

# The 1921 Constitution of the Democratic Republic of Georgia: Looking Back after Ninety Years

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*The Article concerns the 1921 Constitution of the Democratic Republic of Georgia. Soon after the adoption of the constitution, Georgia was occupied by Russia and the Constitution was suspended. During Soviet rule, analysis and evaluation of the Constitution were taboo and only minor works on the constitution by foreign and Georgian authors working abroad have been preserved. The 1921 Constitution can unquestionably be considered as one of the most advanced and perfect supreme legislative acts oriented towards human rights in the world for its time that is, the beginning of the twentieth century. The author argues that it reflects the most progressive legal and political discourse in practice or theory at that time in Western European countries or the USA. As the main law of an independent democratic state, it established representative democracy as well as the system of democratic governance based on popular sovereignty by ensuring an independent judicial system.*

## 1 INTRODUCTION

Establishing a strong system of constitutionalism is crucial for the development of modern statehood and democratic institutions of Georgia. An indispensable prerequisite for this end is the existence of a constitution that ensures the principles of democratic governance, human rights and the rule of law. The Constitution of Georgia, adopted on 24th of August, 1995, is an endeavour in this direction. At the same time, we must not forget to analyse those political and legal traditions and documents, which, along with the modern global experience in constitutionalism, lay ground for the present supreme law of Georgia. We must take this into account now and in future as the development of constitution, like the evolutionary process of living organisms, can never fully cease to evolve.

In this respect, the Constitution of 21 February 1921, ninety years old, is of utmost importance. Soon after its adoption, Georgia was occupied by Russia and the Constitution was suspended. Correspondingly, during the Soviet rule, analysis and evaluation of the Constitution was taboo and only minor works on this theme

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by foreign and Georgian authors working abroad have been preserved. Having this in mind, I deemed it pertinent to recall the Constitution of 1921, make a brief analysis and evaluation for interested readers.

It is not coincidental that the 1995 constitution in force states in the very preamble that it is based on the historical and legal bequest of the 1921 Constitution and this is an acknowledgement of the political and legal hereditary link between the modern Georgia and the then independent republic of Georgia. The 1921 Constitution symbolises aspirations of Georgia of that time towards the formation of a unified, democratic and independent state. Despite the fact that the country did not have an independent legal and constitutional atmosphere and had languished for more than a century under the Russian empire, authors of the 1921 Constitution managed to create such a legal act which stood out among the post World War-I constitutions in terms of its uniqueness and consistency.

Parliamentary governance system, establishment of local self-governance, abolition of death penalty, freedom of speech and belief, universal suffrage (pressing at that time for equal right to vote for men and women), introduction of jury trial and guarantying of habeas corpus, as well as many other provisions, were some of the features of the 1921 Constitution that distinguished it among the constitutions of those times, and among the modern European ones too, for progressiveness.

This document adopted by the Georgian legislators in 1921 can unquestionably be considered as one of the most advanced and perfect supreme legislative acts oriented towards human rights in the world for its time that is, the beginning of the twentieth century. It reflects the most progressive legal and political discourse and tendencies underway or yet in theoretical stage in the Western European countries or the US at that time. In the words of Hans-Dietrich Genscher, the former Federal Foreign Affairs Minister of Germany: 'At that time it (the 1921 Georgian constitution) already advocated such values as liberty, democracy and rule of law, which the modern Europe is based on currently.'<sup>1</sup> It is noteworthy that the draft Constitution was highly valued by the members of The Second International in 1920, who played an important role in the political life of the European countries.

Ramsey McDonald, a prominent British politician, later twice prime-minister of Great Britain, while speaking about the achievements of Democratic Republic of Georgia in the letter 'Social State in the Caucasus', published in the magazine 'Nation' on the 16th October of 1920 after his visit, stated: 'I familiarized myself

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<sup>1</sup> Hans Dietrich Genscher, Introduction, in Wolfgang Gaul, *Adoption and Elaboration of Constitution in Georgia (1993–1995)* (Wolfgang Gaul, Verfassungsgebung in Georgien), (Berlin Verlag Arno Spitz Gmb 2001); 9 (IRIS Georgia 2002).

with its constitution, its social and economic reconstruction and what I saw there, I wish I could see in my country too.<sup>2</sup>

## 2 BACKGROUND

Legal culture in Georgia was being formed from the very early stages of its history. The legal works elaborated in ancient times provided for the important issues of the civil, family and criminal law, as well as state structure.

The most ancient compilation of laws that has come down to us is Bagrat Kurapatat's *The Book of Law* that dates back to the eleventh century. This compilation of legal acts includes the provisions of criminal law. Many chapters in the book are devoted to legal proceedings and organization of courts.

Important Georgian legal works were created in the thirteen-fourteen centuries. Written during the reign of the king George V, *The Brilliant*, 'The order of the Sovereign's Court' is the most noteworthy of all the legal works of the era. This book, due to its uniqueness, is also called the unified feudal Georgia's constitution.<sup>3</sup>

Another legal work of importance to the present subject is 'Dasturlamali.' Its creation laid a solid basis for elaboration of the state law.<sup>4</sup> It was drafted in 1705-07 by Vakhtang the 6th. Old Georgian legal books were published as a single compilation by the order of Vakhtang the 6th. *Dasturlamali* reflects the aspiration to develop law.<sup>5</sup> It aimed at regulation of the state governance characteristic of a feudal system.<sup>6</sup>

It is noteworthy that during the nineteenth and twentieth centuries, during adoption of the constitution, political points of view of Georgian lawyers and politicians were greatly influenced by Georgian public figures and statesmen, like Solomon Dodashvili, Ilia Chavchavadze, Niko Nikoladze, Mikhako Tsereteli, Archil Djordjadze and others, who were acquainted with the advanced political-philosophical thinking of not only the Russian empire of that period, but also of Western Europe and Northern America.<sup>7</sup> As they were advocates of modernization, democratization and self-determination, they called on Georgia to embark on the road towards Europe.<sup>8</sup>

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<sup>2</sup> Malkhaz Matsaberidze, *The Georgian Constitution of 1921: Elaboration and Adoption* 171 (Akhali azri 2008).

<sup>3</sup> Valerian Metreveli, *The History of Georgian Law* 26 (Meridiani 2005).

<sup>4</sup> Zaza Rukhadze, *Georgian Constitutional Law* 21 (American Bar Association 1999).

<sup>5</sup> I. Surguladze, *The Sources of History of Georgian Law* 131 (Pirveli Stamba 2002).

<sup>6</sup> Ivane Javakhishvili, *The History of Georgian Law* Book 1 (Tbilisi University Publishing 1928).

<sup>7</sup> A. Demetrashvili & I. Kobakhidze, *Constitutional Law* 27 (Inovatsia 2008).

<sup>8</sup> Stephen Jones, *Socialism in Georgian Colors* 2 (Harvard U. Press, 2005).

### 3 A SHORT HISTORY OF THE ELABORATION AND ADOPTION OF THE CONSTITUTION

The Historical period, during which the first republic of Georgia and later the 1921 Constitution were being formed, coincided with a very crucial period in the world history. The major European empires – Austro-Hungarian, Russian, Ottoman and others – were breaking up and smaller nation states were taking their place. In the conditions of chaos caused by the First World War, the ultra left and right political forces put the traditional social-political that include the democratic values of that time to doubt. The economic crisis brought about by the results of the WorldWar-I rendered the socialist ideas rather popular in the whole world and this, in its turn, conduced to formation of communist and later totalitarian-fascist regimes in Europe. They came to power in some countries by using socialist-populist slogans.

The successful national-emancipatory movement that brought the almost century long annexation of Georgia, and the formation of the first republic were to a great extent facilitated by the external factors that include the political and military cataclysms underway in Russia.

It must be mentioned that the leading Georgian political force of the time, Georgian social-democrats under the influence of Russian social-democrats and the external factors, were initially hesitant to declare their full support to the Georgian independence and correspondingly, to the necessity of creating a constitution.

The provisional bourgeois government, which has come to power after toppling the Tsarist regime in Russia as a result of the 1917 February revolution, had no wish whatsoever to let go of the countries comprising the empire that included Georgia, Armenia and Azerbaijan. For this purpose, in place of the institute of the Tsar's vice-regent in the region, a special committee of Trans-Caucasus was set up on the 6th March of the same year for bringing 'law and order' and better arrangement of the region. After the October 1917 Bolshevik coup d'etat and the dissolution of the Russian Constituent Assembly, the so called 'Trans-Caucasian Commissariat' (TC hereinafter) was formed on the 15th November of the same year.

On 10th February 1918, at the invitation of the Trans-Caucasian Commissariat, the TC Seim session which included deputies from Trans-Caucasus was convened – participants of the Russian Constituent Assembly dismantled by Bolsheviks. Karlo Chkheidze, a prominent Georgian social-democrat (formerly the leader of social-democratic faction in Russian Constituent Assembly), was elected the chairman of the Seim. On 22 April of the same year, the Seim established 'The Independent Federative Republic of Trans-Caucasus' and declared independence.

The Federative Republic of Trans-Caucasus had existed only for one month and four days due to various internal and especially external factors.<sup>9</sup> The Seim declaration was annulled on 26th May of 1918.

It is noteworthy that some months prior to these events, between 19–22 November of 1917, a convention (the so called ‘National Council’) of political parties of Georgia (excluding Bolsheviks, who boycotted the Council) and representatives of public organizations was held, which was chaired by Noe Zhordania, a social-democrat. By this time, with the backdrop of Bolsheviks having come to power in Russia, internal Disputes in the Southern Caucasus and external factors, even the social–democrats started to share the attitude of political groups with nationalist sentiments on the necessity to create an independent state (and not to be confined to an autonomous status).

At the backdrop of disorganized social-democratic movement in Russia, Georgian social–democrats chose their own path and they supported full self-determination in the national issue. Correspondingly, by the time of establishment of the National Assembly, the whole Georgian political spectrum (Except for Bolsheviks, who did not exert serious influence upon the society) had embraced the idea of independence without serious contradiction or confrontation.<sup>10</sup>

It was the abovementioned National Council, which simultaneously to the liquidation of the Trans-Caucasian Republic on 26th May<sup>11</sup> 1918, declared independence of Georgia at 5:30.<sup>12</sup> The act of independence, which founded independent Georgian State, declared that ‘the political form of governance of independent Georgia is a democratic republic’. The final Article of the act read that before convoking the Constituent Assembly ‘the rule of the whole of Georgia was assumed by the National Council ...’, which was later called the parliament of Georgia. The government of the newly created democratic republic had actively started to conduct democratic reforms in different directions and reconstruction of the country from the scratch as well as creation of different institutions.<sup>13</sup>

<sup>9</sup> For the details on external factors, see Z. Avalishvili, *Georgian Independence in 1918–1921 International Politics* 77–90 (Mkhedari, 2011). This book was written in 1924.

<sup>10</sup> The full support of the idea of national independence by the social-democrats and N. Zhordania at that time was also pointed out by Geronti Kikodze, the politician of the nationalist sentiment and a prominent public figure. See G. Kikodze, *National Energy* 138–141 (G.Tskhakaia Publication, 1917).

<sup>11</sup> It must be noted that 26 May is celebrated as Georgia’s Independence Day since 1990.

<sup>12</sup> Two days later, Armenia and Azerbaijan also declared independence.

<sup>13</sup> Stephen Jones, *On the Anniversary of the Democratic Republic of Georgia*, <http://matiane.wordpress.com/2008/08/30stephen-jones>, <http://matiane.wordpress.com/2009/08/30/stephen-jones-on-the-90th-anniversary-of-the-democratic-republic-of-georgia/>; also see Karl Kautsky, *Georgia: A Social-Democratic Peasant Republic – Impressions And Observations* (H. J. Stenning trans., rev. ed., Intl. Bookshops Ltd. 1921) (available at <http://www.marxists.org/archive/kautsky/1921/georgia/ch05.htm>).

In 1919, the Constituent Assembly (parliament) was elected by exercising the most democratic suffrage in that period marked by equal suffrage, women's participation in the elections as well as using other democratic elements. Parliamentary governance model that ensures efficient control over the government by the parliament was put to practice. The parliament had adopted more than 100 laws regulating different spheres<sup>14</sup> and some of the measures included recognising private property, creating propitious environment and legislation for foreign investors, introducing agrarian reform, introducing judicial reform, jury trial as well as election of the lower instance judges by the local self governments, etc. The crowning glory of the entire process was the adoption of the Constitution. Despite unfavourable external factors, Georgia managed to gain recognition in the international arena. In 1920, it was recognized De Facto by the major Western countries,<sup>15</sup> and in January 1921 – the same states and the League of Nations recognized it de jure.<sup>16</sup>

The social-democrats represented absolute majority in the National Council (just like in the Constituent Assembly elected by direct vote). It was natural that the government had also been composed of social-democrats. It is noteworthy that the Georgian government of 1918–1921 can be considered as the first social-democratic orientated government in Europe and the whole world.<sup>17</sup> Camille Huysmans, a famous Belgian statesman and public figure (later Belgian prime-minister), who visited Georgia in 1919 as one of the members of the Second International, noted in his address to his Georgian colleagues: 'You are our hope. Here is the only country which is headed by socialists.'<sup>18</sup>

The primary objective of the government of that time was to create an exemplary democratic state in the Southern Caucasus. Karl Kautsky, one of the leaders of the European social-democrats, when speaking about the successful political, legal and economic reforms launched by Georgian social-democrats, noted that the Georgian democratic road of 1918–1920 had fundamentally differed from the Bolshevik choice – instead of dictatorship and tyranny the country was governed in a democratic way.<sup>19</sup> Creation of an exemplary

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<sup>14</sup> See the *Handbook of the Legal Acts of the Democratic Republic of Georgia, 1918–1921* (Tbilisi 1990).

<sup>15</sup> Z. Avalishvili, *Georgian Independence in the International Politics in 1918–1920*, at 201,281 (Mkhedari, Tbilisi). This was written in 1924.

<sup>16</sup> *Id.* at 260.

<sup>17</sup> Social-democratic orientation parties may have been in coalitions together with other parties (e.g., in Great Britain, with the Liberal Party), but Georgia's experience is the first in that the government was solely composed of one party – Georgian social-democrats.

<sup>18</sup> Newsp. Ertoba, (Oct. 1, 1920), see M. Matsaberidze, *Elaboration and Adoption of the 1921 Georgian Constitution* 170–171 (Akhali Azri 2008).

<sup>19</sup> Karl Kautsky, *Georgia: A Social-Democratic Peasant Republic – Impressions And Observations.*, (H.J. Stenning trans., rev. ed., Intl. Bookshops Ltd. 1921) (available at <http://www.marxists.org/archive/kautsky/1921/georgia/ch05.htm>).

democracy in the Southern Caucasus should have been, to a certain extent, an antidote and an efficient alternative to the Bolshevik tyranny in Russia. In Ramsey McDonald's opinion: 'Currently there does not exist a bigger obstacle for the Bolshevism than the socialist government in Georgia.'<sup>20</sup>

But in hindsight, this quotation seems a little idealistic as later the Bolshevik aggression against Georgia could not be stopped through confronting it solely by democratic values.

During three years before the occupation by Soviet Russia, it was mainly due to the necessity of establishing a democratic society as an alternative to Russian Bolshevism that the government of Georgia had launched speedy democratic reforms and commenced to work actively for working out a new draft constitution based on democratic principles. The task of the new Constitution was to streamline the internal legal and political system as well as represent Georgia on the international arena with the constitution characteristic of the most democratic country not only in the region but in the whole of Europe. This factor was very important for the country embarked on the road to restoration of its independence.

Elaboration of the 1921 Constitution was started by the 'National Council of Georgia' through the activity of the Constitutional Commission created in June 1918. The Commission consisted of members of different political parties. Initially it was headed by a social-democrat, S. Japaridze.<sup>21</sup>

Election of the Constituent Assembly (Parliament) by direct vote and universal suffrage marked by participation of women, absence of property census, etc., was held on 14–16 February of 1919, and as a result of which Georgian social-democratic party earned the vast majority of parliamentary mandates (109 mandates out of 130). The remaining mandates went to national-democrats, social-federalists and 'Essers' (social – revolutionaries). It is noteworthy that Bolsheviks earned only very few votes and did not get a single mandate.<sup>22</sup>

The newly elected Constituent Assembly set up a Constitutional Commission consisting of fifteen members, the majority of which were social-democrats. The social-democratic party was represented by R. Arsenidze (Chairman of the Commission), S. Japaridze, P. Sakvarelidze (after Arsenidze was appointed minister of justice, Sakvarelidze became chairman of the Commission), L. Natadze, V. Japaridze, K. Andronikashvili, R. Chikhladze, M. Rusia, G. Paghava, P. Tsulaia; the national democratic party by Sp. Kedia and D. Gvazava; the social-federalists by I.

<sup>20</sup> R. McDonald, Newsp. 'Nation' (Oct. 1920), see Walter Elliott, *Georgia and Soviets, Letters to Editors*, (Sept. 27 1924).

<sup>21</sup> Malkhaz Matsaberidze, *The 1921 Constitution of Georgia, Elaboration and Adoption* 56 (Tbilisi 2008).

<sup>22</sup> Out of 505,000 constituents, Bolsheviks received only eight hundred votes. See the report of Georgian Constituent Assembly of Apr. 11, 1919, p. 31.

Baratashvili and G. Laskhishvili; social revolutionaries by I. Go-bechia; the national party by G. Veshapeli; and the 'Dashnaks by T. Avetisian.

The authors of the Constitution, who were mentioned above, had had the experience of studying and working in Europe behind their shoulders, naturally knew the texts of contemporary world constitutions, their underlying principles, and associated work well. Experience gleaned from these constitutions naturally influenced the Georgian legislators a lot. For example, common approaches on different issues are tangible when compared to the Swiss constitution of 1874, Belgian constitution of 1831, the United States constitution of 1789, German constitution of 1919, Czechoslovakian constitution of 1920 and French constitution of 1875. Almost all existing Constitutions had been translated into Georgian and published in the press between 1919–1920, and concurrently in various issues of the newspaper 'Ertoba'. Members of Constitutional Commission and other Lawyers had also run Articles and reviews on the essence of different constitutions.

Process of working on the new draft Constitution had taken the newly created commission considerable time as it endeavoured to study as much of international experience as possible, and also reach a political consensus on important issues. In July of 1920, the draft Constitution was published for the review. And in November of 1920, the parliament started the procedure of its review and adoption.

At the same time, Russia still tried to hamper Georgia's aspirations to become an independent state. In February of 1921, Soviet Russia occupied and subsequently annexed the country. Beginning of the Russian army offensive had speeded up the adoption of the draft Constitution with certain amendments on 21 February of 1921. By this time, almost all chapters of the constitution had been reviewed and adopted by the parliament and the Article by Article review process had already started. But coming out from the existing situation, it became necessary to speedily adopt fledged full-fledged constitution that represents a sovereign country before the world and the enemy. On 25th February 1921 the 11th army of the Soviet Russia occupied Tbilisi and declared Soviet power in Georgia. The government of independent Georgia was forced to move to Western Georgia – the Black Sea town of Batumi. It was in this town, in N. Khvingia's print-house, that the official text of the 1921 constitution of Georgian republic was first published

#### 4 OCCUPATION AND ANNEXATION OF GEORGIA AND SUSPENSION OF THE CONSTITUTION

In 1918–1920, Russia had endeavoured a number of times, directly or indirectly,<sup>23</sup> to trigger internal chaos on the social grounds, and to ferment ethnic strife in Abkhazia and Tskhinvali and other regions of Georgia. Due to failure of these attempts and complicated internal and external situation in Russia itself, Russia was forced to temporarily withhold its intentions and on 7th May of 1920 signed an agreement with Georgia and recognized its independence and territorial integrity.

However, Soviet Russia managed to occupy and ‘Sovietise’ Azerbaijan (April of 1920) and Armenia (November of 1920). It became evident that despite the signed agreement, soon it would attack the Democratic Republic of Georgia too. Georgian government still hoped that Russia would not breach the 1920 agreement and become discredited before the international community. However, the events took a different twist. In December 1920, at the meeting of the League of Nations in Geneva, Georgia was denied to become a member of the League (at the backdrop of the requirement of support by two-thirds of votes, Georgia was voted in support by ten members, voted against by 13, 17 – refrained).<sup>24</sup> Position of major countries like England and France played a decisive role in determining the membership bid of Georgia. Upon a country becoming a member of the League of Nations, on the basis of the 10th Article of its Charter, the League was obliged to protect its member nations against aggression. However, the leading states of the League did not really have the means to realize this in practice, so much so if the aggressor would turn out to be Bolshevik Russia. The members of the League of Nations temporarily postponed the membership issue although they fully supported Georgia’s independence and later, in January, the League and the leading states of the West recognized Georgia’s independence de jure.

After strengthening its positions inside the country and facing no sharp resistance in the international arena, despite international recognition of Georgia, Russia violated the treaty and, with the pretext of supporting the rallying workers who had been instigated by them in the district of Lore, invaded Georgia from the Armenian side in February of 1921.<sup>25</sup> On 25th of February, the government of

<sup>23</sup> Karl Kautsky, *Georgia: A Social-Democratic Peasant Republic – Impressions And Observations* (H.J. Stenning trans., rev. ed., Intl. Bookshops Ltd.) (available at <http://www.marxists.org/archive/kautsky/1921/georgia/ch08.htm>).

<sup>24</sup> Z. Avalishvili, *Independence of Georgia during 1918–1920 International Politics* 351–360 (Mkhedari 2011). This book was written in 1924

<sup>25</sup> On the whole, in Feb.–Mar. of 1921, the Russian red army, which consisted of four military corps, simultaneously unleashed an attack in five directions. They dealt two main blows on Georgia from the East (Azerbaijan) and the South-East (Armenia); the other three attacks were launched from the

the Democratic Republic of Georgia was forced to leave Tbilisi and move to the city of Batumi. Being defeated by Bolshevik Russia, the last meeting of the Constituent Assembly of the independent republic of Georgia was held on 17th March 1921, and the operation of Georgian Constitution was declared temporarily suspended by the passed decree.

The Georgian government in exile (mainly in France) tried by means of internal resistance and support of the Western countries to stop Bolshevik Russia's occupation and annexation of Georgia. Noe Zhordania addressing international community via the British newspaper, *The Times* (commenting on the invitation of Bolshevik Russia to the international conference in Genoa in April–May of 1922), noted: 'Unless Europe voices its concern about the flagrant injustice, with which the government of Soviet Russia treats Georgia, each major country will consider this as a consent to attack neighbour countries and occupy their territories.'<sup>26</sup> But, international situation of that period did not allow for fending off Russian aggression. Major Western countries and the League of Nations had only been expressing their 'concern and worry' about Russia's actions.<sup>27</sup> In 1924, the rallies against the Communist regime were quashed by military force.

## 5 FURTHER DEVELOPMENT OF CONSTITUTIONALISM

From that time on, the 'Sovietised' Republic of Georgia had 'adopted' four Constitutions (1922, 1927, 1937, and 1978), based on the principles of the Communist party, the soviets and legitimized existence of one party communist system which had nothing in common with the principles of constitutionalism which advocates democratic governance. All of them had practically been the copies of their respective preceding USSR constitutions.

In 1990, after holding multi-party elections that ushered in the national-emancipatory political parties, Georgia declared independence from the USSR. The newly elected multi-party parliament made important amendments to the 1978 constitution and expunged the provisions defining existence of the Soviet type one party system and other anti-democratic provisions. However, the

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North – from the mountains of Caucasus, through the Dariali and Mamison mountain ranges, and by occupying Racha and Tskhinvali regions and invading Abkhazia from the Black Sea side.

<sup>26</sup> Noe Zhordania *The Times*, (Mar. 21, 1922).

<sup>27</sup> Walter Elliott, a famous British (Scottish) politician, was ironically criticizing R. McDonald, the prime minister and foreign affairs minister of that time, because of the fact that knowing the real situation in Georgia and being one of the first advocates of Georgia's independence and defence of the country against Russian aggression at the beginning of the 1920s, now, as the leader of the government, McDonald, because of political considerations, preferred to recognize Soviet Russia and be silent on the Georgian issue. See Walter Elliott, *Georgia and Soviets*, Letters to Editors, 27 Sept. 1924.

military council, which has come to power after internal confrontation and the civil war, suspended the operation of the amended 1978 Constitution.<sup>28</sup>

More than seventy years later, on 21 February 1992, the military council of Georgian republic adopted a declaration on restoring the constitution of 21 February, 1921. According to the declaration, the Council considered that legally 1921 Constitution had not ceased its operation, as in accordance with the 10th Article of the Constitution it is valid 'permanently and uninterruptedly'. Correspondingly, operation of the Constitution was considered to have been illegitimately abolished after the occupation of the Georgian Democratic Republic by the Soviet Russia. Hence, after restoration of independence by Georgia, it was declared that the 1921 Constitution was legitimate.

This is why the council maintained, that:

1. Georgian republic, without alterations of the present borders and state-national arrangement (the current status of Ajara and Abkhasia) recognises the supremacy of international legal acts and 1921 Constitution of Georgian Democratic Republic and resumption of its operation taking into account the current reality.<sup>29</sup>

Despite the fact that Military Council of Georgian republic (which self-liquidated itself on 10th March of 1992 and created the State Council of Georgian republic) resumed operation of the Constitution of Georgian Democratic Republic of 21 February of 1921, it did not transpire into practical functioning. This was due to the fact that it did not really reflect the actual political and legal situation of Georgia at that time. All of this meant that a new draft Constitution had to be worked out, which, taking into consideration the political and legal situation of the 1990s, would create a new constitutional environment.

The parliament elected in 1992 set up a special commission for preparing the concept and drafting a new constitution on 16th February of 1993.<sup>30</sup> Eventually, instead of updating the 1921 Constitution, the commission elaborated a new draft constitution as revision of the 1921 constitution would have been very difficult seventy years later from its inception, considering new political-legal reality.<sup>31</sup>

On 24th August 1995, Georgian parliament adopted the present constitution, the preamble of which reads that it is based on 'many centuries old traditions of

<sup>28</sup> George Papuashvili, *Presidential System in the Post-Soviet Countries: Georgian Example*, 20 Rev. of Georgian L. (1999).

<sup>29</sup> Newsp. 'Sakartvelos respublika' (Georgian Republic), (Feb. 25, 1992).

<sup>30</sup> George Papuashvili, *Presidential System in the Post-Soviet Countries: Georgian Example*, Rev. Georgian L. 22 (1999).

<sup>31</sup> In 1992–1995 the law on the 'State Authority' was active, which, to fill in the vacuum, was temporarily considered as the so-called minor constitution.

the statehood of Georgian nation and historical legacy of the 1921 Georgian constitution'.<sup>32</sup>

Thus, despite many vital differences between the present and the 1921 Constitutions, they still have the same legacy, which had been forcefully interrupted for about seventy years by the Soviet Russia.

The 1995 Constitution, by taking into account modern conditions and international experience, has defined fundamental principles of human rights, forms of governance, organization of state and other crucial issues for the country.

## 6 THE STRUCTURE AND LEGAL NATURE OF THE CONSTITUTION

1921 Georgian constitution consisted of 17 chapters and 149 Articles. For comparison, the constitution active today consists of 9 chapters and 109 Articles.<sup>33</sup>

Based on the fact that the 1921 Constitution of Democratic Republic of Georgia had practically not operated, it is hard to say now whether it would have worked or not. In spite of this, Article by Article study and research of its contents gives us an opportunity to draw interesting conclusions. The importance of these conclusions is not defined solely by historical and legal points of view as the basic principles recognized by the norms of 1921 Constitution and the majority of relationships regulated by it are relevant for the modern constitutional justice too. It is also possible to draw many political-legal parallels between the 1921 and the present constitutions and between the stages of development of Georgia now and then.

It must be mentioned that the 1921 Constitution of Georgian Democratic Republic belongs to the first wave of constitutions drafted as a result of historical evolution of justice. The date of its adoption coincides with the end of the World war-I and the emergence of new states in place of empires like Russian, Ottoman, Austro-Hungarian and others. The countries that adopted new constitutions at that time include Austria, Germany (Weimar republic), Czechoslovakia, Finland, Baltic republics and other European countries.

By its nature, it was a 'rigid' constitution, amendment of which entailed intricate procedures. To make an amendment to it, initially it was necessary to obtain 2/3 of votes of the members of parliament, and then this amendment was to be approved by a referendum. The draft could only be reviewed six months later after its submission to the parliament. It is interesting to note that the active 1995 Constitution envisages comparatively simpler mechanisms, namely consent of 2/3

<sup>32</sup> In the first version of the constitution adopted in 1995 there were the words 'The basic principles of the 1921 constitution ...', now the active, amended present version from Oct. 15, 2010 is provided.

<sup>33</sup> As of Feb. 15, 2011.

of the members of parliament and commencement of review of the constitutional text in one month's time after its publication.<sup>34</sup>

The right to initiate revision of the constitution was enjoyed by no less than half of the members of parliament and 50,000 electors. Annulment of Georgian Democratic Republic's form of governance could not be a matter for initiating a proposal to revise the Constitution. This was a very important provision; it represented one of the main mechanisms of constitutional protection of democracy. It could not be altered by constitutional or legitimate mechanisms. Pavle Sakhvarelidze, one of the authors of the Constitution, while substantiating the necessity of the provision, noted the existence of similar types of provisions in the 1875 French Constitution (with 1884 amendment) and the Portuguese Constitution active in 1917.<sup>35</sup> Irrespective of which political force would come to parliamentary leadership, it was not allowed, by legal means, to annul democratic rule as it happened in Germany during the rule of national-socialists. Many states in Europe (e.g., Germany and Austria) paid special attention to similar provisions only after World War-II, for the fear of restoration of national-socialism and communism.

It is noteworthy that before the adoption of the constitution, its function was fulfilled by 'The Act of Georgian Independence' of 26 May 1918, which consisted of seven paragraphs. Besides declaring the creation of an independent state, the Act of Independence, among other issues, defined the political form of independent Georgia as a democratic republic. It also defined respect for human rights and ensuring their protection. It is true that the constitution did not directly point out that the Act of Independence was part and parcel of the constitution. But considering their inter-connection, we must deem it as such, as it was the constitution which had carried out more scrupulous regulation of the recognized principles in the Act of Independence. Due to its importance, this Act was re-confirmed in 1919 by the newly elected Constituent Assembly.

It is natural that the social-democratic ideology of that time influenced the 1921 Constitution to a certain degree. Social-democrats had a vast majority in the parliament and the government was also mostly comprised of their rank and file. This was reflected in the text of the Constitution. This was most conspicuous in the provisions on social rights. But on the whole, the views of Georgian social-demos of that time played a positive role for the democratic nature of the Constitution. More so if we take into account that from the point of view of

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<sup>34</sup> By the 2010 amendment to the constitution, in accordance with the norm active from 2013, the procedure of acceptance of amendment to the constitution is slightly more complicated, namely the draft shall still be supported by two-thirds of MPs, but on two consecutive sessions with the interval of three months.

<sup>35</sup> P. Sakhvarelidze, *Discussions of Draft Constitution, Georgian Republic* (Georgian Republic 1920).

conducting democratic reforms, they considered themselves as the followers of the European social-democracy and strove to share in the democratic values of Europe.<sup>36</sup>

They tried to pursue socialist ideas through the prism of European democratic values by ensuring human rights and private property.<sup>37</sup>

Noe Zhordania, while discussing the draft constitution at one of the public party meetings, noted the compatibility and inseparableness of social-democratic ideas from democracy. He also observed that social-democrats ‘... Set a certain bright goal for the state – transformation of society on social grounds. But when we chase this goal we must by all means negotiate certain political-economic stages. We cannot bypass these stages nor take a leap forward, history does not allow for this...’, ‘Bolsheviks endeavoured to jump from the lower to the higher stage, take one jump from the older regime to the realm of socialism, bypassed democracy, cheated history... By denying democracy they achieved not socialism, but vandalism.’<sup>38</sup>

The members of the Second International delegation, Vandervelle, Renodel, McDonald, Shaw, Snowden, De Bruke, Ingels, Marques, Hausman and others who visited Georgia in the autumn of 1920 got acquainted with the draft constitution, valued it highly and commented and opined on it to the representatives of Georgian authority. A little later, Georgia was visited by Karl Kautsky, one of the prominent representatives of Socintern and social-democratic movement of Europe, who stayed here for a little less than three months. The draft constitution impressed him highly.<sup>39</sup>

## 7 THE BASIC HUMAN RIGHTS STIPULATED BY THE 1921 CONSTITUTION

The constitutional provisions reflecting human and citizens’ rights can be considered the greatest achievement and the prominent symbol of progressiveness of the 1921 constitution of Georgian Demo-cratic Republic.

The spirit of 1921 constitution attests to the fact that by adopting it its authors tried to establish a rule of law or if we use the term of that time ‘rule of right’, when the traditional human and citizens rights are based on the principle of individual liberty.

<sup>36</sup> Stephen F Jones, *Socialism in Georgian Colours* 61 (Harvard U. Press, 2005).

<sup>37</sup> *Id. at*, 283.

<sup>38</sup> N. Zhordania, Speech, Tbilisi party meeting , *Social-democracy and organization of the state* (Constituent Assembly publishing Aug. 4, 1918), p. 5.

<sup>39</sup> Malkhaz Matsaberidze, *1921 Constitution of Georgia, Elaboration and Adoption* 170 (Akhali Azri 2008).

Articles 25 and 26 of the Constitution provide very interesting and liberal approach to human rights for that period, which define the principle of habeas corpus, that is, inadmissibility of detaining a person without trial.

Moreover, unlike in other democratic countries of that time, the abovementioned provisions provide specific and shortest terms for bringing an arrested person before a court. More concretely, an arrested person had to be brought before a court within twenty-four hours of arrest, but as an exception this term could have been extended for twenty-four hours more (forty-eight hours in total). At the same time, a court was given twenty-four hours to either remand an arrested person to prison or release him immediately. It must be mentioned that the present Constitution provides with similar terms. It's noteworthy that death penalty, has the highest measure of punishment for any category of a crime, be that during peace or times of war, was abolished by Article 19 of the 1921 constitution.

Its inclusion into the Constitution represented one of the unprecedented humane legal acts in the world of that period. Some European countries, like Belgium, Lichtenstein, Norway and Luxembourg, abolished death penalty in the nineteenth century.<sup>40</sup> But in the majority of cases, death penalty as the highest measure of punishment was not totally abolished; it was abolished mainly for particular crimes and by legislative acts and not on a constitutional level.<sup>41</sup> Hence, the provision in 1921 Constitution of Georgia was not only on par with the legal standards and requirements of the civilized world of that period, but also was distinguished for rather innovative approaches.

Like other democratic Constitutions of that period, freedom of belief and conscience was upheld (Article 31). The Constitution separated the church from the state. Article 144 of the Constitution practically banned financing the church from the state budget. The present Constitution also separates the church from the state, but at the same time acknowledges a special role of the Orthodox Church in the Georgian history.<sup>42</sup>

Political rights of citizens were also widely covered in the Constitution. Here worthy of note is the freedom of speech and printed media (Article 32), abolition of censorship and freedom of assembly (Article 33). Chapter three also guaranteed the freedom of trade unions (Article 36) and the right of labourers to strike

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<sup>40</sup> See, J. Khetsuriani, *From Independence to Legal State* 176 (Tbilisi, 2006).

<sup>41</sup> Under para. 22 of Art. 3 of the 1911 Portuguese Constitution, the death penalty was abolished for all categories of cases, just like in Georgia, during peaceful as well as war times, and in accordance with 18th Art. of 1866 Romanian constitution the mentioned measure of punishment was abolished only for the peaceful time. The abovementioned records had practically been the first constitutional regulations before the Georgian precedent. [http://www.estig.ipbeja.pt/~ac\\_direito/Const\\_1911.pdf](http://www.estig.ipbeja.pt/~ac_direito/Const_1911.pdf), <http://www.constitutia.ro/const1866.htm>.

<sup>42</sup> Art. 9 of 1995 Constitution.

(Article 38). The rights to individual and collective petitions were separately provided for (Article 37).

Article 45 stipulated that 'the guaranties enlisted in the constitution do not deny other guarantees and rights which are not enlisted here, but are taken for granted due to the principles recognised in the constitution'. In this respect, Article 39 of the present Constitution of Georgia, which contains a provision with similar content, needs to be noted. This once again underscores the inherent link which exists between the main principles of 1921 constitution and the present constitution of Georgia. At the same time it must be mentioned that this provision is similar to the IX amendment in the US Constitution and presumably origins of its inclusion stem from there.

The 1921 constitution is one of the first documents in the world which reflects citizens' socio-economic rights, which is not surprising given that social-democrats were heading the government. At the same time Georgian legislators, naturally, were aware of how the communist rulers in Russia had been lavishly distributing populist, social promises, and it was probably not desirable to 'lag behind' the Bolsheviks in that respect.

Based on the abovementioned, the constitution stipulates such unprecedented and hard to be implemented or in some parts unrealistic guarantees for that period, such as free primary education (Article 110), food, clothes and hats and school items for socially vulnerable children. They were to be helped in employment by the state or granted the social benefit in the form of insurance (unemployment insurance). Working hours per week were restricted to forty-eight hours (Article 123). The constitution also ensured protection of labour rights of women and minors. At the same time, violation of the labour code by an employer was punishable by criminal law ((Article 127).

We must mention constitutional regulation of property rights. Under Article 114 of the Constitution, forceful expropriation of property or restriction of private enterprise could only be done for the state or cultural necessities and that only by abiding by the rules defined by virtue of the law. In case of deprivation of property, relevant compensation was to be paid, unless the law stipulated otherwise.

Articles 115 and 116 of the Constitution carry a rather ultra-socialist tinge. Namely, the state was authorized to 'Nationalise through legislation any industrial or agricultural branch and production, which was worth it.' Also a matter of special concern of the state was the protection of products of the labour of small entrepreneurs – a farmer, an artisan, a household worker – from the private exploitation.

## 8 GOVERNANCE SYSTEM

We can group the governance system defined by the first Constitution of Georgia together with the European type of parliamentary systems popular by that time, albeit with many peculiarities.

For example, we cannot say that all three branches of the powers were equally balanced, as its structure did not incorporate perfect impact mechanisms of the government on the parliament or vice versa... The peculiarities of the governance system, which distinguished it from other parliamentary systems of that time, were: non-existence of the neutral (from other branches) institution like President (or monarch in case of Constitutional monarchy), establishment of only the individual responsibility of the government; impossibility to dissolve parliament by the government in case of crisis, etc.

The authors of the Constitution attempted to merge the Swiss type of direct popular democracy with the elements of representational parliamentary system<sup>43</sup>. Pursuance of popular sovereignty principles in the constitution was all the rage, which was probably influenced by Rousseau's ideas and Swiss democratic experience. More precisely, in accordance with Article 52 of the Constitution, the principle of popular sovereignty was laid down – 'Sovereignty belongs to the whole nation.' The authors of the Constitution were aware of the unrealistic character of absolute implementation of this principle, which can be seen in retaining the principles of representational democracy in the framework of a parliamentary republic, although they tried to keep the parliament and other state institutions under certain 'surveillance' and 'control' by the popular sovereignty, which manifests itself in various provisions of the Constitution.

## 9 THE LEGISLATURE

Under Article 46 of the Constitution, the parliament of Georgia was elected on the basis of universal, equal, direct, secret and proportional suffrage for the term of three years. This provision was rather progressive for that period. It reflected all the principal characteristics of the modern democratic election systems. Women's equal suffrage with men was especially important. It is noteworthy that before the adoption of 1921 Constitution, the rules of conducting elections were regulated by the provision of 'Constituent Assembly Elections'<sup>44</sup> adopted by the National Council of Georgia on the 22 November 1918, under which men and women above twenty years of age were granted the right to participate in elections on equal footing.

<sup>43</sup> For discussions of this issue see P.Sakvarelidze, *Discussions on draft Constitution*, Georgian Republic (Feb. 4, 1920); also see N. Zhordania, Speech, Tbilisi party meeting, *Social Democracy and Organization of Georgian State*, (Constituent Assembly publishing Aug. 4, 1918), p. 14–17.

<sup>44</sup> See *Compilation of Legal Acts of Georgian Democratic Republic, 1918–1921* (Tbilisi 1990).

The progressive character of this measure is pointed out by the fact that the congress of the United States proposed the constitutional amendment (s.c. XIX amendment) on women's suffrage rights only on the 4 July 1919<sup>45</sup> and it became operational only on 18 August 1920. It must also be taken into account that out of forty-eight states, by 18 August 1918, this amendment was passed only by thirty-six states. Women in Germany<sup>46</sup> and Austria<sup>47</sup> have been enjoying equal suffrage only since 12th

November of 1918. In the United Kingdom, women from thirty years of age were given the right to participate in parliamentary elections only from 6 February, 1918 (at the same time property census was considered),<sup>48</sup> where as men were eligible to vote from twenty-one years of age and the voting age of men and women has become equal only from 1928.<sup>49</sup>

Swiss women have managed to fully participate in elections only on the basis of the amendments made during the referendum held on 7 February 1971.<sup>50</sup>

The 1921 Georgian constitution stipulated election of the parliament only on the basis of the proportional system. One can consider that a certain precondition for this was that party system in the country was quite well developed, which provided the possibility for the efficient functioning of this kind of electoral system. It was also natural that such election system facilitated promotion of parties' image and their ability to wield more influence on the political stage. The authors of constitution thought that proportional system would better ensure more adequate representation of different groups and layers of population in the parliament than the majority system.<sup>51</sup>

Parliament was viewed as the supreme body of the country, though just like with the principles of constitutionalism, it was defined that it would act as a 'Sovereign of the state' within the limits of the constitution and for balancing the so called parliamentary supremacy. The parliamentary authority was restricted by the constitution itself in the first Article in which (the constitution) this was pronounced as the 'main law', also by popular initiative and referendum.

<sup>45</sup> <http://lexis.com>.

<sup>46</sup> The Decree of Nov. 30, 1918, on elections of the Constituent Assembly. Verordnung über die Wahlen zur verfassunggebenden deutschen Nationalversammlung vom 30 Nov. 1918.

<sup>47</sup> The law of Nov. 12, 1918 law on German-Austrian state and governance forms. Gesetz vom 12 Nov. 1918 über die Staats und Regierungsform von Deutschösterreich. Staatsgesetzblatt in retrodigitalisierter Form bei ALEX – Historische Rechts- und Gesetzestexte.

<sup>48</sup> Representation of the People Act 1918, <http://www.parliament.uk/documents/upload/1918-rep-people-act.pdf>.

<sup>49</sup> Representation of the People (Equal Franchise) Act 1928, <http://www.parliament.uk/documents/commons-information-office/g01.pdf>.

<sup>50</sup> Frauen Macht Geschichte: frauen und gleichstellungspolit. Ereignisse in der Schweiz 1848–1998, 2 Mappen, 1998–99, S. Hardmeier, Frühe Frauenstimmrechtsbewegung in der Schweiz, 1997, Y. Voegeli, in: Historisches Lexikon der Schweiz Schwabe, 2008.

<sup>51</sup> Giorgi Gvazava, *Basic Principles of Constitutional Rights* 23–25 (Tbilisi 1920).

The tenure of the parliament in the constitution was defined as three years. According to the 1921 constitution, nobody could either convoke or dissolve the parliament, not even the government (more so, that the institutions of monarch or president did not exist). As the constitution did not provide for the institution to disband the parliament, it is logical that the constitution itself defined (Article 51) the obligation to appoint parliamentary elections at one and the same time (autumn). Definition of the date ruled out the possibility of leaving the right to declare elections in the sphere of discretion of the governmental branches. After each three years, the newly elected parliament was to commence its work on the 1 November. The constitutional commission noted that 'the composition of parliament is changed through new elections, but its operation is constant; like the ruler of the country its operation is uninterrupted. This is why it does not dissolve by itself nor any other force has the right to dissolve it'.<sup>52</sup>

According to the 54th Article of the constitution, the parliament's discretion covers legislative activity, discharging management of the armed forces, declaration of war, signing armistice, trade and similar agreements with foreign states, discussing amnesty issues, approval of budget, taking internal or external loans as well as overall control of the executive government.

The 1921 constitution provided for the inviolability of a chief characteristic of modern parliamentarianism (Article 48), as well as banning the activities incompatible with the office of a member of parliament.

The 59th Article of the constitution provided for the accountability of the government to the parliament, among them the possibility to query and put up an investigative commission.

In spite of the fact that the regulatory constitutional norms of parliamentary organization and authority were quite progressive for that time, they still lacked viable mechanisms of political crises resolution, which should have reflected them in the right to dissolution of the parliament. Although large discretion of the parliament pointed to the aspiration of Georgia of that time to develop fully-fledged parliamentary democracy in the country.

## 10 THE EXECUTIVE

Under 1921 constitution, the structure of the executive was based on the principle of government's responsibility and obedience which is a characteristic of parliamentary system ('The Principle of Accountability'), which was taken from the Swiss system, the closest system to direct democracy.

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<sup>52</sup> Malkhaz Matsaberidze, *The Political Concept of the 1921 Georgian Constitution* 81 (Tbilisi 1996).

The supreme executive government – the government of the republic represented a panel accountable to the parliament.

While working out the chapter on regulating the structure and authority of the executive, the Constitutional Commission actively discussed the issue of introducing the presidential institution. It was supported by national-democrats.<sup>53</sup>

For example, Grigol Lortkipanidze noted that introduction of the presidential institution ‘was utterly scholastic and dogmatic ... If there is a place anywhere where a president with sufficient authority is needed, then this place is Georgia, which today is struggling for reunification’.<sup>54</sup>

The majority of social-democrats were against the introduction of presidential institution. Essers and Federalists did not support it either. In the opinion of the opponents of president’s institute, by introducing this office the whole power would end up in the hands of one person, which would jeopardize establishment of democratic rule in Georgia. Members of the commission used to say that the president of USA had more power than the king of England. The presidential system was not introduced due to a number of factors: (1) Russian monarchy had collapsed just a little while before and because of the recent negative experience and the leading parties’ negative attitude towards it. There was a lingering fear and wariness against establishment of unilateral rule. (2) A more collegial form of governance was established among the Social-democrats, who had many leaders among them (Zhordania, Ramishvili, Chkhenkeli, Tsereteli, Chkheidze and others), and thus, as the leading political force, did not feel it expedient to rely on one leader. (3) At the same time, Noe Zhordania, the leader of the party, despite his influence in the party, as it turns out, was not a very charismatic person and having heeded the negative attitude of the party towards this issue, personally came out against the introduction of president’s institute, which, eventually turned out to be one of the most decisive factors, if not the most decisive, against its introduction.

It must be noted here that not a single member of the Constitutional Commission of that time, nor national-democrats, had made a proposal on restoration of Georgian monarchy which was absent for more than a century. When speaking about the debates on the form of the executive stipulated in 1921 constitution, we can draw parallels with the discussions held during the adoption of 1995 Constitution and during the amendments to the same constitution in 2004 and 2010. The initial version of the 1995 Constitution provided for purely presidential governance-management system, the so-called ‘American Model’. After the amendments of 2004, presidential model was replaced by semi-presidential model, in which president retained substantial authority from the

<sup>53</sup> G. Gvazava, *The Main Principles of Constitutional Right* 54 (Qalaqta Kavshiri 1920).

<sup>54</sup> Gr. Lortkipanidze, *Political Will (Roads of development of Georgia)* 275 (Tbilisi University Publishing 1925).

point of view of influencing executive government. The amendments of 2010 brought semi-presidential system closer to parliamentary model and distanced the president from the Executive even more.

The 1921 Constitution, albeit having certain peculiarities, definitely envisaged existence of parliamentary system. Which of the constitutional models of governance from the ones enumerated above is more justified in terms of social-economic as well as internal and external factors of the relevant periods is a matter of additional research for future historians, political scientists and attorneys.

Under 1921 Constitution, the government was headed by a chairman who at the same time was a supreme representative of the republic and was elected by the parliament. Under Article 67 of the Constitution, a person could be elected to the office of chairman twice only. (It is to be noted that the initial version prohibited re-election of the chairman). This restriction was criticized by Kautsky<sup>55</sup> when he was in Georgia in 1920. In due course such a harsh restriction, which no other parliamentary system was characterized by, would have become problematic and triggered relevant amendment.

Under Article 70 of the Constitution, the chairman of the government was granted the rights characteristic of the head of state (the president) – for example, appointment of ambassadors, representation of the state, discharging armed forces during threats – but for not more than twenty-one days, after which parliamentary permission was required.

Whatever concerns the remaining members of the government, the ministers (Article 68) were appointed ('invited') by the chairman of the government who were approved by the parliament. Based on the Article 69 of the Constitution, ministers had no right to work in any other office. Two exclusions from the principle of total incompatibility had been allowed for: combining membership of parliament and the position of the 'elector' in the local self-government.

In the opinion of the Constitutional Commission, implementation of the principle of individual responsibility represented a guaranty of the government's stability. Namely, denying vote of confidence with respect to an individual minister would not cause the resignation of the whole cabinet. In their opinion thus Georgia would have avoided frequent governmental crises caused by the collective responsibility of the government, which is characteristic of parliamentary regimes (as an example they frequently alluded to governmental crises erupting in France and England).

Hence, Article 73 of the Constitution defined individual responsibility of the ministers. This Constitution did not provide for the government's collective solidarity, a characteristic of classical parliamentary systems. By establishing the

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<sup>55</sup> M. Matsaberidze, *1921 Constitution of Georgia, Elaboration and Adoption* 171 (Tbilisi 2008).

principle of individual political responsibility, individual dismissal of each minister by the parliament did not cause resignation of the chairman of the government. The chairman of the government had a deputy (Article 71). This must have served as a guaranty that in case of personal dismissal of a chairman of the government, the government would not stop functioning.

Article 75 Article of 1921 Constitution to a certain extent envisaged impeachment procedures, namely, in case of the breach of the Constitution by a chairman or members of the government, the parliament was authorized to institute proceedings against them.

As we can see, unlike the parliament's, the Executive's competencies were less developed than this could be the case during the existence even of parliamentary conditions. The chairman of the government practically enjoyed president's authority, but in a more restricted way. The tenure of the chairman of the government was also quite restricted (one year). At the same time, he could be elected only twice. By the Constitution, the government did not have a legislative initiative which can be considered as a shortcoming of the Constitution as government should have had a possibility to initiate legislative proposals in the parliament for carrying out necessary governmental policies for the country.

Besides, the mechanism of individual responsibility stipulated by 1921 Constitution considerably differed from the similar institutions of other parliamentary countries. Non-existence of the institutions of the upper chamber of parliament and president (or monarch) who could fill in the governmental vacuum during crises can be considered as one of the reasons due to which introduction of government's collective responsibility and its dissolution during crises had not been taken into account.

## 11 FINANCIAL CONTROL

Article 8 of 1921 Constitution defined the institute of 'State Control', identical to the current Chamber of Control, the function of which comprised to exercise control of the execution of the state budget, appropriate spending of budgetary means by governmental and local self-governance bodies.

The head of the abovementioned agency was elected by the parliament, independent from the government, and accountable to the parliament.

It's interesting to note that such an institution had already existed in Democratic Republic of Georgia since 1918, prior to the Constitution. The bases of its activity were defined by a special law of the National Council (The Parliament) of 6 December, 1918.<sup>56</sup>

<sup>56</sup> Compilation of the Legal Acts of Georgian Democratic Republic, 1918–1921, at 112 (Tbilisi 1990).

## 12 TERRITORIAL ARRANGEMENT, LOCAL SELF-GOVERNANCE AND NATIONAL MINORITIES

In terms of territorial arrangement of the state, the 1921 Constitution recognized 'Integrity of Georgia'. This was a unitary state which recognized autonomy of some parts – a kind of asymmetric unitary system. It is noteworthy that the majority of parties represented in the parliament, among them the Federalists, supported the unitary model. One of the reasons for this was that in the conditions of unitary system, the existence of autonomies and establishment of strong self-governance were envisaged. According to the 107th Article of the Constitution, the integral parts of Georgian republic – Abkhazia (Sokhum region), Muslim Georgia (Batumi region) and Zakatala (Zakatala region) were granted the right of local, autonomous governance.

Under the provision on the 'Autonomous Governance of Abkhazia' worked out by the Constitutional Commission (which was to be adopted after the beginning of operation of the Constitution), the following were subject to the autonomous governance of Abkhazia: local finances, public education, local community and town governance, magistrate and court institutions, safeguarding individual and public order, administration, public health, roads of local importance, local budget and generally 'all cases, which are transferred to the Abkhazian People's Council by the law of the republic'.

Worthy of mention are also the issues of local self-governance regulated by other democratic provisions of the Constitution on the rest of the territory of Georgia. Under Article 101 of the Constitution, self-governance bodies were elected by 'universal, direct, equal, secret and proportional suffrage'. Thus free and direct elections were ensured at all levels in Georgia of that time. The authors of the Constitution paid great attention to constitutional guaranties for efficient self-governance as well as to the fact, that 'Democratic republic is based on the principle of political self-governance by people.'<sup>57</sup>

It is important that the issues concerning self-governance were regulated by the Constitution itself (the supreme act) and not by the on-going legislation. This is a welcome fact as during the adoption of the European Charter 'on Local Self-governance' of the European Council from 15 October 1985,<sup>58</sup> this issue was rather problematic and was reflected in the text of the Charter. Under Article 2, 'the principle of local self-governance shall be recognized by internal legislation and if possible, the Constitution'. By the 1980s there had not existed a consensus around this issue and this might have influenced such careful wording in the

<sup>57</sup> Noe Zhordania, Chairman of the government, Speech, Constituent Assembly, the Session of Dec. 1, newsp., Republic of Georgia. (Dec. 5, 1920).

<sup>58</sup> Ratified by the #515 – II Decree of Parliament of Georgia, from Oct. 26, 2004.

relevant provision of the Charter. Hence, this circumstance once again underscores the merit of the first Constitution of Georgia and its legal finesse.

Under Article 98 of the Constitution, the functions of local self-governments were defined as management of cultural, educational and economic activities mainly within a given territory. Local self-government was authorized, in the framework of its competence and in accordance with the rule established by law, to issue 'binding decrees'. The central bodies of government were authorized to block these decrees and ordinances if they contradicted the law, but the issue of their validation was by all means to be decided by court.

During the elaboration of the 1921 Constitution, the most important task was the formulation of constitutional rights and guaranties of the national minorities. The rights of national minorities were reflected in the fourteenth chapter. All representatives of national minorities were granted the right to study and develop in their own languages as well as to establish their self-governments and unions. To protect their rights, also by means of unions, they were authorized to appeal to the court.

### 13 THE JUDICIARY

Despite devoting comparatively smaller chapter to this issue, the Constitution elaborated rather positive provisions in connection with the Judiciary. At the same time it was defined that the details concerning court arrangement and organization would be regulated by relevant legislation. Thus, this was probably one of the reasons as to why comparatively few regulating provisions were reflected in the Constitution.

Article 76 of the Constitution established that there existed only one Supreme Court on the whole territory of Georgian Republic. The senate, which was elected by the parliament, represented a court of cassation. The Constitution ruled out creation of a provisional court, which was not a part of the judiciary.

The Constitution warranted the principle of independence of judiciary from government. It was impermissible to abrogate, alter or suspend a court ruling by legislative, executive or administrative bodies. The Constitution also advocated the principle of public hearings of cases.

The Constitution provided for the establishment of a jury for hearings of especially important cases. Introduction of this institution was a major step forward and ensured participation and involvement of public in administration of justice. The Constitution of 1995 has not provided for this institution until relevant amendments were made to it in 2004. This fact once again points to the shrewdness and progressiveness of the legislators of that time, as eighty years later

this issue has once again become actual and modern legislators have once again reverted to it.

It is interesting that the legislation regulating court arrangement and organization, and jury procedures had been adopted by the State Council and later by the Constituent Assembly between 1918–1921, prior to the adoption of the Constitution by the parliament.<sup>59</sup>

#### 14 CONSTITUTIONAL REVIEW

The notion of constitutional review is to a certain extent provided in Articles 8 and 9. It underscores the principle of constitutional supremacy: ‘No law, decree, order or ordinance which contradicts the provisions and the purport of the Constitution can be issued.’ The abovementioned provisions unequivocally show the necessity to establish relevance between the Constitution and the legal acts existing before adoption of the Constitution and the legal acts issued after its adoption, which would have been impossible without exercising constitutional review. But the 1921 Constitution did not provide for a body of constitutional review, similar to a constitutional court in classical understanding of this institution and its regulatory functions and authority as was done in Austria and Czechoslovakia in 1920. It must be noted that the government, as it turns out, had already exercised some constitutional review leverage. Under ‘B’ sub-paragraph of Article 72, one of the competencies of the government was ‘scrutiny and enforcement of the Constitution and laws’. Although it’s logical that such a function must be under the competence of court. It’s interesting that only the court had the right to repeal the acts of local self-governments (Central bodies had only enjoyed the right to suspend these acts and appeal to the court by submitting the request for repeal of these acts). Hence, we can conclude that though in such a case full constitutional review was not exercised, full court scrutiny of legitimacy of legal acts was carried out, which manifested itself in examining the relevance of legal acts issued by self-government bodies against the law by court.

This is also corroborated by the function of the Supreme Court, the senate, stipulated in Article 77, which is obliged to ‘scrutinize how the law is abided by’. The law on the provision on the senate, adopted on 29 July 1919, defined that the senate was obliged to scrutinize how the law was abided by and examine the legitimacy of acts of all the governmental institutions, high ranking officials and local self-governmental bodies and in case of aberrations from the law the senate was obligated to either suspend or repeal them. One more function of the senate

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<sup>59</sup> See *The Compilation of Legal Acts of Democratic Republic of Georgia, 1918–1921* (Tbilisi 1990).

was resolution of disputes between the state bodies concerning their competencies.

Because the Constitution abounded in ideas and principles necessary for administering constitutional review, we can conclude that establishment of such a separate constitutional body in future or granting the function of constitutional review to general courts would have been logical had the independent Georgia not been forced to cease to function.

It is also noteworthy that such a concept was not alien to Georgian legislators. Giorgi Gvazava, a national democrat and one of the members of the Constitution Elaboration Commission, noted that:

There is only one case, when a citizen has a right not to abide by law. Such a case is called disputing constitutionality of the law. A citizen has a right to lodge a claim with a court on the constitutionality of the law which restricts his liberties or threatens him with such a restriction. The court is obliged to review this case and if it deems that the plaintiff's claim is well grounded, it can reject the law and not guide itself by it in deciding the case.<sup>60</sup>

Gvazava, who was well aware of the constitutional review mechanisms of Western Europe and the United States also noted, that: 'The court is obliged to defend the Constitution, as the main law, and reject all new laws which contradict it. Such right of review is enjoyed by the court in the USA.'<sup>61</sup>

Popularity of the concept of constitutional review in political and legal circles of Georgia of that time is emphasized by the views of K. Mikeladze, one of the famous public figures and attorneys. He expressed these views in his work on the process of elaboration of the Constitution. Drawing mostly on the United States' experience, he maintained that the role of a court must be more than just hearing cases '...reviewing laws elaborated by legislative bodies in terms of their compatibility with the Constitution'.<sup>62</sup>

## 15 CONCLUSION

Thus, the analysis of 1921 Constitution once again proved the importance of this act. As the main law of an independent democratic state, it established representational democracy as well as the system of democratic governance based on popular sovereignty by ensuring an independent judicial system. The provisions on human rights created the most progressive European mechanisms oriented towards protection and guarantying human rights.

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<sup>60</sup> Giorgi Gvazava, *Basic Principles of Constitutional Right* (Tbilisi, 1920).

<sup>61</sup> *Id.*, at 76.

<sup>62</sup> K.D. Mikeladze, *Constitution of Democratic State and Parliamentary Republic, some Considerations on Elaboration of Georgian Constitution* 47 (Tbilisi 1918).

At the same time, this document reflects democratic aspirations of the Democratic Republic of Georgia, which could have earned our country an important place in the civilized world. Though in the conditions of occupation and following annulment the 1921 Constitution ceased to operate, it played an important role in terms of political and legal development of modern Georgia.

Unlike the tyranny of Bolshevik Russia, the adoption of the 1921 Constitution is a sort of crown for the democratic and civilized ways for democratic Georgia. While trying to substantiate this choice, Noe Zhordania (Chairman of the government of the Democratic Republic in 1918–1921) who had a premonition about Bolshevik Russian occupation of Georgia, noted: ‘And if we do not achieve our goal and fail, one thing will be sure, and impartial history will attest to it – that we had been going in the right way and done what we could.’<sup>63</sup>

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<sup>63</sup> Noe Zhordania, *Social-democracy and the State Organization of Georgia* 32 (Tbilisi 1918).