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CHANGES IN GEORGIAN CONSTITUTIONALISM: CONSTITUTIONAL CONSTRUCTION OF THE PRESIDENT AND THE GOVERNMENT AND SPECIFICITIES OF THEIR INTERRELATIONSHIP FROM THE PERSPECTIVE OF 2010 CONSTITUTIONAL REFORM

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"There should be no diarchy in supreme government"
Charles de Gaulle

1. INTRODUCTION

On October 15, 2010, the Parliament of Georgia adopted amendments to the Constitution of Georgia, which marked completion of the Constitutional Reform initiated in 2009. With these amendments the Basic Law of the country, which since its initial adoption has often undertook broad and significant changes, has now developed almost into a new Constitution. The ground for stating this is that the amendments change the Constitution towards

the parliamentary model of government, or to say more precisely, into the mixed model which is abundantly filled with the elements characteristic to a parliamentary republic.[1]

The new provisions of the Constitution, establishing different rules for regulating relations among the government branches, will enter into force in October, 2013 from the moment of inauguration of the President elected through regular presidential elections. Therefore, there is plenty of time to analyze and consider the views and opinions submitted by the representatives of academic, political and other fields regarding the above mentioned amendments into the Constitution.

In the present article we will not analyze the existing provisions regarding the powers of the President and Government of Georgia, rather the field of our interest lies with the constitutional amendments regarding the constitutional institutions of the Head of the State, and the Executive. Additionally, while reviewing the constitutional amendments related to the above mentioned institutions, we will emphasize interrelations of these two bodies, rather than relations of each of them with the legislative branch, as the peculiarities of interrelationship between the President and the Government define by large the constitutional model.

It should also be noted, that the article presents the results of the Constitutional Reform in the following manner:

a) By analyzing the government model developed as a result of the Constitutional Reform and discussing relevant paragraphs of the Venice Commission's Opinion of October 15-16, 2010;[2]
b) Through taking into account the main goals of the Constitutional Reform, one of them being distancing the President from the Executive powers, as the result of which the Government would become the supreme executive body and would develop into an independent branch with effective constitutional guarantees.

2. INSTITUTE OF THE PRESIDENT OF GEORGIA AND THE CONSTITUTIONAL REFORM AS OF 2010

Most of the problems of the Georgian Constitutionalism arise because of the institution of the Head of the State and constitutional regulation of its powers. The Constitutional Law of Georgia of April 14, 1991, for the first time in the history of Georgia, established the

[1] *G. Kakhiani, views on particular issues related to the draft Constitutional Law, http://www.parliament.ge/publicdebates/article_7.pdf*

[2] *European Commission for Democracy through Law, Opinion CDL-AD(2010)028, 15-16 October, 2010, http://www.venice.coe.int/docs/2010/CDL-AD(2010)028-e.asp*

Institution of the President,[3]who is to be elected through general and direct election.[4] The precedent of granting the President a high level of legitimacy within the parliamentary government model, in particular the method of election through general and direct election.) is rare even today. In the parliamentary models, the rule of general and direct election of the President has been introduced in Bulgaria (since July, 1991), Slovenia (since December, 1991), and Austria (since 1957).[5] The Georgian Constitution of 1995 effectively equipped the Head of the State of the presidential government with the leverages to manage the legislative or budgetary processes. Constitutional growth of the powers of the President has been reflected in the amendments of February 6, 2004.As a result of these amendments,, powers of the Head of the State has increased, especially regarding the executive powers, along with the changes in the form of the government. This is indicated in the fact that Article 73 of Georgian Constitution, which deals with the powers of the President, starting from 1995 up to date, has undergone most of the changes..

Let us consider the most important part of the constitutional changes which dealt with the Chapter 4 of the Constitution, President of Georgia. In addition, while considering these changes, the most noteworthy is the model of the government that was developed as a result of the Constitutional Amendments.

2.1. Constitutional Status of the President and the Rule of Election

The Constitutional Reform, first of all, dealt with the constitutional status of the President. If today the President, along with the other functions, guides and executes domestic and foreign policies of the state, after the changes, he will be endued with the powers to be the arbiter during the conflicts between the governmental bodies, the Supreme Commander in Chief of the military forces, and the Representative of the State in foreign relations, as the Head of the State (Article 69). Therefore, within the government model defined by the reform, one of the most important goals reflected into the changes made to the Basic Law was distancing the Institution of the President from the Executive powers. This is also required by the principle of separation of powers, which is necessary for successful functioning of the state, and of the constitutional order. This principle has repeatedly been proven by the constitutional legal doctrine as well as in practice. The principle of separation of powers has two aspects viz. functional and organizational..The functional aspect reflects the idea of strict regulation of the powers of each governmental body so that neither of the branches encroaches upon the powers of another. As for the organizational aspect of separation of powers, it covers the rules of relations among various governmental branches,

[3] *J. Khetsuriani, starting from XII century... State Government Forms and Perspective to Restore the Monarchy in Georgia, "Republic of Georgia", February 11, 2009.*

[4] *O. Janelidze, Evolution of the Institute of President in Georgia, http://www.politscience.ge/index9.html*

[5] *O. Melkadze, Georgian Constitutional Law, Tbilisi, 2008, pg. 164.*

which is the precondition for the existence of checks and balances mechanisms necessary for the rule of law. This idea was highlighted in the Article 16 of the French Declaration of the Rights of Man and of the Citizen which stated in 1789 that, "A Society, which... has no separation of powers, has no Constitution".[6]

The Constitution stipulates that presidential candidates must satisfy the so called "residential qualification" which requires a 5 year residency in the country, including a continued 3 year residency at the time of announcement of elections. The said change is not new to electoral law, and, guided by the Opinion of Venice Commission, serves to establish "the sufficient bonds of a presidential candidate to the country". This, in our opinion, should be an absolutely obligatory requirement for the future President, and according to the Opinion of the Venice Commission, it helps "to exclude those persons who have no genuine ties with the country".[7]It should be emphasized that the Parliament, at the third hearing of the amendments, changed the requirement that a presidential candidate must be a citizen of Georgia by birth. In addition, the Parliament defined the terms of appointment or holding of new and regular elections of the President..

The Constitutional Amendments filled the vacuum related to the termination of the powers of the President, and defined it from the moment the newly elected president swears in. Also the President is banned from holding a party position. This step was taken to establish the institution of the President as a neutral arbiter. This point is also reflected in the Venice Commission's Opinion.[8]

2.2. Constitutional Powers of the President

As a result of the constitutional amendments, Article 73 of the Constitution, which defines the scope of powers of the President, was substantially reconsidered.

Due to the goals of the Constitutional Reform and the government model set forth as a result of the stated reform, the President will not have the power to assign the Prime Minister, to give consent to the latter in appointing the Ministers, to dismiss the government, and to dissolve the Ministers of Justice, Internal Affairs and Defense. Such restrictions on the powers of the President undisputedly secure development of the executive branch as an independent and supreme body, a change which is also approved by the Venice Commission.[9]

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[6] *http://www.textes.justice.gouv.fr/textes-fondamentaux-10086/droits-de-lhomme-et-libertes-fondamentales-10087/declaration-des-droits-de-lhomme-et-du-citoyen-de-1789-10116.html*

[7] *European Commission for Democracy through Law", Opinion CDL-AD(2010)028, 15-16 October, 2010, paragraph 39, http://www.venice.coe.int/docs/2010/CDL-AD(2010)028-e.asp*

[8] *Ibid, paragraph 41.*

[9] *Ibid, paragraph 42.*

The authorities of the President of Georgia will be restricted in the subjects of foreign relations. In particular, appointment or accreditation of ambassadors, holding negotiations with other states, signing international treaties etc, might be carried out only subject to approval by the Government. It should be emphasized that according to the recommendation of the Venice Commission, the last two powers from the above mentioned "will increase the risk of confrontation between the Government and the President", and it is proposed that the President be deprived of the authorities in the field of foreign relations.[10]However, we think that it would be quite difficult to delimit, strictly on the constitutional basis, the authorities of the President, as he is the representative of the State in its foreign relations, and represents the Government which is the body that executes foreign policy. We think that this issue will be regulated by secondary legislation, and, consequently, developed by practice.

A welcomed change is distancing the President from the budgetary process. As a result of the changes, the Government does not need the President's consent to submit the state budget to the Parliament for approval. Also, the subparagraphs "e" and "f" of Article 73 of the Constitution specified and defined an exhaustive list of appointees to be made by the President. It should be emphasized that the President still holds the authority to propose, with the preliminary consent of the Government, the candidacy of the Chairman of the Government of the Autonomous Republic of Adjara to the Supreme Board..This authority is a subject of constant criticism by the Venice Commission, which is reflected in its Opinion about the Status of the Autonomous Republic of Ajara of June 18-19, 2004 regarding the draft Constitutional Law of Georgia,[11]as well as in the Opinion regarding the Constitutional Reform carried out in 2010.[12]

The President has the discretionary power to declare the state of emergency, and the power to terminate activities of the self-governments and the representative bodies of the territorial units on the basis of recommendations by the Government. We consider that these powers are justified due to the necessity of swift reaction by the state in case of emergencies. The emergency powers of the Head of the State are balanced by the requirement of the Parliament's approval.

Under the unamended constitution, the President had the authority to exercise the constitutional and administrative review of legal acts, and, in accordance with the Paragraph 3 of Article 73, to suspend or cancel the acts of the Government and the Executive bodies, if they conflicted with the Constitution of Georgia, international treaties and conventions, laws, and normative acts of the President. These powers are removed as a part of the

[10] *Ibid, paragraph 43.*

[11] *European Commission for the Democracy through Law, Opinion CDL-AD(2004)018, June 18-19, 2004, paragraph 25, http://www.venice.coe.int/docs/2004/CDL-AD(2004)018-e.asp*

[12] *European Commission for the Democracy through Law, Opinion CDL-AD(2010)028, October 15-16 October, 2010, paragraph 47, http://www.venice.coe.int/docs/2010/CDL-AD(2010)028-e.asp*

amendments, and this was a particularly welcomed change. When there is a specialized body of constitutional review, such as the Constitutional Court of Georgia, constitutional review should be exercised only by it while the President has the authority to file a claim at the Constitutional as well as General Courts. This change has also been positively assessed in the relevant Opinion by the Venice Commission.[13]

2.3. Countersigning Mechanism – A novel feature in Georgian Constitutional practice

The newly added Article 73, for the first time in Georgian constitutional history, establishes the practice of the Prime Minister countersigning all the legal acts of the President. In the doctrine of constitutionalism, countersigning (in Latin: *contra*-against, *signare*-signing) means co-signing of the legal acts of the Head of the State by the Prime Minister (and by the minister of a corresponding department on rare occasions -).As a result of countersigning, the act gains legal power and the Prime Minister bears the legal and political authority for its implementation.

Institution of countersigning was established in European law in the beginning of 19th century, and to date it is effective among the majority of the countries of old members of the European Union (France, Germany, Italy, Portugal, Spain, Greece, Finland...). The mechanism of countersigning has been adopted in Eastern Europe as a result of the Constitutional Reforms implemented, notably in Poland, Czech Republic, Bulgaria, Hungary, Romania, Croatia, Lithuania, Latvia, and Ukraine. Historically, the practice of countersigning has been created as a result of confrontation of two legal principles – Sovereignty of Monarchy and Parliamentary Supremacy. This practice has its origin in the "Act of the Arrangement", 1701, which finally restricted the absolute authority of the Monarch and established diarchy. According to the famous constitutionalist Andras Sajo, "the constitutional problem was how the King had to be controlled –whose responsibility could be qualified neither on personal level nor in the rank of the Head of Executive".[14]

The countersigning should be viewed as the legal symbol which confirms transfer of the responsibility to execute the acts of the Head of the State to the members of the Government. However, it should be emphasized that the constitutions of the modern European states, which envisage the mechanism of countersigning, do not establish the particular procedures of the special responsibility for the countersigned act. Therefore, the real legal content of countersigning implies delimiting the functions and the competences of the Executive and the Head of the State, rather than the transfer of the responsibility to the countersigning person.

[13] *Ibid, paragraph 49.*

[14] *A. Shajo, Self-restriction of the Government, Tbilisi, 2003, pg. 102-103*

In the constitutional legal systems of the modern states, countersigning, as a rule, is established under the conditions of functional dualism of the executive branch in the models of parliamentary and mixed governments. Countersigning represents the procedural form of restricting the authorities of the Head of the State, without which the act of the Head of the State has no legal power and can not be executed (for example: Italian Constitution – Article 89; Fundamental Law of Germany – Article 58; Constitution of Greece – Article 35; Constitution of Portugal – Article 140). Legal analysis of the practice of countersigning reveals that countersigning is not required for the legal acts issued by the Head of the State, which are related to the functions of the Head of the State as the arbiter to settle conflicts or political crisis among various the government branches, and the so-called "formal technical powers", which belong exclusively to the competence of the Head of the State (for example: authorities in the process of Government formation or dismissal of the Parliament [German, France]). Therefore, it may be concluded that in constitutional legal practice, countersigning is required for the realization of those powers of the Head of the State, which are related to executive function. Furthermore, the mechanism of countersigning is established only in those states where there is the mechanism of political responsibility of the government before the Parliament. This is also confirmed by the practice of constitutions of the European states. The practice of countersigning in relation to the Head of the State represents the constitutional guarantee of independence and autonomy of the Government, which, in the end, is the precondition for ensuring the principle of separation of powers.

Introduction of the principle of countersigning into Georgian constitutional practice serves the realization of the goals mentioned in the preceding paragraph. At the same time, there are exceptions to the rule. – Acts issued by the President during state of war are exempted from countersigning. This is understandable as the President, due to his/her constitutional status, is the Supreme Commander in Chief of the Military Forces and in the event of war, the President should have the possibility to react quickly and effectively. In addition to that, article $73^1$of the Constitution foresees the scope of the issues, regarding which the legal acts issued by the President are not subject to countersigning. These, generally, are those issues which in the constitutional legal practice are known as "Direct Powers of the Head of the State". These include, for example, – calling for elections and dismissal of the Parliament; summoning the extraordinary sitting and session of the Parliament; implementation of the legal initiative; promulgation of laws; personnel related authorities; acts of grace; awarding and termination of citizenship; conferment of state awards and special titles.

Quite interesting conclusions are expressed in the Opinion of the Venice Commission related to the Georgian version of the countersigning practice. In particular, the complete analysis of the paragraphs 53-56 of the Opinion clarifies that Venice Commission considers it appropriate to specify or broaden the scope of Article $73^1$of the Constitution. We hope that the recommendations of Venice Commission, from the point of view of developing the practice of countersigning, will become subject of further discussions.

Thus, taking into consideration the government model established by the constitutional amendments, it can be said that the introduction of appropriate standards of practice of countersigning into the Georgian constitutional practice facilitates an increased role for the President as the neutral arbiter among the governmental institutes, and predefines the process of developing a free and responsible government.

3. Institute of the Government of Georgia and Constitutional Reform as of 2010

One of the principal problems of the Georgian constitutionalism has always been the status of the Government of Georgia in the state governmental system. During the legal history of independent Georgia, the government did not have the strictly defined status of a supreme and independent Executive branch. During different times, different generations of law-makers, in the process of searching for various governmental models, have more than once changed the status of the Government of Georgia within the system of separation of powers. We consider that settling of this problem became possible only as a result of the Constitutional Reform implemented in 2010, when the following provision emerged – " The Government of Georgia is the supreme executive body.." (Article 78, Paragraph 1).

In 2010, during the process of implementation of the Constitutional Reform in Georgia, defining the constitutional status of the Government, and its place within the system of the executive branch was of utmost importance on the agenda. This approach became a significant precondition for the regulation of other issues related to the constitutional construction of the Government. Due to the requirements of realization of the principle of separation of powers as set forth by the paragraph 4, Article 5 of the Constitution of Georgia, It became necessary to develop the executive branch into an independent governmental branch, and define the status of the government. Such necessity was also preconditioned by similar practices of the European states regarding the form of the mixed government,[15]and the recommendation expressed by paragraph 7 of the Opinion by the Venice Commission regarding the constitutional amendments of February 6, 2004. According to Venice Commission's recommendations, the Georgian Constitution "should confer to the Government and not to the President the authorities to carry out the policies of the Executive".[16] Taking into account these circumstances, the constitutional amendments im-

[15] *E.g.: In France "the Government defines and manages the national politics" (Constitution, Article 20); in Romania "the Government... provides introduction and implementation of domestic and foreign politics of the country and carries out the general management of the State Government" (Constitution, Article 101); in Poland "the Board of the Ministers implements domestic and foreign politics of the Republic of Poland" (Constitution, Article 146); in Croatia "the Government carries out the Executive Authorities/Powers..." (Constitution, Article 107); in Ukraine "the Cabinet of the Ministers is the Supreme Body in the System of the Executive Bodies" (Constitution, Article 113); in Portugal "the Government manages the general politics of the country and is the Supreme Body of the State Government" (Constitution, Article 182).*

[16] *European Commission for the Democracy through Law, Opinion CDL-AD(2004)008, March 12-13, 2004, paragraph 7, http://www.venice.coe.int/docs/2004/CDL-AD(2004)008-e.pdf*

plemented in 2010 established the status of the government in the system where the strict separation of the powers of the governmental branches is provided, and effective checks and balances mechanisms exist among them. Therefore, achievement of the previously mentioned goal became possible by developing the government into the supreme executive branch, and distancing it from the head of the state.

3.1. Constitutional Status of the Government

An active executive branch, which provides for the effective management of the affairs of the state affairs, is necessary for any state. In a democracy, except for the classical presidential republic, in the management of the governmental system the most important role is conferred to the governmental institute. According to the notion recognized in constitutionalism, the government represents the supreme collegial executive body, which is responsible for executing and implementing the domestic and foreign policies of the country.[17]

Another major subject of our overview is the part of the constitutional amendments, which dealt with the Chapter 4[1]of the Constitution – "Georgian Government". The provisions in the unamended Constitution, which read that "the Government provides for the implementation of the executive powers", did not reflect the legal status of the independent branch of the Executive to the fullest extent. After the constitutional amendments, the Government represents the supreme executive body, which "implements the domestic and foreign policies of the country" (Constitution, Article 78, Paragraph 1). This change should be considered in the context of the constitutional status of the President who does not direct and implement domestic and foreign policies any more. The Government has been released from the responsibility to report to the President, and reports solely to the Parliament, in accordance with the goals of the Constitutional Reform. Also, presentation of the draft law, defining the structure and authorities of the Government, has been turned into the exclusive competence of the Government, for which the latter does not need the consent of the President anymore. By the amendments to the Article 79 of the Constitution, the constitutional status of the Prime Minister as the Head of the Government (and not of the Chairman) has been defined clearly, and the Prime Minister has been released from his responsibilities to the President, but not to the Parliament. The most important thing is that the Prime Minister became an independent figure in the process of appointing the members of the government, and does not need the consent of the President. According to the Opinion of the Venice Commission, this "corresponds to the new mixed system to balance the powers."[18]Accordingly, the analysis of the new amendments confirms that

[17] *I. Kobakhidze, Constitutional Law of Georgia, II Part, Tbilisi, 2007, pg. 90.*

[18] *European Commission for the Democracy Through Law, Opinion CDL-AD(2010)028, October 15-16, 2010, paragraph 63, http://www.venice.coe.int/docs/2010/CDL-AD(2010)028-e.asp*

on the constitutional level both the goals of the Constitutional Reforms to ensure effective separation of powers, and establishing an independent and supreme executive body have been attained.

Fundamental constitutional changes related to the constitutional status of the Government can be briefly presented in the following way:

- Government became the supreme executive body which implements the domestic and foreign policies of the country, and reports to the Parliament;
- Head of the Government is the Prime Minister, who appoints and dismisses various members of the Government, including the ministers of security, defense and law enforcement agencies, the appointment of whom, according to the unamended Constitution, is the exclusive authority of the President. Resignation or termination of the power of the Prime Minister automatically results in the termination of powers of other members of the Government.

3.2. Process of Government Formation

In accordance with the government model established as a result of the Constitutional Reform, new edition of Article 80 that deals with the procedure of Government formation has been incorporated. It should be emphasized that the Fundamental Law has introduced a so-called "Parliamentary method" of forming the government in which the process of giving the government a vote of confidence has become prerogative of the Parliament, and the participation of the President in this process became formal. While this restructuring of the Government is considered by the Venice Commission as "a step taken forward"[19], the Commission also offers some comments that deal with the procedure of forming the Government by the newly-elected Parliament, and the length of terms for giving the Government a vote of confidence in the event of termination of powers to the Government. For the Venice Commission the opportunity to call for another voting to give the same Government a vote of confidence in the Parliament is also unacceptable., The Commission opines that removing this procedure would decrease the time needed for the formation of the government, and renders this process more transparent [20]

General constitutional amendments related to the government formation process are as follows:

[19] *Ibid, paragraph 69.*

[20] *Ibid, paragraphs 69-70.*

- The Government's powers are terminated at the moment of recognition of the powers of the newly-elected Parliament (and not at the election of a new President, as the unamended Constitution stipulated);
- In the newly-elected Parliament the party having won the electoral majority presents the nominee of the Prime Minister who will be formally nominated by the President. The nominated Prime Minister will select the ministers and submits to the Parliament for a vote of confidence;
- If the Parliament could not elect a government in two attempts, then the President submits the nominee proposed by two fifths of the deputies for the vote of confidence. The President may dismiss the Parliament and call for extraordinary elections, if the confidence vote could not be given to a government in the third attempt;
- If the Government has its powers terminated for other reason, and not due to election of new Parliament, the President nominates a candidate proposed by the parliamentary majority for the position of Prime Minister or, in case of absence of clear cut majority, a candidate from the largest party according to the number of its members. in the Parliament.

3.3. Expression of no-confidence vote to the Government

Amendment to Article 81 of the Constitution established the procedure of expressing no-confidence vote to the government in a new form. The mechanism of constructive vote of no-confidence has been introduced; an absolutely unfamiliar notion for the Georgian constitutional practice.

Constructive vote of no-confidence is the special form of vote of no-confidence expressed to the Head of the Government. By expressing constructive vote of no-confidence, a successor is elected by the majority of votes by the Parliament, or by the Chamber of the Parliament to which the Government is responsible. Constructive vote of no-confidence is enshrined in the Constitutions of Germany, Slovenia, and many other states. Constructive vote of no-confidence, together with expressing no-confidence to the Government, requires the nomination of a new Head of the Government from the Parliament. The mechanism of constructive vote of no-confidence, in contrast to the traditional vote of no-confidence, ensures the stability of the Government. The major distinction of this procedure is that the resolution expressing no-confidence in the Prime Minister should be passed along with the election of a new Prime Minister. The principle of constructive vote of no-confidence constitutionally strengthens political stability of the government by preventing the opposition parties that are united with the only wish to replace the Prime Minister, and not to change the government policy. Constructive vote of no-confidence allows avoiding frequent governmental crises in the country, and that is the precondition of political stability of the state.

General constitutional procedures related to the motion of no-confidence vote may be presented in the following way:

- For the procedure of no confidence motion to commence, the motion should have the support of at least two fifths of the total membership of the house. Once the permission for the notion is given, the motion should be put to vote within20-25 days of its introduction, and to pass it should have the support of more than half the total membership of the house. If the motion does not pass the vote, another no confidence motion cannot be initiated in the following six months;
- From the moment of filing the motion of no-confidence, within the following 20–25 days, the Parliament votes for nominating a new Prime Minister proposed by two fifths of the listed members for approval by the President; the President has the right to nominate the proposed candidate or deny within 5 days;
- The President's "suspension veto" can be overcome by the Parliament with three fifths of the listed members of the Parliament passing the motion within 15 to 20 days of the President's veto;
- In the event of overcoming the presidential "veto", within the next 14 days the new Prime Minister is nominated and his/her Government is confirmed in accordance with the rule of constructive vote of no-confidence. This automatically means that, together with appointing the new Government, expression of no-confidence in the old government is passed; in the event of the no-confidence vote failing to result in the formation of a new government by the Parliament, the President bears the right within 3 days to dismiss the Parliament and call for extraordinary elections.

The Opinion of the Venice Commission regarding the implemented constitutional changes provides for several critical comments related to the procedure of expressing the no-confidence in the government. The comments deal with the following issues: necessity of voting to put the issue of expression of no-confidence for voting; existence of some kind of "veto" powers with f the President with regard to the candidacy of the Prime Minister nominated by the Parliament, and the quorum determined in order to overcome this "veto", which is 3/5 of the members of the Parliament; and the length of the duration set forth for the procedure of no-confidence motion.[21] Introduction of the concept of constructive vote of no-confidence, which is an effective means to achieve stability and avert political and governmental crisis, to the Georgian constitutional practice is undoubtedly a step taken forward. Nonetheless, we consider that the abovementioned comments by the Venice Commission should become subject of discussion for law-makers, form the basis for further development of the procedure of constructive vote of no-confidence, and help simplify its mechanism and shorten the duration.

[21] *Ibid, paragraphs 79-80.*

3.4. Constitutional Status of the Governor – the State Agent

As a result of the Constitutional Reform, article 81[3] of the Constitution has been modified, which deals with the appointment and the general authorities of the state agent, the Governor. After the amendment comes into force, the Governor will be appointed by the Government, rather than by the President as it is provided in the present Constitution, and the Governor shall represent the Executive branch only in the administrative-territorial units of Georgia. We think that linking the office of the Governor to the government is absolutely logical to the government model set forth by the constitutional changes, and the same is considered by the Venice Commission as a "positive change".[22]

4. Conclusion

The Constitution of Georgia of 1995 established a presidential, "American" model of government. The drawbacks of this model in our environment were several; rigidity of the Government, inability of the Parliament to dismiss the government in the event of a political crisis, and the inability of the President to dismiss the Parliament in similar circumstances. These drawbacks and the almost absent parliamentary control over the Government's activities caused significant imbalance between the broad powers and responsibilities of the Executive and the Legislature in Georgia.[23]

Due to the aforementioned factors, the agenda of the constitutional reform of 2004 was to ensure that the Government achieves its effectiveness. As a result, on the basis of the Constitutional Reform of February 6, 2004, Georgia has been transformed from the American type of Presidential Republic into the model of mixed government. One of the important characteristics of the mixed republic is the dual executive branch. Taking into account this and other criteria, in accordance with the present Constitution, Georgia is recognized as a semi-presidential republic, though in the dual executive model balance of constitutional power is skewed towards the President, who is the Head of the State. In order to overcome such inconsistency, taking into account the societal demand and recommendations by foreign experts, the Government of Georgia, in the end of 2008, initiated to carry out the Constitutional Reform, the result of which would have been increased parliamentary powers and adoption of the new European type of constitution.

We consider that the new constitutional reality related to the offices of the President and the Government provides for an increased role of the President as the neutral arbiter among the state offices, and facilitates the process of independent and responsible gov-

[22] *Ibid, paragraph 84.*

[23] *K. Eremadze, State Semi Presidential System on example of Georgia, Volume "State Constitutional Organization", Tbilisi, 2004, pg. 99-100.*

ernment. Our position is further strengthened by the analysis of the Opinion by the Venice Commission, in the conclusive part of which it is emphasized that "the constitutional amendments provide several important improvements and significant steps towards the right direction".[24] We consider the development of the executive branch as an independent supreme body as the most important positive characteristic of the Constitutional Reform. Existence of an independent and responsible government and the constitutional amendments to the government model will aid in establishing the principle of separation of powers in practice. Professor Philip Lovo's words, "Main body of the Parliamentarianism is the responsible Government"[25], aptly describe the pertinence of this line of thought.

We have so far reviewed the most significant and principal aspects of the Constitutional Reform carried out on October 15, 2010, which are related to the constitutional nature of the President and the Government, and the innovative regulations of their relations. We consider it absolutely necessary to proceed with further examination of each constitutional amendment, the mechanisms of the formation of the government, and political responsibilities related to the constitutional regulations, while taking into consideration the opinions expressed by the Venice Commission. Further analysis of the constitutional changes should be directed at the purposes of the Constitutional Reform, and the nature of the government model developed as a result of it.

[24] *European Commission for Democracy through Law, Opinion CDL-AD(2010)028, October 15-16, 2010, paragraph 110, http://www.venice.coe.int/docs/2010/CDL-AD(2010)028-e.asp*

[25] *F. Lovo, Parliamentarianism, Tbilisi, 2005, pg. 87.*