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PARADIGMS[1] OF CONSTITUTIONALISM IN GEORGIA

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Georgian State Constitutional Commission was established on 8 June 2009 by the Order of the President of Georgia.[2] Commission was charged with preparation of the Constitutional Law bill in accordance with the article 102 of the Constitution of Georgia on "Changes and Amendments to the Constitution of Georgia." Topics on Constitutional issues, once again as many times during the existence of Georgia as an independent state (1918-1921, 1991-2009) became the subject of analysis, discussions and debate. Current Constitutional reform is aimed at building democratic state and indeed it is laid down in the statute[3] of the Commission. Effective government system serves as bridge between civil society and the state.

It is hard to find an independent state within post soviet states, even those who are in the process of transition, who, like Georgia did not have an ambition to live in accordance with Constitutional examples (paradigms) – in accordance with the supreme law of the State. But it is also reality that in practice it is not always feasible. The close examination of the new and the newest history of Georgia is good example of that, when reality and legal rules were going into different directions.

The aim of the author of the present article is to present the academic analysis of the constitutional history of the country, highlight general trends of development and in light with the ongoing Constitutional Reform to discuss the future perspectives.

At the same time we are far from the idea that only academic analysis, based on texts books will illustrate the real constitutional setting of the country. In order to achieve this aim we need to exam-

[1] Paradigm- ancient Greek word- means example.

[2] Refer to the order N 388 of the President of Georgia dated 8 June 2009 on "the activities to be done for the creation of the state constitutional commission" www.prezident.gov.ge 2944

[3] Refer to the order N 348 of the President of Georgia dated 23 June 2009 on "the approval of the statute of the state constitutional commission" www.prezident.gov.ge 2960

ine issues related to government system (political system), specific policy, civil society, level of legal and political culture, in other words, research the environment where our constitutional system functions, which on its own requires interdisciplinary examination which goes far beyond the ability and scope of the present article.

1. STREAMS OF CONSTITUTIONAL HISTORY OF GEORGIA

Irrespective of how proud or pleasant it might feel that Georgian nation has a long history[4] of civilized existence as a state, we have to admit that Constitutional history in itself, understood as existence based on constitutional principles does not cover long period. Some of the authors in 2005-2006 were even writing that "from practical point of view, Georgia, as an dependant state, counts less than fifteen years"[5] If modern state means legal order based on constitution (written or unwritten) it is hard not to agree with such an opinion, but we also should not forget, that Georgian history is reach with legal documents, content of which and scope of regulation is close to the constitutional laws.

Some of the Georgian academics share opinion that streams of the constitutional history of Georgia start in early feudal. This is how Vakhtang Abashidze appraises the setting up of so called "Isani Tent" in Tamar's period, which was aimed at restricting powers of Monarch: "One of the consistent part of the Georgian renaissance culture is the theory of the separation of the power, which already in twelve's century was used by antifeudal powers as ideological weapon for movements aimed at restriction of the royal authority."[6] The refered attempt, "Big Movement", was bound to fail based on the personality of the Queen Tamar, her ruling style (methods) and some other internal or external reasons, but later, as it was proved by the history of independent Georgia, the issue of first person of the state has always been problematic. This had been witnessed by late feudal period and legal documents. The sources of law which could be regarded as constitutional law of particular importance are "Dasturmali" and Book of Laws drawn by Vakhtang the VI. Dasturmali, says Isidor Dolidze, as it is written in the introductory part of the book is "rule and order of the royal meetings", which should be observed "by all royals and members of the royal order." This source of law contains the description of system of Kartli Kingdom, functions of the members of the system and their rights and obligations. For contemporary society it would be interesting to have information on late feudal Kartli Court organization and the qualities which

[4] Refer to IV. Javakhishvili, History of Georgian Nation, volume 7, Tbilisi, 1984, History of the Georgian Law, Volume 6, Tbilisi 1982.

[5] Refer to Georgian political landscape, political parties: achievements, challenges, and perspectives. Coordinator editor Gia Nodia, avlaro Pinto Sqoltback, Tbilisi 2006, pp 9

[6] Vakhtang Abashidze, Georgian Intellectual phenomena. Georgian History and legal scholars, Tbilisi 1992 pp 457

were regarded as must for Judges regarding professional, moral and personal character."[7] In addition, we should draw attention on codified legal act, which contains laws of Moses, Greek-Roman law, Makita Gosh laws, Katalicos' law and Beka Aghbugha's "Book on law on mankind confession and all" and also laws of Vakhtang the VI. The importance of the act is not only in its content, but its existence is once again proof of desire of integration of the Georgian society into the world community.

In times of Russian Empire we did not have our own constitutional laws and we had not lived in accordance with the constitutional order. However we cannot ignore in second part of XIX century and beginning of XX century the activities of the Georgian academics. Those were Western European and Northern American (USA) leading philosophical and political reasoning acquired Solomon Dodashvili, Niko Nikoladze, Ilia Chavchavadze, Mikhako Tsereteli, Archil Jorjadze etc.

Georgian enlighteners were spreading the opinions of Spinoza, Lock, Russo, Montesquieu, and others by translating them into Georgian language. Their opinions[8] on the topics of government system, separation of powers, territorial organization of a state, regional governments and some other, is almost not dissimilar from notions and categories recognized by contemporary constitutionalism theories. As if intentionally, prominent Ilia's words are said about our present when he characterizes Montesquieu classical doctrine on threepartied separation of power as abstraction of past and for his times ideal, but for future –as a plan.[9]

It was due to their input that first Constitution of Georgia had progressive, contemporary intellectual content.[10]

2. FIRST REPUBLIC OF GEORGIA

Period known in Georgian history as **"**Golden Period" is regarded by K. Inasaridze as such mainly due to its legislation and in particular specialty of the constitutional legislation, because neither level of economic development nor social or political conditions of that period could have served as ground for such aprisal. This period marks adoption of two founding acts of Independent Georgia and the process of drawing up Constitution, the entirety of both gives us ground to regard the constitutional history of Georgia as Golden Period.

[7] Refer to Isidore Dolidze, Law of Vakhtang the VI. Tbilisi, 1981, pp 5

[8] Refer to Niko Nikoladze's opinions- volume 1, pp 380; same author volume 385, volume 2, pp 201 207.

[9] Refer to Vakhtang Abashmadze, quotation, work pp 467

[10] Refer to k. Inasadirze, little "golden period", Democratic Republic of Georgia 1918-1921. Munich, 1984

One of the mentioned documents is Independence Act of Georgia, **which Georgian National Council "…… In Tbilisi, in the white hall of the palace in 1918, 26 May, On Sunday, at midday 5 o'clock and 10 minutes "has declared"[11].**

Short, (just only about 250 words) but at the same time very significant in content gives us the ground to form opinion about that time history of Georgia, internal and external political situation of Georgia and basic principles of state and social order.

First time in the history of Georgia, at the level of founding act, government system and political regime has been clearly defined – the State should have been republican in the form and it should have exercised its powers by democratic methods ("the form of political order of the independent Georgia is democratic republic").

In the circumstances of general downturn and nihilism, which marked the development of that times, the independence act laid down the obligation of care of a state over a person – the independence act declared sovereignty of people, social and political liberties irrespective of sex, origin, belief, faith and social status, state is taking binding obligation to ensure freedoms of ethnic minorities.

It might be exaggeration to regard Independence Act of Georgia as the "Stream" [12], of the Georgian Constitutionalism, due to the fact that it could not have assumed the functions of constitution or served as substitute; however it plaid an important role in the constitutional development. The principles laid down by the act could also be found in the subsequent constitutional acts of Georgia and in particular in the **Constitution of Georgia dated 21 February 1921.**

The Fortune of the 21 February 1921 First Constitution of Georgia is special. Two constitutional commissions, National Counsel and Founding Assembly had been drafting it over 3 years and adopted in conditions of war. On the fourth day (25 February) from the date of its adoption (21 February) because of invasion of Georgia by Soviet Russia the legal force of it had been **suspended** by the legitimate authority of Georgia while moving to immigration.

1921 Constitution did not come into force, because reinstated on 21 of February it was nullified by the signature of the two members of the same military council with the reservation – "to come into force with the consideration of the reality."

In 1993 the Parliament of Georgia entrusted the State Constitutional Commission with the task "to draw up new version of the 1921 Constitution."

It is not hard to guess what the outcome of it could have been – instead of new version of 1921 Constitution, the Parliament of Georgia was happily satisfied with mere declaration in the preamble of the 1995 Constitution that Georgian Citizens, in adopting the constitution were relying "… on the basic principles of the 1921 Constitution."

[11] Text of the "act" refer in" Democratic Republic of Georgia 1918-1921. Three History document Compiler and author of the introduction Guram Sharadze, Tbilisi, 1991. pp 5

[12] Refer to Paata Tsnobiladze, Georgian Constitutional Law, volume 1, Tbilisi 2004, pp 98

Let us focus on two aspects of it:

1. Although 1921 Constitution was of political focus[13] in all phases of new and newest history of independent Georgia, in reality, it has never come into force and the country has never lived the life based on its rules.
2. In the Constitutional history of Georgia this document has served not only the function of spiritual and political character, but in my opinion it was performing the role of legal bridge with the First Republic; Such a link between constitutional past and current is not rare in the history of other countries too, for instance France, where 1789 bill on human and citizens rights and preamble of 1946 Constitution are regarded as parts of the Fifth Republic (1958 – up to date) Constitution even though they are not incorporated in the actual text of the Constitution.

What was attracting such a big attention to that Constitution? I think, mainly its importance as independent Georgia's Founding Act and its distinguished and different content from those laid down in other countries Constitutions.

By appealing on the 1921 Constitution, it is highlighted that Georgia as independent constitutional state existed in the beginning of 20th Century and principles laid down by it were by no means less in value and importance to those of civilized world's similar documents. More than that, in the opinion of Founding Fathers of the constitution, it should have served as clear example to Europe that democratic legal order was setting up in Georgia.

"Undoubtedly . . . . . our constitution became example to follow by democratic states"– one of the authors was writing in the Newspaper "Ertoba"[14].

Now we are going to discuss 1921 Constitution from the point of view of its importance as legal document. However, it also should be pointed out that discussion will mainly be of academic character, which obviously is different from type of discussion which examines its effectiveness based on practice. However, we are denied such opportunity due to the fact that 1921 Constitution was just only for 4 and 1992 Constitution just for 3 days in force and in fact, it has never come into real existence from practical point of view.

As Gia Khubua points out, normative reasoning, in our case constitution could not be assessed from the point of view of right or wrong[15], therefore the assessment of the 1921 constitution should be done by its analysis as mere legal document, by general assessment, existence of basic rights, principals of constitutional order laid down by the constitution, existence of judicial authority, etc. To begin with, the document shall be examined from its architectural and composition point of view.

Generally, the aim and basic principles of most constitutions are given in the preamble.

[13] Based on what has been said above, it seems almost persuasive the article 10 of 1921 Constitution reading: "this constitution is in force permanently and uninterruptedly".

[14] Quoted from the monograph of one of the famous researcher of 1921 constitutional issues Malkhaz Matsaberidze "Political Conception of the 1921 Constitution of Georgia", Tbilisi 1996, and pp 69.

[15] Refer to G. Khubua, Theory of Law, Tbilisi 2004.

However, 1929 Constitution does not contain such part and that is explained by some academics with the fact that this aim was served by the 1918 independence act. Some argue that social democrats simply did not have time to review and adopt preamble of the constitution because of the existing situation. The same logic of explanation could also apply to lay out of human rights issues (they were scattered into different chapters).

From the point of view of structure of articles it would have been better (for use by judicial and administrative caseload) within articles to have paragraphs and within paragraphs, in case of need, sub paragraphs. It is worth mentioning that constitutional norms lacked direct effect and applicability power – almost all articles and rules laid down by such articles require concretization by the special legislative acts. However, in overall 1921 Constitution represents well structured, bound with constitutional logic, well drafted legal instrument.

The adoption of constitution was carried out in the tough environment with lots of hindrances mainly by external factors. Irrespective of that, adoption of the constitution was carried out with the observance of all rules usual for the legitimate adoption of such type of documents.

It could be regarded as main attribution of the Founding Fathers that constitution regards Human Rights as main social value. Almost half of the articles (70 from 141) were devoted to it.

Now let's discuss the state organization issue, which was of main interest at that time and it is of no less importance today.

1921 Constitution of Georgia is very interesting model of constitution, which attempts to reasonably summaries the world constitutional experience and national Georgian origins. The primary desire of the founders were to draw up a draft, which would cover and share the historically established customs, psychology of Georgian people, the ethnic composition of Georgian population and parliamentary practice developed during three years[16].

As for the use of experience of other countries, the Swiss and French influence is obvious, but as ex Foreign Affairs Minister of Germany Hans Dietrich Gensher says, 1921 Constitution of Georgia "... text of the constitution was one of the progressive within the continental Europe. It was already recognizing at that times such values, as freedom, democracy and rule of law state, those principles which are of key foundations of today's Europe"[17].

Perhaps, the fact that social democrats were represented in majority in the commission and in the founding assembly determined that organizational form of the country was easily chosen as Republic. More than that, it is declared as permanent and unchangeable form (Article 1), therefore under this wording the cancellation of this form and restoration of monarchy was not permissible.

[16] For more detailed reading refer to works of Malkhaz Matsaberidze, also books on Georgian Constitutional acts, edited by Eliso Gurgenidze, also, her introductory article in the book "Constitutions of World Countries (responsible editor Avtandil Demetrashvili), Tbilisi 1991, pp 19.

[17] Quoted from the book: Wolfgang Gauli, drawing up and adoption of Constitution in Georgia (Georgian Translation of German edition) Tbilisi., 2002, pp.IX

1921 constitution researcher undoubtedly would have drawn attention on the very interesting model of horizontal separation of the authority, which was drawn up by the Founding Fathers. Based on that model, we do not see the Head of State institute within the system of state central bodies. The traditional functions of a Head of the State were delegated to the Government, Head of the Government elected for a year and to the Parliament.

It is hard to judge how this system could have worked, because it's effectiveness for Georgia through its existencehas not been checked, but on the basis of abstraction following could be said:

1. Parliamentary Republic only functions effectively and stably in the defined social and political environment.
2. The founders of the constitution denied the classical model of separation of power and laid down such a modification of the Parliamentary, where Parliament, "legislator" clearly is in favorable position compared to Government and Judiciary.
3. Single chamber Parliament in light of undeveloped social environment is less effective, stable and of positive effect.

Now, let us discuss third branch – Judicial out of well known separation of power's doctrine (Executive, Legislative and Judicial).[18]

If we, even conditionally, can recognize Parliament and Government as branches of the authority (in constitution their status is defined as "representative body of Republic" "Legislature" and Supreme Executive Authority"), we could not say the same about the third branch. The Founders have never used the "Judicial Authority" or even words of equal content but simply they named chapter six as "Court".

3. SOVIET CONSTITUTIONS IN GEORGIA

One of the problematic issues which refer to the constitutional history of Georgia is the role and place of 1922, 1927, 1937 and 1978 Soviet constitutions[19]. On the one hand they are adopted by the appropriate bodies of Georgian state and are referred as constitutions. It also should be noted that they were fulfilling some positive role, they were introducing the elements of legal order in the life of society, were facilitating some level of political stability but in the assessment of their role and place, attention should be drawn on other things.

[18] Refer to Montesquieu's Spirit of the Law, introduction by Nodar Antadze, Tbilisi 1994.

[19] In this part of the article we review 1978 Constitution as adopted in an initial version and does not refer to the amendments introduced by Zviad Gamsakhurdia government.

The main essence of the analysis of the constitutions adopted in times of Lenin, Stalin and their followers is that none of them were the true expression of the will of Georgian people or the creation of the legislative work of one of its bodies.

In the Soviet Socialist Georgia adoption of constitution was an automatic follow up process of adoption of Soviet Socialist Union constitution in the "Centre" by communist party.

The appropriate bodies of the Soviet Georgia were allowed to decide on the changes of official titles and names and in particular " (Soviet Socialist Republic Union – " Soviet Republic of Georgia", " Moscow" – "Tbilisi", " SSR Union Supreme Council" – Georgian SSR Supreme Council" and etc) and official translation of the text from Russian into Georgian and Abkhazian.

It is hard to discuss the compatibility of such constitutions with the principles of constitutionalism. First of all, because socialist doctrine denies the one of the primary principles of constitutionalism- separation of powers and people as the only source of authority and on the other hand, constitutions were just fictitious because the quazi democratic or legislative institutions were serving of no purpose but cover up for USSR Union communist party unlimited authority.

4. TRANSITION PERIOD CONSTITUTIONAL LEGISLATION

Already second time in the nineties of 20th century the independent Georgian state was building and developing in a very tough social and economic and political conditions. This period of Georgian history, especially with the government system and methods of exercising power, the level of involvement of society in the ongoing processes could be compared with events taking place in the last decade of the 18 century in France.

28 October 1990 is regarded as period of commencement of this phase in the history of Georgia. These are the times, when in SSR of Georgia, the Supreme Council elections were held with the persuasive victory of political union "Round Table – Independent Georgia."[20]

Post election period has proved to be toughest and hardest for the new government. Its activities marked both achievements and obvious mistakes.

Governing elite were declaring and even proving it by concrete actions that they desired to build democratic government order in the state. Within short period many changes were introduced to 1987 Soviet Constitution which continued to be in force and it was declared as transition period

[20] For the details refer to Igor Kveselava. The chronics of the newest history of Georgia. Zviad Gamsakurdia, Dissident, President, Saint. Tbilisi 2007.

Constitution. The official name of the state changed from "Soviet Socialist" to "Republic of Georgia. Changes were introduced to symbolic of the State and in particular –coat of arms, flag and anthems were changed, most importantly, the lead role of the communist party was abolished and political pluralism and ownership types started to originate.

However, it also should be mentioned, that even in light of those progressive steps and important changes at a constitutional level with populations' stable start up support [21] the new government was losing image of democratic authority in the eyes of society. Best examples to illustrate how less democratic things were present in the constitution would be the unlimited authority of the president which in itself was against the basics of principle of separation of power in the architecture of the state government system and the initial promise made to public that new government system would be built and function in accordance with key democratic principles of separation of power. In addition, local self government as means of participation of public in the determination of issues of their concern remained unachieved (instead of this just instituion of Center appointed Prefects was introduced). Also unachieved remained introduction of democratic principle of appointment of Judges.

Indeed, one of the main declared reasons for the 1991 state riot was named the above referred deviations from the principles of constitutionalism. The authority of the legitimately elected Supreme Council of Republic of Georgia, President of Republic of Georgia and Government had been seized by non constitutional forceful way and the authority was assumed by the Military Council (Triumvirat)[22].

Military Council declared the transition period Constitution as void and instead on **2 February 1992 adopted declaration on the restoration of the 1921 constitution of Georgia.**

We will quote Paata Tsnobiladze who assesses the decision of the Military Council in the following way: "Although 1921 Constitution as a legal document carries big importance, it was already irrelevant legal instrument to the existing reality of that time society and the State"[23].

The impression is created that their action did not result in any positive outcome and even more it appears to be politically motivated document which carried only declaratory character and the authors of declaration by reinstating the 1921 Constitution wanted to legitimize their illegitimate actions (change of authority by forceful way).

The formally reinstated Constitution and the state life were moving in different directions. Instead of the Parliament elected by public and the Cabinet responsible before the Parliament, State Council of low level of legitimacy was created, which simultaneously was exercising legislative and executive functions.

[21] Apart from the will expressed by people at elections of 28 October 1990, the Georgian electorate supported initiative of the government to reinstate Independence of Georgia based on the 1991 Independence act. Also, 26 May 1991 elections are of significant importance from the point of view that Zviad Gamsakhurdia won elections with 87 %.

[22] Refer to discussion topic 2 on Democracy building in Georgia, Constitutional system in Georgia, 2003 pp 26.

[23] Refer to Paata Tsnobiladze, Constitutional Law of Georgia, volume I, Tbilisi 2004, pp 128

On 11 October 1992, in order to fill the gap of legitimacy Government held parliamentary elections and on 6 November 1992 newly elected Parliament adopted the law on "State Powers", which is considered as a fact of great importance in constitutional history of Georgia. The referred document in light of the fact that country was left without supreme law and due to its character and level of legitimacy was referred as "Small Constitution".

The primary importance of 6 November 1992 law on " State Powers" was due to the fact that it ended the Socialist Constitution era and served as commencement of the foundation of contemporary State based on the principles of constitutionalism, which in itself introduced some level of clarity and stability in the state lifehood. At the same time, however, it should be pointed out that still it was not of such authority to assume functions of and substitute constitution for the country.

Although it is generally perceived that main law of the State should cover the entire state order/organization in the referred document only legislative and executive branches were represented in relative entirety while nothing was mentioned about the judicial branch. Also, basic rights chapter as always seen as integral part of modern constitutions were completely missing.

One of the peculiarities of the Georgian Constitutionalism, the analogy of which is hard to find in the world, is the system of state supreme bodies created by the law. Within this system, Head of the Parliament elected by general, direct, equal and secret ballot was at the same time Head of the State.

Those were the transitional period constitutional chronics. The situation was not the easy one in 1993. The reinstated 1921 constitution, due to its reinstating by illegitimate way and inconsistency with reality failed to come into function. The law on the "State Powers" covered just only part of constitutional issues of high importance with the consideration of the fact that also some of the provisions of the abolished 1978 Constitution still remained into force. The only way in the process of integration with the civilized world was to adopt entirely new Constitution.

5. 24 AUGUST 1995 CONSTITUTION OF GEORGIA

In the constitutional history of Georgia, 24 August of 1995 shall remain as date of significant importance. On that day Parliament of Republic of Georgia (formed on the basis of pluralism of political parties) adopted second "own" constitution in the history of independent Georgia.

Draw Up and Adoption of the Draft[24].

According to experts and members of the commission, the process of drawing up and adoption of the Constitution was carried out in relative accordance with the requirements of the principles of legitimacy and law[25]. This refers both, to setting up and activities of the Constitutional Commission on the basis of regulations lay down by the Parliament and to adoption of the Constitution by the Parliament and promulgation and publication of the text by the Head of State-Head of the Parliament[26]. It should be pointed out that the initial text of the Constitution as drawn up by the Constitutional Commission which consisted of 118 members and the final text adopted by the Parliament of the Republic of Georgia were significantly dissimilar.

Basic characteristics of the text drawn up by the State Constitutional Commission

The draft adopted by the Constitutional Commission entirely resembles in its structure to the text adopted by the Parliament of Republic of Georgia (in the final text the chapter on the Cabinet had been removed) and also it marked similarities in the composition with the 1921 Constitution. Six out of nine chapters of the initial text of the draft had almost word by word coped Chapter Titles of the 1921 Constitution. Chapter one – General Provisions (1921 Constitution-General Provisions), Chapter two – Georgian Citizenship, basic human rights and freedoms (1921 Constitution – Citizenship), Chapter three- Parliament of Georgia (1921 Constitution- Parliament), Chapter six- State finances and Control (1921 Constitution – State Finances (chapter 7) and State Control (chapter 8), Chapter seven- State Security (1921 Constitution – State Security), Chapter eight – review of the Constitution (1921 Constitution – review of the Constitution).

Commission tried to adhere and lay down in the Constitution the idea of decentralization and deconcentration of the State Powers based on the doctrine of horizontal and vertical separation of powers. Territorial organization of a state in a final draft was based on the principles federalism and the system of the state bodies were following so called called French model.

The text adopted by the parliament of Republic of Georgia on 24 August 1995 considerably differed from the version drawn up and adopted in the Commission in that they were differently regulating the state order.

"Federal Origins" appeared to be not acceptable to the majority of the Parliament, who in it could not come up with the possible alternative. As a result, the issue of territorial organization of a state

[24] For Details refer to Wolfgang Gauley. Drawing up and adoption of Constitution in Georgia (Georgian Translation of German edition), Tbilisi 2002.

[25] Instead of calling on referendum and adopting it through referendum, which was initial order of the Parliament, in the end Constitution was adopted by the parliament.

[26] We consider as quite innovative signing of the text adopted by the Parliament by both MPs and members of State Constitutional Commission.

(apart from some remaining articles from the draft) had been left open until the restoration of the territorial integrity of the country.

Debates were severe on the types of the government system – Parliament failed to adopt the proposal of the commission about mixed, semi presidential type of the government system and as a compromise adopted proposal initiated by the Union of Georgian Reformers on classical (American) Presidential model[27].

While attempting to review and assess the content of 1995 Constitution it is important to take into account opinion of Vince Commission, international[28] and Georgian[29] experts and academics, who assessed Constitution in overall as entire, well drafted legal document.

At the same time they point on the dissimilarities with the classical American Presidential model. Under the Georgian Constitution President is serves not only as the head of the executive branch (as it is the case in the classical American model), but is at the same time head of the State. In the structure of the executive Brach existed institute of the State Minister not known to the Presidential Republics in general, who was responsible for the exercise of the special powers in the determination of issues of state importance although he/she was not possessing the authority of the head of the state collegium (Cabinet was only advisory body of the President).

President through Council of Justice, which was its advisory body, was in charge of the appointment of judges (but the Supreme Court Judges) imposing disciplinary actions against them and dealing with their dismissal issues.

Constitution did not provide solution to local self governments and territorial organization issues which in itself could be regarded as deviation from the principle of constitutionalism. This was enhanced by declaring persecutors office as part of the judicial authority and its vague definition. Importantly, the misbalance in power in favor of the President (executive branch) and non existence of the procedures for the solution of the potential conflicts between executive and judicial branches were not in compliance with the principles of constitutionalism.

The main attribute of the 24 August 1995 Constitution was in its founding character. Within its framework democratic institutions had been created. However, it should be pointed out that their proper functioning was not the issue of legal regulations but also on some other surrounding factors.

Unfortunately, the democratic potential of the Constitution was not utilized by the Government and society frequent ignorance of its democratic requirements by contrary actions diminished the positive effect of the document. It was clear that this should have resulted in the protests from the part of political elite which ended up with the so “Rose Revolution” and by peaceful although

[27] Refer to Bakur Gulua, thoughts on the History of Constitution of Georgia. Tbilisi 2003.

[28] Refer to review of Larry Lessing, American Lawyer – Wolfgang Gauley work, pp 407-415.

[29] Refer to Gia Nodia, Constitutional system in Georgia, democracy building in Georgia, Tbilisi 2003, and p 25-33.

unconstitutional way of change of the existing authotity (President and Cabinet) and partially Parliament.

The new government, based on the Constitutional laws of 6 February 2004, and proceeding legal documents exercised substantial review of the 24 August 1995 Constitution. Changes and amendments were introduced to almost all articles[30] of the chapters dealing with the state government system and relationship between branches. As a result, the government system referred as Presidential Republic form established by the initial text of the Constitution, has been changed with the new system referred by the authors as Semi Presidential model.

Irrespective of noticeable success[31], Rose Revolution government has often been subject of criticism or active opposition. The main issue of critic was the existing disbalance between the Powers of the president and other branches of the state, especially it was pointed out that Constitution was adjusted to the president[32]. The issue of style and methods of communication between Government and the public was also criticized a lot.

6. OUTCOMES OF OBSERVATION

1. Even superficial observance of the events, which are resulted in the creation of constitutional documents, gives us the ground to conclude that they are related to the periods of decisive significance in the history of the country.

1921 constitution emerged as a first founding act of Georgia, which should have strengthened the gained independence and created effective state mechanism; 1990-1995 constitutional or quasi constitutional legislation emerged as means restoring independence of Georgia and were aimed at strengthening the state powers. The creation of 1995 Constitution was dictated by the desire to stabilize the life of society and to gain democratic image before the world community.

Constitutional reforms commencing from 2004 were the products of “Rose Revolution” and aimed at creation of the strong although still disbalanced state mechanisms through substantial reforms.

[30] Emended and changed are half of the 109 articles of the initial text of the Constitution.

[31] Effective fight against corruption, provision of public safety and security, change of educational system to European, solution of problems such as infrastructure and energy in short period of time, introduction of contemporary system of state services, improvement of external image of the country, etc.

[32] Although Venice convention was happy with the aim of the amendment and changes to the 6 February 2004 Constitution and in particular, coming close to the European Constitutional legislation and practice, it had substantial comments on the10 articles of the draft law (in total there were 24 articles) and deemed reasonable before the adoption of the constitutional changes and amendments to held debates and make reviews of them- Opinion of the Venice commission 0 281/2004 non official Georgian Translation.

2. All Constitutions of Georgia and all other documents of equal constitutional importance speak in the name of democracy and assign significant value to human rights issues.

The large spectrum of rights laid down in 1921 and 1978 Constitutions are of significance to be mentioned among other Constitutional documents like 1995 Constitution and 1918 act of Independence and 1991 act on restoration of independence which are limited in listing the rights, not saying anything about the law on the "State Powers" which failed to deal with the rights issues.

However, none of the sources of the constitutional law mentioned above contain separate chapter on basic rights in the sense viewed by modern principles of constitutionalism as rights limiting state authority.

Presumably, it could be said that dealing with human rights issues in the different non related chapters and in the scattered way[33] does not give 1921 Constitution any conceptual logic in assessing it from the point of importance in regulating human rights issues.

Although 1995 constitution went further and introduced separate chapter on "basic rights" still from its content it cannot be considered as of having equal value and importance as understood in classical way.

There, similar to 1978 constitution (1991 renewed version) the classification of rights freedoms was done with the scheme "personal rights and freedoms, political rights and freedoms, social economic rights and freedoms, obligations"

From the point of covering limitation of rights 1995 condition could be regarded as etalon of European 1950 convention on the protection of basic human rights and freedoms, which allows limitation of almost al types of rights permissible based on different grounds.

Current Constitution of Georgia allows restriction of ten out of thirty-five guaranteed rights in the existence of following circumstances:

– Emergency state,
– Public need,
– Provision of state security and public safety for the existence of democratic society,
– health safety,
– Avoidance of criminal offence,
– Enforcement of Judgments,
– Provision of territorial integrity and Public safety,
– Protection of others rights and dignity,
– Avoidance of disclosure of confidential information,
– Provision of Judicial independence and enforcement of judgments.

[33] Chapter two – Citizenship, chapter 3 Rights of the Citizens, Chapter twelve education, school, Chapter thirteen social economic rights, Chapter fourteen rights of ethnic minorities, chapter fifteen State servants.

3. In line with the opinion that constitution shall be entirety of the norms regulating we consider reasonable and as indicated in the introductory part of the present article to examine this issues in light of the courses of the Constitutional law of Georgia.

State Territorial Organization

For our analysis the 1918 Independence Act, 1991 Independence Restoration Act and Law on "State Powers" is of less importance since they do not contain provisions regulating territorial organization of a state. Therefore we should look into and examine 1921, 1979 and 1995 Constitutions.

1921 Constitution does not contain separate chapter on territorial organization of a state, however Article 1 which reads: "Georgia is . . . integral state" and chapter 18 consisting of two articles "autonomous government[34]." shall be subject of our examination.

The analysis show that in accordance with these regulations, even though structure could be seen as containing several autonomies, Georgia should be regarded as central unitary state.

In review of 1921 constitution makes clear that the document only speaks of "Central" bodies and integral parts – Abkhazia (Sokhumi district), Muslim Georgia (Batumi region) and Zakatala (Zakatala district). The rest, lower first layer territorial units are not covered by the constitution. And as it is characteristic for the founders of constitution the main regulation of it should be at the level of law and not constitution[35]. It is also worth mentioning that nothing is said about the distribution of power from the center to the lower levels.

Now we should discuss the second component of state organization – **government system itself (government type).**

The first republic of Georgia was starting its life in the form of the Parliamentary Republic, which was not based on the doctrine on separation of powers with the main emphasis and primacy of the powers of the Parliament.

In the Socialist ear the system of government in Georgia is defined as Republican, which was based on absolute power. In this system, there was no place for the principles of separation of powers, checks and balances.

1991-1995 system of government shall be characterized as non democratic (military council, state council and as quazi democratic (law on "State Powers").

[34] Perhaps, based on the wording of 1921 Constitution which says "local self government is at the same time body for such governance. (article 98) and local self government in the issues of local self governance has to obey Central bodies of the Government (Article 104), George Papuashvili in his article discuss issues related to local self governments in the chapter dealing to territorial organization of a state- refer to George Papuashvili 1921 Constitution of Democratic Republic of Georgia from the perspectives of 21 century, in a book,,21 February 1921 Constitution of the democratic republic of Georgia, Batumi, 2009, pp 17-19.

[35] Almost every forth article of 1921 constitution is of blanket nature and requires concretization by the legislation.

The stable, democratic form of government was the result of adoption of 1995 Constitution. Till 2004 the state government system was organized in the form similar to USA Presidential Republic. From the date of entry into force of 2004, 6 February Constitutional law up to now (1 June, 2010) the government system of Georgia is classified as semi presidential, French model.

Those were the chronics of constitutional importance in the new and the newest history of Georgia, the entirety of which is forming him constitutional face of Georgia.

The Recent constitutional evens created the need of constitutional reform, some even argue that was not only a simple need but immanent to happen. The actions taken by the current Government and in particular, setting up Constitutional commission to prepare such reform could be seen as proper, timely and adequate to such need.

7. OPINIONS ON PRINCIPLES, CONTENT AND MECHANISMS OF EXERCISE OF THE CONSTITUTIONAL REFORM[36]

Principles. The success of constitutional reform shall be determined with two main factors. First is the political conjuncture within the country (the analysis of which goes beyond the aim of the current article) and Second is correctly defined principles of constitutional reform, the values which it should be based on and carried out. We consider following principles as vital:

– Recognition of human as basic social value, for which the limitation of state power should be exercised;
– Public sovereignty which should be expressed in the direct and representative democracy constitutional institutions, developed, economically strong local self governments.
– taking into account historic development, ethnic psychology of the Georgian people and current reality;
– Separation of powers horizontally and vertically. My understanding of the vertical separation of the powers concerns the separation of legislative, executive and judicial branches from each other and existence of the institute of the President. Prudent procedures for checks and balances of powers, as well as cooperation and subsidiary.

Framework of Review of the Constitution. Constitutional reform should cover substantial part of Constitution of Georgia and relevant legislation, which will result in the new, emended and changed version of the 1995 Constitution. With the framework of Constitutional Reform, articles regulating

[36] The opinions expressed in the present article are of personal views on the issue of the author which might not coincide with the opinion of the state constitutional commission and is by no way related of my as Head of the Commission activities. –A.D.

the authority of the Parliament, President and the Cabinet should be subject of substantial review. In addition, I consider reasonable to review other parts of the constitution and introduce some relevant and adequate changes and amendments.

Main Directions of the Reform

Parliament of Georgia. The image of the Current supreme legislative body Parliament of Georgia as for its functions (to define internal and external polices of the Country, exercise control on the executive branch), level of participation in the appointment of high officials and setting up bodies, full legislative competence, powers to exercise effective checks, authority to ratify international treaties does not look too bad. American politologist Steven Fish (refer to annex 1), and Mathews Croening gave to the Parliament of Georgia 0, 59 score index[37], which in the post Soviet area is not bad result[38]. However, in the Georgian society expectations are higher as of the role and level of participation of the Parliament in the State affairs.

In order to achieve this level of efficiency we consider reasonable to review and emend the current structure and introduce instead bicameral parliament. Also, in the number of well organized, democratic states, irrespective of type of government system and territorial organization (USA, Italy, Switzerland, France, Japan, Germany) bicameral parliaments were functioning quite successfully, I will try to outline the arguments in favor of the bicameral Parliament in Georgia:

– Enchant and strengthen representative quality of the Parliament, with diverse, more balanced and complex public interest representation;
– Provision of more refined procedure for adoption of legislature. Minimal possibility of admitting laws in unreasoned, quick way. Chambers can improve each others mistakes.
– Permanent control over Cabinet due to the fact that President can only dismiss one chamber of the Parliament (presumably lower, Republican Council).
– Reduced excessive influence of the parties on the activities of the Parliament, due to the fact that Cabinet might not be formed on the basis of belonging to particular political party.
– Introduction of system where number of the Members of the Parliament (members of the republican council) and Senate (upper chamber) (desirably 150 again) is defined by the existing territorial units (Abkhazia, Adjara and South Ossetia ex autonomous district special status) and/or public (voters) quantitative base.
– Changing of Senators on the basis of the rotational principle would serve as a good means of " letting steam" from the chambers in case of social tenseness.

[37] M.Steven Fish and Matthew Kroenig, The Handbook of National Legislatures: A global Survey (New York: Cambridge University Press, 2009 .

[38] For the comparison – the formal legal index of the Parliament authority of Lithuania and Latvia was 0,78, Estonia and Moldova 0,75, Ukraine 0,59, Armenia 0,56, Russian Federation and Azerbaijan 0,44, Tajikistan 0,31, Uzbekistan 0,28, Belorussia 0,25, Turkmenistan state council was 0,06. The data is taken from the work of the above referred American Author, which entered Georgian academic world as PH.D work by Malkhas Nakashidze.

In our opinion the number of the members in each chamber should vary (100 Republican Council and 50 – Senate). The rules on formation of each of the chambers should be different too. MPs are elected from political party lists based on proportional system, senators – one part with general, direct, madjoritarian system in light of local residence criteria and second by the representative bodies of the territorial units having special status, 3 senators will be appointed by the president of Georgia based on their eminence and input in the society life from different fields. The ex presidents of Georgia, who have served their term in full are automatically admitted to senate as senators. Term of the office for MPs shall be 4 years and for Senators 6 years with the reservation that every three years senators will be renewed. Chambers should be vested with equal powers in determination of issues, though each of them shall be charged with some special authority too.

The role of the parliament could be increased by charging committees working on a permanent basis, with the investigatory powers, with participation in the appointment and dismissal process of judges, and what is the most important – the relationship with the Cabinet shall be entirely modified. Cabinet shall be responsible before the parliament, shall be formed by the Parliament from its majority.

President of Georgia. Similar as it was with 1921**,** 1978 (with the new addition of 1991), and 1995 constitution, in the process of ongoing constitutional reform one of the important and complex would be the issue of the Head of State. Some questions are coming up: Shall we introduce institute of President as such or just have a Monarch? How shall be his/her Constitutional status be defined and what powers and responsibility shall be vested in President, including its place within the government system. Those are main issues which should be covered and answered in the process of current constitutional reform. I will present my view on the issue.

I am viewing skeptically "beheaded" state idea. Two arguments are dominant among those in support of this position: First, that just mere existence of such institute would result in the creation of authoritarian government system in the country and second argument which is based on the 1921 Constitution of Georgia and those in support of that enthusiastically regard it as something to illustrate perfect government system and justification of the argument. I think that the arguments and approaches itself does not have much ground or even potential to come into effect and in my opinion, as one of the counter arguments I can note that there is no state in the world which claims to be at some level of development and is without institute of the Head of State. In case we want to experiment as to be the ones to introduce such system as novelty, it could be said with high level of probability that this would not be successful thing and is bound to fail.

It should also be mentioned that institute of the prime Minister under 1921 Constitution which should have served as a substitute to the Head of the state and simultaneously be vested with such a big spectrum of authority as representation, governance, complex foreign affairs could not have been able to deal with all that in an effective and productive way. Since there had been no practice based on so called romantic constitution of 1921 we could only make some conclusions and assessments at a doctrinal level.

In addition, I do not think it sounds persuasive that mere existence of the institute of Head of State means move to authoritarian government system. This fear could be dealt by the creation of the balanced system of state bodies, by the active involvement of civil society, raise the level of legal and political culture in the country.

I think topic of separate discussion is reinstating of Monarchy. In the framework of present article we can provide very brief review and say that the success of it could possibly be anticipated with the existence of certain conditions. However, with the consideration of the fact that Georgia had long not been in the form of Monarchy and its current political and social structure has changed a lot it is hardly feasible that for the time being this idea could successfully come into existence and even more within the framework of the current constitutional reform there is no debate as for the reinstating of monarchy in the country.

It is clear that Head of the State should exist but the issue of discussion is its constitutional status, role and place within the system.

The constitutional history of Georgia, internal political and geopolitical factors demand institution of high legitimacy. Therefore, its constitutional status should be defined by the following formula: the President of Georgia is Head of State and supreme representative in international relations. The mere existence of the Head of the State institution does not in itself create any possibility for authoritarian government system and even more unilateral representation in international relations has advantages of high legitimacy. For this to be achieved, the high level of legitimacy of the institute should be provided. Hence President shall be elected by general, equal, free, direct vote by secret ballot.

Functions and Powers of the President. 1) Derive from his status and the way he is selected by the people; 2) In light with the government system we try to introduce the role of the president as arbitrator should be the focus of our discussion and attention. In my opinion this function should be preserved although with slight modification. I am sceptical about the rule of the current cosntitution and in particular, President ". . . Exercises and leads the internal and external policy of the state". To begin with, President as supreme representative in international relations is already leading and exercising foreign policy. However, I disagree with the fact that the body or person who does not carry any political responsibility for it shall not lead and more than that shall not exercise such policy. It should be also pointed out and this is especially true in case of internal policy affairs that it is almost impossible mainly due to its inefficiency that one person to be good lead at both internal and external policy issues. In addition it is hard to perceive that one could simultaneously manage to be unbiased Arbitrator and head of the executive branch.

Presumably it could be said that by distancing President of Georgia from the executive branch we will not diminish its high priority as such and at the same time will help to create more balanced government system.

Hence, we think based on the reasoning provided above article 69 of the constitution of Georgia shall be formulated in a following way:

,, Article 69

1. President of Georgia is the Head of the State, guarantor of integrity and national independence of the country, supreme commander in chiefs of the armed forces and supreme representative in foreign relations.
2. President of Georgia through its arbitration provides constitutional functioning of state bodies."

Based on the status of the president and especially from the functions as Arbitrator, the rule on the Presidents office incompatibility requires review. Based on our history lessons, and legislative experience of some other countries (Latvia, Turkey, France) person elected as the president shall suspend its activities (in case he/she was involved in) in the political union of citizens until the following presidential elections.

It would be reasonable to examine closely different approaches and methodologies concerning the legal role and place of the President especially in light of ongoing constitutional reform and new Constitution.

I consider as of significant value to examine Shugart and Kery methods (please refer to annex 2).

Under this methodology in light of the current, existing index of Presidents of south Caucasus countries looks as follows: President of Republic Azerbaijan -30, President of Georgia 27, and President of Armenia 15)[39]. Under the current constitution, President of Georgia somehow is vested with the powers to excersise both constitutional control and administrative control[40].

Based on the status of the head of the state or arbitrator he should be equipped with (and is indeed) the right to address constitutional court (to ascertain the compliance of law with the constitution) and to the court of common jurisdiction to ascertain the compliance of acts with the law). Therefore article 73 should be formulated in a different way or abolished completely.

The new overview is required for the issue of President's participation in the formation of the cabinet[41]. President's discretional power to dismiss cabinet or any of its members unilaterally and based on his discretional power shall be eliminated. President shall not be vested with power to hold the cabinet meetings based oh his/her initiative. Therefore the existing formula in the current constitution requires specification[42]. In my opinion President should have authority to participate in those cabinet meetings only in case it discusses issues of following content: the draft budget to be submitted, decrease to be adopted in case of state emergency or martial situation, issues initiated

[39] Index is determined based on the publication used by Malkhaz Nakashidze in his PH.D work. ,,Shugart M.S. and Carey J.M. Presidents and Assemblies. Constitutional Design and Electoral Dynamics.-Cambridge University Press, 1992.

[40] Third paragraph of the article 73 of the Constitution of Georgia: President of Georgia is authorized to suspend or cancel legal acts of the government and bodies of the executive branch in case they conflict with the Constitution of Georgia, International Treaties and Agreements, Laws and Normative acts of the President.

[41] For more details in the subsequent text.

[42] Forth paragraph of the article 78 of the Constitution of Georgia: President of Georgia is authorized to convene and preside over the meetings of the government with regard to the issues of exclusive state importance. Decisions adopted at the meeting shall be formed by the act of the President.

by the cabinet concerning declaration of confidence or non confidence to the parliament, calling on referendum, or amnesty issues.

Cabinet

In my opinion, the executive branch shall only consist of cabinet, governmental bodies and local government bodies and the supreme body of this branch shall be Cabinet of Georgia. And its function and authority shall be defined accordingly. It should define internal and external polices of the country, based on the constitutional and legislative acts exercise executive and administrative functions. Apart from these substantial issues, it is desirable on the level of legislative acts (constitution, organic law) to have exhaustive list of competence of the Cabinet. Current constitutional formula "Cabinet is responsible before President and Parliament" is absolutely not necessary. Cabinet shall be indignant branch of state system. Respectively, the role and place of the prime-minister shall be reviewed, his relationship with other bodies of the government.

Legal facts, which should determine the formation of the cabinet, are declaration of the final results of the Parliamentary elections and first meeting of the newly elected parliament, resignation of the cabinet, dissolution of the cabinet. How shall Cabinet be formed in such case?

First legal fact- Parliamentary elections have been finished. The formation of the government takes place with the following order: President with the consultation of the political parts represented in the Parliament will select candidate for the Prime Ministership, the later will select members of the cabinet and with the government plan goes before the parliament to get confidence. Before the resolution for the declaration of confidence (before the actual vote on it) parliament is entitled by the recommendatory ruling to rescind the individual members of the Cabinet.

Prime Minister has power not to agree on this recommendation and ask for the vote. Parliament can either declare confidence or deny (so this ends the first Parliamentary stage).

In order to get confidence, President submits same or new composition of the Cabinet before the Parliament for the second time. In Case parliament declares Confidence, President by order appoints Prime Minister and other members of the Cabinet. In case Parliament denies trust, within the time frame laid down by the constitution (15-20) working days) elects Prime Minister and other members of the Cabinet and President just approves this composition by the order. The main phase of the creation of the Cabinet ends with this process. President shall be obliged to appoint person elected by the Parliament as the head of the Cabinet and as members of the Cabinet candidates submitted by the prime Minister.

In case Parliament fails to elect Prime Minister within the time frame established by the constitution, then President's as Arbitrator's functions will come into force, he will appoint interim Prime Minister and later will submit the candidates for the cabinet; he will dismiss the Parliament and appoint new Parliamentary elections.

Second, (resignation of the Cabinet) and third (dissmisal of the Cabinet) – procedure is the same, on initial stage participants are President and Parliament.

It is possible to have such a formation of the Cabinet where president only plays formal role. It happens in case of Parliament's so called "constructive votum of non confidence", when Parliament dismisses Cabinet by electing new Prime Minister. If this happens President shall appoint Prime Minister elected by the Parliament and members submitted by the Prime Minister.

Judicial Branch

I am not going to draw big attention on this issue, due to the fact that Judicial system does not require any substantial reform, its drawbacks are the result of more political will and individual actions of individual judges rather than institutional.

The Constitutional Court generally receives positive appraisal, but I want to focus on the place in the determination of issues, I would have reviewed the issue of determination of case without oral proceeding, based on the adversarial principle, which I consider as crucial- I would have given it authority to decide on the constitutionality of the judgments made by the courts of common jurisdiction.

The issue of appointment of judges in the courts of common jurisdiction life time as considered effective means to ensure independence of Judiciary needs close examination and in particular, it should be examined whether their mandate is really life time. One of the effective methods of ensuring the independence of the judges in the courts of common jurisdiction, appointment of judges life time, all judges will automatically go on life time mandate or just some in case they pass some probation period. Shall all judges be subject to such rules or only Supreme Court judges... The issue of consideration shall also be of whether all judges shall be elected by the Parliament submitted by the president (currently this rule applies only to Supreme Court judges), or shall high council of justice be charged with that powers.

In the Constitution of Georgia issue of local self governments are not well regulated and moreover, it only contains two sentences on the issue, which obviously is not enough for the regulation of such an important issue of democracy. It is not desirable especially with the consideration of the fact that Georgia is the part of the European charter on Self governments.

In light of non existence of the regulations of territorial organization in the new version of the Constitution, I think, new constitution should devote separate chapters to it, especially with the consideration of the fact of imperativeness of decentralization and deconcentration of the Powers.

The regulations on the review of constitution require also serious examination. If the so cold " soft rules " of review was justified and was acceptable at that level of dynamic development of the country, with more stable situation the review of constitution should be subject to more cautious

exercise. Therefore it is desirable to exercise review with the observation of the so called double ovum procedure, which means following:

Review of the one part of the articles of the constitution by the parliaments of two consecutive invite, and the rest of them (articles) by the two consecutive sessions, which shall have time interval of three months. In addition, review of adopted or dismissed changes/additions shall only be possible after on year's time. All this would serve as effective means to strengthen stability of constitution.

ANNEX 1

Methodology of assessment of the powers of legislative branch (Parliament) by Steven Fish

1. The legislature alone, without the involvement of any other agencies, can impeach the president or replace the prime minister.
2. Ministers may serve simultaneously as members of the legislature.
3. The legislature has powers of summons over executive branch officials and hearings with executive branch officials testifying before the legislature or its committees are regularly held.
4. The legislature can conduct independent investigations of the chief executive and the agencies of the executive.
5. The legislature has effective powers of oversight over the agencies of coercion (the military, organs of law enforcement, intelligence services, and the secret police).
6. The legislature appoints the prime minister.
7. The legislature's approval is required to confirm the appointment of individual ministers; or the legislature itself appoints ministers.
8. The country lacks a presidency entirely; or there is a presidency, but the president is elected by the legislature.
9. The legislature can vote no confidence in the government without jeopardizing its own term (that is, without, the threat of dissolution).
10. The legislature is immune from dissolution by the executive.
11. Any executive initiative on legislation requires ratification or approval by the legislature before it takes effect; that is, the executive lacks decree power.
12. Laws passed by the legislature are veto-proof or essentially veto-proof; that is, the executive lacks veto power, or has veto power but the veto can be overridden by a simple majority in the legislature.
13. The legislature's laws are supreme and not subject to judicial review.
14. The legislature has the right to initiate bills in all policy jurisdictions; the executive lacks gate keeping authority.

15. Expenditure of funds appropriated by the legislature is mandatory; the executive lacks the power to impound funds appropriated by the legislature.
16. The legislature controls the resources that finance its own internal operation and provide for the perquisites of its own members.
17. Members of the legislature are immune from arrest and/or criminal prosecution.
18. All members of the legislature are elected; the executive lacks the power to appoint any members of the legislature.
19. The legislature alone, without the involvement of any other agencies, can change the constitution.
20. The legislature's approval is necessary for the declaration of war.
21. The legislature's approval is necessary to ratify treaties with foreign countries.
22. The legislature has the power to grant amnesty.
23. The legislature has the power of pardon.
24. The legislature reviews and has the right to reject appointments to the judiciary; or the legislature itself appoints members of the judiciary.
25. The chairman of the central bank is appointed by the legislature.
26. The legislature has a substantial voice in the operation of the state-owned media.
27. The legislature is regularly in session.
28. Each legislator has a personal secretary.
29. Each legislator has at least one nonsecretarial staff member with policy expertise.
30. Legislators are eligible for reelection without any restriction.
31. A seat in the legislature is an attractive enough position that legislators are generally interested in and seek reelection.
32. The reelection of incumbent legislators is common enough that at any given time the legislature contains a significant number of highly experienced members.

ANNEX 2

Methodology of assessment of Powers of President by M.S Shugart and J.M Carey (Source: Presidents and Assemblies. Constitutional Design and Electoral Dynamics, Cambridge University press, 1992)

Under this method the Power of the president is weighted by grade system from 1 to 5, therefore more grades it gets in the Legislative or non legislative flied, higher is its role in the structure of the state government.

1. Legislative Powers

Right to Veto on entire draft law and right to override it.

Parliament cannot override veto of the President – 4

Parliament can override veto by President 2/3 of votes – 3
Parliament can override veto of the President by 3/5 of votes – 2
Parliament can override veto of the President by absolute majority -1
There is no right to Veto or simple majority of the votes are enough to override it -0.

Semi Veto and right to override it
Parliament cannot override veto of the President -4
Parliament can override veto by 2/3 – 3
Parliament can override veto by absolute majority -1
President does not have right of semi veto – 0

Power of the President to issue legal act having power of law
President has power to issue legal acts having power of law and this right cannot be cancelled -4
President can issue legal acts having power of law but their legal force is limited by certain time frame -2
President has limited power to issue legal acts having power of law– 1
President does not have power to issue legal acts having power of law or has just only in case such power is delegated by the Parliament – 0

Powers of the President related to State Budget issues
Draft Budget is prepared by the President; Parliament does not have power to make amendments to it – 4
Parliament can decrease but cannot increase Budget – 3
President draws the upper limit of the Budget and Parliament cannot exceed it when introducing changes to it – 2
Parliament can increase expenses – 1
Power of the Parliament in the Budget issues is unlimited – 0

The exclusive rights of legislative initiative in the defied areas of policy

Parliament cannot introduce changes to the draft law of the President -4
Parliament has limited power to introduce changes to the draft law of the President – 2
Parliament has unlimited power to introduce changes to the draft law of the President – 1
President does not have unilateral legislative initiative power -0

Power of the president to decide issues by calling on referendum
Is unlimited – 4
Is limited– 2
President does not have such power – 0

2. Non legislative Powers of the President

Formation of the Cabinet

President appoints Cabinet members without approval and confidence of the Parliament -4

President appoints Cabinet members but approval and confidence of the Parliament is essential – 3

President appoints Prime Minister, Parliament approves candidate, Prime minister appoints Cabinet members – 1

President does not have power to appoint Cabinet members without the recommendation of the Parliament – 0

Power to cease authority of the Cabinet

President can dismiss Ministers – 4

Presidents power to dismiss Cabinet is limited – 2

President can only dismiss Cabinet or its members if Parliament gives its prior consent fur such and nominates new composition of the Cabinet or new member (s) of the Cabinet – 1

Parliament can deny confidence and dismiss Cabinet – 0

Deny of confidence

Parliament cannot deny confidence, dismiss Cabinet or its members – 4

Parliament can deny confidence to the Cabinet, but President can disagree to it by dismiss Parliament -2

Votum of constructive deny of confidence or in other words, Parliament can deny confidence, dismiss parliament by creation of new, own Cabinet – 1

Power of the Parliament to deny confidence is unlimited – 0

Power to Dismiss Parliament

President has unlimited power to dismiss Parliament – 4

President's Power to dismiss parliament is limited (can only dismiss certain number of its members or the conditions when it can happen are exhaustively defined) – 3

The dismissal of the parliament is followed by the new elections of the President – 2

President has limited power to dismiss parliament and only as case Parliament denies confidence to the Cabinet – 1

President does not have power to dismiss parliament – 0