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Kakhi Samkharadze*

Creation of Embassies of Georgia and Other Diplomatic Missions, Appointment and Dismissal (Exemptions) of Their Heads

Nowadays in Georgia, the issues related to the establishment of various foreign representations and embassies of Georgia, also-appointment and dismissal (exemptions) of their heads is not fully defined by the Constitution or other legislative acts. The work deals with the competitive competences of the President of Georgia and the Government of Georgia in the field of foreign representative functions, particularly in the competence of appointment and dismissal of the ambassadors. The paper aims to clarify the differences between the competence of the executive power and of the head of state in the regulations of foreign affairs and to create the list of recommendations regarding the legislative regulations, according to the basic principles of the Constitution. So, at first of all we should clarify the Constitution's basic principles and definition of the special competences.

We believe that the head of state is not part of the executive power, as it is a representative of the Commonwealth (federative power), i.e. represents a sovereign with main representative function. Hence, we can talk about the supremacy of the head of state in foreign affairs, in defense and security issues, as well as the determination of the most important issues in the state's politics. One of the most important directions in the foreign relations is the appointment of diplomatic officials, which is partially regulated by the Constitution, but mostly regulation is realized via as the diplomatic law, as by the international diplomatic law norms. The regulation of the diplomatic official's appointment is within the scope of the study.

Key words: *President of Georgia, Ambassadors, Diplomatic Representatives, Embassies, Consulates, Diplomatic Representations, Foreign Affairs*

1. Introduction

“Diplomatic Law is the eldest field of international law, which is the result of diplomatic activities of the international law subjects, and is realized depending on base of diplomatic law. The diplomatic activities are the way of realization of the state foreign relations and it determines the content-the state's foreign policy's one of the main directions.”¹ Thus the issue must be examined broadly including such elements as diplomatic relations and consulting activities and their main directions, and the bases for the regulation of diplomatic activities and standards need to be analyzed.

In this paper, we'll evaluate the authorization of the foreign affairs' executive bodies by institutionally. “In any state, the foreign affairs' executive bodies are divided into two groups-domestic (central) and foreign. Thus, the domestic foreign affairs' executive authorities, their formation and their powers' characteristics, usually are divided into constitutional and specialized bodies.”² Therefore, it's necessary to evaluate the state authorities' role and function in the decision-making process, which have the real impact as on the determination of foreign policy, as well on the full implementation and realization of the constitutional norms.

* Doctoral Student and visiting lecturer at Ivane Javakhishvili Tbilisi State University Faculty of Law.

¹ *Legashvili N.*, Diplomatic Privileges and Immunity, Almanac 1999, №9. International Law (II) (in Georgian), <<http://www.nplg.gov.ge/gsdll/cgi-bin/library.exe?e=d-01000-00---off-0period--00-1---0-10-0---0---0prompt-10---4-----0-11-11-ka-50---20-about---00-3-1-00-0-0-11-1-0utfZz-8-00&cl=CL2.6&d=HASHa7563fae1ef8bb17876837.7&x=1>>.

² See note №1.

The State's Head's and Government's participation in the foreign affairs is always an important and problematic issue, and the ambassador's appointment is one of the core elements in this area. The issue became significant since December 15 of 2016, after the Georgian Parliament adopted the resolution "creation the Constitutional Commission and the Constitutional Commission statute's approval", which aimed revising of the Constitution and creation of draft for the constitutional law, including regulation the president's and the government's competences, what gives more importance to this problem. The Constitutional Commission completed the work and was submitted a new project of the constitutional law to the Parliament on May 1, 2017, which was accepted by the first and second hearings, respectively on 21 and 23 June 2017, and the next hearing is noted for the 2017 autumn session.⁴ Despite that, within the reform there is no any substantial changes for main presidential competences granted by the constitution, but the issue is still opened, as the way of the presidential election has been rearranged and that has a great deal of practical importance, as it has influence on the realization of the presidential competencies, including realization of the foreign representations, particularly appointment and dismissal of the foreign representatives of the country.

2. The Influence of the Governance model on the President's Foreign Competences

Article 73 of the Constitution of Georgia⁵ defines the constitutional competence of the President of Georgia. By the subparagraph "a" of paragraph 1 of this Article, "the President of Georgia, with the agreement of the Government of Georgia, negotiates with the foreign countries' governments and with the international organizations, concludes international treaties and agreements; with the Georgian governments' presenting, the president appoints and dismisses the ambassadors and other diplomatic representatives of Georgia; with agreement the government, the President of Georgia accepts accreditation of the foreign states' and international organizations' ambassadors and other diplomatic representatives."⁶

The thesis mainly deals with systematic analysis and understanding of this constitutional norm, particularly, authority of the President of Georgia in foreign relations and in the regulation of ambassadors' appointment and recall on the constitutional level.

It is important to define how should be regulated the appointment and dismissal of ambassadors and diplomats, under the Constitution, and as well as the creation and liquidation of diplomatic missions with its nature is a constitutional dimension, consequently which constitutional bodies should regulate and what would be the optimal solution for regulation of these issues.

Furthermore, in the history of Georgian constitutionalism we can list some important constitutional reforms dated as 1) February 6, 2004, 2) October 15, 2010 and 3) the 2016-2017 constitutional reforms that changed the constitutional models of governance. The history of Georgian constitutionalism includes the presidential and both division of the Semi-Presidential governance models: including the so-called "Parliamentary-Presidential" system, also "Primer-Presidential" models, and today's formation gives a classic type of the Parliamentary system. But currently so-called Semi-Presidential is an active governance model.

³ <<https://matsne.gov.ge/ka/document/view/3472813>>.

⁴ See also Note №5.

⁵ On May 1, 2017, the draft of "the new amendment of the Constitution of Georgia" (Constitutional Law project N07-3/52/9) was presented to the Georgian Parliament, in accordance with the above mentioned law, in the new edition Article 52 regulates the Presidential competences, the subparagraph "a" of this article repeats, with technical characteristic changes, subparagraph "a" of Article 73 of the Constitution of Georgia, in which the presidential competencies in foreign relations, at the implementation stage, are set out in the list. The draft law was adopted by the first hearing by the Parliament on 21 June 2017 and the remaining two hearings should be held by the 3-month interval for the revision of the Constitution. In accordance with Article 102 § 3 of the current constitution. The Bill: "On Changes to the Constitution of Georgia" (№07-3 / 52/9 of the Constitutional Law) (in Georgian), <<http://info.parliament.ge/#law-drafting/13831>>.

⁶ The Constitution of Georgia (04/10/2013), (in Georgia), <<https://matsne.gov.ge/ka/document/view/30346>>.

“The second wave of democratization in Europe has led to the types of regimes that do belong neither to the parliamentary, nor to the presidential systems. The term “Semi-Presidentialism” was first used in 1959 by Hubert Beuve-Méry, the French journalist and editor of the newspaper *Le Monde*, and in the academic sphere, the term was used for the first time by Morris Diuverzes in his book “on Political Institutions and Constitutional Laws”, 11th edition.⁷ As we have mentioned, the mixed model of governance originated in the French Constitution by combining some of the European and American constitutional systems and it is a hybrid of these two systems.⁸ Namely, the established model of governance is Semi-Presidential, if it includes these competences: a) the president of the Republic is chosen according to the universal rule by the people of the Republic and b) he acquires enough power; c) the president’s opposition is the government, and the latter holds the executive power, till it has got the parliament’s support.⁹

It should be noted that there are two separated branches of the Semi-Presidential system.¹⁰ “The manifestation of the practical multiple diversity of mixed presidential governance prompted Shugart and Carey to develop the concept by forming the Prime-President and Presidential-Parliamentary Subtypes.”¹¹

We can conclude that the Semi-Presidential system is a complex model that includes two important subtypes: first-the President-Parliamentary subtype, which is more like a so-called Austrian Semi-Presidential model, and a second subtype-referred to as the Premier-Presidency subdivision, is more common in Eastern Europe and is oriented to the classic French Semi-Presidential model. “The words “presidential” and “parliamentary” identify which from the elected institutions has the authority to form a government, and as Primer-Presidentialism expresses the prime minister’s superiority and important assertions of the president’s existence, the term “Presidential-Parliamentary” The regime defines the main properties of the model, in particular the presidential primacy to other branches of the government, in addition the minister’s cabinet dependence on the parliament, in such systems, in addition of other classical characteristics of the system, the president must be elected indirectly.¹²

In the parliamentary systems, the role of the president in implementation of the foreign representative functions is significantly weakened, due to president’s indirect election. Therefore, the president’s participation in the implementation of the foreign office’s functions is essentially important. The president, in the Semi-Presidential model (the model of the Prime-President), had a significant prerogative in the selection, appointment and dismissal of the representatives of the embassies and foreign representations. In the condition of preserving

⁷ *Elgie R.*, <http://www.researchgate.net/publication/265101267_The_Politics_of_Semi-Presidentialism>.

⁸ *Kimberly A., McQuire*, President – Prime Minister Relations, Party System, and Democratic Stability in Semiprezidential Regimes ; Comparing The French and Russian Models, *Texas International Law Jurnal* Vol.47 Issue 2, 2012, 429.

⁹ *Sartori G.*, *Comparative Constitutional Engineering-an Inquiry into Stuctures, Incentives and Outcomes*’- Macmillan, 1994, 137.

¹⁰ In the frames of today’s constitutional reform, the classical parliamentary system was chosen as a model for governance, in which the President is not directly elected and the model of state arrangement is transformed into the regime of the parliamentary republic.

¹¹ *Alasania G.*, *The Scope of the Executive Governmental Power of the President of Georgia as Defined by the Constitution of Georgia*, the seminar work, Scientific Supervisor; *Kurashvili K.*, Tbilisi, 2008, 22, (in Georgian) compared with Matthew Soberg Shugart and John M. Carey, *Presidents and Assambles-constitutionalal design and electoral dynamics*”, Cambridge university press, 1992.

¹² In accordance with the draft of the Constitution, by the Article 50 of the new version of the Constitution, the President of Georgia is elected for 5 years by the Electoral College with open ballot and without a debate. The Electoral College consists of 300 members, including all members of the Parliament of Georgia and Supreme Representative bodies of the Autonomous Republics of Abkhazia and Adjara. Other voters are defined by the Central Election Commission of Georgia to comply with the principle of proportional geographical representation on the basis of organic law and composition of local self-government representative bodies in accordance with the proportional quota according to the results of the local self-governance proportional elections and are named by the relevant political parties. The composition of the Electoral College is approved by the Central Election Commission of Georgia, <<http://info.parliament.ge/file/1/BillReviewContent/152296>>.

the same competencies for the president in the proposed parliamentary system, the presidential institution will be granted with the same discretion as now, what again emphasizes the importance of the President of Georgia's role of in the model of parliamentary governance.

3. Creation and Formation of Embassies and Other Diplomatic Missions

In international relations, there are several active international treaties, regulating between-state relations with regard appointment and recall of the ambassadors and other diplomatic representatives.¹³

The Vienna Convention on Diplomatic Relations, dated April 18, 1961 (ratified by the Parliament of Georgia on May 15, 1993 as "Diplomatic Relationship" joining to Vienna Convention)¹⁴ and the Vienna Convention on Consular Relations of April 24, 1963 (ratified by the Parliament of Georgia with decree of June 8 of 1993, as "Consular Relations" joining to the Vienna Convention).¹⁵

The article 14 in The Vienna Convention on Diplomatic Relations provides the following types of the diplomatic missions: the first class representatives are the ambassadors, nuncios and other officials with equal rank, who manages the diplomatic missions and are accredited by the heads of state, as it is directly referenced in the convention. By the convention the second class diplomats are represented as the emissaries and internuncios, accredited by the heads of government. And third-class representatives are the commissioners, who are entrusted with the competence of the Ministry of Foreign Affairs.¹⁶ Under article 10 of the Vienna Convention on Consular Relations, the heads of consular offices are appointed by the presenter states, according to their own legislation-determining the procedures of their appointment and dismiss.¹⁷ Consequently, above mentioned issues are regulated not only based on the internal law, by also-on base of the international conventions, what underlines the constitutional level of regulation.

3.1 Diplomatic Representation and Consular Office of Georgia

In accordance with the Constitution of Georgia, the foreign representations are carried out by the President of Georgia, by the Government of Georgia and on the basis of the ordinary legislation-by the Ministry of Foreign Affairs and also by diplomatic and consular representatives, whose establishment and function is not directly defined by the Constitution.

Although the Constitution's Article 73, paragraph 1, subparagraph „a" determines the ways of election of ambassadors and diplomatic representatives, but does not regulate directly the matter of the establishment of diplomatic missions, what we believe the importance of this issue presents the constitutional dimension, as are — appointment-dismissal of the ambassadors and the diplomatic officials.

Georgia's diplomatic representations are: a) Embassy of Georgia; b) Permanent Representation of Georgia in the international organization; c) Representation of Georgia associated with the international organization. Here we have to mention that, if Georgia is a member-state of an international organization, it has permanent representations in that organization, in other cases there could be presented only regular representatives of the country. What about the consular offices, usually they are established in the States, where diplomatic representation has not been based.¹⁸

¹³ Convention on the Legal Status of Special Missions in International Community (1969) and Convention of Representatives in International Relations with International Organizations (1975), See Note 1.

¹⁴ <<https://matsne.gov.ge/ka/document/view/116584>>.

¹⁵ <<https://matsne.gov.ge/ka/document/view/116590>>.

¹⁶ <<http://www.supremecourt.ge/files/upload-file/pdf/aqtebi39.pdf>>.

¹⁷ <<http://www.mfa.gov.ge>>.

¹⁸ In addition the law takes into account such cases, when the two countries established diplomatic ties are cut, or are temporarily or permanently broken up, in this case possible to create section of Georgian interests under the third state's

Diplomatic representation of the Georgian, in accordance with the law of Diplomatic Service, subparagraph “c” of article 2, is a subdivision of the Ministry of Foreign Affairs in the abroad state, where it represents Georgia in diplomatic and consular relations with the international organization and the receiving state.¹⁹ And the consular office, in accordance with subparagraph “d” of Article 2 of the same law²⁰ and the sub-point “d” of the Article 3 of the Law on Consular Activities, is a subdivision of the Ministry of Foreign Affairs in abroad, which represents Georgia in the consular and diplomatic relations with the receiving state, where Georgian Diplomatic Corp is not based.²¹

Decisions on the establishment and liquidation of the diplomatic representation are adopted by the Government of Georgia and the decisions on the reorganization of the diplomatic representation and on the establishment, reorganization, and liquidation of the consular offices are taken by the Minister of Foreign Affairs.²² These issues are regulated in accordance with the Georgian Law on Diplomatic Service, but we believe, it would be better, if these legal relations are defined and managed by the Constitution and not by the ordinary law, since the diplomatic activities’ and services’ regulative legislation cannot be an only appropriate normative source, to determine the rule of establishing the institution, because this law regulates the implementation of this service and not the establishment process.

In addition, we think that, as the president is the country’s representative in foreign relations, actions realized in accordance with only the government’s decision will not be treated with the idea of the constitutionalism. If the president decides to appoint ambassadors and diplomatic representations, he/she also should take part in decision making processes regarding the establishment and liquidation of diplomatic missions.

It is noteworthy, to review the constitutional models from several Eastern European countries, particularly the states that are located in one region with Georgia, have more or less narrow historical-legal and political past and still exist in a similar legal environment, for example, the President of Azerbaijan, in accordance with 15 paragraph of article 109 of the Constitution of Azerbaijan, applies to the Milli Məclis (Parliament) on behalf of establishment of the foreign states’ and international organizations’ diplomatic missions in the Republic of Azerbaijan, also he/she appoints and dismiss diplomatic representatives in other states and international organizations.²³ While in Azerbaijan is a model of presidential governance, it is noteworthy, that the legislative body is involved in the creation of diplomatic missions and appointment of the ambassadors.

By the Article 81 of the Constitution of Romania-Presidents are elected by the direct, universal, equal, secret and free elections.²⁴ And in accordance with the Constitution paragraph 2 of Article 91, the president’s foreign policy for accreditation to grant diplomatic representatives, as well as in his capacity to create, abolish and change diplomatic missions, is executed on the government’s proposal.²⁵ Concluding constitutionally should be settled the issues: where and what level of the diplomatic missions should be established.

In Moldova, the president is elected by the Parliament (Article 78 of the Constitution)²⁶ and according to

diplomatic representation, however, the issue is not a interest for our research and therefore we’d not pay attention to these issues.

¹⁹ Georgian Law on Diplomatic Service (22/12/2016), (in Georgian), <<https://matsne.gov.ge/ka/document/view/20158>>.

²⁰ Georgian Law on Diplomatic Service (22/12/2016), (in Georgian), <<https://matsne.gov.ge/ka/document/view/20158>>.

²¹ Georgian Law on Consular Activities (29/05/2014), (in Georgian), <<https://matsne.gov.ge/ka/document/view/1682950>>.

²² § 1 and 2 of Article 8 of the Georgian Law on Diplomatic Service.

²³ Constitutions of Foreign Countries Part. I I 2nd ed., *Gonashvili V.(ed.)*, Tbilisi, 2008, 239-240, (article in Georgian), compared with Constitution of the Republic of Azerbaijan, <http://azerbaijan.az/portal/General/Constitution/doc/constitution_e.pdf>.

²⁴ Constitutions of Foreign Countries Part. 3rd ed., *Gonashvili V.*, Tbilisi, 2006, 573, (in Georgian).

²⁵ Constitutions of Foreign Countries, Part. 3rd ed., *Gonashvili V.*, Tbilisi, 2006, 576, (in Georgian), compared with Constitution of Romania, <<http://www.wipo.int/edocs/lexdocs/laws/en/ro/ro021en.pdf>>.

²⁶ Constitutions of Foreign Countries, Part. 4th, *Gonashvili V.*, Tbilisi, 2007, 626, (in Georgian).

the Article 86 of the Constitution, which defines the president's competences in foreign relations, the President of the Republic of Moldova appoints and revokes the diplomatic representations, also approves, abolishes and changes rank of diplomatic missions, with the agreement of the Government.²⁷

In contrast to Azerbaijan, this particular cooperation between the President and the Government in the Moldovan and Romanian constitutions makes them relate, with its modular characteristics, to the Georgian constitutional model, so called the Semi-Presidential system is a model of the Prime Minister-Presidential Model (Semi-Parliamentary System)²⁸ that is closer to the model of parliamentary governance, but we consider that in both cases, the most important prerogative of the legislative authority is to determine and define by what rank of diplomatic activity should be represented the state in relations with other particular states.

Georgian foreign policy is determined by the highest constitutional body as it is the Parliament,²⁹ and because the definition of the diplomatic relations level in particular countries is one of the significant elements of the foreign policy, this competence in full or in partially should be obligate for the Parliament or at least it has to be involved in the decision-making process. Before October 15, 2010's constitutional reform and the relevant text came in action the appointment and dismissal of the foreign representatives were in the competence of the parliament and were approved by cooperation with the president.³⁰ Thus, the issue of creation of a diplomatic representation must be regulated by the Constitution of Georgia and the decision has to be made based on the participation of the relevant authorities.

3.2 Diplomatic Service Types, their Functions and Status of Officials

As we have already noted, Georgia's diplomatic missions consist of three types of diplomatic missions: the Embassy of Georgia; the Permanent Representation of Georgia in international organizations and the Representation of Georgia in international organizations and the Representation of Georgia with international organizations, which are not represented by the relevant supervisor and other diplomatic officials.

Diplomatic ranks are defined by the law, and three-level diplomatic officials may be destined for positions, namely: a) the highest diplomatic positions are: the First Deputy and the Nominated Deputy of Minister of Foreign Affairs, the Director of the Department of the Ministry, the Ambassador, the Permanent Representative of Georgia in international organization, the Representatives of Georgia in international organizations, the General Consul and the Ambassador of Extraordinary Assignments; b) senior-level diplomatic positions: the Department Deputy Director of the Ministry of Foreign Affairs, the Extraordinary and Plenipotentiary Ambassador, Deputy of the Permanent Representative of Georgia in the international organization, Deputy of the Representative of Georgia in the international organization, the Head of the Minister's Secretariat, the Head of Division of the Department of the Ministry, the Senior Advisor, the Counselor, the Adviser, Defense Attache and the Representative of the Ministry of Defense, the Police/Security Attaché and the Liaison Officer, the Commercial Attache; c) the junior diplomatic rank positions are: the Vice-consul, the First Secretary, the Consular Agent, the Second Secretary, the Third Secretary, an Attaché, Defense Attache's Office and the Office of the Representative of the Ministry of Defense officials, the Police/Security Attaché and the Liaison Officers and employees.

²⁷ Constitutions of Foreign Countries, Part. 4th, *Gonashvili V.*, Tbilisi, 2007, 628, (in Georgian) compared with Constitution of the Republic of Moldova see, <http://www.wipo.int/wipolex/en/text.jsp?file_id=427200>.

²⁸ <http://www.researchgate.net/publication/265101267_The_Politics_of_Semi-Presidentialism>.

²⁹ Under Article 48 of the Constitution, the Parliament of Georgia determines the main directions of domestic and foreign policy of the country.

³⁰ *Tsursumia S.*, Constitutional status of the President of Georgia's in the foreign representation (Comparison of Legal Analysis) Models of State Governance: Constitutional Reality and Perspectives of Georgia (II National Conference in Constitutional Law: Collection of Reports) Publishing House of David Batonovishvili Institute of Law, Tbilisi, 2016, 67, (in Georgian).

According to the law on the Diplomatic Service, the President of Georgia appoints and dismisses the head of the Diplomatic Representative by the suggestions of the Government of Georgia. The law defines the certain incompatibilities with diplomatic positions; from the moment of appointment on the diplomatic position the designated person is obliged to terminate any political activity. In the diplomatic service the diplomat is politically neutral and does not have the right to engage in activities/propaganda in favor or against any political party, organization or union.

The main functions of diplomatic representations, in accordance with Article 61 of the Law of Georgia on Diplomatic Service, are: support of the strengthening relationships of political, economic, social, scientific, technical, military, cultural and other fields of cooperation between Georgia and the receiving state/international organization; ensure dissemination of information on Georgian domestic and foreign political, economic, social and cultural life in the receiving state and promoting Georgia as a democratic state; Protection of interests of Georgia in the host state/international organization; organizational provision of visits of Georgian official delegations, in particular, to convene the reception and farewell ceremonies, and if necessary, to participate in official meetings; Other functions provided by the Georgian legislation.

The functions of diplomatic representations are mainly determined by the 1961 Vienna Convention on Diplomatic Relations. "The diplomatic representative's function includes such as the negotiations, informational activities, and diplomatic protection. In many manuals, to these functions have been added the fourth function-a representation, and it has been so frequently demonstrated in international practice and doctrine, later it was reflected in the 1961 Vienna Convention. The representation is considered to be the main function, as this is a whole activity of the embassy-i.e. to speak on behalf of his state in the official relations between the two countries. Essentially this function derives from the rest."³¹ Under the relevant legal framework, the representation is also the consulates' main function.

3.3 Types of Consular Activities, Functions and Officials

Consular activities, under the law of Georgia, are determined as: a) General Consulate of Georgia, whose head is the General Consul b) Consulate of Georgia-Consular c) Vice Consulate of Georgia-Vice Consular d) Consular Agency of Georgia - Consular Agent.

Consular activities are carried out in hierarchical classes, first of all by the General Consulates; they represent the highest branch of the consular offices' hierarchy and are possible to be created in the state, where Georgia is represented through the appropriate diplomatic missions. Although the General Consulate by its importance is equal to the diplomatic representation, this type of consulate can be established in the states with which Georgia does not have diplomatic representation. The General Consulate is authorized to carry out consular activities and it is equipped with all the consular functions envisaged by the Law of Georgia on Consular Activities and the Vienna Convention on Consular Relations dated with April 24, 1963. A consulate, established in the state in which Georgia has no diplomatic representation, functions to be defined in the same way as the diplomatic representation of Georgia. Hence, the General Consulate can, within its functional and legal nature, be the same as the diplomatic representation, and therefore we should consider constitutionally basis for its establishment.³² All types of consular posts are established by the order of the Minister of Foreign Affairs, and require the consent of the receiving state. Reorganization and liquidation of consular offices are based on the Minister's order. This does not comply with some of the constitutional provision, as the General Consul at first

³¹ Ref. Note №1.

³² Decree №158 of the Minister of Foreign Affairs of Georgia of 9 July 2013 on Approval of the Rule of Opening of the Consular Post and the Approval of Typical Regulations (Articles 8-13), (in Georgian), <<https://matsne.gov.ge/ka/document/view/1965749>>.

represents the highest level of diplomatic position and the diplomatic officials have to be appointed by the head of the states, based on the recommendation of the government and the consulate to be established by decision of the highest officials, because consuls' function, which require state officials' authorization.

The consular functions are a set of legal mechanisms available for a consular officer, whose powers 1) are legislated by the law of Georgia, 2) are permissible under the laws of the receiving state and 3) are possible by international treaties and agreements of Georgia.³³ Consular functions are divided into main and delegated functions.

The main consular functions are: consultation; legal protection; mediation; promotion of cooperation in trade, economic, cultural, scientific, transport, tourism and legal spheres within the consulate district; observing of consular districts; general supervision over the implementation of international treaties and agreements in the consular sphere; consular legalization; issuing Georgian visa; issuing a certificate for return to Georgia; consular accounting; legal assistance to Georgian administrative bodies; perform notarial actions; consular services for marine, air, motor and railway transport of Georgia.

The delegated consular functions are: issues related to Georgian citizenship and migration; tasks related to registration of citizens of Georgia and distribution of identity documents; issues related to registration of civil acts; also the other functions defined by the Minister of Foreign Affairs and the Minister of Justice of Georgia.³⁴ The functions mentioned above are essentially the same as are assigned to the different diplomatic missions, like Embassy of Georgia. And the fact that a state has not the diplomatic relations with other countries can't rule out the authority of the different government branches in legal consular relations: in creation of consulate-representations and in appointment the representatives.

While the Vienna Convention on Consular Activities determines as the state legislation prerogative the regulation to set up and dismiss the consular officials, however, the Vienna Convention on diplomatic relations suggests that the head of the diplomatic mission should be appointed by the Head of State, and as the consular office is more or less equal to other diplomatic missions,³⁵ and therefore the consular officers are equal to the heads of diplomatic missions, based on their status.

In regard to this issue, the experience of different countries is interesting, and in particularly, by the Article 94 of the Constitution of Croatia, the president is elected by universal rule, which underlines the position and role of the head of state in the governmental system, and defines, to comply with Article 98 of the Constitution, the President, with the governmental suggestion and counter-signature of the Prime Minister, establishes the diplomatic missions and consulates of the Republic of Croatia in abroad, and under the same article, the President, with the government's and the Committee on the Proposals of the Croatian Sabor's suggestion, also with counter-signature of the Prime Minister approves and fires the diplomatic officials.³⁶ It is possible to say that in this case all relevant institutions are involved in this process, which in one hand is quite positive event, as it creates possibility for refining decision, but on the other hand, the appointment of the ambassadors becomes difficult process and we think that in this case, in decision making process somehow the role of the government has increased and it would be better just to make decisions based on the parliament and the president's agreement about diplomatic representations and consular posts, and in appointment of consuls the role of the president is very important.

³³ The Law of Georgia on Consular Activities (29/05/2014), § 1 of article 11 (in Georgian), <<https://matsne.gov.ge/ka/document/view/1682950>>.

³⁴ The Law of Georgia on Consular Activities (29/05/2014), § 2 of article 11 (in Georgian), <<https://matsne.gov.ge/ka/document/view/1682950>>.

³⁵ The consular offices have relatively administrative functions, but the duties and responsibilities of diplomatic missions can not be limited with only one type of competence, especially when it comes to heads of representations and institutions.

³⁶ Constitutions of Foreign Countries. Part. III, *Gonashvili V.* (ed.), Tbilisi, 2006, 842, (in Georgian).

4. Appointment and Dismissal of Diplomatic Representatives

Judicial relations connected with the appointment of ambassadors and diplomatic representatives are regulated by the Constitution of Georgia and the Law on Diplomatic Service as well as by the Vienna Convention on Diplomatic Relations. The latter is considered as the major and primary legal source in regard to the issues related to the appointment and dismissal of the ambassadors.

As already mentioned, since October 15, 2010 Georgia has adopted constitutional model by which representatives of diplomatic missions are appointed and dismissed with the involvement of the head of the country and the executive branch of the government. During the period of the constitutional reform, an attitude towards the regulation of the noted subject was different. For instance, according to the constitutional law project presented by V. Gonashvili and L. Bodzashvili, ambassadors were appointed by the president with the consent of parliament.³⁷ Moreover, the constitutional project presented by the Chairman of the State Constitutional Commission (A. Demetrashvili) did not envisage new edition of the constitution, which would differ from the old one³⁸ and which, we think, would as well be more acceptable for the current constitutional model – as stated above, participation of the representative body in the decision-making process would be more beneficial and it would adjust to the constitutional system more due to the fact that the constitutional body determining foreign policy would be able to control execution of this very foreign policy. The Public Constitutional Commission has presented an interesting approach regarding appointing and dismissing the ambassadors. According to their proposal, the president, as the head of the state, is responsible for appointing the ambassadors and other highest ranking diplomatic representatives. However, the proposal also says that the decision has to be made with the government and parliament's approval. Even though the stated model also exists in the constitutional law practice³⁹, participation of every branch will complicate the decision-making process and it will be impossible to elaborate optimal procedures regulating this subject. More precisely, in its concluding remarks, the Venice Commission has not suggested recommendations upon this topic. Though, the Commission's recommendations referred to polishing regulations regarding president's involvement in foreign affairs.⁴⁰ Approximately the same opinion was expressed at Berlin Conclusive Conference, referring to the Constitution's subparagraph "a", first paragraph of 73 article, which belonged to the professors Oetter and Nusberger.⁴¹ In its conclusion, the Venice Commission also paid attention to the subparagraph "a", first paragraph of 73 article as well as to matters connected with ambassadors and other diplomatic representatives. To be more precise, according to the Venice Conclusive Commission's final remarks: "Holding talks with foreign countries, including reformulation of international treaties, is a problematic topic. Based on changes drawn from the second hearing, president will be obliged to get government's approval on letters of credence received from ambassadors and other diplomatic representatives, which will not eliminate disturbing instances. In the sphere of foreign affairs, differences in duties and responsibilities between president and government are not well-defined. If according to the explanation given by the Constitutional Commission it is implied that president's general role is representative and that he/she can make a decision only in the most important cases, then it is unclear why president has the authority of "negotiating with foreign countries" and "executing international conventions and contracts" (every type, on every level) even if

³⁷ Demetrashvili A., 2009,2010 Constitutional Reform in Georgia (Georgia's Constitutional Chronicles), Batumi, 2012, 230, (in Georgian).

³⁸ Ibid, 188.

³⁹ More or less same regulation in accordance with Croatia's Constitution, as Croatia's Sabor (to the extent of the respective Committee), president and government take part in the decision-making process connected with the appointment of ambassadors – ref. note 30.

⁴⁰ CDL (2010)062 Conclusion of the Venice Commission (№543/2009) related to the corrections and changes in Georgian constitution about constitutional bill, Strasbourg, 31 July, 2010, 11, <<http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL%282010%29062-geo>>.

⁴¹ Demetrashvili A., 2009,2010, Constitutional Reform in Georgia (Georgia's Constitutional Chronicles), Batumi, 2012, 396, (in Georgian).

they are implemented “with government’s approval”. If this means that government does not have the power to hold talks regarding international agreements, then aforementioned opposes paragraph of article 78, according to which the government executes foreign policy. The necessity of government’s consent will not eliminate and, instead, will even more increase chances of disagreement between government and president in case the latter participates in discussions of the mentioned topic. In contrast to the bases of president’s new role that, first of all, can be considered as a guarantor of the state’s fundamental features, it should also be taken into account that he/she is responsible for general traits of foreign policy, while government takes care of everyday foreign relations. However, it is very difficult to differentiate these two spheres from each other.”⁴²

In accordance with the Georgian Constitution’s subparagraph “a”, first paragraph of 73 article, the President of Georgia appoints and dismisses Georgian ambassadors and other diplomatic representatives after they are presented to him/her by the government. Therefore, an ambassador or another diplomatic representative is firstly identified and presented by the government, and afterwards is appointed or dismissed by the president’s legal act.

According to the Georgian Constitution’s subparagraph “a”, first paragraph of 73 article, in order to execute the power entitled by the Constitution, the President of Georgia issues an edict, a decree, an order, also, as the Supreme Commander-in-Chief of Georgian military forces – a command. Thus, the president has the power to promulgate 4 types of legal acts: an edict, a decree, a command and an order.⁴³

Regarding appointment and dismissal of ambassadors, the government, in accordance with Georgian Law on “Georgian Government’s Structure, Authority and Types of Activity”, article 5, sub-point “gh”, presents a candidate to the president, received in a form of an order.⁴⁴ After president appoints or dismisses an ambassador, president’s legal act (order)⁴⁵ does not require counter-signature as according to Georgian Constitution’s paragraph 3 article 73, the “counter-signature is not required on those legal acts of the president, which are issued in accordance with the constitution and are presented by the government or which are pre-approved by the government.” In this case, the president’s legal act is issued on the basis of the government’s presentation.

Based on the Georgian Law on Diplomatic Service, article 6, paragraph 5 and 6, the President of Georgia appoints and dismisses heads of diplomatic representatives once they are presented by the government. Appointment of diplomatic representatives’ supervisors is directly connected with the appointment of the highest ranking officials of the state’s any representation, including appointment of consulate’s senior officials. The above-mentioned law also extends to ambassadors as well as to permanent and temporary representatives (in accordance with paragraph 5 of article 17 and paragraphs “d”, “e” and “e1” of article 12, as well as aforementioned article 6, there are blanket instructions in the law).

⁴² CDL (2010)028 Conclusion of the Venice Commission related to the corrections and changes in Georgian constitution about constitutional bill, approved by the Venice Commission during its 84th plenary session (Venice, 15-16 October, 2010), Strasbourg, October 15, 2010, 11, <<http://constcommission.parliament.ge/1-5http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282010%29028-e>>, based on conclusions made by the Venice Commission on July 31, 2010.

⁴³ In accordance with the constitutional practice, president issues an order regarding matters of appointment and dismissal of ambassadors. However, in this case, president is also eligible to issue an order as based on Georgian Law on Statutory Acts, article 11, point 3, Georgian president’s decree is a statutory act, except cases when orders are issued regarding staff and personal matters. For instance, Georgian president’s orders issued on November 24, 2016, №24/11/01, <<https://www.president.gov.ge/ka-GE/sajaro-informacia/samartlebrivi-aqtebi/%E2%80%8Bsaqartvelos-prezidentis-gankarguleba-N-24-11-01.aspx>>, and on March 25, 2016 № 25/03/01, <<https://www.president.gov.ge/ka-GE/sajaro-informacia/samartlebrivi-aqtebi/%E2%80%8Bsaqartvelos-prezidentis-gankarguleba-N-25-03-01.aspx>>, (in Georgian).

⁴⁴ Georgian government’s order №2434, issued on November 17, 2016, (in Georgian), <<https://matsne.gov.ge/ka/document/view/3440196>>.

⁴⁵ See note 33.

Regarding issuing Georgian president's order, it must be noted that based on practice, he/she is guided by the administrative law. However, according to General Administrative Code of Georgia, article 3, part 4, subparagraph "e", general administrative code's authority does not extend to the basic constitutional competencies that the president of Georgia has—more precisely, "to appointment and dismissal of officials by the president in accordance with Georgia's constitution as well as to exercising authority entitled by Georgia's Constitution's paragraph 2, 4 of article 73 and also subparagraph "a", "i" and "p" of paragraph 1 of the same article 73."⁴⁶ Therefore, it can be said that the appointment of ambassadors and diplomatic representatives is a constitutional legal act rather than administrative-legal act. Though, it should be noted that in constitutional practice, the president supervises promulgation of such type of order in accordance with General Administrative Code. More precisely, in regard to changes in a specific order, the president makes a decision in accordance with General Administrative Code, article 63. The noted article takes into account changes to already issued individual administrative legal act according to the rule by which it was issued.⁴⁷ Even though the above-mentioned topic is a procedural nuance, we think that in this case the president should only be guided by and should appoint ambassadors and diplomatic representatives only in accordance with the constitution and not in accordance with the Law of Georgia on Diplomatic Service.⁴⁸

After analyzing practice, it can be said that, as a rule, special and plenipotentiary ambassadors in specific states are assigned as permanent representatives and representatives in international organizations, located on the territory of their respective states. For example, a representative in the European Union is, at the same time, an ambassador of Georgia in Belgium⁴⁹, also an ambassador of Georgia in Austria is a permanent representative of Georgia in Organization for Security and Co-Operation in Europe (OSCE).⁵⁰ Moreover, Georgian ambassador in Canada is a permanent representative of the country in International Civil Aviation Organization (ICAO).⁵¹ However, there are some exceptions to this general approach. For instance, Georgia's representation in the Council of Europe does not represent the state in international relations with other countries.⁵² Thus, it can be implied that diplomatic representations in international organizations and in foreign countries are compatible positions and, as a rule, positions of ambassadors and diplomatic representatives are combined by the territorial principle. Though, some exceptions also exist.

In the Georgian Constitution, in subparagraph "a" of paragraph 1 in article 73, an appointment of ambassadors and other diplomatic representatives is discussed. However, the constitution does not directly define which officials are meant under other diplomatic representatives. Though, based on the analysis of the legislation, it can be inferred that under other diplomatic representatives are meant those officials who are supervisors in diplomatic missions. However, the legislation is also vague as it is unclear whether only supervisors of diplomatic representations or senior officials from consulates are implied.⁵³ The latter, we believe, has to be defined by the

⁴⁶ General Administrative Code of Georgia (based on 21/12/2016 issue), (in Georgian), <<https://matsne.gov.ge/ka/document/view/16270>>.

⁴⁷ From October 15, 2010 to December 28, 2016, the president issued several legal acts, which presented changes in already issued legal acts, based on the norm corresponding to General Administrative Code (Georgia's president's order issued on November 15, 2011, №15/11/05, Georgia's president's order issued on November 15, 2011, №15/11/05, Georgia's president's order issued on March 21, 2013, №21/03/01, Georgia's president's order issued on April 17, 2013, №17/04/01), (in Georgian).

⁴⁸ As a rule, the president of Georgia issues orders regarding appointment of diplomatic representatives in accordance with the Law on Diplomatic Service, article 6, point 5. However, the major legal basis is the Constitution's 73rd article, 1st point, "a" sub-point.

⁴⁹ An order issued by the president of Georgia on March 18, 2013, №18/03/07; an order issued by the president of Georgia on March 21, 2013, №21/03/01 (in Georgian).

⁵⁰ An order issued by the president of Georgia on March 18, 2013, №18/03/12; an order issued by the president of Georgia on April 17, 2013, №17/04/01 (in Georgian).

⁵¹ An order issued by the president of Georgia on July 9, 2012, №09/07/01, (in Georgian).

⁵² An order issued by the president of Georgia on May 10, 2013, №10/05/11, (in Georgian).

⁵³ In accordance with the Law on Consulate Activity, article 8, point 4, "once appointed, the supervisor of the consulate receives accreditation in a written form – a consular patent" (in Georgian).

constitution or the text of the constitution and the part which says that every diplomatic representation's supervisor has to be appointed by the president, as these officials should be considered as diplomatic representatives, have to be explained more broadly.

It is important to discuss foreign countries' constitutional regulations regarding matters of appointment of ambassadors and other diplomatic representatives.

Poland's Constitution differently regulates matters connected with the appointment and dismissal of ambassadors. In particular, the president of Poland is not tied by executive or legislative authorities when he/she appoints ambassadors and other diplomatic representatives. In Lithuania and Portugal, similar to Georgia, the president is tied by the executive authority when he/she appoints the ambassadors and other diplomatic representatives. In these cases, like in Georgia, the president appoints country's representatives by cooperating with the government—the government presents a candidate, who afterwards is appointed by the head of the country.⁵⁴ According to the Constitution of Poland, subparagraph 2 of paragraph 1 from Article 133, the president personally appoints and dismisses ambassadors, and has same competence regarding the representatives in the international organizations.⁵⁵

As a rule, in the presidential governance models, aforementioned competence belongs to the head of the country as the supreme constitutional body of the executive authority. However, during decision-making, he/she is tied by the authority of the supreme representative body. For instance, according to Argentina's Constitution's article 99, paragraph 7, the president, with the approval of the senate, appoints and invites ambassadors and plenipotentiary representatives of the country.⁵⁶ The Constitution of the United States has the similar regulation as based on the 3rd sentence from the 2nd part of the article 2, the US president assigns the ambassadors, other official representatives and consuls by suggestion and consent of the senate.⁵⁷ In this case, it is noteworthy that it is president's competence to appoint consuls. Though, this regulation is not peculiarity of the presidential governance as it is typical to other mixed or parliamentary systems. As for the Constitution of Georgia, even though it is not clear who is meant by other diplomatic representatives appointed by the president, analyzing the legislation makes evident that Georgia's consuls are not appointed by the president, which, we believe, is a legislative gap for both constitutional and ordinary laws. In a theory, it can be said that representative authority and electing international delegates are functions of the executive authority. Though, in reality, cooperation between executive and legislative authorities in regard to choosing diplomatic officials is necessary (In the US, based on bicameral parliamentary systems, the senate takes part in selecting international treaties and diplomats, while the Congress participates in matters connected with the declaration of war. Therefore, regarding international relations, president's authority is shared with the parliamentary authority).⁵⁸

Regarding the Russian Federation, which is essentially one of the Presidential Republics, in accordance with paragraph "L" of Article 83 of the Constitution, the President of the Russian Federation, on the basis of

⁵⁴ *Tsurtsunia S.*, Constitutional Status of Georgia's President in Executing Foreign Affairs (comparative legal analysis). Models of State Governance: Georgia's Constitutional Reality and Perspective (II National Conference in the Constitutional Law: Collection of Reports). Davit Batonishvili Law Institute Publishing House, Tbilisi, 2016, 67, (in Georgian).

⁵⁵ Constitutions of Foreign Countries, part II (the second modified edition), *Gonashvili V.*, (ed.), Tbilisi, 2008, 656, (in Georgian), compared with Constitution of the Republic Of Poland, <http://www.wipo.int/wipolex/en/text.jsp?file_id=194980>.

⁵⁶ Constitutions of Foreign Countries, part I (the second modified edition), *Gonashvili V.* (ed.), Tbilisi, 2008, 121, (in Georgian), compared with Constitution of Argentina, <<http://www.biblioteca.jus.gov.ar/argentina-constitution.pdf>>.

⁵⁷ Constitutions of Foreign Countries, part I (the 2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, 51, (in Georgian), compared with *Francis N. Thorpe*, „Is the President of the United States Vested with Authority under the Constitution to Appoint a Special Diplomatic Agent with Paramount Power without the Advice and Consent of the Senate?“*The American Law Register and Review* Vol. 42, №4, (First Series) Vol. 33 (New Series, Vol. 1), (Apr., 1894), 257.

⁵⁸ *Francis N.*, Thorpe, „Is the President of the United States Vested with Authority under the Constitution to Appoint a Special Diplomatic Agent with Paramount Power without the Advice and Consent of the Senate?“*The American Law Register and Review* Vol. 42, №. 4, (First Series) Vol. 33, (New Series, Vol. 1), (Apr., 1894), 263.

consultations with relevant committees and commissions of the Federal Assembly, is entitled to appoint and dismiss Diplomatic Representatives in foreign states and international organizations.⁵⁹

Based on this and the Constitution of USA, it could be argued that appointment and resignation of the ambassadors by the head of state in presidential system depends on negotiations with parliament. Despite various regulations, effectively the decision is taken based on relations between president and parliament. On the one hand, the legislature should give consent (USA), on the other; the Constitution of the Russian Federation prescribes mandatory consultations. Despite the difference the constitutional construct is the similar.

It is important to study experience of the countries, where is established the mixed model of governance. The head of state has primary responsibility in foreign representation and the domain of foreign affairs is under president's authority. Under Article 106 paragraph 5 of the Ukrainian Constitution the presidents appoints and accepts resignations of the ambassadors and other heads of diplomatic missions.⁶⁰ The Article 84 paragraph 10 of the Belarusian Constitution allows the President to unilaterally appoint and resign ambassadors, as well with other diplomatic missions.⁶¹ The President of Kazakhstan appoints heads of foreign diplomatic missions under Article 44, paragraph 6 of the Constitution.⁶² The Constitution of the Republic of Armenia the President appoints ambassadors and representatives to international organizations.⁶³

It is interesting to study the experience of mixed government countries. The president's right to appoint ambassadors is limited usually with countersignature of the government, as in Georgia. For example, Article 14 of the Constitution of France the President grants accreditation of ambassador sot foreign countries. In this case the president uses its prerogative to choose a diplomat for job.⁶⁴ However, Article 19 of the Constitution all acts of president requires countersignature - unless stated otherwise. The Article 14 is not exempt. Hence, president is limited by executive branch.⁶⁵ In a Semi-Presidential rule the president authority is limited with countersignature.

The Latvian constitutional model deserves attention, because the President that is elected by majority of Saeima,⁶⁶ appoints and resigns ambassadors according to Article 41 Constitution of Latvia.⁶⁷ In this case, the act of the president requires countersignature by prime minister or relevant minister under Article 53. This case is interesting because Latvia is more parliamentary oriented republic than Georgia. That issue, according to Latvian example is President's prerogative to appoint ambassadors and represent the country in foreign affairs.

According to Article 54 paragraph 2 of the Constitution of the Czech Republic the President is elected by joint session of parliament and under Article 54 paragraph 3 during his term of presidency he/she is not account-

⁵⁹ Constitutions of Foreign Countries. Part. I (2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, p. 408, (in Georgian) compared to Конституция Российской Федерации, <<http://constitution.kremlin.ru>>.

⁶⁰ *Constitutions of Foreign Countries, Part. III*, *Gonashvili V.*, (ed.), Tbilisi, 2006, 655, (in Georgian).

⁶¹ Constitutions of Foreign Countries, Part. II (2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, 300, (in Georgian), compared with Конституция Республики Беларусь, <<http://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/>>.

⁶² Constitutions of Foreign Countries, Part. III, *Gonashvili V.*, (ed.), Tbilisi, 2006 , 770, (in Georgian).

⁶³ Constitutions of Foreign Countries, Part. I (2nd ed.), ed. *Gonashvili V.*, Tbilisi, 2008, 466, (in Georgian), compared with Constitution of the Republic of Kazakhstan, <http://www.constitutionnet.org/sites/default/files/2303_constitution_kazakhstan1.pdf>.

⁶⁴ Constitutions of Foreign Countries, Part. II (2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, 580, (in Georgian), compared to Constitution of France, <http://www.constitutionnet.org/sites/default/files/constitution_of_france_1958.pdf>.

⁶⁵ *Pacte P., Melen-Sukramanian P.*, Constitutional Law, *Kalatozishvili C.* (ed.), *Demetrashvili A.*, First Georgian Edition (28th ed., as of 2009) Tbilisi, 2012, 644-645, (in Georgian).

⁶⁶ According to Article 36 of the Constitution of the Republic of Latvia, the President is elected by 51 votes, and according to Article 5 of the same constitution, the Saeima consists of 100 deputies. Constitutions of Foreign Countries, Part. I (2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, 305, 301, (in Georgian).

⁶⁷ Constitution of the Republic of Latvia (Satversme), <<http://www.humanrights.lv/doc/latlik/satver~1.htm>>, compared with Constitutions of Foreign Countries Part. I (2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, 306, (in Georgian).

able for his/her actions.⁶⁸ The Article 63 paragraph 1 subparagraph "e" the President of Czech Republic has authority to appoint and fire the heads of diplomatic missions.⁶⁹ The Czech Republic like Latvia are parliamentary republics, and president's power are limited wither requirement of mandatory countersignature by head of the government or relevant minister.⁷⁰ Under the Article 60 of the Austrian Constitution the President of Austria is elected in direct elections⁷¹ and under Article 65 paragraph 1, the elected president appoints consular representatives and concludes international agreements;⁷² however in this case the nomination from the government or by the relevant minister is necessary (Article 67 paragraph 1).⁷³ Under Article 84.3 the President of Latvia appoints and takes resignation of ambassadors with consent of the government.⁷⁴

By the Article 59 paragraph 1 of the German Basic Law the President of Germany grants accreditation to the ambassadors, and under Article 58 of the same law for activation of the presidential order the act should be signed by the Federal Chancellor or by the relevant minister.⁷⁵

The paragraph 3 of the German Federal Law on Foreign Service (Gesetz über den Auswärtigen Dienst), regulates the status of the ambassadors, general consuls, consuls, permanent missions in the intergovernmental and supranational organizations.⁷⁶ All these activities represent diplomatic work, and respectively equal social and legislative protective standards for the diplomatic representatives; though the statuses of ambassadors are different because they represent the President of the FRG and are responsible to him. In Germany also acts The Law on Consular Activities, Responsibilities, and Authorities (Gesetz über die Konsularbeamten, ihre Aufgaben und Befugnisse),⁷⁷ but it does not regulate the appointment of the consul and hence it is domain of common rule.⁷⁸

Between European constitutional models, there are specific states, in which the issues are regulated depending on their peculiarities. Such state is Bosnia and Herzegovina, according to the Constitution of the country, in particular, article 5, the presidium of the country consists with three members; they are chosen from territories of the federation, each one Bosnian, one Croatian and also one Serbian chosen from territories of the Republic of Serbia.⁷⁹ They have authority to appoint ambassadors and other diplomatic representatives, the norm determining the same competence has its own special requirement (reservation) according to which two-thirds of ambassadors and diplomatic representatives must be from the territory of the Federation.⁸⁰

We believe it's important to examine constitutional system of appointing ambassadors and envoys of those states in which the head of state is chosen indirectly, by the legislative instance or by the special board and not elected directly by the people. We can compare several systems. For example, according paragraph 2 of article 79 of the Estonian Constitution, the diplomatic representatives of Estonia are appointed and dismissed by the

⁶⁸ Constitutions of Foreign Countries Part. I (2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, 653, (in Georgian,) compared with The Constitution of the Czech Republic, <<http://www.psp.cz/en/docs/laws/constitution.html>>.

⁶⁹ Constitutions of Foreign Countries Part. I (2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, 655, (in Georgian).

⁷⁰ Constitutions of Foreign Countries Part. I (2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, 656, (in Georgian).

⁷¹ Bundesverfassung der Republik Österreich, <<http://www.verfassungen.de/at/verfassungheute.htm>> compared with Constitutions of Foreign Countries, Part. II (2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, 120, (in Georgian).

⁷² Constitutions of Foreign Countries, Part I I (2nd ed.) *Gonashvili V.*, (ed.), Tbilisi, 2008, 122, (in Georgian).

⁷³ Constitutions of Foreign Countries, Part I I (2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, p. 124 (in Georgian).

⁷⁴ Constitutions of Foreign Countries, Part I I (2nd ed.), *Gonashvili V.*, (ed.), Tbilisi, 2008, 356, (in Georgian), compared with Constitution of the Republic of Lithuania, <http://www.opbw.org/nat_imp/leg_reg/lithuania/constitution.pdf>.

⁷⁵ *Shavbe J.*, Decisions of Federal Constitutional Court of Germany, Tbilisi, 2011, 414, (in Georgian), <<http://lawlibrary.info/ge/books/giz2011-ge-BVerfGE.pdf>>.

⁷⁶ <<https://www.gesetze-im-internet.de/bundesrecht/gad/gesamt.pdf>>.

⁷⁷ <<https://www.gesetze-im-internet.de/konsg/BJNR023170974.htm>>.

⁷⁸ The German Federal Law on Consular Activities deals only with the appointment of the Honorary Consul, but even in this case, does not define the procedure by which the consuls have to be appointed.

⁷⁹ Bosnia Herzegovina is a state, which is represented by the so-called "Head of the Collective State", what in turn reflects on the country's international relations.

⁸⁰ Constitutions of Foreign Countries, Part. III, *Gonashvili V.*, (ed.), 2006, 34, (in Georgian).

State Assembly, with suggestion of the Government, And the president is elected by the Electoral College, but if has not been elected by the three rounds, the president will be elected by the Chairman of the State Assembly's invited voter's board.⁸¹

The President of Albania approves and dismisses the candidates put forward by the Prime-Minister according to constitution's article 92 paragraph "F". The President of Albania is elected by 3/5 representatives of Kuvendi.⁸² This means that president is elected indirectly and makes decisions under control of the Government.

According to the Hungary's Constitution's article 29/a (1) the president is elected by the parliament. According article 30/a (1) paragraph "c", the parliament also selects ambassadors and envoys with prime-minister's or responsible minister's counter-signature.⁸³

It's impossible to understand the duty of such president and the purpose of existence of the governmental organ which can't do anything within its own competences. It's completely incomprehensible doubling of the competences via mechanism of counter-signature and we believe that, existence of the presidential institute in this form is unacceptable.

A similar system acts in Republic of Italy. According to article 83 of the Constitution of Italy, the president is elected by both chambers of the parliament and by the regional representatives, and in accordance of article 87 of the Constitution of Italy, the president is authorized to appoint and dismiss the envoys. But by the constitution, article 89, and the president's every act needs to be agreed and signed by the relevant minister and the act of law issued by the president requires approving by the head of cabinet council.⁸⁴

There are several European countries in which the presidents are elected directly by the people and have high legitimacy in decision-making process and in politics, but individually can't make decisions about appointment of the ambassadors. For example, the President of Bulgaria, elected directly by the people, in accordance with article 93 of the Constitution of Bulgaria, appoints and removes the candidates, which are put forward by the cabinet of Ministers, as the heads of diplomatic representatives and the permanent representatives in the international organizations.⁸⁵ According the article 121 of the Constitution of Portugal, the Portugal's President in elected also directly by the people⁸⁶ and as it is in most of main European countries, he/she appoints the ambassadors and special representatives (the paragraph "A" of article 135 of the Constitution of Portugal).⁸⁷ Therefore, if we consider foreign countries' constitutional regulations regarding the issue, we conclude that, the president's competence in appointment and resignation of the ambassadors is not directly linked neither to the way of election of the president, nor to the model of governance, but is the subject of regulation in the process of separation of the concrete competences. According to Montesquieu and Blackstone the governmental executive branch's one of the main competences is the subject of selecting ambassadors, and in so far executive branch belongs to government, it's explained that president does not carry out the executive power, is able to carry out the foreign policies. In authors' opinion this subject is a category for evaluation and is approached individually in different countries.⁸⁸ We have reviewed several constitutional models about competences of foreign representations, almost every model which exists

⁸¹ Constitutions of Foreign Countries, Part. III, *Gonashvili V.*, (ed.), Tbilisi, 2006, 259-260, (in Georgian), compared with Constitution of the Republic of Estonia, <<https://www.president.ee/en/republic-of-estonia/the-constitution/>>.

⁸² Constitutions of Foreign Countries, Part. IV, *Gonashvili V.*, (ed.), Tbilisi, 2007, 53-55, (in Georgian).

⁸³ Constitutions of Foreign Countries, Part. III, *Gonashvili V.*, (ed.), Tbilisi, 2006, 712-715, (in Georgian).

⁸⁴ Constitutions of Foreign Countries, Part. V, *Gonashvili V.*, (ed.), Tbilisi, 2007, 343-345, (in Georgian).

⁸⁵ Constitutions of Foreign Countries, Part. I V, *Gonashvili V.*, (ed.), Tbilisi, 2007, 209 – 211, (in Georgian).

⁸⁶ Constitutions of Foreign Countries, Part. V, *Gonashvili V.*, (ed.), Tbilisi, 2007, 671, (in Georgian).

⁸⁷ Constitutions of Foreign Countries, Part. V, *Gonashvili V.*, (ed.), Tbilisi, 2007, 676, (in Georgian), compared with Constitution of the Republic of Portugal, <https://www.constituteproject.org/constitution/Portugal_2005.pdf>.

⁸⁸ *Papashvili T.*, Foreign Affairs of the President and Government In the context of the 2010 Constitutional Reform, Contemporary Constitutional Law (Book I), Collection of Articles, Red: *Kverenchkhiladze G., Gengenava d.*, (David Batonishvili Institute of Law) Tbilisi, 2010, 198, (in Georgian).

in republic countries. We can say that, by the universal principle of constitutionalism, foreign policy is a competence of the head of state that includes subject of appointment of the ambassadors and envoys. In addition, it should be noted that there is no system of mixed governance in which the executive power completely belongs neither to the head by the head of state, nor to the government. Their functions and competences are strictly separated, but in certain cases the shared competencies are carried out.

Based on analysis of the constitutional practice, we can say that, in the case of expiry of the term or early release of the diplomatic representatives from the office, the president issues an order for his/her dismissal and due to that the Minister of Foreign Affairs is instructed to dismiss the diplomatic officials. Therefore, the President gives immediate assignment to the government's executive branch representatives to be performed appropriate legal actions envisaged by the law. This issue once again points to the fact that the president cannot be distant from the executive branch of government and frequently is connected within execution of the power.⁸⁹

5. Conclusion

In the paper, we have discussed the President's competence in the scope of appointment and dismissal of the ambassadors and diplomatic officials, as well as the constitutional regulation of the creation of diplomatic missions and consular posts and appointment of foreign representatives in general, which are regulated by the Constitution of Georgia, by the current legislation of Georgia and also by the international treaties.

It can be said that the constitutions of other countries, compared with the Constitution of Georgia, more specifically refers to the fact that the president not only appoints the ambassadors and other diplomatic representatives, but also, as the Constitution specifies and defines the competence of the president, the heads of diplomatic missions as well as the heads of consulates are appointed by the President. Also the constitutions of foreign countries directly regulate the bases of establishment and liquidation of foreign representations and institutions. Thus, it would be better and justified if the Georgian Constitution was more clearly in regulation of these issues.

In addition, it is possible to adopt a constitutional model that will ensure that decision on the foreign representation will be taken together, by the consultations between the head of state and the government and the representative body, that actually determines the main directions of the foreign policy. Also, the current constitution is unclear regarding to the other diplomatic representations, whether is included or not the consular representation and we believe that regarding this theme is needed more specified regulations.

The paper discusses the constitutional practice concerning the ordinances of the President and the Government, on the basis of which the ambassadors and diplomatic representatives are appointed. Based on the analysis of this practice can be concluded that, there are some inconsistencies between the acts and regulations, and to say that the resolutions on the appointment of ambassadors and diplomatic officials should be considered, not only as a legal administrative acts, but also as constitutional legal acts, as the authority of the President first of all is made on the basis of the Constitution.

And at last, the control and supervision of the diplomatic relations and diplomatic service must exercised by the higher authorities of the state and not only by the Ministry of Foreign Affairs, as the Constitution Article 3 paragraph "e",⁹⁰ respectively, defines the state's representation in the political-legal provision is only the government's supreme authority on relative issues, while the Ministry of Foreign Affairs is only the subject of the such body and can not unilaterally be the highest authority of the state.

⁸⁹ Decree N07/12/08 of the President of Georgia of 7 December 2015, ordinance № 15/03/03 of the President of Georgia of 15 March 2012, (in Georgian).

⁹⁰ Constitution of Georgia, (04/10/2013), (in Georgian), <<https://matsne.gov.ge/ka/document/view/30346>>.

Bibliography

1. Constitution of Georgia (04/10/2013).
2. Georgian Law on Diplomatic Service (as of 22/12/2016).
3. Georgian Law on Consular Activities (29/05/2014).
4. Law of Georgia “General Administrative Code of Georgia” (as of 21/12/2016).
5. Decree №158 of the Minister of Foreign Affairs of Georgia of 9 July 2013 on Approval of the Rule of Opening of Consular Establishment and Typical Regulations of the Minister of Foreign Affairs of Georgia.
6. Order 25/03/01 of 25 March 2016 of the President of Georgia.
7. Order №24 / 11/01 of 24 November 2016 of the President of Georgia.
8. Decree №15/11/05 of the President of Georgia of 15 November 2011.
9. Decree №21/03/01 of the President of Georgia of 21 March 2013.
10. Decree №17/04/01 of the President of Georgia of April 17, 2013.
11. Decree №.18 / 03/07 of the President of Georgia of March 18, 2013.
12. Decree №18 / 03/12 of 18 March 2013 of the President of Georgia.
13. Decree № 9/07/01 of the President of Georgia of 9 July 2012.
14. Decree №10 / 05/11 of 10 May 2013 of the President of Georgia.
15. Decree N07 / 12/08 of the President of Georgia of 7 December 2015.
16. Decree № 15/03/03 of the President of Georgia of 15 March 2012.
17. N2434 Decree of the Government of Georgia, November 17, 2016.
18. CDL (2010) 062 Venice Commission Convention (N543 / 2009), Concerning Constitutional Bill of Amendment and Amendment to the Constitution of Georgia, Strasbourg, 31 July 2010.
19. CDL (2010) 028 Venice Commission Final Resolution on the Constitutional Draft Bill on the amendment and amendment to the Constitution of Georgia approved by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010) Strasbourg, 15 October 2010.
20. Constitution of the Republic of Portugal .
21. Constitution of the Republic of Estonia.
22. The Constitution of the Czech Republic.
23. Bundesverfassung der Republik Österreich.
24. Constitution of the Republic of Lithuania.
25. Конституция Республики Беларусь.
26. Constitution of the Republic of Kazakhstan.
27. Constitution of France.
28. Constitution of the Republic of Latvia (Satversme).
29. Конституция Российской Федерации.
30. Constitution of the Republic of Poland.
31. Constitution of Argentina.
32. Constitutions of Foreign Countries, Part. I (2nd ed.), *Gonashvili V.* (ed.), Tbilisi, 2008.
33. Constitutions of Foreign Countries, Part. I I (2nd ed.), *Gonashvili V.* (ed.), Tbilisi, 2008.
34. Constitutions of Foreign Countries, Part. I I I, *Gonashvili V.*, (ed.), Tbilisi, 2006.
35. Constitutions of Foreign Countries, Part. I V, *Gonashvili V.*, (ed.), Tbilisi, 2007.
36. Constitutions of Foreign Countries, Part. V, *Gonashvili V.*, (ed.), Tbilisi, 2007.
37. *Demetrashvili A.*, 2009-2010 Constitutional Reform in Georgia (Constitutional Chronicle of Georgia) Batumi 2012.
38. *Papashvili T.*, Foreign Ministers of the President and Government In the context of the 2010 Constitutional Reform, Contemporary Constitutional Law (Book I), Collection of Articles, Red: *Kveenckhiladze G., Gegenava d.*, (David Batonishvili Institute of Law), Tbilisi, 2010.

39. *Legashvili N.*, Diplomatic Privileges and Immunities, Almanac 1999 №9 International Law (II).
40. *Packet P., Melen-Sukraman F.*, Constitutional Law, *Kalatozishvili C.* (ed.), *Demetrashvili A.*, First Georgian Edition (28th ed. as of 2009), Tbilisi, 2012.
41. *Tsurtsunia S.*, Constitutional Status of the President of Georgia (Comparison of Legal Analysis) Models of State Governance: Constitutional Reality and Prospect of Georgia (II National Conference in Constitutional Law: Collection of Reports) Publishing House of David Batonovishvili Institute of Justice, Tbilisi, 2016.
42. *Shavbe J.*, Decisions of the Federal Constitutional Court of Germany, Tbilisi, 2011.
43. *Thorpe F.N.*, "Is the President of the United States Vested with Authority under the Constitution to a Special Diplomatic Agent with Paramount Power without the Advice and Consent of the Senate?" The American Law Register and Review, Vol. 42, №4, (First Series) Vol.33 (New Series, Vol. 1) (Apr., 1894).
44. <https://www.constituteproject.org/constitution/Portugal_2005.pdf>.
45. <<https://www.president.ee/en/republic-of-estonia/the-constitution/>>.
46. <<http://www.psp.cz/en/docs/laws/constitution.html>>.
47. <<http://www.verfassungen.de/at/verfassungheute.htm>>.
48. <http://www.opbw.org/nat_imp/leg_reg/lithuania/constitution.pdf>.
49. <<http://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/>>.
50. <http://www.constitutionnet.org/sites/default/files/2303_constitution_kazakhstan1.pdf>.
51. <http://www.constitutionnet.org/sites/default/files/constitution_of_france_1958.pdf>.
52. <<http://www.humanrights.lv/doc/latlik/satver~1.htm>>.
53. <<http://constitution.kremlin.ru/>>.
54. <http://www.wipo.int/wipolex/en/text.jsp?file_id=194980>.
55. <<http://www.biblioteca.jus.gov.ar/argentina-constitution.pdf>>.
56. <<http://www.nplg.gov.ge/gsd/cgi-bin/library.exe?e=d-01000-00---off-0period--00-1----0-10-0---0---0prompt-10---4-----0-11--11-ka-50---20-about---00-3-1-00-0-0-11-1-1-0utfZz-8-00&cl=CL2.6&d=HASHa-7563fae1ef8bb17876837.7&x=1>>.
57. <<https://matsne.gov.ge/ka/document/view/30346>>.
58. <<https://matsne.gov.ge/ka/document/view/3472813>>.
59. <<https://matsne.gov.ge/ka/document/view/116584>>.
60. <<https://matsne.gov.ge/ka/document/view/116590>>.
61. <<http://www.supremecourt.ge/files/upload-file/pdf/aqtebi39.pdf>>.
62. <<http://www.mfa.gov.ge>>.
63. <<https://matsne.gov.ge/ka/document/view/20158>>.
64. <<https://matsne.gov.ge/ka/document/view/1682950>>.
65. <http://www.researchgate.net/publication/265101267_The_Politics_of_Semi-Presidentialism>.
66. <<https://matsne.gov.ge/ka/document/view/1965749>>.
67. <<http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL%282010%29062-geo>>.
68. <<http://constcommission.parliament.ge/1-5>>. <<http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282010%29028-e>>.
69. <<https://www.president.gov.ge/ka-GE/sajaro-informacia/samartlebrivi-aqtebi/%E2%80%8Bsaqartvelos-prezidentis-gankarguleba-N-24-11-01.aspx>>.
70. <<https://www.president.gov.ge/ka-GE/sajaro-informacia/samartlebrivi-aqtebi/%E2%80%8Bsaqartvelos-prezidentis-gankarguleba-N-25-03-01.aspx>>.
71. <<https://matsne.gov.ge/ka/document/view/3440196>>.
72. <<https://matsne.gov.ge/ka/document/view/16270>>.
73. <<http://lawlibrary.info/ge/books/giz2011-ge-BVerfGE.pdf>>.
74. <<https://www.gesetze-im-internet.de/bundesrecht/gad/gesamt.pdf>>.
75. <<https://www.gesetze-im-internet.de/konsg/BJNR023170974.html>>.