

CHRONICLES OF CONSTITUTIONALISM IN GEORGIA

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ABSTRACT

The professor of Tbilisi State University Avtandil Demetrashvili tries to display regulations of the history of Georgian Constitution. He establishes the correspondence between constitution chronicles and paradigms of constitutionalism. On behalf of this he offers the government the ways of future development of constitutional democracy in the country. The object of the scientific observation is the outstanding state constitution (state without the leader) of the first Georgian Republic (1918-1921 yy). The chronicles of socialist (1921-1990yy) non-legitimate (1991-1992yy) quazi-constitutional (1992 -1995yy) period of the country's history are surveyed critically. Also the primary (1995- 2004yy) and nowadays text of up to date (24th August, 1995) constitution are analyzed thoughtfully. On the behalf on this opinions about the future development of Georgian Constitution are being produced.

Keywords: Constitution of Georgia, The constitutional history of modern Georgia, Georgian republic, Constitutions in Georgia, Constitutionalism

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ÖZET

Bu çalışmada Tiflis Devlet Üniversitesi Profesörü Avtandil Demetrashvili, Gürcistan Anayasa tarihinin uygulamalarını göstermeyi hedeflemiştir. Anayasa kayıtları ile paradigmaları arasındaki mutabakatı belirlemek namına yönetime, ülkedeki anayasal demokrasinin gelecekteki gelişim yollarını sunmaktadır. Bilimsel gözlemin amacı, ilk Gürcü Cumhuriyeti'nin (1918-1921) yerine getirilmemiş devlet anayasasıdır. Ülke tarihinin, sosyalist (1921-1990), meşru olmayan (1991-1992), yarı anayasal (1992-1995) dönemi kayıtları ciddi olarak araştırılmıştır. Ayrıca ilk (1995-2004) ve bugüne kadar gelen (24 Ağustos 1995) günümüzdeki anayasa metni dikkatlice incelenmiştir. Bu inceleme adına, Gürcü Anayasasının gelecekteki gelişimi hakkındaki fikirler gösterilmektedir.

Anahtar Kelimeler: Gürcistan Anayasası, Gürcistan Cumhuriyeti, meşruiyet.

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INTRODUCING

According to the decree of the President of Georgia on June, 8th, 2009 was formed the State constitutional commission of Georgia (in the further text-the Constitutional commission) which in conformity with statue 102 of the constitution of Georgia should prepare the project of the constitutional law, "About accomplishing changes and additions in the constitution of Georgia".² The constitutional subjects again as it repeatedly was in others, from the point of view of history of independent Georgia the brief periods (1918-1921, 1991-1992, 1995-2004 and so on) became a subject of meditations, the analysis and discussions of political elite, the academic circles and the population (to a lesser degree). Also as before, the essence of the constitutional reform, its dominating idea even today remains to be the construction of a democratic public and state design, that according to Position of the Constitutional commission maintenance of the civilized mutual relations of a civil society and the state, fastening effective working, counterbalanced systems of branches of the government is concretized as coherence of the state fundamental laws.

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Hardly will be, even going through a postcolonial transformation post-colonial, post-soviet or post-socialist state where similarly to Georgia at a level of the organic law arrogant would not be made the following types of applications - to live in conformity with standards and norms of constitutionalism, but it also is a reality that frequently these standards are interpreted differently any way, according to political or other conjuncture, and the constitutional declarations even remotely do not answer calls of a real life. Even the retrospective, superficial sight at new and newest history of Georgia gives the basis at least partially to distribute the above-stated judgements on my country as well.

In communication with the purpose of present clause attempt to reveal law of the constitutional development of Georgia is told, to estimate it from positions of the doctrine and practice of constitutionalism and in a context of carried out constitutional reform (clause is written in February-April, 2010) to reflect on prospects and the basic direction of the constitutional reform. Thus we are far from an idea, that only on the basis of perusal and the analysis of the constitutional texts can be formed the

² The order of the President of Georgia from June, 8th 2009 r «About carrying out of actions for the purpose of creation of the State Constitutional Commission of Georgia; the Decree of the President of Georgia from June, 23rd 2009 «About the statement of Position of the State Constitutional Commission of Georgia ».www.prezident.gov.ge, 2944,2960

valid constitutional image of the country. For this purpose it is necessary to research the methods of board, i.e. a political mode, an establishment of a level of a maturity of a civil society, legal and political culture of a society, presence and functional viability of party system and much all another. That demands interdisciplinary research and does keep within neither the purposes nor a genre of clause, nor with our opportunities.

1. Sources of the constitutional history of modern Georgia.

Though we were proud-Georgians, from that consciousness that we have centuries-old history of a civilization and statehood³ - we should recognize, that the actual constitutional history that is perceived as constructed and functioning according to principles of constitutionalism - a public life covers not such a long period of new and newest history and differs with essential originality. At the same time is more useless and it is necessary to notice set of monuments of the right which under the maintenance and a circle of adjustable attitudes are not so far from modern understanding of sources of the constitutional (state) right in history of Georgia.

In opinion of the Georgian scientists sources of the constitutional history of Georgia can be found out still in early-feudal Georgia. Here is how is estimated the creation of so-called “Isnis Karavi” (Chamber of Isani) the purpose of which was restriction of absolute power of the monarch professor Vakhtang Abashmadze: “One of components of culture of Georgian renaissance was the doctrine of division of authorities which in the twelfth century was applied... as the ideological instrument of the restriction which have begun the purpose of imperial authority of the big movement”.⁴ That this attempt, “the big movement” by virtue of the person of queen Tamara, style of her reign (methods of management), by virtue of other intranational and external factors had no continuation. As for the question of the first person in the state (as it appears from the subsequent history of independent Georgia) remained problematic. It is testified by the statehood and monuments of the right of late-feudal Georgia, the period which could leave a significant trace in public sense of justice if not loss of the state independence.

³ Other about it see, Iv. Dzhevakhishvili. History of the Georgian nation. work .7; it, History of the Georgian right, Tb., 1982

⁴ Vakhtang Abashmadze. The Georgian intellectual phenomena. Political and legal doctrines in Georgia. Tb., 1992, pg., 457

From monuments of the right of this period which to a greater or lesser extent can be carried to sources of a modern constitutional law, special attention are deserve by “Dasturlamali” and “ The Book of Laws” developed under supervision of and directly by king Vakhtang Sixth. “Dasturlamali” – on Professor Isidore Dolidze’s opinion - as in introduction to this book are told the writes of correct presence in front of the king. According to this book both should behave – powerful and private soldiers. In this monument of the right the detailed description of system of board of central and local management of an empire of Kartli, functions, the rights and duties of civil servants are described. The knowledge of features of the judicial organization and those professional, moral and personal qualities which were shown to judges in late-feudal Kartli ⁵ would be also useful for our contemporaries.

The attention of the scientist will by all means involve one more, this time encoded legal certificate which included Laws of Moshe, the Greek-Roman right, Laws of Mkhitar Gosha, Rights of Catholicon, "the Book of the Rights” of Agbugha’s centuries and Laws of king Vakhtang the Sixth. Value of this certificate is not only in its interbranch consolidating law character. Its existence is one more certificate of aspiration of the Georgian society through studying and loan of experience of others in order to be integrated into the world community.

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During a finding in structure of Russian empire we had no own legislation and naturally could not live under standards of constitutionalism. But we have no right to pass by the whole galaxy of the advanced Georgian thinkers of second half of XIX- XX beginning. These people’s creativity promoted distribution of ideas of constitutionalism to the Georgian society. It is the advanced philosophical, advanced philosophical and political ideas of the Western Europe and Northern America: Solomon Dodashvili, Niko Nikoladze, Ilya Chavchavadze, Mikhako Tsereteli, Archil Dzhordzhadze and others.

The Georgian educators distributed Spinoso's doctrines, John. Lock, Jean-Jacque Russo, Charles Montesquieu and others, translated into the Georgian language and acquainted the population with their works, stated rather interesting and for that time courageous judgements and offers. Their judgements⁶ on such questions as example, forms of board, divi-

⁵ Isidore Dolidze. Vakhtang the Six's right. Tb., 1981, pg. 5

⁶ See for example Niko Nikoladze. pg. 380-385; .2, pg.201-207

sion of authorities, the territorial organization of the state, local self-government, etc. do not differ much from the modern conventional concepts and categories of the theory of constitutionalism. As if it was today was seen by great Ilya, when classical (on Montesquieu) three-part division of authorities characterizes as the abstraction of the past, an ideal of its time and the program of the future⁷. If not creativity of these thinkers, the constitutional image of the first Georgian republic quite often perceived as "the brief Golden Age" our history would have absolutely different intellectual maintenance.

2. The First Georgian republic.

K. Inasaridze's "Golden Age" called this period of history of Georgia first of all coordinates with the progressive legislation for that time and first of all the constitutional legislation because neither the level of economic development of then Georgia, nor quality of a social or political life for such recognition could not serve as the basis for such thought. Proceeding from quality of this legislation there is a basis to approve to what exactly it can serve as a point of readout of the constitutional history of Georgia. From set of sources of this period two documents of constituent character in the best way meet these requirements.

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First of them is the Act about independence of Georgia, proclaimed by National Council of Georgia "in Tbilisi, in the White hall of the Palace, on May, 26th, 1918, on Sunday at 5 o'clock 10 minutes p.m." ⁸. Only in one-page this document the brief review of history of Georgia is carried out laconically, the situation of the period of acceptance of the Act is analysed, main principles of public and state system of Georgia are stated. For the first time in history of the country at a level of the enactment the form boards (republic) and a political mode (the republic should carry out the functions by democratic methods) is precisely defined. In conditions of general ruin and nihilism characteristic for Georgia of this period, the Act fixes bases of coherence of the state by the obligation of care of the person, the sovereignty of people is proclaimed, the desire to provide to all citizens the equal civil and political rights irrespective of their national identity, creed, a social status and a floor is declared. The young republic

⁷ See about it Vakhtang Abashmadze. pg.467

⁸ The Act text about independence of Georgia sees the Georgian, Russian and French languages «Demolratichesky Republic Georgia 1918-1921. Three historical documents. The composer and the author of the preface- Guram Sharadze. TB. 1991

incurred the obligation to give an opportunity of free development to all nationalities living on its territory.

The Act about Independence could not, and had no claim to change the constitution, however, as the original base, has played the important role in definition of a vector of the subsequent state construction. The basic positions proclaimed in the Act in the various form and in various volume have found reflection in the legislation and especially in the Constitution of Georgia on February, 21st, 1921.⁹

About conditions and procedures of development and acceptance, about factors determined the basic maintenance and the basic subject line of the constitution of Georgia of 1921, about its estimation as legal product, about correctness of the selected form of board, at a level of scientific abstraction it is possible to reduce our judgement. It is as follows.

a) Despite of extreme, basically external factors of influence, the constitution was developed by created representative constituent bodies, by the constitutional commissions and was accepted by the Constituent assembly with observance of the standard conditions and procedures.

6 b) According to a plan of "fathers-founders" the constitution should reflect a reasonable combination of world experience of constitutionalism and the national Georgian beginning (historically generated ethno psychology, features of a life, customs of Georgian people, national structure of the population and three-year (1918-1921) experience of statehood). The Ultimate goal and the basic motivation consists of the necessity to create the most democratic constitution in the world which would fix absolute power of people as a source of authority and would exclude an opportunity of legal assignment, and even usurpation of authority by anybody of the state.

c) The Constitution of 1921 is executed in good style, good Georgian language, its internal construction answers the constitutional logic¹⁰. With the Doubtless merit of "fathers-founders" of the constitution it is necessary to consider recognition by them the idea of the person being

⁹ About a problematics of the Constitution of Georgia 1921 see Malhaz Matsaberidze. The political concept of the Constitution of Georgia of 1921. T6. 1996, etc. its publications on this problematics

¹⁰ the articles about the rights and freedom on seven various heads, unsatisfactory structured holes, the set blank norms is probably a consequence of deficiency of time as the definitive text was accepted in force-majeur conditions of a wartime

the basic social value. To fastening of this idea in the constitution is served almost with half of its clauses - 70 of 141.

d) Considering the definitions accepted in a legal science, the form of board under the Constitution of 1921 can be defined as parliamentary republic¹¹ with that clause, that in system of the central bodies abundantly clear the obvious leadership of parliament is traced. With some share of care all I shall notice in occasion of such position - it does not keep within traditional system of division of authorities.

e) If the leadership of parliament has analogues in those countries which devoted to idea of parliamentarism, it is difficult, and even impossible to find system of the central state bodies similarly to that which is fixed in the Constitution of Georgia of 1921- in it in any kind (the monarch, the president, chairman of republic, the joint body) is not stipulated institute of the head of the state. Its traditional functions are distributed between parliament and selected parliament for 1 year Chairman of the government, and the same person can be selected chairman only twice successively.

f) If, even conditionally, parliament and the government can possibly be recognized as branches of authority¹², it is difficult to say the same about the third branch of traditional division of authorities. Founders have never used in the constitution a verbal design "judicial authority" or even a word-combination identical to it, have not allocated courts with function of the judicial control which is one of attributes of judicial authority and by time of acceptance of the constitution had enough wide recognition and distribution in the world.

g) Considering an insufficient level of development of party system, a low level of political and legal culture of the population, motley, fragmented structure of parliament and, multinational structure of the population of then Georgia and other counter-indicative preconditions for stable and effective functioning of parliamentary system, it is possible to assume, that the form of board stipulated by the Constitution of Georgia of 1921 would not justify itself.

¹¹ It is visible reflexion of the constitutional outlook of social democrats which dominated also the constitutional commissions both in National board and in the Constituent assembly

¹² Their status in the constitution is defined by word-combinations «a republic representative body», "legislator", «executive power of the Supreme board»

As told in last thesis has no intention to belittle the value of the Constitution of 1921, it was a major landmark and as it will appear later – to be an original link in continuity of the constitutional history of Georgia.

3. The Soviet constitutions in Georgia

One of the problematic questions of the constitutional history of Georgia is the issue of a role of the Soviet constitutions 1922, 1927, 1937 and 1978 years in this history.

On one hand, accepted by corresponding bodies of the Georgian Soviet Socialist Republic, they carried out a positive role by bringing the elements of certain law and order and political stability in public life. Despite this, the basic estimation of these constitutions (accepted at the time of Lenin, Stalin and their followers) consists in the fact that they were not the products of law derivation of neither Georgian people nor its any branches. Accordingly these constitutions could not express public's will and interests adequately.

The issue of the constitution acceptance in Georgia automatically was followed by its acceptance in the "centre", in Moscow, due to the constitution of the USSR developed in a narrow circle of heads of Communist party of Soviet Union. Independently corresponding branches of the Georgian Soviet socialist republic solved only the issues of replacement of official names («the Union of the Soviet Socialist Republics» to «the Georgian Soviet Socialist Republic», “Moscow” to “Tbilisi”, «the Supreme Council of the USSR» on «Supreme Council UGSSR” etc.) and transfer of official texts of constitutions from Russian to Georgian and Abkhazian languages.

As to conformity of the maintenance of these constitutions to paradigms, constitutionalism principles, it is necessary to make two conclusions of the general character. First of all, the socialist doctrine basically ignores a principle of division of the authorities, substituting for its principle of absolute power of Councils. And secondly, the Soviet socialist constitutions were initially fictitious, as the declared absolute power of "selected" "representative" bodies really carried out function of fig sheet for constitutions categorically declared that supervising and directing force of a society, a kernel of its political, economic and social system is the Communist party of Soviet Union.

3. The constitutional and quasi-constitutional legislation of a transition period

Already twice in the XX-th century the formation of the independent Georgian state was being conceded in the hardest conditions of the 90ies. Due to the variety of forms and methods of the state board, dynamics of the phenomena, participation in these processes of public forces, civil (quite often bloody) opposition, this unique period in the history of Georgia not without justification can be compared with final decade XVIII centuries in France.

October, 28th, 1990 is considered to be a reference point of this period. The day of the next elections of Supreme council of UGSSSR. It was unexpected for a CPSU management to discover that convincing victory was gained by the political association «Round table – free Georgia».¹³

National forces that came to the power declared and in the certain sense realized ideas of an establishment of a democratic social order in the country. In brief terms the constitution of 1978¹⁴ was essentially reconsidered and declared to be the constitution of a transition period. Also was created the state constitutional commission for development of the new constitution.

By virtue of some reasons alongside with these progressive undertakings it is difficult to not notice the measures of the constitutional character essentially undermining democratic image of new authorities. In some way it is the establishment of the presidential institute with practically unlimited authority and is ignoring of national institute local self-government. It also is far from democratic principles of regulation of formation of the judicial case. All it finally really meant refusal of realization of a principle of division of authorities, a principle which was leader in an electoral programme of “a round table”.

These and some deviations from democratic methods of statehood became formal reasons of revolution in the end 1991 -the beginning of 1992. Violent, military powers forced to stop the warrants of legitimate authorities ahead of schedule and the management of the country was

¹³ See Igor Kveselava. *Chronicles of a contemporary history of Georgia*. P.Zviad Gamsahurdia. Disident. The president. The martyr. TB. 2008

¹⁴ From an official state words «Soviet and socialist» have been withdrawn and it began to be called as the Georgian republic with own state symbols, ill-starred sixth article which fixed supervising CPSU role is withdrawn, the constitutional bases of political pluralism and variety of patterns of ownership are put.

incurred by the Military council banked from three persons which can be named a triumvirate.¹⁵

The military council cancelled the constitutional legislation of the previous authorities and on February, 21st, 1992 and accepted Declaration on restoration of the Constitution of Georgia of 1921 according to two signatures of members of the Military council. Considered to be progressive this undertaking did not find the positive continuation, because the maintenance of the constitution of 1921 obviously mismatched realities of 90th years, and a plan of members of the Military council already was many characterized as aspiration to justify obviously unconstitutional and violent military coup d'etat by lots of people.¹⁶

State-legislative life flew contrary to formally restored constitution - instead of the parliament selected by people and the responsible government before this representative institution. Also was formed practically unconstitutional illegal State Council that was carrying out both legislative and governmental inherently functions.

With the purpose of completion of deficiency of legitimacy and democracy on October, 11th, 1992 the State Council organized parliamentary elections. This way selected parliament passes the law "About the government" on November, 6th, 1992. This law, in our opinion, was the important phenomenon of the constitutional history of Georgia. With its acceptance the period of the constitutional uncertainty formally comes to the end and bases of construction of the state on principles of constitutionalism are pawned.

However, so called "the small constitution"¹⁷ this law still was defective for standards of constitutionalism- it with greater or smaller sufficiency and quality contains the regulation, concerning legislative and executive authorities and nothing is told about such organic attributes of modern statehood like fundamental laws and judicial authority. And one more remarkable feature of the law "About the government". Hardly one can find in the world practice an analogue of construction of system of legis-

¹⁵ Other about it see in Democratic building in Georgia. A material for discussion №2 - «Konstitutionnaja system in Georgia», Tb., 2007, pg., 26

¹⁶ Other about it sees by Paata Tsnobiladze. The Constitutional law of Georgia. Tb., 2004, pg.128; Igor Kveselava. Chronicles of history of Georgia. Tb. 2004

¹⁷ Constitutional law. The editor and the head of a group of authors of Avtandil Demetrashvili. Tb., 2005, pg., 83

lative and executive authority similar to those that were established by this law. In this system on the basis of straight encyclical elections Chairman of parliament was being elected in parallel with the parliament itself. The same parliament selected this Chairman to be the head of the state. This way, concentration of both legislative and (actually) executive authority was carried out in hands of one person -Chairman of parliament- head of the state. These were the constitutional and quasi-constitutional chronicles of revival of the Georgian statehood in a transition period of 90ies of XX century.

4. Constitution of Georgia of August, 24th, 1995

Disintegration of the USSR has extremely painfully affected economy of Georgia, bloody conflicts in Abkhazia and South Ossetia created real threat of territorial integrity, all parts of political system functioned arrhythmically, the most part of public relations was not covered by the mechanism of legal regulations, owing to what there were no real legal guarantees of the rights of the person. The original situation was observed in constitutional-legal sector. The constitution of Georgia of 1921 by virtue of low legitimacy of its restoration and estrangement from a reality didn't work, the part of constitutional-legal relations was adjusted according to formally cancelled Soviet constitution of 1978, the law "About the government" at its all advantages regulated only a part of constitutional-legal relations. In these conditions almost one and only legal and productive way of solving the internal problems and on this basis adequately to be integrated into the civilized world community was ordering of state -legal life. For this it was necessary to accept the new constitution. With this purpose in February-March, 1993 the Parliament of Republic Georgia accepted the Declaration about creation of the State constitutional commission and approved its Position.¹⁸

More than two years preceded the work of the constitutional commission, for this time more or less had been in details discussed 12 various projects presented by scientific institutes, political parties, non-governmental organizations and private persons. On July, 1st, 1995 the commission approved the project presented by editorial group of the commission and transferred it for discussion to the Parliament of Republic Georgia. After

¹⁸ The maintenance of the initial text of the constitution. The edition of 1996 (responsible for issue - Avtandil Demetrashvili) containing constitution texts, nowadays acting in the Georgian, Russian and French languages, the current text-on to the edition of 2010.

bi-monthly sharp discussions on August, 24th, 1995 was accepted the nowadays operating organic law (April, 2010).

According to the approaches (accepted in a science of a constitutional law) and with the purpose of an establishment of their conformity to paradigms of constitutionalism, we shall pay attention to questions of development, acceptance, structure, principles and maintenances of the Constitution of Georgia of 1995.

In opinion of developers and founders of the constitution and also experts the development (above the project worked the state constitutional representative commission created by parliament-consisted of 118 members) and acceptance (accepted after national discussions by parliament) were carried out with observance of the standard legitimate requirements. However for the sake of justice it is necessary to note, that in these processes the wide public did not take an active participation.¹⁹

Till July, 2004 the constitution represented the uniform text, had traditional classical structure and consisted of: brief (about 50 words and signs) not having heading prologue, in the literature so called preamble, the basic part (clause 1-104) and transitive positions (clause 104-109). All nine (now 10) chapters in the text have the headings, clauses and items of clauses are numbered by the Arabian figures, and subitems are entitled by consecutive letters of the Georgian alphabet.

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Modern (April, 2010) structure of the constitution essentially differs from initial - in it has appeared new 41 chapter, some have been withdrawn and there are new clauses. On July, 1st, 2004 the constitutional law "About the status of autonomous republic of Adjara" was passed. Unlike other constitutional laws the parliament has refrained from it's incorporation (entering, transferring) in the text of the basic text of constitution, but has made the clause that this constitutional law is an integral part of the Constitution of Georgia. Thus, now the constitution of the country represents two separately existing texts-accepted in 1995 with the subsequent changes and the Constitutional law "About the status of autonomous republic of Adjara" (25 clauses). It is difficult to understand the members of the parliament, passing the given constitutional law and the president which promulgated it, however in a world practice such cases are not individual, do not contradict idea of constitutionalism, but, from

¹⁹ Wolfgang Gaul. Working out and acceptance of the Constitution of Georgia (the Georgian translation of the German edition). Tb., 2002

my point of view, cannot serve as the best samples of constitutional law-derivation. The most principal, basic positions are concentrated in the first chapter "Substantive provisions" and their mentioned below list gives the basis to optimistically judge about their conformity with standards of constitutionalism.

Considering necessity to observe continuity in the constitutional development²⁰, founders of the constitution borrowed from the Constitution of Georgia of 1921 the form of board (democratic republic– clause 1), about people's sovereignty (the Source of the government in Georgia is people-clause 5), about predominance of constitution (clause 6). Worth of paying attention is a principle of division of authorities (the government is carried out on the basis of a principle of division of authorities-clause 5), regulations about a primate of the conventional principles and norms of international law (clause 6), about an exclusive role of autocephalous orthodox church and its independence from the states (clause 9), the characteristic of the state as independent, unite and indivisible (clause 1). From an initial plan of developers of the project of the constitution²¹ there were regulations about questions of exclusive conducting the supreme bodies of state authorities of Georgia (clause 3) and about two-chamber parliament (clause 4).

The analysis of the maintenance of the Constitution of 1995 is expedient to carry out from the point of view of the initial and current text. In opinion of the Commission "Democracy through the Law" (the Venetian commission) and separate international²² and Georgian²³ scientists and experts the initial text of the constitution represented well grouped legal product. At the same time also are marked the Georgian deviations from classical American (USA) presidential system. According to this text the president is not only the head of the executive authorities, as in the USA, but also the head of the state. In the structure of executive authority there is an unknown person to the American system - the state minister, who despite not being the head of the governmental board was responsible for it (governmental activity in conditions when the government is one of the

²⁰ See a preamble of the constitution of Georgia: «... Leaning against centuries-old traditions of statehood of the Georgian nation and main principles of the Constitution of Georgia of 1921...»

²¹ On their thought the Georgian state should be constructed according to federalism bases – see Wolfgang Gaulja's quoted composition.

²² Wolfgang Gaul, pg.407-415,

²³ See Gia Nodia, Gia Getsadze. The constitutional system in Georgia. In a cycle «democracy Building in Georgia», Tb., 2003, pg. 25-33

advisory bodies for the president). Through the council of justice which also was the advisory division by the president. This last appointed, displaced from a post, supervise disciplinary prosecution of judges and made on it the final decision. There still remained to be unsettled questions of the territorial device and local self-government. Also that is the most important - in system of the central branches of the government even not armed sight finds out misbalance, concentration of imperious powers in a presidential vertical that accordingly excluded opportunities of the constitutional sanction of the possible conflict between executive authority and parliament.

The basic advantage of the Constitution of Georgia of 1995 consists of its constituent character, on its basis institutes have been founded democratic by the nature institutions. Unfortunately it is necessary to ascertain, as from authorities and from a society this democratic potential of the constitution either has not been demanded at all, or used in narrow corporate and other unconstitutional purposes. As a result the advantages of the constitution remained in the shadow and its lacks were hypertrophied. It might have lead and caused protests from one, but the significant part of political elite. The protest of this part lead to the end and caused so-called "revolution of roses". Unlike previous revolution this time was not violent, but had practically the same consequences - the pre-schedule termination of powers of the president ("voluntary" resignation together with ministers) and parts of parliament (under the decision of the Supreme Court of Georgia).

New authorities have carried out huge constitutional reform²⁴. Amendments have touched almost all chapters, but the main accent has been made on those positions which adjusted mutual relations of the central branches of authority, i.e. forms of board. As a result Georgian modified presidential system has been replaced by the current form of board. It's conceptual basis according to the proclamation of its authors is half-presidential - the so-called French model. In spite of the obvious and significant success in separate spheres of the state and public life²⁵ the action of new authorities quite often became an object of criticism or active

²⁴ From 109 articles of the initial text of the constitution were put under the audit more than half.

²⁵ Productive fight against corruption, public order and safety maintenance, transition to the European system of higher education the decision in deadlines of problems of a transport infrastructure and supply of the population by the electric power, the statement of modern level of the state service in separate spheres.

protestant movement. Dissatisfaction was caused by the misbalanced constitutional system, which again as well as during a former mode, due to other branches of authority focused on one political figure-the president. Methods of realization of authority and style of the communications of authorities with a society.²⁶

INSTEAD OF CONCLUSION

These were the chronicles of constitutional (or close to constitutional) meaning of new and newest history of Georgia. The phenomenon, unity of which creates the constitutional image of the country. Even the superficial view on the features of creation and consistence of some constitutional documents, gives us the ability to conclude their determination to the goals of concrete historical period.

Constitution of 1921 y. “was born” to be the constituent act of first Georgian republic. It was called to fix the gained independence and create the capable state mechanism. Constitutional and quasi-constitutional legislation of 1990-1995 yy. was supposed to serve as the judicial mechanism of reestablishment and future development of independent state. Creation of Constitution of 1995 was provoked by the necessity to organize (inflamed by the civil opposition) the improper social relations and by the aspiration of integration into the world society with democratic image. Constitutional reform of 2004 and subsequent legislation was due to the necessity to create even not balanced but strong centralized state, in order to implement fundamental reforms.

To speak the language of democracy, the basic part of the constitution is given to the subjects of the *rights and freedom*. Constitutional act of Georgia are no difference as well. Though according to the list of rights, their classification and legislative mechanism – their restriction is possible. In these acts are marked both obviously similar conceptual approaches, and basic distinctions. Huge list of rights, freedom and duties are contained in the constitutions of 1921 and 1978 yy. The list is smaller in the constitution of 1995. Their amount is even smaller in the Act of Independence of 1918 and in the Act of rehabilitation of state independence of

²⁶ Welcoming the purpose of the constitutional changes under the constitutional law from February, 6th, 2004 rapprochement of Georgia with the European constitutional legislation and practice, the Venetian commission had essential remarks on 10 of 24 articles of the constitutional bill. Experts of the commission considered expedient before definitive acceptance of the constitutional law to arrange.

1991. These rights, freedom and duties are not mentioned in the law of “State Authority” of 1992.

None of the mentioned sources contains separate structural fractions of main rights (so called to be the special category of rights) that limit state authority. Though the classification and position of rights, freedom and duties in the text are carried out according to the following scheme – a) private rights and freedom, b) political rights and freedom, c) social-economical rights and freedom, d) duties. As for the limitation of the rights and freedom, here comes the constitution of 1995, the standard of which is recognized to be the European Convention of protection of rights and main freedom of 1950. This convention allows the limitation of practically all rights and freedom due to different reasons. In 10 out of 35 statues of second chapter of the Constitution of Georgia of 1995 legislative limitation of rights and freedom is allowed and guaranteed according to the following reasons: 1) urgent necessity, 2) necessary social need, 3) maintenance of state and social safety, necessary for existence of democratic society, 4) protection of health, 5) prevention of criminality, 6) maintenance of territorial unity and social safety, 7) rights and freedom of other persons, 8) prevention of distribution of documented confidential information, 9) maintenance of independence and impartiality of justice.

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According to the conventional statement that constitutional legislation is the unity of legal regulations, establishing the state organization²⁷, we shall consider the approaches and the maintenance of these legal regulations in the constitutional acts of Georgia.

Territorial organization of state. We can say for sure that neither in the Act of Independence of 1918, neither in the Act of rehabilitation of state independence of 1991, nor in the law of “State Authority” the subjects of territorial organization were not considered to be the topics of legislative regulation. From the constitution of 1921 we should note the first statue, according to which “Georgia is ... inseparable state” and also two statues in the 11th chapter of “Autonomic board”. After having read these statues – despite the presence of few independent autonomic formations, - we can say that Georgian state can be characterized as centralized unitary state. As for the structure of this state, we can find that in the text of con-

²⁷ For example see Pierre Pactet et Ferdinand Melin_Soucramanien. Droit constitutionnel. 27-e edition a jour September 2008, Paris 2008

stitution are mentioned the central organs, inseparable Abkhazia (Sukhumi area) and Muslim Georgia (Batumi area). Other i.e. territorial units of first level are not mentioned in the main law and according to the general approach of the founders of this constitution; the centre of their legislative regulation is carried to the current legislation.

Much more extensively are regulated the topics of territorial organization of state in the Constitution of Georgia of 1978. In it's soviet edition Georgia –is one of the republics' of difficult, so called federal state-USSR. Respectively the form of board in Georgia was typical for all the united republics of USSR. Top level of it's statehood is represented by the highest (central) state organs of Georgian SSR, second level – is Abkhasian and Adjarian soviet social autonomic republics, third level – South-Osethian autonomic area, next level – regions and cities of republican submission, and, at last, lowest unit of territorial organization – are the cities of regional submission, villages, settlements and communities. In the post-soviet edition (1990-1992) Abkhazia and Adjara remain their status of autonomic republics; South-Osethia is abolished and remains the same administrative-territorial division (regions, cities, villages, settlements, communities.)

The period of development and action of Constitution of 1995 is determined to have the definite features of regulation of territorial organization of state. The project (prepared by the state constitutional committee) provided the creation (by means transformation) of state on the federal basis²⁸. The Parliament of Republic of Georgia didn't agree with the committee, returned to the unitary form of state organization. Though the "tracks" of difficult state can be discovered in the current text – request of two-chamber parliament, strengthening the exquisite competence of state organs and so on. Together with this still exist the legal regulations about autonomic status' of Abkhazia and Adjara. And for some reasons the subordinate territorial units have disappeared.

In the conclusion of everything that has been said we can say, that during the whole observable period (1918 – 2010 yy.) the form of territorial organization of Georgian State (according to the sources of constitutional law) has not gone through the fundamental changes and it can be defined as unitary with the elements of decentralization represented by the few autonomic formations.

²⁸ See citation from work of Wolfgang Gaul

If in case or the territorial organization the constitution of Georgia can be characterized as monotonous, it is difficult to say the same about the form of governance. First independent Georgian republic had to function in the form of original parliament republic, which ignored traditional division of authorities and starting with a principle of leadership of parliament. 1991-1995 years can be characterized as the period of refusal of democratic forms of governance (Military council, State council) and the period of quasi-constitutional form of governance in accordance with the law “About State Authority”.

Stable constitutional form of governance appears only after acceptance of current constitution in 1995. Since the moment of it’s acceptance (more exactly – after the formation new system of central state organs on it’s basis) till the constitutional reform in 2004, the form of governance was similar to so called presidential (USA example) republic in literature. Acceptance and involvement of the constitutional law on the 6th of February, 2004 was followed by the modification of the form of governance and it started to be called half-presidential, French. Such is a retrospective sight at the chronicles most important constitutional and close to us new and a contemporary history of Georgia for today.

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