

25 YEARS IN THE SEARCH OF LEGITIMACY: CONSTITUTION OF GEORGIA IN ACTION

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Abstract. Constitution of Georgia has 25 years of history but still needs more legitimacy from the people. The problem began from the drafting the basic law and continued with many unnecessary constitutional reforms. Constitution of Georgia now has the same challenge: to deal with the horrors of the past and play the function of social integration, which is so important to unite the nation.

Keywords: Constitutional Reform, Georgia, Legitimacy, Social Integration, Constitution of Georgia

INTRODUCTION

Modern nations and governments are more oriented on formality and legality, then legitimacy, because they passed this very important period. Most civilized countries do not have any problem about clarity of elections and recognition of its results, therefore most of them don't worry about legitimacy. But it is real problem in the new democracies, where neither political culture nor governmental institutional memory gives stable ground for the realization of the political or other functions of constitution.

Constitution of Georgia has 25 years of history¹ but none of these years were period of compromise, negotiation or understanding the real needs of society or Georgian population [Gegenava 2021, 54–58]. Story of the Georgian constitution is a mix of political misunderstanding, rise and fall of charismatic bureaucracy and the demand of people for good governance and democracy.

The constitution was aimed to be the real document of consensus to sum up all thoughts and ideas of basic political actors [Babek 2002], but it ruined all expectations: despite of the document of union Georgia got the basic law that more separated people.

1. ADOPTION OF THE CONSTITUTION OF GEORGIA: RISKS AND CHALLENGES FOR START

In 1992 legitimate president and government of Georgia were dismissed by the way of military overturn, illegitimate military council became the ruler of the country [Gegenava 2016, 53]. This council was transferred to the Council of State with the leadership of former Soviet minister Shevardnadze. Well experienced

¹ Adopted in 24 August 1995.

politician decided to take political processes from outside to the parliament. So temporary government organized the parliamentary election without any threshold.² This guaranteed more than 20 parties to have parliamentary representative.³ Shevardnadze himself became Speaker of the Parliament (elected by the population), Head of the Government (elected by the parliament) and Head of State *ex officio* [Gegenava 2016, 56]. He avoided to have title of President because of President Gamsakhurdia, who remained one and only legitimate president for the people.

Shevardnadze suggested all parliamentary forces to create constitutional commission and draft the constitution. 118 representatives of all parliamentary fractions, governmental organizations and universities formed the constitutional commission [ibid., 61]. The only goal of the commission was to make the draft of the future constitution [Tsnobiladze 2005, 132].

More than 2 years draft project of the Constitution of Georgia was discussed in Georgia, Europe and the United States, dozens of international experts worked on it [Babek 2002]. Parties and representatives finally compromised to one idea and created balanced semi presidential republic, with sustainable system of checks and balances. The draft project of the constitution was changed by Shevardnadze a few weeks before the hearing [Gegenava 2021, 54]. Unfortunately the document which was aimed to be the consolidator of divided society and political actors, became the golden apple of discord itself.

2. SOCIAL INTEGRATION FUNCTION, LINK TO THE PAST AND THE ROLE OF THE CONSTITUTIONAL

Law is a social institution and has many social functions from regulation to prevention. But for modern democracies law became more than ordinary social institution, because it took function of social integration, reunion of nation and make stronger the basis of democracy [Khubua 2004, 46].

Constitution is the basic law of the state, symbol of the nation and the link between past, present and future [Barak 2005, 372]. It plays a huge role to constitute real order in the state, not formal, but the actional and practical. In 1995 during the hearings and drafting the constitution, every political actor and the electorate imagined that future constitution would be the document of consensus, which would end the era of disorder and disharmony [Gegenava 2021, 54; Melkadze 2005, 10–11]. Unfortunately, individual ambitions and the love of power made Shevardnadze to refuse primary idea. this ruined all the imaginations about the national reunion and social integrity function in practice.

Every constitutional reform brought something new to the constitution of Georgia, but all of them, even the drafters of the original one tried to show the direct

² See *Electoral History of Georgia 1990-2018, 2021*, Central Election Commission of Georgia, Tbilisi, p. 62.

³ Ibid., p. 82.

link between the first constitution of Georgia of 1921 and the current one to underline hereditary historical and political legitimization. Lack of legitimacy interfered the process of recognition of the basic law by the ordinary people, real addressor of it and till now constitution of Georgia doesn't have the real political or social authority, it still remains as "law in books," not as "law in action" [Pound 1910].

3. CONSTITUTIONAL REFORMS AND CONTINUOUS AMENDMENTS

Constitution of Georgia was amended up to 40 times [Gegenava 2021, 55]. Some of them were concrete amendments, but 2 times more than half text of the basic law was changed and 1 time the new redaction of the constitution was passed [Demetrashvili 2010, 13].

All three constitutional reforms were initiated to "cure" the harms of last reform.⁴ It became like an idea fix of the modern Georgian constitutionalism [Gegenava 2017, 111]. The text and not the political culture or implementation of the basic law, was seen as real problem. Constitutional commissions were created to "deal with" the challenges of the past reform.

None of the constitutional reforms were supported by the electorate and of course, was not legitimated by the people. Unfortunately, this fact was ignored by the ruler parties, which always thought they had privilege to know real challenges of the constitution and constitutional reality. This sad story of the constitutional reforms underlines practical meaning of legitimacy. Beside the fact that government is elected and legitimated, it doesn't mean that their action or political decision is legitimated automatically. Amending the constitution is very complicated process and the initiators should work to make this process clear and understandable for the people and try to get necessary legitimization.

Political actors always try to ensure the electorate in the necessity of every constitutional amendment, but research shows that people is not interested in any new constitutional reform: they know basic directions but don't want to pass it [Metreveli 2020, 65].

4. CONSTITUTION AND THE CROSSROAD

Since 2018 Georgia has a new redaction of the basic law, generally its concept remains the same, but technically it was revised, reduced and rearranged. These amendments became formal changes without real need and support by the people. [Metreveli 2020]. The whole constitution was revised in three months [Gegenava 2021, 57] constitutional law changed the whole text but the signature of the for-

⁴ See: Explanatory Note to the Constitutional Amendments of 2004; Decree of the President of Georgia, 23 June 2009; Explanatory Note to the Constitutional Amendments of 2010; Resolution of the Parliament of Georgia, 4 October 2013; Resolution of the Parliament of Georgia, 27 October 2013.

mer president. So, President Shevardnadze's signature now stands on the end of the text, he even didn't read.

Constitutional law, that amended the constitution, was changed in a few months. From 78 basic articles of the revised document, almost 18 were amended.⁵ This made the whole constitutional process like a caricature and decrease trust in the political processes and the basic law itself.

All constitutional reform brought something new, some of them were unacceptable experiments which humiliated the idea of the constitution, but some of them were accepted by the people. Reform of 2017–2018 had its good side, but it lost the price because of the ignorance by the electorate. Georgian parliament passed the new redaction of the basic law without real necessity and of course it took effect on the level of legitimacy.

Constitution failed its social integration function second time during the pandemic. It didn't integrate people and didn't reunite nation; all the mechanisms of the parliamentary control were useless.

CONCLUSION

History of the constitution of Georgia is the story of tries to get legitimacy and authority over the people. Basic law that was aimed to be the closer of all conflicts and political disorder, needs to get more support from the electorate. But all the actions by political actors, unnecessary amendments and constitutional reforms decreased chances to have powerful document as a symbol of nation.

Unfortunately, personal ambitions made constitution fail even in the beginning and the lost legitimacy was never increased any more. It has magnificent chance to become the act of unity, play the role of social integrity. The only way to improve the situation is the cooperation between political actors, but they must act in accordance with the will of nation, because everyone should remember (and not forget) that the only source of the state power and authority is no one but the people.

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⁵ See: Constitutional Law of Georgia, 2 April 2018.

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