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CONSTITUTIONAL CHANGES IN GEORGIA: POLITICAL AND LEGAL ASPECTS

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Overall analysis and review of amendments and addenda to the Constitution in Georgia provides a solid ground to conclude that amendments introduced to the supreme law of the country have been conditioned by political motives. As strong authorities with high legitimacy can be seen and as overall analysis of political and legal space shows, the conceptual essence of the doctrine of constitutionalism is often entirely ignored.

Keywords: Constitutional changes, Georgia, Constitution of georgia, Constitutionalism, Political and legal aspects.

I. Introduction

Having reemerged in the late 20th century (after its brief existence as the Democratic Republic of Georgia during 1918-1921), the Georgian state has developed quite an "original" habit of making permanent and virtually unrestrained modifications to its supreme law, the Constitution. It is obvious that since its adoption on 24 August 1995, the Constitution of Georgia has been altered with amendments and addenda, one after the other, and the current version of the supreme law has largely nothing in common with and is no longer identical to its original text even though it has been operational for only 18 years now.

This paper will discuss key political and legal aspects of constitutional changes in Georgia and will analyze and highlight those factors which had a major influence on the essence and content of changes.

If we perceive constitutionalism as a political and legal theory establishing the constitutional order,1 it will be appropriate and legitimate to consider not only legal but also political aspects of constitutional changes. Because, a political system, as a phenomenon, is a sort of creative framework which forms and constructs a legal characteristic. Without studying it, discussing the real essence of constitutional changes makes no sense, especially in such an environment in which the newly emerged Georgian state had to take its first steps.

According to a common opinion, a constitution is just as much a legal act as a political one since the state and government are those main elements which combine all attributes of a political system.2 In this very context and from the perspective of constitutionalism, we will review main amendments introduced to the Constitution of Georgia to date (i.e. amendments and addenda made in 1999, 2004 and 2010). We will try to get to the depth of the problem although this would require a sort of interdisciplinary research which, at this stage, definitely exceeds our possibilities. This paper is an attempt to view and perceive an issue raised from a theoretical-

1 Otar Melkadze. Constitutionalism. Tbilisi, 2008; pg. 16.

2 Ibid., pg. 33.

doctrinal standpoint. The author with find it highly rewarding if this paper achieves the above objective.

At the end of introduction, we should note that if we consider the phenomenon of "the constitution of fear" formulated by Andras Sajo, a Hungarian professor and renowned theoretician and researcher of constitutional law,3 we will understand that it is mainly a political fear which largely affects the constitutional climate and the landscape of a state, especially states in transition, which have inherited undeveloped political and legal systems and institutions.

II. Georgia's Constitutional Landscape During 1999 and 2004

The year 1999 must be seen as a sort of watershed in the analysis of constitutional changes because that was the year when the Constitution of Georgia was amended for the first time (primarily for political reasons which are extensively discussed below), giving birth to a process of modifying it with amendments and addenda. Before discussing amendments themselves, let us first overview the political situation and legal framework of Georgia in the period between 1995 and 1999.

Some 54 political parties contested in the 1995 parliamentary elections. Of those 54 parties, only three cleared the election threshold to obtain seats in the parliament. That election threshold was set at 5 percent by the Constitution. Therefore, many votes did not make it into the parliament and helped those political parties, which mustered more than 5 percent of votes, to obtain seats in the parliament in a super-proportional way.4 The referred analysis depicts the picture which emerged after the parliamentary elections in Georgia in the most clear and concise manner. The election threshold was a sort of political and legal means which, in fact, easily eliminated that vast conglomerate of political parties which was present in the legislature of 1992-1995 when no election threshold existed.5

As a result, the majority was formed in the parliament and a political team supporting the president of the country was created. The real problem was that only one party, namely Eduard Shevardnadze's Citizen's Union, held almost two third of seats in the parliament by a mere 23 percent of votes cast in the 1995 election.6 Since then nothing has actually changed in the political picture of Georgia with one dominant political party holding a constitutional majority in the parliament, which is not motivated by anything to discuss issues of vital importance for the state with other political actors in a format of political dialogue and mutual agreement.

With this background the political actors approached 1999, the year of scheduled parliamentary elections. The ruling party decided to stick to the old way and on 20 July 1999, amended the Georgian Constitution for the first time to further increase the election threshold. As seen afterwards during the parliamentary elections in 2004 and 2008, the election threshold became an important lever in the hands of the ruling party for maneuvering against political opposition. It must be said that amending the Constitution at that time was a wrong step because it was designed, first and foremost, to strengthen parties that were already strong.7 Consequently, as a renowned German lawyer, Wolfgang Gaul, concludes, the above mentioned constitutional change can be assessed as a strategic measure implemented by parties represented in the parliament with the aim of retaining power.8

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3 Andras Sajo. Limiting Government: An Introduction to Constitutionalism. Tbilisi, 2003; pg. IV (Foreword by Tevdore Ninidze).

4 Wolfgang Gaul. Drafting and Adoption of Constitution in Georgia. Tbilisi, 2002; pg.113.

5 Ibid., pg. 113-114.

6 Ibid., pg. 115.

7 Ibid., pg. 115.

8 Ibid., pg. 115.

It is difficult to question this conclusion because the results of 1999 elections showed that only three political forces made it into the supreme representative body of the country, with one amongst them holding a distinct majority. As the situation remained unchanged, cohabitation did not take place. The president could rely on his majority in the parliament. The increased 7 percent election threshold would continue to be a key issue of Georgian political or legal space thereafter too.

As a result of this situation, a sort of arrhythmia existed between the law and politics, conditions peculiar to the constitutional dynamics.9 A clear proof of this situation is the abovementioned first amendment to the supreme law. It is clear that in this case the law yielded to narrow political interests. This, however, does not hold true in case of the second amendment to the Constitution made on 20 April 2000, when the status of Adjara was defined as that of an "Autonomous Republic."

Yet another constitutional amendment, which was approved on 30 March 2001, envisaged a possibility of concluding a constitutional agreement, the so-called concordat, between the Georgian state and the Georgian Apostolic Autocephalous Orthodox Church. Eventually, in 2002, this agreement was officially executed. A legal analysis of this agreement (concordat) goes beyond the scope of this paper. For our part, however, we must note clearly that the said "concordat" does not fit into the concept of civil and secular state at all. We believe that it will be appropriate and correct to consider the real need for such type of legal act at all. As a renowned researcher Carl Friedrich writes, by definition constitutional democracy is a democracy which does not grant the entire power to a majority.10

When discussing constitutional amendments, we cannot leave the constitutional changes planned in 2001 unmentioned. Even though the parliament did not endorse the draft amendments submitted by President Shevardnadze, almost identical changes and addenda were approved by the post-Shevardnadze parliament in February 2004. Moreover, the approval took place in violation of that one month procedure which was established for the publication and consideration of the constitutional draft law. That violation was explained with the reality that the draft law essentially repeated the one which was submitted by Eduard Shevardnadze and was published in the spring of 2001.11

The planned reform in 2001 envisaged a very important change to introduce the post of prime minister and abolish the post of state minister, which Shevardnadze wanted to do for a long time. With the then proposed amendment, an absolutely new chapter 41, "Government of Georgia", would have been added to the Constitution. This amendment would enable the president (as it is the case to date) to dismiss the entire government as well as its separate members.12 The scope of powers of the head of state towards the legislature would also be broadened. According to the published draft law, the president had four options to dissolve the parliament, whereas the pre-amendment status quo ruled out any possibility of the dissolution of the parliament.

Difficult to explain was the right of the president to cancel legal acts of the government and executive authority if they ran counter to the Constitution, international agreements and treaties, laws and the president's normative acts. The most interesting thing in this regard is that the abovementioned right, by constitutional logic, belongs to the sphere of constitutional justice and, accordingly, to the constitutional court. The head of state, qualitatively, has nothing to do with that sphere. It is obvious that those amendments were set to cancel and neglect constitutional paradigms, and, especially, such an important constitutional principle as the separation of power. It seems that the president wanted to assume certain judicial or quasi-judicial functions. Otherwise, the real aim of the proposed amendments remains absolutely unclear.

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9 Otar Melkadze. Constitutionalism. Tbilisi, 2008; pg. 34.

10 Philippe Lauvaux. Les grandes démocraties contemporaines. Tbilisi, 2002; pg. 97.

11 Marina Muskhelishvili. Constitution and its Discoursive Legitimization. Tbilisi, 2006; pg.16.

12 Wolfgang Gaul. Drafting and Adoption of Constitution in Georgia. Tbilisi, 2002; pg. 302.

The aim of the proposal was also unclear, which would deprive the Constitutional Court, a body of constitutional justice, of means to carry out a concrete control on norms, thereby questioning the possibility of citizens to submit individual claims. It was precisely such concrete control that turned the Constitutional Court from a "negative" tribunal poised to prevent anti-constitutional actions of legislative and executive powers (ultra vires) into a creative institution.13

As the judge of Spanish Constitutional Court Luis López Guerra once famously said, "Thus, more than a technique for defending the Constitution from parliamentary attacks, concrete constitutional control has become a procedure for interpreting the Constitution and for deducing from it rules which are applicable in specific cases."14

The constitutional changes considered back then came under bitter and wide criticism and quite rightly so in our opinion. In their open letter, foreign law experts Lessing, Blankenagel, Sajo and Holmes noted that in case the proposed amendments were adopted, the Georgian system would become a super-presidential system.15 And indeed the draft law on amendments to the constitution was designed to completely undermine the Georgian balanced system.16 As regards the political aspect of the issue, it seemed that the president wanted to weaken the role of the parliament and eliminate those problems which he faced from the legislature. One should also underline the fact that a less conspicuous backstage opposition (to the proposed draft law) was caused by the candidature of future prime-minister (Zurab Zhvania).17

The first seven years of the Constitution enable us to conclude that the enactment of the Constitution contributed to the stabilization of the political system. At the end of 2001, against the backdrop of governmental crisis and mass protests of students, slogans about the resignation of the president and early dissolution of parliament became popular among a segment of the society. This movement, however, did not find a large support mainly because of the opinion that such demands would jeopardize the constitutional order.18

These are those basic characteristics which largely influenced the Georgian constitutional picture and landscape before the well-known Rose Revolution in November 2003. The Citizen's Union of Georgia (CUG) had been the ruling party for most of Eduard Shevardnadze's Presidency, and represented the interests of Head of State's supporters. In the period before 2003, the growth rate of the Georgian economy fell. Corruption among state officials and police, while not new, was certainly fundamental problem of Georgia. Practically the state was dysfunctional and political elite had never been to done. The falsification of electoral vote was last drop for Georgian people who started massive anti governmental demonstrations in the central streets of Tbilisi. Finally oppositional forces took the residence of legislative body of country. After negotiations with opposition leaders and the foreign diplomatic corps, President Shevardnadze decided to resign.

"The Rose Revolution represented a victory not only for the Georgian people but for democracy globally. [It] … demonstrated that, by aggressively contesting elections, exercising basic freedoms of speech and assembly, and applying smart strategic thinking, a democratic opposition can defeat a weak semi-democratic kleptocracy."19 After the resignation of President Shevardnadze, Georgia witnessed very dynamic post-revolutionary processes which, naturally, affected the basic law of the state, of which we will talk about below.

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13 Herman Schwartz. The Struggle for Constitutional Justice in Post-Communist Europe. IRIS Georgia, 2003. pg. 79.

14 Ibid., pg. 79

15 Wolfgang Gaul. Drafting and Adoption of Constitution in Georgia. Tbilisi, 2002; pg. 303-304.

16 Ibid., pg. 304.

17 Marina Muskhelishvili. Constitution and its Discoursive Legitimization . Tbilisi, 2006; pg.18.

18 Building Democracy in Georgia, Constitutional System in Georgia. Discussion paper #2. Gia Getsadze, Ghia Nodia; pg.31.

19 Lincoln Mitchell, "Georgia's Rose Revolution," Current History 103 (October 2004):342-348, at 342.

III. Constitutional Changes in 2004 and Post-Revolutionary Separation of Power

According to a renowned constitutionalist, John Elster, there are democratic constitutions in the world, which are drafted and adopted in an undemocratic way but no authoritarian constitution drafted and adopted in a democratic way. Two factors are important in a constitution-making process: how democratic is this process and how much the adoption of a new constitution (or amendment of existing constitution) rests on a broad and comprehensive discussion.20

Events in the post-revolution reality of Georgia unfolded in such a way that not only the abovementioned two main factors but also the requirement of legal consideration and publication of the draft law was entirely ignored. As the amendments implemented in 2004 largely condition the political-legal and constitutional picture in the country to date, it is necessary to discuss and analyze all those aspects which prompted those amendments from a constitutional perspective.

Peculiarities of the process of constitutional amendments made between January-February 2004 were the following: amendments were drafted behind the scenes and adopted very speedily; a new model of governance was developed and defined by only three future leaders of branches of power (viz. speaker of the parliament, prime minister and president); other political forces were unable to stop the process or change its direction.21

The government's arguments and rhetoric were geared towards justifying such rapid and actually thoughtless changes. One such argument was that if the country experiences a serious crisis, consequently, a new government team must have corresponding authority to enable it to pull the country out of the quagmire rapidly. The created situation once again underlined the refusal to observe legal requirements and exercise political prudence. It also shows clearly that the governmental, political line of constitutional changes remains unchanged. The new power elite kept the "righteousness" of the old path in mind perfectly well. Consequently, it started its activity with fundamental, essential revision and modification of the supreme law of the state.

The abovementioned problems make the threat of instrumentalizing the Constitution for political ends clear. The only means to avoid this threat is a political will of the government to act within the limits of the Constitution alone, and in case of drafting a new constitution or making essential changes to it, to act in accordance with the idea of a democratic constitution which is expressed in the restriction of government.22 As it seems, political will and observance of constitutional paradigms were something that authors and creators of amendments and addenda were least concerned about.

As it is noted in the scientific literature, the problem of interrelation of politics and constitution is most acute for countries undergoing transformation (like Georgia), especially when drafting a new constitution or introducing essential changes to a constitution. In order to prevent the instrumentalization of the Constitution for political interests, it is necessary to act in accordance with the idea of democratic constitutions, which, first and foremost, implies the obligation of self-restriction for the political authority. Only by fulfilling this obligation a constitution becomes binding in a democratic society and a foundation of politics.23

The proposed draft of constitutional amendments was bitterly criticized by both the political opposition and a segment of civil society. However, that was only a sort of letting off steam because those actors could not actually influence the essence and content of the amendments. Clearly, the dimensions in which proponents and opponents of the draft law stood were largely out of step with each other. Proponents placed a positivist emphasis on efficient governance whereas opponents expressed concern regarding restrictions of constitutionalism.24 If summed

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20 Marina Muskhelishvili. Constitution and its Discoursive Legitimization . Tbilisi, 2006; pg.15.

21 Process of Constitutional and Political Reform in Georgia: Political Elite and Vox Populi. Tbilisi, 2005, pg.107.

22 Levan Izoria. Presidential, Parliamentary or Partly Presidential? Path towards Democratic Consolidation. Tbilisi, 2010; pg. 11-12.

23 Ibid., pg. 12.

24 Process of Constitutional and Political Reform in Georgia: Political Elite and Vox Populi. Tbilisi, 2005, pg.116.

up, it is not difficult to see that a common Georgian picture regarding constitutional changes remained unchanged.

In this context the key was politics, or to be more precise the will of government to tailor the key legal act of the country to their ambitions. No doubt that the constitution was, in reality, an instrument in the hands of a strong government for the achievement of its political aims. It is obvious that there was a consensus on that inside the ruling team and only a few figures that had political weight placed emphasis on constitutional ideals and fundamental principles of self-restriction of the government. Although it exceeds the scope of this paper, it must still be noted that "revolutionary ideals" actually stop existence upon constitutional changes.

Let us now analyze all those main changes which the Constitution underwent in February 2004; review horizontal and vertical vectors of the separation of power as well as other political and legal aspects which have created a Georgian constitutional landscape to date.

The key function of the Constitution is to protect the society and each and every of its members from undemocratic pathologies. This is the key idea and essence of the abovementioned political and legal theory and doctrine. This means a proper operation of the important constitutional principle of separation of powers. This objective is achieved by a constitution implementing the concept of constitutionalism which aims at reasonable restriction of state authority as well as people.25

As early as in 1789, the French Declaration of the Rights of Man and of the Citizen says that, "Any society in which the guarantee of the rights is not secured, or the separation of powers not determined, has no constitution at all". Separation of powers means rules of state arrangement and operation, which exclude arbitrariness on the part of a ruler and anarchy on the part of those ruled.26 As Hungarian scientist and constitutionalist Andras Sajo contends, there are various ways of power separation and state arrangement and any solution of this issue has the right to exist provided that means of restricting freedom are excluded or avoided.27

Considering all the above said, we arrive at a conclusion that the implementation of the concept of constitutionalism can be ensured only by such a model which does not enable even a "bad" government to inflict serious damage on the country. This concept envisages such separation of powers and such relationship between its branches that none of the branches can misappropriate the others' authority, force other branch to act against its will, act uncontrollably and with impunity.28

Political forces that came to power after the Rose Revolution and the resignation of Shevardnadze changed the entire model of separation of powers and, consequently, the system of state administration in Georgia on 6 February 2004. The main outcome of this change was a significant enhancement of presidential powers, significant weakening of parliament, construction of a new executive body of the government, and separation of the system of prosecution from the judiciary.29

It must be noted that overall the so-called "powerful presidential hand" remained unchanged. If we analyze political motives behind those changes, we will understand that powers of the head of state, the president, did not actually fit into the conceptual doctrine of restricted governance and self-restriction by the government. A package of amendments which earlier (in spring 2001) was actively denounced became absolutely acceptable after the change of political roles.

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25 Ibid., pg. 9. Georgian Government on Central Level: Balance among its Branches (Vakhtang Khmaladze, Avtandil Demetrashvili, Aleksandre Nalbandov, Levan Ramishvili, Davit Usupashvili, Zurab Jibghashvili).

26 Ibid., pg. 10.

27 Andras Sajo. Limiting Government: An Introduction to Constitutionalism. Tbilisi, 2003; pg. 92. (Foreword by Tevdore Ninidze).

28 Process of Constitutional and Political Reform in Georgia: Political Elite and Vox Populi. Tbilisi, 2005, pg.12.

29 Ibid., pg. 19.

Indeed, as Lord Acton once famously said, "Power tends to corrupt, and absolute power corrupts absolutely."30 As the famous French thinker and statesman Louis de Saint-Just said, "A people has but one enemy, the government."31

The judiciary remained least affected by changes although in this regard two conceptual changes are worth noting. The first concerns the jury trial whilst the other relates to the system of prosecution. Opinions about the introduction of jury trial are controversial. However, it must be emphasized that this institution will most likely bolster the public confidence towards the Georgian judiciary and justice. The standard of the independence of the judiciary will be higher and more importantly, rights and freedoms of people in procedural proceedings will be better protected. It is also worth noting that the legal principles of adversarial system and equality will be realized with more intensity and frequency. All in all, it can be said that the jury trial, by its essence, is a clearly progressive step. The main risk on this difficult road is again the Georgian society and the level of its political and legal awareness and culture.

As we see, we deal with fear here again. Consequently, this fear must be overcome or else it is virtually impossible to improve and elaborate the system, especially its political and legal construction. As regards the issue of prosecution, we believe that by its legal subordination as an institution to the Ministry of Justice, the legitimate set of questions that arose after the constitutional amendments of February 2004, were largely eliminated. Here, we point to issues of the separation of the prosecution system from the judiciary and leaving its powers and place on a systemic level of state bodies undetermined.

The key factor in analyzing the post-revolution amendments of February 2004 is the constitutional status of the president, the parliament and their interrelation. In order to better understand the conceptual issue involved, it is necessary to review the theoretical and doctrinal concept of semi-presidential model. Because, the authors of those amendments and addenda identified a new model as, and emphasized its similarity with, the semi-presidential (mixed) system.

First fundamental scientific elaboration of the semi-presidential model dates back to the early 1980s. According to Duverger, semi-presidential form of government is the one where a president: a) is elected by people, b) possesses vast powers, and c) cohabitates with the government which can be disbanded by the parliament.32 Given the above said, let us review the real constitutional situation which emerged in Georgia after February 2004.

A general constitutional analysis of the president's powers makes it clear that after the amendments, the president, as a subject with a constitutional status, is actually the only source of executive power even though the parliament has a formal right to declare a vote of confidence to the government. This legal procedure is formal by its essence because even if the legislature does not approve the government the president still can appoint the prime minister and dissolve the parliament.

The government is entirely under the control of the president. A new government is formed after the election of the president, not the parliament, and the government is in fact accountable to the president (although, formally, the government is accountable to the president and the parliament) and cannot be disbanded until it loses the president's trust.33 The only exception is when the parliament with the majority of its entire composition does not give its vote of confidence to the government. This, however, is possible only if three fifths of the parliament members are from the political opposition.

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30 Andras Sajo. Limiting Government: An Introduction to Constitutionalism. Tbilisi, 2003; pg. 9. (Foreword by Tevdore Ninidze).

31 Ibid., pg. 8.

32 Levan Izoria. Presidential, Parliamentary or Partly Presidential? Path towards Democratic Consolidation. Tbilisi, 2010; pg. 26.

33 Process of Constitutional and Political Reform in Georgia: Political Elite and Vox Populi. Tbilisi, 2005, pg. 20.

Given the political landscape, it is only in the parliamentary elections of 1 October 2012, for the first time ever in the history of the second republic of Georgia, the political opposition won the majority in the parliament, which is indeed an exception from the rule. Given the political characteristics of Georgia, the result which occurred for the first time in the past 20 years of the existence of Georgian state does not yet provide a ground to assert that any further change in the constitutional system will be carried out through routine elections.

The main problem of the young Georgian state actually lie in the definition of democracy, and elections i.e. the change of power through a particular method and recognition of the legitimization of the process by every significant political actor. As Samuel Issacharoff writes, "When stripped down to their essentials, all definitions of democracy rest ultimately on the primacy of electoral choice and the presumptive claim of the majority to rule".34

When analyzing powers, several focal points must be singled out. It is necessary to touch upon a systemic flaw which actually excludes the separation of powers between the president and executive branch. More specifically, this is expressed in the following political and legal mechanisms and levers. The head of state, the president, with only a formal involvement of the parliament, who appoints the prime minister of the country, gives consent to the appointment of the prime minister, is also authorized to dismiss the government of Georgia on his initiative, and dismiss ministers of law enforcement. Moreover, the head of state is authorized to convene the government meeting and chair it.

The scope of president's competence also includes the suspension and abolition of legal acts of the government and executive agencies, if they run counter to the Constitution, international agreements and treaties, laws and the president's normative acts. It is obvious that with such constitutional norms, the constitutional principle of separation of powers and common, fundamental constitutional paradigms are ignored.

It is also noteworthy that the president's authority is also significantly strengthened in the law-making sphere. At the initial stage the Head of State had two significance competence. The legislative initiative and suspensive veto authority. According to the Article 67, Constitution of Georgia, "The President of Georgia only in the exclusive cases, shall have the right to legislative initiative." It is clear that, the existence of above-mentioned constitutional mechanisms in hand of a President, has practically weakened the discrete authority of Parliament at the sphere of legislative policy area.

If we recognize the fact that ordinary, before last parliamentary election of country, Head of State always had been constitutional majority in the legislative body. It is naturally, that this system was hyper or super presidential. In the post revolutionary period, there was not a single occasion, when Parliament of Georgia blocked the legislative initiative of President or Government. Practically the Head of State had never been used the power of suspensive veto authority. Because the President of Georgia, always had been loyalty majority in higher legislative body of country. It is clear that Georgian constitutional system was practically quasi-presidential one. To a certain extent it nullified the classical paradigms which constructed presidentialism. In basic terms, strict separation of powers with legislative, executive and judiciary branches of government.

While president Shevardnadze was denied the right to suspend or abolish legal acts of the government and executive agencies, the newly elected head of state, enjoying high degree of legitimization, was granted judicial or quasi-judicial powers by the parliament. If in the early 2000s such a constitutional amendment was unacceptable because of political roles, after the change in balance of power, the situation has essentially changed. As the group of authors notes correctly, by the above provision the president assumed the load of constitutional control, administrative justice, and was granted quasi-judicial functions which is an intrusion into the competence of the judiciary.35

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34 Samuel Issacharoff. Fragile Democracies. Magazine, Constitutional Law Review. 2010; #2, pg. 62.

35 Process of Constitutional and Political Reform in Georgia: Political Elite and Vox Populi. Tbilisi, 2005, pg. 22.

That issue was indicated in the conclusion of such a respected institution as the Venice Commission. European experts, among other topics, touched upon the problem of the abovementioned provisions. They drew up a set of recommendations which the highest legislative body of Georgia did not take into account. Overall, if we look at the issue from a political angle, we will understand that the politics gained the upper hand over the entire powers and possibilities of the law. Proceeding from political interests, the law and Constitution became effective and flexible means to strengthen the power of the government. Given the situation, it is impossible to speak about proper realization of the doctrine of self-restriction of government.

A decision granting the president the authority to issue decrees that equal the law in authority, even in case of dissolving the parliament, was absolutely incomprehensible and devoid of any constitutional logic. This decision was complemented with the right of the president to approve the state budget by a decree if the parliament of Georgia failed to approve the state budget at a specified time and within a specified term. The pre-amendment status quo envisaged the right of the commander-in-chief to issue such decrees only during the state of emergency. Considering all the above said, if we recall the history of parliament and parliamentarianism, it will become apparent that the main reason of creating the legislative body was to define and build the tax policy.

The only conclusion that can be drawn from these developments is that the president intruded in to that sphere where he, by constitutional logic, had nothing to do at all. This is yet another clear illustration of intrusion by the head of state into the sphere of the competence of legislature, and of total annulment of basic principles and postulates of constitutionalism and separation of powers. It is very difficult to question a rather critical and objective conclusion of a group of authors who said that as a result of the constitutional amendments, the status of parliament significantly changed and its law-making and political clout diminished.36

In this context, a certain restriction of the highest representative body in terms of implementing legislative function must be underlined. The abovementioned changes led to the creation of a mechanism that enables the Georgian government to interfere, directly or indirectly, in the parliament's legislative activity. The power of the executive to like or dislike a draft law is no less than the enhancement of the role of government in the law-making process. It is clearly unacceptable to restrict the legislative body in such a case where a draft law leads to increase in costs. If the parliament has to agree to this on every occasion with the government, then the parliament actually loses its constitutional prerogative and power because it is very difficult to find a draft law which does not cause increase in certain costs, a decrease in income or the assuming of financial liability.37

All the above said demonstrates that those amendments establish the president as the leading figure of constitutional system of the Georgian state. If we look at the post-revolution path, we will understand that a whole series of reforms, which the country and its commander-in-chief boast about, were implemented owing to the amendments. But the issue of consolidation of democracy is still problematic in the Georgian political reality. Consequently, the launch of a new constitutional reform (yet again) is a clearly welcoming development. However, we will discuss in detail amendments and addenda to the Constitution made in 2010 in the final part of this paper. Before that we will review a vertical vector of separation of power and analyze all focal points and aspects as thoroughly as possible.

According to the Constitution of Georgia, "The citizens of Georgia shall regulate the matters of local importance through local self-government without prejudice to the state sovereignty. The procedure of the creation of the bodies of local self- government, their authority and relation with state bodies shall be determined by the Organic Law". As a result of amendments-addenda made in 2004 to the Constitution, a new constitutional norm was established, according to which,

36 Ibid., pg. 23.

37 Ibid., pg. 25.

"The office of the superiors of the executive bodies and a representative office of local self-government shall be electoral".

Except for this addendum, issues concerning municipalism did not experience modification on the constitutional level. The key event, in terms of legal analysis from this standpoint, was the accession of Georgia to the European Charter of Local Self-Government and the legal recognition of its fundamental principles and provisions. The issues of municipalism, decentralization and non-centralism are not novel to the Georgian constitutional practice. The main issue, however, with regard to these issues, is linked to the concept of territorial-administrative arrangement of the state.

Despite the state's serious problem regarding the separatist enclaves, that part of the territory which is under the jurisdiction of the legitimate authority of Georgia must have effective legal levers to regulate the matters of local importance within the scope of its discretion. It is therefore correct to carry out real distribution of powers between the central and municipal levels of the government.

The fundamental problem of Georgian constitutionalism was uncertainty of territorial-administrative arrangement of the state. According to the constitutional clause, "The territorial state structure of Georgia shall be determined by a Constitutional Law on the basis of the principle of circumscription of authorization after the complete restoration of the jurisdiction of Georgia over the whole territory of the country." Correspondingly, municipal level of government is so weak and dependent on central direction of state authorities. That is why it was sparingly difficult to determine local, self-government separate and independent actor in Georgian state system.

Local governments are not perceived as very important public institutions. The interest of citizens in local public affairs is limited, as is the knowledge of institutions and politicians involved in local government operations. To a large extent this low interest reflects a very low level of functional and financial decentralization of the country. It is additionally strengthened by the perception of local governments as local arms of the centralized state, rather than as independent political actors having local legitimacy, driven by accountability towards the local community.38

Qualitatively, self-government and issues related thereof are very broad. Therefore, a more detailed analysis of this issue will be provided in the section that discusses the 2010 constitutional changes. Such a treatment of the topic is correct insofar as the supreme law of the country was complemented with an entirely new chapter on self-government. As a conclusion we can refer to a rather reasonable advice of experts regarding the improvement of Georgian municipalism.

The realization of the principle of non-centralism will ensure the establishment of poly-central political, administrative, financial/economic system within the borders of a united state, which will ensure a continuous existence of healthy competitive environment. This is a necessary foundation for the existence and constant development of a viable state.39 As a well-known researcher Alexander Mikhailov notes, European concept of self-government rests on the principle of subsidiary according to which authority, in general, shall be implemented on levels as close to local population as possible.40

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38 Public opinion about local government in Georgia. Pawel Swianiewicz. Department of Local Development and Policy University of Warsaw, Poland. "Open Society Georgia Foundation", Tbilisi, 2011; pg. 20-21.

39 Ibid., pg.79.

40 Ibid., pg.82.

IV. The 2010 Constitutional Reform and New Vector of Distribution of Power

June 8, 2009 by the order of the President of Georgia established Georgian State Constitutional Commission. Mentioned fact was preceded by a longtime political and public discourse, about necessity of reformation the supreme law of state. The basic actors in Georgian political and legal field agreed on the issue, that country need more perfect constitutional framework. Also current version of basic law, had been fundamental problems, with the field of checks and balances and separation of powers. According to the statute of State Constitutional Commission, the basic aim of current constitutional reformation was to build democratic state system and constructed effective government framework. Which serves as bridge among civil society and the state.41

On 15 October 2010, the parliament finally approved, on third reading, the amendments and addenda to the Constitution. This was the second time, after 2004, when the Constitution underwent a fundamental change and revision. Looking at the amendments made in 2004, we will see that the feedback and opinions about that reformation were quite critical. Numerous comments and recommendations were made both inside and outside the country. The conclusion of the Venice Commission will be enough to illustrate that overall the feedback was rather critical and negative.

The situation is almost absolutely different with regard to the constitutional changes of 2010. Every qualified expert, without exception, as well as the group from the Venice Commission (democracy through law) working on these amendments noted that regardless of some critical remarks, the implemented amendments were definitely a step forward on the irreversible path of Georgia's democratic transformation. Clearly, positive assessments are a noteworthy factor in the analysis of amendments. However, to gain a deeper insight of the essence of the issue, a broad consideration of amendments and addenda is necessary to have a good understanding of critical remarks and flaws and to rectify and eliminate them as much as practicable.

The key issue, which comes to the forefront when analyzing constitutional reforms implemented, is related to the model of the reformed system. Which concept of government model does the new constitutional system fit into? Many different opinions were expressed on this principal issue. Views of experts and constitutionalists largely vary. In our view, there is no clear-cut answer to this question and different opinions may have their respective solid grounds. Nevertheless, we believe that the constitutional amendments should be viewed and analyzed within the boundaries and framework of the concept of parliamentarianism or, more precisely, rationalized parliamentarianism.

Such consideration of the issue is correct because criteria of other modalities of republican government do not actually match the new constitutional framework and matrix. In the given case, we are talking about essential characteristics and criteria of presidential and semi-presidential models. With regard to the presidential system, virtually no question exists. As regards semi-presidential regime, it is obvious that the key criterion of the mentioned model i.e. dualism of executive authority is completely annulled according to the implemented amendments. Given the above said, we think a new and well-substantiated consideration of the 2010 reform will enable us to have a deep understanding through a model paradigm standing closest to it.

Since we intend to analyze amendments based on the concept of rationalized parliamentarianism, it is necessary to touch upon the essential and functional issues of this doctrine. Rationalization of the parliamentary regime dates back to the post-World War I period.

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41 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.president.gov.ge 2944 Refer also, 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.president.gov.ge 2960.

New regimes, with the majority of them having emerged on the ruins of empires, tried to express forms of functioning parliamentary systems through written legal rules and formal mechanisms and conduct them from a rational perspective. The majority of constitutions drafted in this manner showed great mistrust towards the executive authority.42

Consequently, stability of the executive authority, i.e. the government, and smooth operation of political institutions became the main goal of a rationalized system. Influenced by that fundamental and basic concept, such systems which largely contributed to the government stability were established. Ensuring the government stability became the key function and essence of rationalized parliamentarianism.

It can be stressed that in the Georgian constitutional reality, we can witness not only rationalized but even "super-rationalized" model of parliamentarianism with its constructive vote of no confidence and the dominant role of prime minister. Given the above said, we think no additional questions arise as to why we decided to consider constitutional changes through the prism of rationalized parliamentarianism.

We will start the analysis by considering the vote of confidence and no confidence because this legal mechanism is the main measure of parliamentary system, and specifically rationalized parliamentarianism. As Evgeni Tanchev, a scholar of the University of Virginia Law School, writes, rationalized parliamentarianism is the entirety of constitutional mechanisms and procedures aimed at strengthening the stability of cabinet so that basic characteristics of the parliamentary system, including the legislative supervision of the government policy, are retained.43 The most powerful weapon of rationalized parliamentarianism is a constructive vote of no confidence. One should also underline the fact that as a result of constitutional reform, an absolutely unordinary formula of constructive vote of no confidence has developed, which excessively strengthens the executive authority and the institution of prime minister.

If we look at constitutional provisions and norms of Central and East European countries, but not limited to, we will be unable to find such legal mechanisms as were created in the Georgian constitutional reality. First of all, one must note the issue of raising the procedure of no confidence itself in the parliament. This procedure requires two fifths of the composition of Georgian parliament. We cannot find an analogous regulation in a vast spectrum of comparative constitutionalism. In the Western democratic countries, introducing the motion of vote of no confidence usually requires no more than one fifth or one fourth of the parliament members.

It is precisely for the above mentioned reason, along with other factors, the Georgian constitutional system is considered to be "super-rationalized." Consequently, it will be correct if the supreme representative and legislative body of Georgia, the parliament, will take into account the above expressed rational remark and really contains the system within the framework of rationalized parliamentarianism. Otherwise, amendments and addenda will be a Georgian constitutional "innovation" which will be largely out of step with common constitutional models and paradigms.

The separate procedure of raising the issue of no confidence and terms of procedure for declaring the vote of no confidence is highly vague. Despite accommodating a number of remarks of the Venice Commission, we believe that the given topics require further improvement to prevent the procedure of no confidence from being endlessly procrastinated to prevent the executive authority, specifically the prime minister, from exploiting certain political levers. That will be a serious guarantee for retaining the post and maintaining the stability of the government cabinet.

The procedure of constructive vote of no confidence, which relate to the nomination of a new prime minister, the entire mechanism of confidence-no confidence and its results are problematic too. Looking at the experience of comparative constitutionalism, we will see that in almost every system a prime minister shall be nominated by a subject raising a vote of no

42 Philippe Lauvaux. Le Parlementarisme. Tbilisi, 2005; pg. 102.

43 Republic: Parliamentary or Presidential. Tbilisi, 1996; pg. 38-39.

confidence. According to amendments and addenda, this requires more than half of parliament members. This clearly allows the nomination of two candidates.

Political and legal concepts established in rationalized parliamentarianism and in constitutionalism prompt that the declaration of vote of no confidence in the government and vote of confidence to new government must fit into the limits of common vote. This is entirely ignored by the implemented constitutional amendments. At the end of the day, all that must be followed by the resignation of the government as the only logical legal result. As we noted already, additional attention must be paid to each and every of such problematic issues in order to avoid unpredicted results when those amendments and addenda enter into force in 2013.

Analysis of confidence-no confidence must be finalized with the discussion of one conceptual topic. The issue is related to the right of the president to apply veto towards constructive vote of no confidence. It must be noted clearly that this amendment does not fit at all into the logic of constitutional law. It is a fact that one cannot actually find an analogue to such legal norm. The provision of overcoming the veto by the parliament with three fifths of votes is even more unclear. As it is noted correctly, the entire load of this reform rests on those Articles of the Constitution which regulate the vote of confidence (Article 80) and no confidence (Article 81) in the government.44

Overall, we may state clearly that the mechanism of confidence-no confidence and especially the constructive vote of confidence is absolutely inconsistent with common constitutional standards. Consequently, we should stress once again that it is not only desirable but also necessary for the parliament to revisit this issue and carry out a systemic and organic improvement and elaboration of problems. Analyzing from this standpoint, one should emphasize that legislators still have enough time until the amendments and addenda adopted on 15 October 2010 will enter into force.

Let us now review the organizational issue of state authority at the central level and discuss the classical constitutional triad i.e. all the three branches. Let us start with the discussion of amendments and addenda concerning the legislative authority.

An overall analysis of the Constitution makes it clear that in contrast to the changes made to Constitution in 2004, the powers and political and legal weight of the parliament have been clearly enhanced. It is obvious that the role of the highest legislative body in the official foreign sector and especially with regard to fundamental topics of international relations has been clearly defined. This implies legal levers for ratification, denouncement and abolition of international agreements and treaties on such occasions when the Georgian government or the president of the country applies to the parliament.

A clearly welcoming fact is the clarification of the legal procedure of impeachment. In this regard, powers of parliament as a key political and legal actor and the solidity of these powers are worth stressing. Naturally, the power of judiciary and the Constitutional Court specifically will be discussed separately in relation to the abovementioned legal procedure.

The issue of setting up investigative and other temporary commissions and their regulation are worth noting separately. According to the Constitution and the standing order of the Georgian parliament, which is a legislative, normative act having the power of law, the number of parliamentarians needed for setting up such commissions have changed from one fourth to one fifth. At the same time, a legal norm, according to which the representation of majority in a temporary commission shall not exceed half of the total composition of the parliament members, has been strengthened. For our part we can declare that this regulation is a step forward in terms of improving the system.

As regards legal or political aspects related to the Constitution of Georgia, we believe that the maintenance of this supreme law within the constitutional space and system is a correct and acceptable step. The mentioned mechanism can indeed be one of the means to protect legal

44 Otar Melkadze. Constitutional Law of Georgia (from reform to reform). Publishing House Universal. Tbilisi, 2011; pg.339.

security and avoid hasty legislative regulations. We also think that organic issues specified in the Constitution must be defined by corresponding normative acts which will have such normative hierarchy and rule of adoption which will differ from those of ordinary laws.

All in all, it can be said that the political and legal weight of the parliament has clearly been increased. However, issues concerning the relationship of the parliament with the government and especially the mechanism of confidence-no confidence vote, which we discussed extensively above, need improvement and elaboration in order to strengthen the competencies of the parliament as a body that controls the government and executive authority.

Powers of the executive authority and the president of the country have changed radically. Amendments and addenda concerning the institution of the head of state clearly prove the fact that the power and relationship of the head of state towards the government, and the parliament have changed. It is obvious that by implemented changes the spectrum of powers of the head of state shrinks and the prime minister becomes a leading actor in the constitutional system of Georgia.

Let us discuss in detail the regulatory aspects of those amendments and addenda which concern the institution of president. Under the pre-amendment version, a person who was a Georgian citizen by birth, reached 35 years of age and lived during the past 15 years in Georgia was eligible to become the president. The reformed version no longer contains the requirement of being a Georgian citizen by birth whilst the required term of living in the country has been changed to 5 years. We think the issue of citizenship by birth is not an ordinary topic and it would be correct to keep the old regulation. In our view, this will create additional constitutional guarantees proceeding from the essential function of the president.

Norms regarding the legal status of the president have been almost entirely changed. It is necessary to note that the president no longer has the power to conduct and implement domestic and foreign policies. It is definitely worth noting and a welcoming fact that the head of state will no longer have the right to suspend or abolish legal acts of the government or executive agencies if they run counter to the Georgian Constitution, international agreements and treaties, laws and normative acts of the president.

Besides, the president has been deprived of the right to dismiss the government or ministers of defense, internal affairs and justice on his/her own initiative or in other cases envisaged by the law. A norm which required that the government was to seek the consent of the president to submit a draft state budget to the parliament is also deleted from the Constitution of Georgia.

Through these reforms, a new and rather interesting legal mechanism and institution called countersignature has been introduced in the Georgian constitutional space. According to the new wording of the Constitution, a large part of legal acts of the president requires the prior consent of the prime minister, or co-signature. The supreme law specifies all the legal acts which require countersignature. Moreover, according to the constitutional provision, legal acts of the president which need countersignature are published and become valid only in case if it is endorsed by a second signature, i.e. countersignature. This institution of countersignature concerns legal security, coordination and cooperation between the head of state and executive authority, and with its material regulation, deserves a positive assessment.

At the end of reviewing the institution of president, we will touch upon yet another topic which concerns the party affiliation of the head of state and the combination of his/her position with party activity. The introduction of the concept of president-arbiter in the Georgian constitutional space is an undoubtedly positive step. Consequently, the regulation which prohibits the president to combine a party post with official position is indeed a positive development. As a summary and a conclusion, we can say that overall amendments and addenda concerning the head of state definitely represent a step forward on the path towards the improvement and building of the system.

As a result of constitutional changes, competencies and status of the highest body of the executive authority, i.e. the government, are developed in a new way. According to the Constitution, the Georgian government is the highest body of the executive authority which

conducts domestic and foreign policy. The government is accountable to the Georgian parliament alone. As regards the head of state, the government is not accountable to him/her and the president has the right to raise only separate issues and participate in the considerations of issues during government sittings.

On the basis of Constitution and other legislative acts and for the execution thereof, the government adopts decrees and ordinances which are signed by the prime minister who is the head of government and defines directions of the government activity. Moreover, the prime minister coordinates and controls activities of government members. Prime minister appoints and dismisses ministers, i.e. members of the cabinet. Prime minister's resignation, or termination of his/her power, leads to the termination of powers of the entire cabinet.

In addition to abovementioned issues, the government is authorized to appeal to the parliament for ratification, denouncement or abolition of international agreements and treaties. All of the above is compounded with such an important legal lever as the power of the government to require the president to call an ad hoc sitting of the parliament.

All in all, it is clear that the arsenal of competences and spectrum of powers of the government are enhanced and broadened. If lots of issues emerged regarding the competence and independence of the government when analyzing constitutional changes of 2004, this constitutional reform took those issues off the agenda entirely.

We must discuss yet another amendment according to which the executive power is represented in administrative-territorial units of Georgia by state governors. According to the Constitution, a state governor is appointed and dismissed from his/her position by the government. Considering the established concept, it is clear that this institution, by its nature, is a structural unit of the government.

As a summary, we can say that statuses of the parliament, president and government provide the ground to claim that the list of competences of the parliament and the government are broadened and strengthened, whilst powers of the president are limited to formal mechanisms. For the discussed constitutional system to fully meet the paradigms of parliamentarianism or, more precisely, rationalized parliamentarianism, the rational regulation of interrelationship between the government and parliament is necessary. At the same time, it is necessary to improve and elaborate the mechanism of confidence-no confidence and especially of constructive vote of no confidence.

We will continue this discussion with the third member of the triad. Similar to 2004, the judiciary was the least affected by amendments. However the implemented amendments and addenda do deserve attention in this regard. The key issue, in this case, is related to the status of the supreme body of the judiciary. According to the reform, the Constitutional Court of Georgia has become the only body to judge the legal procedure of impeachment. The Supreme Court has been totally excluded from this sphere.

The legislators changed the regulation concerning the age criterion of judges. While the lower age limit of judges of common courts was decreased from 30 to 28 years under the amendments adopted in 2005, the current reform reinstated the initial limit.

Another amendment concerns the appointment of judges for life. Naturally, this is a clearly positive step and will largely contribute to the independence of the court system. At the end, we want to touch upon the aspect related to the re-election of Constitutional Court chairman. The provision that prohibits the re-election of one and the same person was deleted from the Constitution, which gave rise to certain legitimate questions. However, we believe that this regulation is not a main problem at all and this norm can fit into a certain rational framework.

When discussing the state government triad on the central level, one cannot avoid the important issue of state finances and their control. Analyzing from this standpoint, one must emphasize that all those problematic provisions which were introduced in 2004 have been completely changed and revised.

One should primarily single out the power of the government to submit a draft state budget to the parliament, after discussing its main data and directions with parliamentary committees.

Moreover, submission of budget is an exclusive right of the government. The right of the president to approve the state budget by order in the event the parliament failed to approve it has been scrapped, which is indeed a welcoming step forward. One should also underline the fact that if the parliament fails to adopt the budget within three months after its submission, the public expenditure and liabilities will be performed in accordance with the budget data and parameters of the previous year. This regulation is absolutely acceptable and fully complies with the postulates widely established in constitutionalism.

Despite positive legislative dynamic, there are a number of serious problems with regard to state financing. It is necessary to refer to a noteworthy conclusion of experts of the Venice Commission, which highlights the problem of interrelationship between the government and parliament in terms of their powers i.e. the restriction on the parliament in issues related to the state budget, its inability to alter and revise the draft budget and the power of the government to approve changes to current spending.

As a group of experts working on amendments and addenda notes quite rightly, it would be useful to increase the importance of parliament with regard to issues related to state budget. Overall, the analysis of this issue convinces us that the arsenal of competencies of the government is very broad. Consequently, it is clear by any measure that the constitutional balance is tilted towards the government and this poses a serious threat to the balance of powers.

At the end of the review we will try to analyze in as much detail as possible of the powers and important issues of self-government. As it is correctly noted in the relevant literature, a significant positive aspect of 2010 constitutional changes is the improvement of a constitutional flaw by representing the self-government system as a full-fledged component of state governance.45 Issues related to municipalism have become regulated by a separate chapter of the supreme law of the country.

According to the Constitution of Georgia, a representative body of the self-government, the council, is elected by Georgian citizens registered on the territory of a self-government unit through direct, general, equal vote by closed ballot. This chapter also specifies that the abolition of a self-government unit or the revision of administrative borders shall be preceded by consultations with the respective self-government unit. As regards the issue of authorities, the powers of state bodies and self-government have been separated and the authority of the latter has been defined as a combination of original and delegated powers.

A welcoming fact is that in case of powers delegated by the state bodies, this legal procedure is performed through legal acts as well as agreements for transfer of corresponding material and financial resources alone. No one doubts that if we really want to establish independent and strong municipal structures which will perform their functions efficiently, it is necessary to define financial and other guarantees of self-government on the constitutional level.

When analyzing from this standpoint, it is important to single out the subject of certain municipal guarantees that concerns the property and financial issues. No less important is the issue of obligatoriness of decisions taken by self-government units within the scope of their competence and the issue of legal self-restraint in their territories. Finally, we cannot leave the state mechanism of supervision of activities of self-government bodies unmentioned, the main aim and purpose of which is to ensure the compliance of normative acts of self-governments with Georgian legislation and the proper implementation of delegated powers.

The issue of accountability of self-governments' executive bodies to municipal representative bodies has been specified in the Constitution. Moreover, the important constitutional mechanism of the right to appeal to the Constitutional Court has been strengthened.

According to the Constitutional addendum, a representative body of self-government is among those subjects which can file a complaint about the constitutionality of normative acts

45 Otar Melkadze. Constitutional Law of Georgia (from Reform to Reform). Publishing House Universal. Tbilisi, 2011; pg.312.

with the Constitutional Court of Georgia. Moreover, the Georgian Constitution specifies that the Constitutional Court, on the basis of a claim by the council, considers the issue of constitutionality of normative acts against the provision specified in Article 7 of the Constitution.

As we can see, the municipal part of amendments and addenda, and the work performed in that direction deserves praise. Nevertheless, in summary, we will again refer to the conclusion of European experts of the Venice Commission (Democracy through Law).

As they note quite rightly, despite the amendments, the Constitution is still not strengthened to the desired level. Certain important issues must be regulated at the constitutional level. Otherwise, the above mentioned fundamental principles of local self-government will lack proper protection and the Constitutional Court will not provide sufficiently clear criteria to resolve problems arising in relation to defining the competences and other conflicts between representatives of state and local self-government.46

V. Conclusion

Overall analysis and review of amendments and addenda to the Constitution in Georgia provides a solid ground to conclude that amendments introduced to the supreme law of the country have been conditioned by political motives. As strong authorities with high legitimacy can be seen and as overall analysis of political and legal space shows, the conceptual essence of the doctrine of constitutionalism is often entirely ignored.

This conclusion can refer to the amendments introduced in 1999 as well as to any other constitutional changes made thereafter. As regards the 2010 constitutional reform, it will be difficult to make such claims as the enactment of the majority of these changes is scheduled in 2013. Consequently, a proper assessment of every aspect of these changes can only be made after real enactment of these changes.

Discussion of causes behind existing problems will require much time because, as we noted in the beginning, a fundamental and interdisciplinary research will be needed to study that the subject in its entirety. Nevertheless, we can conclude that the source of causes should be sought inside the Georgian society. If we want to contain the system by constitutional paradigms, it is necessary to raise civil awareness as well as the standards of political and legal culture. As an American scholar, Dick Howard, noted in regards with the educational importance of constitutions, civic education is necessary for the healthiness of constitutionalism. People who do not understand the concept of the form of free governance are less likely to maintain its viability. Constitutionalism relies on the principle of educated masses.47

It is apparent that until the civil society, one of the pillars of a constitutional state, is not fully built, it is difficult, if not impossible, to speak about the realization and practical implementation of the concept of constitutionalism. As the 1776 Virginia Declaration of Rights states, "[n]o free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles." This was topical not only in the 18th century but remains as such today as well.48

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