not directly, to the president in case of a negative finale of the budget process. This indirectly gives the president the possibility to offer protection to the government. The temptation is stronger where the president plays a more significant role in forming the government. In this case, it is obvious what he will decide²⁹.

24 Gegenava D., Georgian Model of Constructive Vote of No-Confidence: Gordian Knot in the Constitution of Georgia; Law Journal, 2013, p. 338; Citation A. Sajo, The Government's Self-Restraint.

25 See Ibid, p. 338.

26 In the US, the Congress approves candidates for the President's cabinet, while the President can dismiss them without Congressional consent. This fact had been contested although the Supreme Court of the US left unchanged the practice.

27 Wolfgang B., Stephen Fish., Reichenbeher S.; Review of the Constitution-Georgia's Path to Europe (ვოლფგანგ ბ., სტივენ ფიში., რაიჰენბეჰერი ც., კონსტიტუციის გადასინჯვა - საქართველოს გზა ევროპისაკენ). Venice Commission, Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia; Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010).

28 Constitution of Georgia (Article 81 (6 paragraph); see English text: https://www.constituteproject.org/constitution/Georgia_2013.pdf?lang=en (last seen on 20.12.2017).

29 Z. Jibgashvili, Weak and Strong President's Phenomenon in European Constitutional Systems, Law Journal, 1999, N3 p. 24. (ჯიბგაშვილი ზ., სუსტი და ძლიერი პრეზიდენტის ფენომენი მმართველობის ევროპული სისტემის ფონზე, იურიდიული ჟურნალი, 1999 წ., N3, გვ. 24).

2.3.2. Presidential-Parliamentary

According to the Shugart and Carey classification, the president has significant powers in the forming of the government in the presidential-parliamentary variation, in addition to the dual accountability regime that exists in the government. In the model that was brought about by the 2004 reforms, the formation of the government was strongly linked to the president. A renewal of the government's cabinet was contingent on the presidential, rather than parliamentary, elections. The parliament was well aware that if it did not support the president's favorites for ministerial positions, he/she would appoint a prime minister, dismiss the parliament anyway and, eventually, the party that supports the president would win the majority. Due to the fact that president would have been newly elected, he/she would enjoy wide popular support and his legislature would have been so bright that it inevitably would have affected the parliament's elections. The 2004 Constitution also provided provisions for a dual no confidence vote and an unconditional vote of no confidence. The chances of success of a motion of no confidence, due to the complex procedures and inadequate timing provisions, were so slim that the parliament never used it during the life of the Constitution (2004-2013). In fact, it did not even try to initiate a motion. In this context, if the parliament had been obstinate, the president, with broad discretion and without any reserved clause, could have dissolved the parliament or dismissed the cabinet (and eventually, could have adopted the budget by decree before the formation of a new parliament) under Article 93 (6th paragraph) of the 2004 wording of the Constitution. Here, we should note, that under the Article 93 (1st paragraph) of the Constitution, "Only the Government of Georgia is authorized to submit the Draft State Budget to the Parliament after reaching agreement on the main data and directions with the Parliamentary Committees",³⁰ – And this is the government renewal of legislature of which is linked to the presidential elections, and the nomination of its prime minister is made by the president after consultations with parliamentary political groups³¹ (no one understands what kind of consultations or why the president should be interested in holding consultations with anyone, after all, he at his own discretion decides who will be a prime minister and who will occupy ministerial positions), and any kind of opposition from the parliament will end in its dissolution.

Finally, we must find an answer to the question of why the president should support the parliament during the process of a negative finale of the budget. In a mixed system, it does not matter whether the president enjoys broad constitutional authority or not, he/she will always decide in favor of his team³² and the budget it has approved. This characteristically Georgian context includes aspects of the presidential-parliamentary variation, although we cannot call them characteristic features. Rather, they are reflections of the faults of the system. It is possible that in every country

30 Constitution of Georgia (Article 93 (1 pa); see English text of 2014 wording: <http://www.legal.nbg.gov.ge/en/document/view/>; (last seen on 20.12.2017).

31 Constitution of Georgia (Article 80 (2 pa); see English text of 2014 wording: <http://www.legal.nbg.gov.ge/en/document/view/>; (last seen on 20.12.2017).

32 Z. Jibgashvili, Weak and Strong President's Phenomenon in European Constitutional Systems, Law Journal, 1999, N3 p. 24. (ჯიბლაშვილი ზ., სუსტი და ძლიერი პრეზიდენტის ფენომენი მმართველობის ევროპული სისტემის ფონზე, იურიდიული ჟურნალი, 1999 წ., N3, გვ. 24).

where the mixed system operates, the president does not have extensive constitutional possibilities (for example, the cabinet's legislature is not linked to the elections of the president or the president does not have wide discretionary power in the case of a negative finale of the budget), but if he plays a substantial role in the formation of the government, then he/she in all probability will not reject his/her team in the budget process.

3. IMPACT OF CLASSIC AND RATIONALIZED PARLIAMENTARISM ON THE NEGATIVE FINALE OF THE BUDGET PROCESS

A perpetual threat of governmental crisis dominated classical parliamentarism, where the cabinet's legislature was weak and parliamentarism was largely associated with instability.³³ This should not be surprising; any piece of legislation, especially the budget, might have served as the basis for disagreement between the legislative body and the government.³⁴ A shift from classical to rationalized parliamentarism should be seen as an important step toward progress, governmental stability and a more powerful executive. Hence, authority over the budget, as an important tool for the state's operation, would not formally be divided between the parliament and government and the executive branch would be able to defend its position without any fear of repercussions.

We have examined the 1921 constitutional regulations of Georgia and have seen that the legislative body enjoyed a considerable advantage in the budget process. We have also examined the regulations in force today. Although it is difficult to call the then governance model a parliamentary system, the current model is even further from the parliamentary system. However, a closer look at the two Georgian constitutions has enabled us to discern a golden mean: those with authority over the budget in the parliamentary and mixed systems should be divided between the cabinet and the parliament. The political accountability of the cabinet when the budget is not passed should not be enforced in a way that makes it obvious who will win the battle. The search for a golden mean has driven the shift from the classic model to rationalized parliamentarism.

33 Collection, Constitutional Law of Georgia, second rev.ed, Tbilisi, 2014, pg 99 (ავტორთა კოლექტივი, საქართველოს საკონსტიტუციო სამართალი, მეორე გადამუშავებული ვერსია, თბილისი, 2014 წ., გვ. 99).

34 Avaliani T., PHD Thesis: Financial Competence, as a Form of Parliamentary Control in Georgia (ავალიანი თ., სადოქტორო თემა: ფინანსური კომპეტენცია, როგორც საპარლამენტო კონტროლის ფორმა საქართველოში, თბილისი, 2016 წ., გვ. 73).

4. PRESIDENT'S VETO

The president's veto power should be understood as one of the manifestations of the negative finale of the budget process. If the president vetoes the budget, what happens next? To be passed, the budget bill requires a majority of votes, which is equal to the number needed for the formation of the cabinet,³⁵ which is to say the majority of MPs on the current nominal list, i.e. the party list.³⁶ It should be noted that although the Constitution calls the budget law an ordinary law, its adoption requires the same quorum as a higher law, i.e. an organic law as determined in the Article 66 (2nd paragraph) of the Constitution. This has a great impact on the issue of overriding the president's veto. The Article 68 (4th paragraph) distinguishes between the quorums needed to override vetoes on a law and organic law (in case of a law, the quorum is the majority of MPs on the current nominal list while an organic law requires a majority of the total number of MPs). As a result, a veto on a draft budget that has been approved by the number of MPs needed for an organic law can be overridden by the number of MPs necessary for an ordinary law. In simpler terms, a law adopted by the majority of MPs on the list can be overridden by a simple majority. Consequently, the president's veto becomes a symbolic measure that serves to demonstrate the president's political will and delay the passage of the bill for some days. In our opinion, this approach makes it more difficult to solve the problem. What would happen if the president's veto had the same strength (although it cannot be said it is weak now) as it had under Article 68 (4th paragraph) of the 2004 Constitution? In that case, the president would have had an inappropriate role in the budget process, since he would have been granted considerable constitutional power to indirectly influence the budget formation at any time and could force it to fail. If that were the case, what sensible government would have ignored the president's will or his/her opinions on the budget?

Under the 2004 Constitution the veto issue was really comical. Although the government would submit the budget bill to the parliament with the president's consent, without his/her consent the bill could not be changed. In addition, the president could dissolve the parliament in the case of the latter's stubbornness without any risk because he/she retained the power to veto the budget bill. This veto was really strong: three fifths majority of the MPs on the list were required to override it.³⁷ In this context, why was it necessary to empower the president to veto the budget bill? That would have led to chaos. Also, what would have been the logic in vetoing the president's own budget bill?

In the context of vetoing the budget bill, the 3rd paragraph of the Article 68 is even more interesting. According to this norm the president sends his/her comments to the parliament; if the comments are approved by the majority of MPs on the list, they should be included in the bill. It should

35 Z. Jibgashvili, *Parliament's Control Authorities in Budget Sphere* (ჯიბლაშვილი ზ., პარლამენტის საკონტროლო უფლებამოსილებანი საბიუჯეტო სფეროში, გვ. 3).

36 2004 Constitution of Georgia (Article 92 (1 pa); see English text: http://webcache.googleusercontent.com/search?q=cache:cixSdMfSqHsJ:www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf+&cd=1&hl=ka&ct=clnk&gl=ge

37 2004 Constitution of Georgia (Article 92 (1 pa)).

be noted that this norm was criticized by the Venice Commission³⁸ because it complicates procedures. It is also inappropriate in respect to the budget as, under the Article 184 (1st paragraph) of the Rules of Procedure of the Parliament of Georgia, the comments are considered in one reading for obvious reasons. This prompts the question: why are the procedures stipulated in the Article 68 (3rd paragraph) necessary, what impact do they have? The parliament cannot pass the comments since it had not been granted the necessary legal mechanisms; under the Article 93 (3rd paragraph), it should be inadmissible to make amendments to the budget bill without the government's consent. This norm is unclear and may be incorrectly interpreted.

5. GEORGIAN ANOMALY OR A MANIFESTATION OF THE ART OF BALANCE

Under the Article 93 (4¹ paragraph), if the budget bill is facing an impasse, the process of a vote of no confidence is launched (in Georgia's case it is a constructive vote of no confidence), which aims at reducing tensions and managing a serious finance crisis that could have a major impact not only on the development of the country but also for its existence. If the vote of confidence is unsuccessful, the president is forced to dissolve the parliament and call for new elections, according to Article 93 (4¹ paragraph) of the Constitution. A special regulation included in the norm, which essentially differs from the Article 81 (6th paragraph), stipulates that if the "Gordian knot" was not untied³⁹ and the parliament did not send the cabinet home, the president would have a political choice whether or not to dissolve the parliament⁴⁰. According to the constitutional regulation the president is obliged to dissolve the parliament and call for new elections in this situation. But what happens if this occurs within six months following the election of the parliament or during the president's last six month in office? The Article 51 (1) of the Constitution was added following the 2004 constitutional reforms. Under the initial wording of the paragraphs "a" and "d", the president was not authorized to dissolve the parliament "within six months from the elections of the Parlia-

38 Venice Commission, Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia; Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010); p. 9.

39 D. Gegenava, A Georgian Model of a Vote of Constructive No Confidence: Gordian Knot in the Constitution of Georgia; Journal of Law, 2013 (გეგენავა დ. უნდობლობის კონსტრუქციული ვოტუმის ქართული მოდელი: გორდეას კვანძი საქართველოს კონსტიტუციაში. სამართლის ჟურნალი 2013 წ.).

40 This norm can be explained by the new functions of the president, although it's unclear if a vote of no confidence fails after lengthy procedures, like: no less than 2/5 of the MPs on the list initiate a motion; majority of the MPs on the list table a motion; the 2/5 of the MPs on the list propose candidate (s) for prime minister's position; the candidate gets majority votes of the MPs on the list; the president uses his delaying veto power; the same candidate gets support from the 3/5 of the MPs on the list; the parliament does not support the cabinet proposed by a candidate for a prime minister's position, and all these mean that a vote of no confidence has actually failed - why the president would want or why he/she should have constitutional possibility not to dissolve the parliament after all these procedures? (Here, we should note, that these lengthy procedures have many critics among influential organizations and well-known scholars). I cannot see how the parliament with as many as 90 MPs (the 3/5 of the MPs on the list) opposed to the government would work in cooperation with this government. It means that the government will not have a pillar or legal basis, which is necessary for the state's economic and political wellbeing. This issue does not relate to this research and that is why I have put into the footnotes.

ment” and “within the last six months of the term of office of the President of Georgia”. After the constitutional changes, an exception was added to these paragraphs stipulating that the dissolution of the parliament was possible during these periods on the ground of the Article 80. The Georgian Constitution recognizes three legal grounds for the dissolution of the parliament: declaration of non-confidence (Article 80, 7th paragraph); dissolution of the parliament after a constructive vote of no-confidence has been defeated (Article 81 (6th paragraph)); and a negative finale of the budget process (Article 93 (4¹ paragraph)). Although the latter is linked to the non-confidence procedure, in our opinion, it should be distinguished as a separate ground for the dissolution of the parliament since the grounds as well as results are different from those stipulated by the Article 81 (6th paragraph). It should be noted that the dissolution of the parliament in the cases defined in the “a” and “b” paragraphs of the Article 50 (1st paragraph) on these last two grounds is impossible. Therefore, if a negative finale situation develops during this period and the result is not in the favor of the parliament (and there is a good chance for this situation to develop in such a manner) we will find ourselves in a situation where one of more of these factors has occurred: 1. a budget bill has failed; 2. nearly half of the budget year has gone (because of the terms defined in the Article 81); 3. we have the same government and 4. the president’s colliding obligation to dissolve the parliament. The constitutional regulation mentioned above (Article 93 (4¹ paragraph), which demands the president dissolves the parliament, indicates that the dissolution of the parliament is compulsory in this situation. Consequently, the circumstances under the paragraphs “a” and “b” of the Article 51 (1st paragraph) of the Constitution create a stalemate; constitutional changes are required to end the conflict. The resulting situation is in full conflict with the model Georgia has been following and therefore cannot be considered as an example of the art of balancing, since it’s outside of the predefined model. The given situation, in terms of its legal outcome, creates a situation that is more like that one defined in the 1995 wording of the Article 93 (4¹ paragraph) of the Constitution. However, the Constitution, which rejected the presidential model of governance, should not contain regulations that are more typical for a presidential system, for example, the handling of the prime minister’s countersignature. According to the Article 73 (4 “a” paragraph) of the Georgian Constitution, “dissolution... of the parliament on the grounds of the Article 80 of the Constitution should not require a prime minister’s signature”. This phrase implies that the president’s act on the dissolution of the parliament on the grounds of the Article 81 or 93 (4¹ paragraph) requires prime minister’s countersignature. It is unclear why a countersignature is needed in the case of the Article 93 (4¹ paragraph) as the president has an obligation to dissolve the parliament (he/she cannot make a different decision). The regulation concerning the countersignature gives a prime minister the right to not sign the president’s act, which in its turn makes possible for him to keep the current composition of the parliament. While logically it seems that the executive power will always countersign acts because it will not be enthusiastic about keeping a hostile parliament, including this phrase in the Constitution creates uncertainty. It can be unquestionably stated that in the given situation the president’s act should not require the prime minister’s countersignature.

6. DELAYED BUDGET

According to the Article 93 (4¹ paragraph), if the budget bill is not adopted within two months after the beginning of the new fiscal year, a no-confidence vote in the government is initiated. Under the same paragraph of the same article, it is stipulated that the no-confidence vote procedure should continue from the second paragraph of the Article 81. This means that a Georgian constructive vote of no confidence should take between 20-25 days. In practical terms, the deadline set under Article 93 (4¹ paragraph) ends on 28 (29) February; after that another 20-25 days are added as stipulated by the Article 81 (2 paragraph). Regardless of whether or not the president uses his/her veto power, a new government will be installed within 14 days. If he does use the veto power, the procedure will take another 15-20 days⁴¹ plus the extra 14 days under the Article 80 (3,4 paragraphs). If the parliament is able to untie the Gordian knot,⁴² the state budget will be passed in June of the new fiscal year, but if the parliament fails and an act on its dissolution is issued as stipulated by the 4¹ paragraph of the Article 93 of the Constitution, then, according to Article 50 (3rd paragraph), a parliamentary election will be held on the 60th day after the day of its dissolution, which would fall in August or the beginning of September. In addition, we have to add another 20 days to this timelines outlined, as Article 125 (1st paragraph) of the Election Code of Georgia requires the Central Electoral Commission to finalized the election results 19 days after the election and Article 51 of the Constitution states that the president should convene the first sitting of a newly elected parliament within 20 days of the elections. Consequently, in this scenario, the state budget would be adopted in October at the latest, two months before the end of the year.

Even though we are not a specialist in economics, it is obvious that adopting the state budget just months before the end of the year would not be beneficial for the development of the country. This situation is created by the unusually lengthy timelines for the vote of no confidence defined in Article 81 of the Constitution of Georgia⁴³, which has been widely criticized. One of the consequences of this drawn out process is an increased risk of a negative finale of the budget process, in our opinion.

It should be also mentioned that paragraph 4¹ of Article 93 of the Constitution is not a product of the October 2010 constitutional reforms. The wording of Article 93 was completely changed in 2010 and paragraph 4¹ was added on 4 October 2013 by constitutional law. The way the parliament chose to change the wording makes us think that, initially, this issue was left to the politics of the parliament. If the parliament does not support the budget bill, and the bill requires the vote of the majority of MPs on the list to be passed, it means that the parliament has the resources to hold

41 Constitution of Georgia (Article 81 (paragraph 4)).

42 D. Gegenava, A Georgian Model of a Vote of Constructive No Confidence: Gordian Knot in the Constitution of Georgia; *Journal of Law*, 2013 (გეგენავა დ. უნდობლობის კონსტრუქციული ვოტუმის ქართული მოდელი: გორდეას კვანძი საქართველოს კონსტიტუციაში. სამართლის ჟურნალი 2013 წ.).

43 Ibid, p. 337.

a constructive vote of no confidence. While this would delay the adoption of the bill, in theory, in practice the consequences are vague. In this respect, we can observe that adding paragraph 4¹ made the budget time limits more flexible but nevertheless, we cannot say this norm is the best way out.

7. CONSTITUTIONAL REFORM AND NEW REGULATIONS FOR A NEGATIVE FINALE OF THE BUDGET PROCESS

The 2017 constitutional reforms also affected the norms related to a negative finale of the budget process. Article 66 regulates the issues concerning the adoption of the state budget. It's the first time in history of constitutional reforms in Georgia that regulations concerning a negative finale of the budget process were not defined in the article regulating the adoption of the state budget. Article 66 (the State Budget) does not provide any direct wording that defines a resolution for this serious situation. Nevertheless, the logic of constitutionalism indicates that "the rejection of the budget in parliamentarism meant a sanction for political responsibility of the executive".⁴⁴ Consequently, the disagreement over the budget has always led to raising the question of the political responsibility of the government. At this point, it does not matter whether a negative or constructive vote is included in a relevant article (regulation of the adoption of state budget) of the constitution; the question of whether or not the executive resigns depends solely on the constitutional regulation of the vote of no confidence. From the point of view of constitutional logic, we should assume that Georgian legislators and the people who participated in constitutional reforms decided not to create the relevant regulation and left the issue of the non-adoption of the budget as an ultimate sanction to be imposed on the executive and the parliament. If a disagreement over the budget persists, either the government should go home or the parliament. It should be noted that the Venice Commission has not expressed an unfavorable opinion concerning how this issue was regulated during the reforms. It did not comment on the handling of a potential negative finale of the budget process and advised the Georgian government to let the parliament be more significantly involved in budget processes.⁴⁵

This approach echoes a statement by the country's ruling party, which said that Georgia was heading towards a parliamentary republic.⁴⁶ That shift is why a negative finale of the budget process

44 Lovo F.; *Parliamentarism*, Tbilisi, 2005, p.118.

45 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), Adopted by the Venice Commission at its 111th plenary Session (Venice, 16-17 June 2017), Adopted by the Venice Commission at its 112th plenary Session (Venice, 6-7 October 2017), p. 31

46 <http://www.parliament.ge/ge/parlamentarebi/chairman/chairmannews/irakli-kobaxidzem-veneciis-komisiis-plenarul-sxdomaze-sakonstitucio-reformis-sheaxebs-isaubra.page>

has been linked to a vote of confidence. The legal soundness of this process should be sought in the textual fabric of regulatory norms of these issues, in particular Article 58 of the Constitution. This article introduces an element of a quasi-negative vote of no confidence, according to which the prime minister is authorized to link important issues, including the budget, to a vote of no confidence and exert considerable influence over the parliament. If a consolidated and powerful political unity does not exist in the parliament, pressure from the government will be effective and the parliament will succumb to the government's wishes out of a fear of destabilization.

From the point of confidence/no confidence, the improvement of the regulations of these issues should be positively assessed, particularly the shorter timeframes and the removal of "the unclear role" (president's veto) of the president. This should be also positively assessed in the context of the negative finale of the budget process because, as we have already noted, the vector of the power should not tilt towards any of the actors, either the executive or legislative.

The new approach related to the regulation of the negative finale of the budget process is directed towards the parliamentary model of governance. New regulation should be evaluated as based on its effectiveness in the regulation of this issue but one problem still remains, namely, what will happen if the parliament does not adopt the budget, the prime minister does not exercise his right to table a vote of confidence on his/her initiative, as guaranteed by Article 58 of the Constitution, and parliament does not begin the procedure for a vote of no confidence? In this case, the 5th paragraph of Article 66 enters into force. Accordingly, if the parliament does not adopt the budget bill before the start of the new fiscal year, the expenditures should be covered according to the state budget for the previous year. But, how long will the authorities be willing to cover the costs of a current year under a previous year's budget? This cannot be an acceptable solution for the development of the country. In our opinion, the constitution should contain a regulation calling for procedures for a vote of confidence after a defined period following the failure of the budget bill as prolonging uncertainty for an indefinite time is not reasonable.

CONCLUSION

We have examined a negative finale of the budget process and explained its role in the separation of powers. We have also revealed some flaws in the constitutional regulations. In addition, we have demonstrated that in a presidential system, the question of a negative finale of the budget process is addressed at the very foundation of the separation of powers, which create a system where the president should be dependent on the legislative branch of power. The parliament should find its strength in the budget authorities. In parliamentary and mixed systems, the regulation of this matter requires a golden mean, according to which the parliament should be able to express no-confidence in the cabinet in the process of a negative finale. However, here we need a procedure

which would not make the winner a foregone conclusion. In short, a wandering animal must be stopped by both a fence and barking dog⁴⁷.

RECOMMENDATIONS:

- The Article 51 (1 paragraphs “a” and “b”) should be changed and the case envisaged in the Article 93 (4¹ paragraph) should be added as a further possibility of dissolution.
- An instance described in the Article 93 (4¹ paragraph) should be added to the Article 73 (1, 4 “a” subparagraph). This would remove the need for a countersignature for the president’s act on dissolving the parliament.
- In a process of the negative finale, time limits for the passage of the budget bill should be shortened (this can be solved by changing the relevant regulations of the Article 81).
- The Article 81 of the Constitution should be reformed so that it is able to balance the outcome in the case of a negative finale of the budget process.

47 A. Sajo, *Self-Restraint of the Government* (შაიო ა., ხელისუფლების თვითშეზღუდვა, თარგმანი, მ. მაისურაძე, რედაქტორი თ. ნინიძე, თბილისი 2003 წ.).