THE STATUS AND POWERS OF THE PRESIDENT OF GEORGIA ACCORDING TO AMENDMENTS OF THE CONSTITUTION OF GEORGIA

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Abstract - The history of Georgian Constitution is very rich. The first Georgian Constitution was adopted in 1921 and its content was not less good than the constitutions of other European countries at that time, especially in the parts of the fundamental Human Rights and Freedoms and guarantees of their protection. However, this constitution, which was based on democratic and legal state's principles, only existed for several days due to sovietization of the country. Today's constitution was adopted in 1995, that established democratic republic in which the source of power is the people. There were made some amendments in the Constitution of Georgia time by time that altered the role and powers of the President. The current reduction establishes the classical parliamentary governance, where the role of the President is nominal, and s/he has no real leverage by which s/he could influence the formation and implementation of the state policy. The parliamentary governance model is novelty for Georgia, because mostly carrying out the governmental powers was associated with the President institute. It is difficult to determine beforehand how much the government of secondary legitimation will be able to exercise executive powers independently, completely when the control mechanisms, which are less common in parliamentary governance in Georgia yet, are at the stage of development, in particular: the strong civil society is not fully established, there is no strong party system and electoral legislation, and mostly a single party holds a majority in the legislative body.

Keywords - Constitution, Direct election, Parliamentary Governance, President.

I. INTRODUCTION

Georgia is a republic state, where there are the characteristic features of the republican governance, the most importantly the principle of separation of power is constitutionally guaranteed and each branch has constitutional status and powers. Of course, over time, the role of each of them in the process of implementation of the governance and their spheres of influence has been changing, in this respect the President's institute is of particular interest. According to the Constitution of 1995, all executive powers were in the president's hands, s/he was appointing ministers and exercised effective control over their activities, the Parliament had less capacity to influence executive branch's decision-making. Failure of presidential form of government was evident, therefore, as a result of constitutional amendments, the Government was created as a new institution, which was accountable to the President and the Parliament. The main problem of dualistic governance was the fact that the President was making real decisions, but the responsibility was imposed on the Government, the president institute was established with unlimited opportunities, that resulted in super presidential governance, which was contradictory to fundamental principles of legal state. These constitutional anomalies led to the new wave of constitutional reform. Georgia has adopted a new redaction of constitution, by which the president's institute was distanced from the executive authority, s/he was only granted with the function of the arbitrator and was able to influence the activities of the executive authority, exercise of which was imposed on the Government and the accountability of the Government before the Parliament was determined by the Constitution. Constitutional reform did not solve all the problematic issues that had been emphasized by experts and international organizations, so it became necessary to revise the constitution. The Government used this moment and made huge amendments to the Constitution.

II. A BRIEF OVERVIEW OF DEVELOPMENT OF CONSTITUTIONALISM IN GEORGIA

The history of Georgian Constitution is very rich. The first Georgian Constitution was adopted in 1921 and its content was not less good than the constitutions of other European countries, especially in the parts of the fundamental Human Rights and Freedoms and guarantees of their protection. However, this constitution, which was based on democratic and legal state's principles, only existed for several days due to sovietization of the country [1].

Today's constitution was adopted in 1995. This one established the model of presidential governance. After a while, the deficiencies of the Constitution were revealed. In 2004 the constitutional reform was carried out and the model of governing became dualistic. By

the new edition of Constitution of Georgia government was established as an Executive Branch. The Executive Branch was accountable to the President of Georgia and Parliament, as well. All the political powers were concentrated in the President's hands, which was also promoted by occupying the constitutional majority seats by one political party in Legislative Branch [2].

There were many amendments made in the Constitution of Georgia time by time, especially in 2009-2010 years.

III. COMPARISON OF THE POWERS OF THE PRESIDENT ACCORDING TO THE CURRENT AND PREVIOUS CONSTITUTIONS OF GEORGIA

In order to make the last amendments to the Constitution of Georgia, the Government created a Constitutional Commission in 2017. The State Constitutional Commission elaborated the first draft version of the Constitution in which many amendments were made mostly due to the opinion of the Venice Commission. It should be noted that the power of the President of Georgia was decreased as a result of the amendments.

It is stated in the previous version of the Constitution: "The President of Georgia shall be elected on the basis of universal, equal and direct suffrage by secret ballot for a term of 5 years" [3]. It means that the elections of the President are held every 5 years. Every person who legally has the right to participate in elections is involved in this process. A candidate shall be deemed to be elected if s/he has gained more than half of the votes of participants. Therefore, according to the old version of the Constitution, the President had a high legitimation and in the new version of the Constitution, the President will be elected by the College composed of 300 people in which there will be 150 members of the Parliament of Georgia, the supreme representative bodies of the Autonomous Republics of Abkhazia and Ajara and the representatives of the local government. Also, the Constitution defines that the President's election will not be held with debates, but s/he will be chosen by 2/3 of the total number of the members. It should be noted that the term of office of the President increases to 6 years [4].

The last Constitutional reform changed dualistic governance to the parliamentary governance. Exactly due to argument the process of electing the President was changed and his legitimation level was weakened. It is natural that one of the characteristics of the parliamentary governance is electing the President by an indirect suffrage. However, in many European countries of parliamentary governance, we meet the precedents of electing presidents in direct way. Basis of this is the fact that these countries want to have a highly legitimate figure by the side of the legislative and executive branches, an arbiter who will influence and balance how every branch works. Georgia is a new democratic country, because of this, the low level of awareness and poor experienced, political parties cannot exercise powers in complete accordance with the characteristics of legal state. That is why there is need to have additional mechanisms for check and balance in governance. Taking into account a circumstance that, people living in the territory of the de facto government of Republic of Abkhazia and South Ossetia and refugees will not be able to participate in elections even in indirect way. And according to the new amendments this right is limited for them because they do not elect local government and correspondingly, they cannot have a representative in the electors' group. Since 1991 Supreme Council of the Autonomous Republic has not been elected, so its members do not have a legitimation from this people.

As for the rights of the President, the first most important amendment is about the defense and security issues. Although, according to new reduction, the President is still terminologically "commander-in-chief", his powers are substantially reduced, which largely undermines the status of commander-in-chief. The President cannot make decisions about declaring state of emergency or martial law without the permission of the Prime-Minister. Also, the President does not have power to conclude a peace treaty or issue a decree [5]. In these cases the President needs the recommendation of the Prime-Minister. This makes him a middle ring in a chain where s/he appears as a deterrent between the Prime-Minister and the Parliament. According to the previous Constitution, the President was making decisions by himself and he submitted them to the Parliament. Becoming a middle ring in this process substantially decreases the President's powers regarding very important issues.

Regarding defense issues one of the most important issues is abolishment of the National Security Council as a constitutional institution and establishment of National Defense Council instead. According to the previous version of the Constitution, the President appointed the members of the National Security Council in agreement with the Government. For organizing the military development and defence of the country the National Security Council was set up, which has always been a standing body headed by the President of Georgia. As for the National Defense Council, it will only be organized in cases of the state of war and will only serve to arrange the situation. In the new version of the Constitution, this means that the power of the President's authority will be decreased

because the issues falling under the competence of the Security Council that was headed by the President are extinguished from the Constitution along with abolishment of the Security Council as an institution.
One more important amendment is about appointing commanders. According to the previous version of the Constitution, the President was appointing and dismissing the Chief of the General Staff of the Armed Forces of Georgia and other commanders. Under the new version of the Constitution he has this right only regarding the Chief of Defense forces. It might mean that the title of Chief of the General Staff of the Armed Forces is replaced by the Chief of Defense forces, so in both cases the President is entitled regarding appointment and dismissal. In addition, in the previous version of the Constitution there was a note about the President's right to appoint and dismiss other commanders, but there is no such provision in the new version of the Constitution, so this means that s/he will not have this right anymore.

According to the new version of the Constitution the President's right to recommend the Judges of the Supreme Court is also restricted. The previous version of the Constitution stated that "the chairperson and judges of the Supreme Court of Georgia shall be elected by a majority of the full list of MPs, by the recommendation of the President of Georgia". And according to the new amendments this right is fully transmitted to the High Council of Justice – a group of 15 members from which 5 of them are elected by the Parliament [6].

And there is the amendment about the President's right to give asylum. While it was his exclusive right before and there was no need for a counter-signature of the Government, now it shall be regulated by the law, which also eliminates the President's participation in this affair.

Before the amendments, the President of Georgia could grant Georgian citizenship to an alien who had made a contribution of exceptional merit to Georgia. The President of Georgia could also grant Georgian citizenship to an alien based on state interests. Now it is regulated by the organic law. This makes it possible to grant decision-making power regarding this issue not the President, but any other institution.

According to the previous version of the Constitution, the President did not have the right to hold other position including partial, or to carry out entrepreneurial activity, to get a salary or other constant remuneration from other jobs. And in the new amendments this list is increased and now the President does not have the right to be even a member of the party.

Also, according to the previous version: "the President shall conduct negotiations with other countries and international organizations in agreement with the Government, conclude international agreements and treaties, appoint and dismiss ambassadors and other diplomatic representatives of Georgia on the recommendation of the Government, accredit ambassadors and other diplomatic representatives of foreign states and international organizations in agreement with the Government;" But now the President needs the consent of the Government to exercise representative powers in foreign relations, negotiate with other states and international organisations, conclude international treaties, and accept the accreditation of ambassadors and other diplomatic representatives of other states and international organisations; upon nomination by the Government, appoint and dismiss ambassadors and other heads of diplomatic missions of Georgia. So, agreement with the Government is replaced by the consent of the Government [7].

Another amendment is that according to the new reduction, the President only appoints the Prime-Minister. He lost the right to nominate the Prime-Minister. Now the Prime-Minister is nominated by the political party which wins the Parliamentary elections.

According to the previous version of the Constitution, the President of Georgia was able to nominate before Parliament, appoint, remove from office, and dismiss officials in accordance with the rules prescribed by the law, he was also able to appoint a member of the High Council of Justice as was determined by law, nominate candidates for the members of the National Regulatory Bodies before the Parliament in agreement with the Government; According to the new amendments, he appoints and dismisses Commander-in-Chief of the Armed Forces of Georgia by nominations of the Government, appoints the member of the High Council of Justice and upon nomination by the Government, submits to Parliament candidates for the membership of the national regulatory bodies.

According to the old version of the Constitution, the President could declare martial law in the case of armed attack on Georgia, conclude a peace treaty in case of appropriate conditions, and submit such decisions to Parliament for approval within not later than 48 hours; As current text states, in cases of armed attack, or a direct threat of armed attack on Georgia, the President of Georgia shall, upon recommendation by the Prime Minister, declare martial law, sign a truce (provided that the appropriate conditions are in place), and shall immediately present these decisions to Parliament for approval.

According to the old version of the Constitution, the President of Georgia shall declare a state of emergency throughout the country or certain part thereof in the cases of war or mass disorder, infringement upon the territorial integrity of the country, coup d'etat and armed insurrection, ecological disasters and outbreak of epidemics, or in other cases, when state bodies are unable to normally exercise their constitutional powers, and submit the decision to Parliament for approval within 48 hours; As new amendments now state that the President of Georgia shall declare a state of emergency throughout the country or certain part thereof in the cases of war or mass disorder, infringement upon the territorial integrity of the country, coup d'etat and armed insurrection, ecological disasters and outbreak of epidemics, or in other cases, but now this should be nominated by the Government and immediately submitted to the Parliament for approval. However, today, in above mentioned cases, the President needs counter-signature of the government which is stated in the "Law of Georgia on the State Emergency".

In the new version of the Constitution, it is stated that the Parliament votes for the decree within 48 hours. If there is no voting conducted within this period, the decree will be deemed to be approved. However, if the voting is conducted but the decree is not approved, it loses its legal force. In addition, the draft established that a decree related to the powers of the National Bank shall be issued with the consent of the President of the National Bank [5].

Today's Constitution states that the President of Georgia shall call elections for Parliament and local self-government bodies under procedures established by the Constitution and organic law. S/he no longer has authority to schedule presidential elections, now this function is given to the Parliament, so the Parliament schedules the date of elections of the President of Georgia, except for re-run elections which is scheduled by the Chairperson of the Parliament. The new Constitution abolishes National Security Council so the President will be deprived of a right to appoint its members anymore.

According to the old version of the Constitution, the President of Georgia had right to request the particular matters to be discussed at the Government meeting and participate in the discussion. The Secretary and other members of the National Security Council were also attending the discussion. Under the new Constitution the President does not have the right to request the particular matters to be discussed at the Government meeting and participate in the discussion (that was attended by the Secretary and other members of the National Security Council). According to the previous version of the Constitution: after Parliament gives a vote of confidence in the Government and the Government Programme, if the initial composition of the Government is renewed by one third but not less than 5 members of the Government, the President of Georgia shall present a composition of the Government to Parliament for giving a vote of confidence within one week. Under the new amendments, this right (presenting a composition of the Government to Parliament for giving a vote of confidence) is not provided anymore in similar cases.

The new Constitution of Georgia no longer allows the President to nominate the candidates of judges and the Chairperson of the Supreme Court to the Parliament. This right is now transmitted to the High Council of Justice. It is noteworthy that the international organizations and experts have been talking about necessity of reforming the High Council of Justice for a long time. This issue is not envisaged by the new Constitution. So, giving the above-mentioned wide powers to the High Council of Justice might not be the optimal decision because these circumstances may represent a threat for the independence of the Supreme Court.

The previous version of the Constitution also defined the rule of adopting the State Budget. Although, the president was not involved in this process, in case the Parliament neither was able to adopt the State Budget, nor gave no confidence to the Government, the President had the right to dismiss the Parliament and schedule the extraordinary parliamentary elections. This provision aimed at defusing the crisis. Now the new amendment does not give the President the right to dismiss the Parliament of Georgia in case of non-adoption of the budget.

The new edition of the Constitution of Georgia alters rules of electing the President of Georgia. While the same person could serve as a president for two consecutive terms according to the previous edition, current edition only allows electing same person as a President only twice.

The right to elect three members of the Constitutional Court of Georgia is still retained to the President under the new reduction of the Constitution which is a very important fact, because the Constitutional Court is body entitled to render constitutional justice, hence participation of President, as an independent institution who is left without legislative or executive powers, in this process is directed on assuring the independence of the Constitutional Court of Georgia [8].

IV. CONCLUSION

After evaluating the amendments, we can summarize the new role and place of the President in carrying out the governmental powers. As it was already

mentioned, Georgia has been transformed to the Parliamentary governance, that greatly reduced the powers of the President and she has become a nominal figure. She has no right to make decisions neither regarding legislative nor in executive branches' activities; To be active and define the internal and foreign affairs of the State. Although, she has certain rights as a Supreme Commander In-Chief of the Armed Forces of Georgia, in exercising these powers the President is restricted by the consent of the Government. It is natural since the President has no access on decision-making process.

In spite of the fact that the President has become a nominal figure, it is noteworthy that the president elected in 2018 elections has more influence and opportunity, because as an exception, this is the last time when the President is elected through direct suffrage. Hence, her high legitimation will always affect the process of realization of her ideas. The President will always have the opportunity to underline her high legitimation level in relations with the Government and the Parliament and emphasize that she actually represents the will of nation.

As for the next president, s/he will be elected by the college of electors and, of course, will have a lower level of legitimation that will make him/her much more passive.

As it was already mentioned above, Georgia has experienced all the forms of republic governance, presidential and dualistic forms with its advantages and disadvantages were peculiar bases of country's development. This time Georgia will have to pursue with the basic characteristics of Parliamentary Governance and, hopefully, it will be the optimal path to establish legal state.

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