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## **The Principle of Subsidiarity and its Implementation Prospects in Georgian Political-Legal Environment**

*As the saying goes, the change of three words in the legislation turns all the libraries into waste-paper, however, the three new words suffice to fill the libraries again. The principle of subsidiarity belongs to the latter category<sup>1</sup>. Nowadays the principle of subsidiarity has become a kind of “trendy” idea. It is the constituent conception of the political-legal traditions for a number of European countries<sup>2</sup> having gained the recognition and influence even in the USA<sup>3</sup>. Moreover, the principle of subsidiarity is reflected in the treaty of the European Union as well.*

*As a result of the Constitutional Reform of 2017 the principle was enshrined in the Constitution of Georgia as well. Thus, the principle gained the additional topicality for Georgia. In the present paper there is reviewed the basic concept of the principle of subsidiarity, the conditions for its enforcement and the practice of the Constitutional regulation, in addition, there are evaluated the challenges posed to implementing the principle of subsidiarity and the further prospects of its enforcement in Georgia.*

**Key Words:** *Principle of Subsidiarity, Decentralization, Local Self-Government, Autonomous Republic of Adjara, Division of Power, Separation of Power*

### **1. Introduction**

The modern developing, fast-changing and globalized world introduces the new challenges. The dynamics of globalization – technological progress, international trade and investments, smooth flow of financial capital among countries, market expansion and economics based on the knowledge and innovations – have become a burden on the state power. The list of issues, the resolution of which is the internal problem of a country, is more and more decreasing. Even inside the country, there are several interested public and private parties participating in the decision-making process. The demands of citizens and social structure of the society have significantly changed as well.<sup>4</sup> “The nature of the problems faced by the government has changed. ... Nature of the problems as well as the possible solutions are deeply contest-

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<sup>1</sup> *Schutze R.*, Subsidiarity after Lisbon: Reinforcing the Safeguards of Federalism?, *Cambridge Law Journal*, Vol. 68, № 3, 2009, 525.

<sup>2</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), *Local and Regional Authorities in Europe*, №. 55, 1994, 7-8

<sup>3</sup> See *Vischer K. R.*, Subsidiarity as a Principle of Governance: Beyond Devolution, *Indiana Law Review*, Vol. 35, № 103, 2001, 103-142.

<sup>4</sup> *Cheema S., Rondinelli D.*, *Decentralizing Governance: Emerging Concept and Practice*, Washington, 2007, 4-6.

ed ... as the problems have become more difficult, so have the powers available to the central (national) government declined”.<sup>5</sup>

The new challenges posed to the state and the economic crisis, the growth of unemployment have outlined the limits of the centralized system of governance. “The large, the enormous, the distant, are no longer synonymous with efficiency.”<sup>6</sup> The mentioned tendency is well expressed in the statement of the prominent American sociologist, *Daniel Bell*: “the nation-state is becoming too small for the big problems of life, and too big for the small problems of life.”<sup>7</sup> The state is so engaged in the global and major problems that its capability to respond adequately to the different local, regional issues of great variety is restricted.

The crisis of centralized governance led the way in popularizing the idea of a small state that has accounted for the universal tendency of decentralization over the world.<sup>8</sup> In a wide sense, the decentralization is defined as the transfer of the state (central) power to the territorial bodies of state authorities, the partially autonomous state institutions, the regional and local authorities, and/or to the private corporations and non-governmental sector.<sup>9</sup>

“The subsidiarity is primary a de-centralizing principle”, in accord with which the process of decision-making and solution to problems occurs closest to the location they have been triggered, thus taking advantage of the quick and accurate managing of the issues.<sup>10</sup> Despite the fact that the principle of subsidiarity has gained in considerable popularity for the last several decades, it is not the “invention” of the modern society. The philosophical origin of the principle of subsidiarity goes back to the antique era. However, it should be noted that the ongoing processes over the world breathed new life into the concept of subsidiarity, which in the Western world became one of the most topical principles and is still disputable even today.

In the vertical structure of the state the local self-government bodies run the closest to the population. Within the scopes of the present paper the focus is made exactly on the issues concerning the enforcement of the principle of subsidiarity during the course of relationships between the state power and local self-government.

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<sup>5</sup> *Pollitt C.*, *Advanced Introduction to Public Management and Administration*, Cheltenham, Northampton, 2016, 46.

<sup>6</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, *Definition and Limits of the Principle of Subsidiarity*, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), *Local and Regional Authorities in Europe*, № 55, 1994, 7.

<sup>7</sup> *Bell D.*, *Previewing Planet Earth in 2013*, *Washington Post*, B3, 1988.

<sup>8</sup> *The World Bank*, *Decentralization in Client Countries An Evaluation of World Bank Support*, Washington, 2008, 5.

<sup>9</sup> See *Rondinelli D., Nellis J., Cheema S.*, *Decentralization in Developing Countries, a Review of Recent Experience*, *World Bank Staff Working Papers*, № 581, *Management and Development Series*, № 8, 1983, 13; *The World Bank*, *Decentralization in Client Countries An Evaluation of World Bank Support*, Washington, 2008, 3.

<sup>10</sup> *Evans M., Zimmermann A.*, *Editors' Conclusion: Future Directions for Subsidiarity*, *Global Perspectives on Subsidiarity*, *Evans M., Zimmermann A.* (eds.), Heidelberg, London, New York, 2014, 221.

In Georgia, the process of decentralization had been progressing with difficulty for about 3 decades of the independence of the country. For that period of time a number of decentralization reforms had been implemented. However, sometimes even the necessity of decentralization itself was open to question. Today the system of self-government is far from perfection and is still in the process of formation. Despite some of the positive changes, generally, it is poorly developed and takes the insignificant role in the governance system of the country.<sup>11</sup>

On October 13, 2017 the Parliament of Georgia adopted the Constitutional Law of Georgia on “Amending the Constitution of Georgia” (*hereinafter, Constitutional Amendments*). By the amendments, in fact, the new Constitution was confirmed. The major part of amendments will come into effect immediately after taking the oath by the president to be elected in the next Presidential Elections of Georgia in 2018. The amendments included constitutional norms regulating local self-government issues too. There should be highlighted the 4<sup>th</sup> section of Article 7 of the current Constitution envisaged by the Constitutional Amendments,<sup>12</sup> according to which the new Constitutional principle of separating the state from local self-government powers – the principle of subsidiarity- is being established in Georgia.

The introduction of the principle of subsidiarity in the Constitution and the new initiative in regard to the strategy of decentralization to be developed in 2018 as announced by the Government of Georgia, give grounds for expectation of the additional measures to be taken with the aim of implementing the principle of subsidiarity. The present paper is the recall to the mentioned tendency. Our goal is to review the subsidiarity concept as well as the conditions for its application and then analyze the prospects of implementing the principle in Georgian political-legal environment.

The second part of the paper starts with the analysis of the principle of subsidiarity. The third and fourth parts refer to the challenges posed to the implementation of the principle and the issues of its application. The fifth part reviews the examples of the Constitutional regulations of the principle. The fifth part evaluates the possibilities for implementation of the principle of subsidiarity in the political-legal environment of Georgia and the final part of the paper presents our conclusions.

## 2. The concept of subsidiarity

The term – “subsidiarity” is premised on the term “subsidia”, which, in its turn, is derived from the Latin verb – *subsidium*. This word in Latin means aid, assistance. The term itself had the military significance in the past. In ancient Rome this word denoted the replacement of military units, which set to battle only upon necessity.<sup>13</sup>

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<sup>11</sup> See *The International Center of the Civil Culture*, The local self-government in Georgia, 1991-2014, Losaberidze D., Bolkvadze T., Kandelaki K. (eds.), Tbilisi, 2015 (in Georgian); Ladner A., Keuffer K., Baldersheim H., Measuring Local Autonomy in 39 Countries (1990-2014), Regional and Federal Studies, Vol. 26, № 3, 2016, 321-357.

<sup>12</sup> Constitutional Law of Georgia on Amendments to the Constitution of Georgia, Legislative Herald of Georgia, № 1324-RS, 19/10/2017.

<sup>13</sup> Khubua G., The Federalism as the Normative Principle and the Political Order, 2000, 110 (in Georgian).

As it was mentioned, the genesis of the philosophical basis of the principle of subsidiarity goes back to the antique era. Particularly, the principle conceptually represented the part of the Greek philosophy. The aspiration of the principle of subsidiarity is reflected in “Politics” (the art of governing the free human being) – the work by *Aristotle*. *Aristotle* points out that the main goal of a state is to provide the unity, however, the exceeded unanimity is devastating. The state exists in variety. It consists of free people, families, yards, villages, communities, tribes. The mentioned units are diverse each performing its own function, however, for *Aristotle* the perfect formation, is only the state, while the other parts are only its constituent elements, the independent existence of which is impossible.<sup>14</sup>

*Aristotle*’s viewpoints were further developed by *Thomas Aquinas* (1225 -1274). He denoted that in the state there existed the different groups (religious, trade, political, territorial, vocational, etc.) fulfilling the independent public and private functions. In contrast to *Aristotle*, *Thomas Aquinas* thought, that the existence of each group mentioned above is necessary, as they represent the essential means of self-realization for the human being. And the state can intervene in their affairs only in specific cases.<sup>15</sup>

In the 20<sup>th</sup> century a kind of revival of the concept of subsidiarity is connected with the encyclical published by the Pop of Rome *Pius XI* in 1931, which comprehensively formulated the concept of subsidiarity. According to the encyclical, “It is indeed true, as history clearly proves, that owing to the change in social conditions, much that was formerly done by small bodies can nowadays be accomplished only by large corporations. None timeless, just as it is wrong to withdraw from time individual and ‘commit to the community at large what private enterprise and industry can accomplish, so, too, it is an injustice, a grave evil, and a disturbance of right order for a larger and higher organisation to arrogate to itself functions which can be performed efficiently by smaller and lower bodies. ... Of its very nature the true aim of all social activity should be to help individual members of the social body, but never to destroy or absorb them. The State should leave to these smaller groups the settlement of business of minor importance; it will thus carry out with greater freedom, power, and success the tasks belonging to it, because it alone can effectively accomplish these, ...as circumstances suggest or necessity demands.”<sup>16</sup>

To summarize, subsidiarity is a political philosophy referring to the principles of managing the social affairs. And the central idea of subsidiarity principle is the free individual. The principle of subsidiarity pays attention to the significance of the various social groups (family, community, local societies, vocational union, etc.) in the social life, as far as the mentioned groups are deemed to be the essential conditions for the development of a free individual. The state assumes a kind of consolidating function in this diverse social structure. The intervention of the state in the social life is justified only in case the members of the society or their groups are not capable to meet their own demands. To sum up, the philo-

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<sup>14</sup> *Aristotle*, *Politics*, *Jowett B.* (trans.), Kitchener, 1999, 23-24.

<sup>15</sup> *Aroney N.*, *Subsidiarity in the Writings of Aristotle and Aquinas*, *Global Perspectives on Subsidiarity*, *Evans M.*, *Zimmermann A.* (eds.), Heidelberg, London, New York, 2014, 24-25.

<sup>16</sup> *Pius XI*, *Quadragesimo Anno: Reconstructing the Social Order and Perfecting it Conformably to the Precepts of the Gospel in Commemoration of the Fortieth Anniversary of the Encyclical Rerum Novarum*, Australian Catholic Truth Society, 1931, № 19, 21.

sophical basis of subsidiarity, first of all, is the freedom and free individual that makes it the democratic principle.<sup>17</sup>

The enforcement of the concept of subsidiarity in the state is possible at the horizontal and vertical levels, accordingly, there are distinguished the territorial and functional versions of the subsidiarity concept. The horizontal (functional) subsidiarity highlights the importance of the individual, various social groups and unions. While the vertical (territorial) subsidiarity emphasizes on the territorial units of the state.

The territorial conception at the official level first appeared in the Basic Law of Germany of 1949 and became the essential part of German Federalism, before long it became the dominated concept in Europe. In the process of the division of power among the different territorial levels of government the principle of subsidiarity acts as a presumption in favour of the lower territorial government, whereas formally, the obligation of proving the opposite is imposed to the higher territorial government.<sup>18</sup> In the present paper mainly the territorial concept of subsidiarity is highlighted.

Interestingly, from then onward, the concept of subsidiarity has encompassed the controversial elements which are often called the negative and positive elements of subsidiarity. The negative (proscriptive) subsidiarity concept implies the protection of lower units from the interference of the higher authorities. Whereas the positive (prescriptive) subsidiarity admits the possibility of the intervention of higher authorities into the freedom of lower units. However, as mentioned above, the right of higher authorities to intervention is conditioned by the incapability of the lower units.<sup>19</sup> “Subsidiarity is not simply a limit to intervention by a higher authority ..., it is also an obligation for this authority to act”, when the lower units need the aid.<sup>20</sup> The coexistence of the above mentioned two elements contributes to the perfect self-realization of the social groups, unions and individuals. However, this coexistence offers the possibility of making quite a wide interpretation too. In particular, the logical question arises: in what case and to what extent do the higher authorities have the right to intervene in the freedom of lower units?

The ample opportunities for the definition of the concept of subsidiarity significantly simplify the integration of the principle with political-legal space of the countries having various traditions and interests.<sup>21</sup> As it seems, its flexible nature deserves the general approval. Some of the researchers compare it

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<sup>17</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 10-11.

<sup>18</sup> *Follesdal A.*, Subsidiarity, *The Journal of Political Philosophy*, Vol. 6, № 2, 1998, 195-196; *Endo K.*, The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors, *Hokkaido Law Review*, № XLIV/6, 1994, 568, 640-39.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Delors J.*, The Principle of Subsidiarity: Contribution to the Debate, Subsidiarity: The Challenge of Change: Proceedings of the Jacques Delors Colloquium Subsidiarity – Guiding Principle for Future EC Policy Responsibility?, European Institute of Public Administration, Maastricht, 1991, 9, 17.

<sup>21</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 10-11.

with the old Swiss army knife, “flexible enough to apply to most policy issues, pointed enough to command caution, dull enough to never do serious harm, and always in its pocket.”<sup>22</sup>

While analyzing the principle of subsidiarity the professor of Columbia University George Bermann distinguishes its five main values: the first is self-determination and accountability. The individuals get more opportunities to influence their own life when the rules are set at the territorial level, where they have more possibilities for their participation. The opportunity for participation implies the compatibility of the local laws and policy with the demands and interests of the local population. It is easier for the society to express the dissatisfaction when the government is closer to the population. The second, political liberty. The subsidiarity hinders the exceeded concentration of power and creates the better possibilities of gaining a balance between the diverse interests. The third, flexibility. The subsidiarity allows the society to take into account the uniqueness of the local – physical, economic, social, moral, cultural conditions and promptly respond to the changes. Accordingly, the subsidiarity allows to enjoy the democracy as well as the efficient governance at the same time. The fourth, preservation of identity. The local society can develop the local social and cultural identity and take the local peculiarities into consideration. The fifth, diversity. The subsidiarity is important to ensure the variety of politics. It allows conducting a number of experiments within the certain community. Thus the community turns into a kind of laboratory allowing to create and develop the best practice. Hence, the principle is the important policy tool for developing the efficient management practice as well.<sup>23</sup>

All in all, the subsidiarity, first of all, means more autonomy (self-government). The implementation of the principle allows to reach the reasonable balance among the interests of the individuals, social groups, unions and the state. In the process the state assumes the responsibility for the security, social unity, general regulation and coordination. However, the dual nature of the principle provides the opportunity to conduct the complex manoeuvres. In the process of vertical division of powers on the one hand, the principle is deemed to be the argument for transferring the powers to the lower level, however, on the other hand, it presumes the opportunity of centralization too, particularly, when the lower level is not capable or the incapability of exercising the power on lower level is evident.<sup>24</sup>

To conclude, it is worth noting that “subsidiarity is primarily a de-centralizing principle, which aims to empower the individual by ensuring that decisions are made, and problems are resolved, closest to where they arise. In turn, decision-making and action taken by those directly affected allows for problems to be resolved more quickly, and more accurately than if a higher-level decision maker who is distanced from the problem, were to become involved.”<sup>25</sup>

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<sup>22</sup> *Martin A.*, The Principle of Subsidiarity and Institutional Predispositions: Do the European Parliament, the German Bundestag, and the Bavarian Landtag Define Subsidiarity Differently?, CAP Working-Paper, München, 2010, 3.

<sup>23</sup> *Bermann A. G.*, Taking Subsidiarity Seriously: Federalism in the European Community and the United States, Columbia Law Review, Vol. 94, № 2, 1994, 339-44.

<sup>24</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 11.

<sup>25</sup> *Evans M., Zimmermann A.*, Editors’ Conclusion: Future Directions for Subsidiarity, Global Perspectives on Subsidiarity, *Evans M., Zimmermann A.* (eds.), Heidelberg, London, New York, 2014, 221-223.



### 3. The Challenges of the Principle of Subsidiarity

The principle of subsidiarity cannot be reviewed isolated in the system of public governance. It is in constant competition with other important public interests and principles and has to be balanced therewith. The experts of the Congress of Local and Regional Governments (hereinafter referred as Congress) distinguish four principles, over which the principle of subsidiarity must reach a kind of “compromise”, they are as follows: the principles of unity of actions, effectiveness, the unity of application and solidarity.<sup>26</sup>

The unity of action implies to the unification and concentration of the effort within the state. The modern challenges require the mobilization of energy at every level and the economic management of resources from the states.<sup>27</sup> However, the effective management and solution to problems is not always possible to be achieved by the centralization of power and unified action. Today the central government is overloaded with the global and bigger issues that it is not able to make the adequate response to various and diverse local problems. Under such conditions, in some case, the most proper solution is to rely on the principle of subsidiarity.

The principle of subsidiarity is often opposed by the principles of effectiveness and economy. The effectiveness can be perceived differently, accordingly, its exact definition is a complicated task. In the theory of management and finances there are distinguished two types of “effectiveness” (effectiveness and efficiency), the Georgian equivalents of which do not exist. That is why, conditionally, we will use the terms: effective results (effectiveness) and efficient expenses (efficiency). The effectiveness implies, to what extent the goal has been achieved in the relevant policy area (e.g. social security, healthcare, transport, etc.) The achievement of goals is regarded as the positive changes of the existing situation and environment. (e.g. reducing the rate of unemployment, decreasing of illnesses, diminishing of traffic congestions, etc.) The efficiency implies the number of wasted resources (finances, materials, human resources, etc.) and the number of produced “objects” resulted therefrom (e.g. how many km of road were constructed, how many reports were written, how many persons were arrested, how many persons were trained, etc.). In this case, the greater importance is attached to the proportion between the amount of the wasted resources (finances, time, human resources, etc.) and the amount of produced objects (the amount implies: size, weight, volume etc.). Whereas the economy means the resources saving.<sup>28</sup>

In the process of evaluating the distribution of functions the economic criteria are frequently applied: firstly, the criteria of proximity. The closeness of the public government with the problem offers

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<sup>26</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 24-29.

<sup>27</sup> *Ibid*, 25.

<sup>28</sup> *Endo K.*, The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors, *Hokkaido Law Review*, № XLIV/6, 1994, 636-37; *Rossell C.*, Using Multiple Criteria to Evaluate Public Policies, *The Case of School Desegregation*, *American Politics Quarterly*, Vol. 21, № 2, 1993, 164; *Pollitt C., Bouckaert G.*, *Public Management Reform: A Comparative Analysis: New Public Management, Governance and the Neo-Weberian State*, 3<sup>rd</sup> ed., Oxford, 2011, 15, 135.

the flexibility to become better aware of the situation and solve the problems by adapting to the local conditions thereto; the second one is the economy of the scale that implies the reduction in expenditure along with the increase in the amount of production; and the third criteria is the effect of access. According to the mentioned criteria, while dividing the powers effectively, it should be considered the extent (the volume) of the direct benefit of the local population from the relevant public good produced by the local community (local government). For example: the consumer of the outdoor lighting and fire protection service is mainly the population of the specific territorial unit in contrast to the international highway which is equally used by the whole population of the country.<sup>29</sup>

The last two criteria of effectiveness logically lead to the centralization and the merger of territorial units, which are opposite categories with the principle of subsidiarity. However, the concept of subsidiarity does not contradict to the concept of effectiveness. The principle of subsidiarity introduces other criteria along with the traditional financial and economic criteria for evaluating the effectiveness. For example, the criteria such as the welfare of the population and the respect for the historical-cultural peculiarities.<sup>30</sup> For instance, the construction of one big House of Justice (state agency which provides some public services, for example, registration of the property, issuing identity cards and etc.) in the region may be the most efficient and economical, however, in this case the population living in the peripheries has to go a very long distance to be provided with the service, whereas the decision on opening the Houses of Justice in the mountainous settlements may not be financially justified but it will improve the welfare of the local population.

Based on this, in the social and political issues the economic-financial criteria may be only the relative concept. The common welfare is not always connected with the financial and economic categories. The subsidiarity principle takes notice of not only the quantitative but qualitative factors as well. At the same time, the economy of scale has its limits and sometimes contributes to the increase of bureaucratic procedures.<sup>31</sup> Accordingly, bigger does not always mean more effective.<sup>32</sup>

One more principle contending with the principle of subsidiarity is the principle of the unity of application. The central power is characterized by the tendency of unification, which is the condition for the existence and development of the unified state. The provision of unification, in a fairly general sense of this word social, economic, cultural, political, legal and other is the important condition for the equal social-economic development of the country. At the same time, ensuring the equal living standards for the whole population represents the constitutional obligation of the country.<sup>33</sup>

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<sup>29</sup> David K., *Fiscal Tiers (Routledge Revivals): The Economics of Multi-Level Government*, 1<sup>st</sup> ed., New York, 2016, 17-18.

<sup>30</sup> Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M., *Definition and Limits of the Principle of Subsidiarity*, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), *Local and Regional Authorities in Europe*, № 55, 1994, 26.

<sup>31</sup> Ibid, 26-27.

<sup>32</sup> See Swianiewicz P., Lukomska J., *Is Small Beautiful? The Quasi-experimental Analysis of the Impact of Territorial Fragmentation on Costs in Polish Local Governments*, *Urban Affairs Review*, № 55(3), 2017, 1-24.

<sup>33</sup> Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M., *Definition and Limits of the Principle of Subsidiarity*, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), *Local and Regional Authorities in Europe*, № 55, 1994, 27-28.

At first glance, the principle of unification is directly contradictory to subsidiarity, however, the unification can be most effectively achieved on the basis of the principle of subsidiarity. The subsidiarity offers the opportunity for adaptation to the local conditions and demands, which is far more effective means of creating the equal living conditions over the territory of the country. “Subsidiarity can reduce the possible rigidity and ill adaptedness that unity of application can involve.”<sup>34</sup> The subsidiarity encourages the individualism and allows free rein to initiative and innovations. Sometimes under the conditions of the local initiative even the original ways of solving the problems are explored, that increases the prospect of the generalization and further development.<sup>35</sup>

The principle of subsidiarity and solidarity are in conflict as well. During the course of distributing the wealth among the rich and poor, one of the complicated challenges for the modern state is the assurance of fair balance. From this point of view, the centralization of all the resources and their further distribution seems to be an appealing way out without any alternative.<sup>36</sup> However, the concentration of comprehensive knowledge of the problems pertaining to each settlement and territory at the central level is practically impossible. Accordingly, the logical question arises: how fair is the centre unless having the relevant information concerning the local conditions and demands?

The subsidiarity does not actually exclude the solidarity. The concept of subsidiarity implies the positive alongside negative obligations of the state power as well, which is expressed in the duty of providing the subordinated units with the aid. This element approximates the subsidiarity to the principle of solidarity and makes the outlines for coexistence therewith. The coexistence of the principles of subsidiarity and solidarity necessitates the need to preserve the reasonable balance between the municipalities possessing the different capabilities (e.g. urban or high mountainous or rural municipalities) and obliges the state to distribute the resources among the municipalities equally. At the same time, “subsidiarity introduces the idea that equalization or aid have no meaning unless they lead to the equal capacity for action and are accompanied by acceptance of responsibility.”<sup>37</sup> Correspondingly, based on the autonomous management of resources and the relevant responsibility therefor the concept of subsidiarity itself implies the consent of the other party to accept the aid as well.<sup>38</sup>

#### **4. The “Standard” for Enforcement of the Principle of Subsidiarity**

The implementation of the principle of subsidiarity requests the establishment of the standard for its enforcement, which means the stipulation of the criteria and rules according to which the principle will be enforced. In this term, the criteria for the division (distribution) of power established by the dif-

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<sup>34</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 28.

<sup>35</sup> *Ibid*, 27-28.

<sup>36</sup> *Ibid*, 28-29.

<sup>37</sup> *Ibid*, 28.

<sup>38</sup> *Ibid*.

ferent international legal regimes in Europe are of interest for Georgia. In this respect the greatest importance is attached to the European Charter on Local Self-Government (hereinafter referred as Charter) which was ratified by the country in 2004.

The principle of subsidiarity is not directly enshrined in the Charter, however, its essential aspiration is premised on the subsidiarity conception.<sup>39</sup> In this respect, the 3<sup>rd</sup> section of Article 4 of the Charter is worth noting, pursuant to which “public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.”<sup>40</sup>

In accord with the explanatory report of the Charter, it is impossible to determine the precise and comprehensive list of functions of “local importance.” The great part of functions bears the local as well as the statewide significance. They vary according to the states as well as change in time and are differently distributed among the governments of various territorial levels. “To limit local authorities to matters which do not have wider implications would risk relegating them to a marginal role.”<sup>41</sup> That is why, pursuant to the Charter the local self-government must assume the responsibility for the substantial share of public affairs.<sup>42</sup>

Four criteria of the division of powers are stipulated by the 3<sup>rd</sup> section of article 4 the Charter. The first two are more or less “objective” categories, such as: the “nature” and “volume” of the function. For example, the solution to the issues such as the administration of defense and foreign affairs of the country, the construction of pipeline and international highways do not represent the issues of the local importance due to their nature and volume and they cannot be managed by municipality, in contrast to, for instance, the functions of municipal waste management and arranging the resting places. The rest of two criteria “effectiveness” and “economy” are the normative (evaluative) categories, which we have discussed above.

The Charter heavily focuses on the positive obligations of the state, which is one of the elements of the subsidiarity conception. In particular, “Local self-government denotes the right and the ability of local authorities... to regulate and manage”<sup>43</sup> The creation of the real “ability” of regulation and management is the direct obligation of the state power. In this respect, the three groups of norms of the Charter can be conventionally distinguished. The first group requires from the state the provision of the or-

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<sup>39</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 13.

<sup>40</sup> Council of Europe, European Charter of Local Self-Government, European Treaty Series, № 122, Strasbourg, 15/10/1985, <[http://www.coe.int/t/dgap/localdemocracy/WCD/CS\\_Conventions\\_en.asp#](http://www.coe.int/t/dgap/localdemocracy/WCD/CS_Conventions_en.asp#)>, [15.04.2018].

<sup>41</sup> Council of Europe, Explanatory Report, European Charter of Local Self-Government, European Treaty Series, № 122, Strasbourg, 15/10/1985, <<http://conventions.coe.int/Treaty/EN/Reports/HTML/122.htm>>, [15.04.2018].

<sup>42</sup> Article 3 (1), Council of Europe, European Charter of Local Self-Government, European Treaty Series, № 122, Strasbourg, 15/10/1985, <[http://www.coe.int/t/dgap/localdemocracy/WCD/CS\\_Conventions\\_en.asp#](http://www.coe.int/t/dgap/localdemocracy/WCD/CS_Conventions_en.asp#)>, [15.04.2018].

<sup>43</sup> *Ibid.*

ganizational and personnel autonomy of the local self-government (article 6 and article 7). The second group, denotes to the necessity of ensuring the financial autonomy (article 9, sections 1-5 and section 7), and the third group focuses its attention on the mechanisms of the influence of the local self-government over the central power (article 6, section 6 and article 9, section 6).<sup>44</sup>

The principle of subsidiarity is prescribed by the Treaty of Lisbon as well.<sup>45</sup> The attitude of the European Union related to the subsidiarity principle is different from the concept enshrined in the Charter. The goal of the Charter is to protect and popularize the concept of the local self- governance. Whereas the European Union aims at achieving of the prudent political balance between the interests of the Union and the member states.<sup>46</sup> Despite the diverse agenda, even in the Treaty of Lisbon it is possible to identify the interesting guidance criteria for the division of power in compliance with the principles of subsidiarity.

The 5.1<sup>st</sup> and 5.3<sup>rd</sup> sections of the Treaty of Lisbon envisages the following frame approach of the distribution of the powers among the Union and its members: “The use of Union competences is governed by the principles of subsidiarity and proportionality. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence,<sup>47</sup> the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.<sup>48</sup>

The Treaty of Lisbon offers several criteria for the division of powers: firstly, the Union is entitled to act if the lower unites cannot sufficiently exercise their authorities (negative test); Secondly, the Union is authorized in case it can prove that by reason of the scale or effects of the proposed action the set goals be better achieved at the Union level (positive test, so-called the test of additional value)<sup>49</sup> and thirdly, if the first and the second criteria are in place, the union is obliged to imply with the proportionality principle and exercise the power only to the extent that is necessary to achieve the better result (proportionality test).<sup>50</sup>

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<sup>44</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 15-16.

<sup>45</sup> Treaty of Lisbon was signed by 27 countries of EU, in Portugal, Lisbon on December 13, 2007. The Treaty of Lisbon moves amendment to the Treaty of European Union and the Treaty Establishing the European Union, which was renamed and called Treaty on the Functioning of European Union.

<sup>46</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 14.

<sup>47</sup> The term – exclusive competence implies to the European Union.

<sup>48</sup> *Bonde J. P.* (ed.), Consolidated Reader-Friendly Edition of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as amended by the Treaty of Lisbon (2007), Foundation of the EU Democracy, 3<sup>rd</sup> ed., Notat Grafisk, 2009, 16-17.

<sup>49</sup> The phrase “by the reason of the scale or effects” means that achieving the set goals demands impact on large area (territory) or the result of the action could have a large scale effect. See *Endo K.*, The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors, *Hokkaido Law Review*, № XLIV/6, 1994, 635.

<sup>50</sup> *Kiiver P.*, The Early Warning System for the Principle of Subsidiarity: Constitutional Theory and Empirical Reality (Routledge Research in EU Law), 1<sup>st</sup> ed., New York, 2012, 23, 70-71.

Despite the difference there can be found the common signs related to the principle of subsidiarity both in the Charter and Treaty of Lisbon. In both of the cases in the process of the division of the powers the subsidiarity principle is the presumption in favour of the lower territorial governments, while the obligation to confirm the opposite is imposed to the higher authority. The guidance criteria and principles of the division of powers may be chosen in accordance with the generalizing the approaches reviewed above. In particular, upon the division of powers the following criteria and principles should be considered:

- The presumption of the granting the power to the lower territorial units;
- The criteria of nature and volume of power;
- The criteria of economy and effectiveness;
- The criteria of the scale and effect of the objective;
- The positive obligation of aid;
- The principle of proportionality.

At the same time, the enforcement of the subsidiarity principle is not completed only by determining the principles and criteria for the division of powers. In the process of division of powers the compliance with certain rules is not less important.

Upon the recommendation of the experts of the Congress in the process of division of the powers introduction of shared authorities should be avoided as possible, it means excluding the possibility of overlapping responsibilities of the various territorial units.<sup>51</sup> In accord with the Charter, the powers transferred to the local self-government shall be full and exclusive.<sup>52</sup> The mentioned position is straightforward and logical, the autonomy of the local self-government “can be preserved and collaboration is fruitful if there is a clear rule.”<sup>53</sup> That is why, the authorities must be stipulated as precisely and comprehensively as possible.

Here it should be determined that the above mentioned approach does not hinder the existence of the principle of general competence (universal competence), according to which “Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.”<sup>54</sup> Hence, upon the division of the powers, the maximally clear and comprehensive definition of the powers by the Constitu-

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<sup>51</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 30.

<sup>52</sup> Article 4 (4), Council of Europe, European Charter of Local Self-Government, European Treaty Series, № 122, Strasbourg, 15/10/1985, <[http://www.coe.int/t/dgap/localdemocracy/WCD/CS\\_Conventions\\_en.-asp#>](http://www.coe.int/t/dgap/localdemocracy/WCD/CS_Conventions_en.-asp#>), [15.04.2018].

<sup>53</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 30.

<sup>54</sup> Article 4 (2), Council of Europe, European Charter of Local Self-Government, European Treaty Series, № 122, Strasbourg, 15/10/1985, <[http://www.coe.int/t/dgap/localdemocracy/WCD/CS\\_Conventions\\_en.-asp#>](http://www.coe.int/t/dgap/localdemocracy/WCD/CS_Conventions_en.-asp#>), [15.04.2018].

tion or Law must be the major and guiding principle, whereas the principle of the general competences is deemed as the additional, “auxiliary” means.

The transfer of powers to the local self-government by the higher (state, autonomous republic, federation, etc.) authorities can be made in the form of the own as well as delegated authority. Correspondingly, the question arises: which of the authorities must be more emphasized? The own powers of the local self-government are the powers granted by the Constitution or Law to the local self-government, which is exercised independently or under its own responsibility. Whereas the delegated powers represent the authority imposed to the higher territorial government, which is exercised by the local self-government under the extensive supervision and in the name of the relevant government.<sup>55</sup>

The well-defined position related to the mentioned issue is enshrined in the Charter which emphasizes on the own powers, in particular, the exercise of power by local government independently and under its own responsibility. Otherwise the danger will be posed to the local self-government to turn from the autonomous unit into the local agency directly subordinated to the highest governmental body. Hence, pursuant to the Charter the local self-government must have the freedom of action even in case of execution of the delegating powers thereto.<sup>56</sup>

The principle of subsidiarity is the method of action of the public authority emphasizing the exercise of power at the lower territorial level. However, it is debatable, which territorial level/levels can be the lower territorial levels of the public governance. The lower territorial level may be a settlement (village, town) or/and a certain community of several settlements (district, department, county, etc.) or/and larger territorial level – region. Traditionally, the discretion of solving the mentioned issue is within the remits of the state power.

The systems where the self-government units are established at several territorial levels allow using the subsidiarity principle in more flexible manner. In the mentioned case the central government can effectively manipulate the diverse criteria reviewed above, that is attested by the territorial reforms having been implemented by the states for the last 30 years, which was followed by the creation of several-level systems of public governance. There is displayed high tendency for forming the regional level too.<sup>57</sup> In this respect, the countries of Eastern Europe are distinguished by the implemented reforms too. For example, two levels of local self-government have been established in Czech Republic, Slovenia, Serbia, Hungary, Rumania, Croatia and Greece, and in Poland – three levels.

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<sup>55</sup> Study of the European Committee on Local and Regional Democracy (CDLR) with the collaboration of *Marcau G.*, *Local Authorities Competences in Europe*, 2007, 40-41, <<https://rm.coe.int/1680746fbb>>, [13.04.2018].

<sup>56</sup> Article 4 (5), Council of Europe, *European Charter of Local Self-Government*, European Treaty Series, № 122, Strasbourg, 15/10/1985, <[http://www.coe.int/t/dgap/localdemocracy/WCD/CS\\_Conventions\\_en.asp#>](http://www.coe.int/t/dgap/localdemocracy/WCD/CS_Conventions_en.asp#>), [15.04.2018].

<sup>57</sup> See Study of the European Committee on Local and Regional Democracy (CDLR) with the collaboration of *Marcau G.*, *Regionalization and its Effects on Local Self-Government, Local and Regional Authorities in Europe*, № 64, 1998.

## 5. The Principle of Subsidiarity in the Constitutions of Foreign Countries

The principle of subsidiarity is rarely enshrined in the legislative acts of the European States, especially in the Constitutions. However, the norms completely or partially encompassing the subsidiarity concept is often encountered in the Constitutions.

In the Basic law of Germany the subsidiarity concept is referred to only in terms of the relationship with the European Union. However, the subsidiarity conception is mentioned in various articles of the Basic Law. Among them Article 30 of the Basic Law of Germany is noteworthy, pursuant to which “except as otherwise provided or permitted by this Basic Law, the exercise of state powers and the discharge of state functions is a matter for the *Länder*,” It is worth noting that Article 30 of the Constitution is clearly defined by the Constitutional Court of Germany. Particularly, the Constitutional Court denotes that upon the division of powers the following sequence should be followed: municipality, land and federation.<sup>58</sup>

It is also interesting, how the Constitutional Court defines the concept of “local affairs”. According to its definition, “local affairs are those needs and interests that have their roots in the local community and that have a specific link to the local community.”<sup>59</sup>

The first section of Article 70 of the Basic Law is also premised on the subsidiarity concept, in compliance with which, “The *Länder* shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Federation”, however, the above mentioned general authority of the land is therein limited to the conception of exclusive and competitive (equal, parallel) authority by the Basic Law. In the sphere of competitive authorities the Federation is entitled to pass the legislative act in case it is impossible to exercise the power efficiently by the regulations based on the land legislation, and/or the interests of the land or the whole state are jeopardized (the definition of the Constitutional court). In case of the existence of the above-mentioned conditions, the Federation exercises the relevant power only to the extent that is necessary to create the equal living conditions over the territory of the country or/and to ensure the legal and economic unity.<sup>60</sup> It is worth noting that this approach applies to the above discussed criteria to a certain extent as well.

The principle of subsidiarity is not directly enshrined in the Constitution of Austria either. However, in the Constitution there is the article covering the idea of subsidiarity. Pursuant to Article 118 of the Constitution of Austria all the issues applying exclusively or/and generally to the local society belong to the own power of the municipality and they can be exercised within its territory.<sup>61</sup>

In the constitution of France the principle of subsidiarity is prescribed as follows: “Territorial communities<sup>62</sup> may take decisions in all matters arising under powers that can be best exercised at their

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<sup>58</sup> Bröhmer J., Subsidiarity and the German Constitution, *Global Perspectives on Subsidiarity*, Evans M., Zimmermann A. (eds.), Heidelberg, London, New York, 2014, 144-145.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid, 133-137.

<sup>61</sup> Eberdhard H., Austria – Municipalities as the “Third Tier” of Austrian Federalism, *Local Government in Europe, The Fourth Level in the EU Multilayered System of Governance*, Panara C., Varney M. (eds.), London, New York, 2013, 13.

<sup>62</sup> In France the term Territorial Community means the self-governing unit.



level.”<sup>63</sup> (Article 72). In accord with the Constitution of Greece, “for the administration of local affairs, there is a presumption of competence in favour of local government agencies.” (The 1<sup>st</sup> section, Article 102).<sup>64</sup> And in compliance with the Constitution of Romania the public governance and the delivery of public services is conducted on the basis of the principles of decentralization, local autonomy and de-concentration.<sup>65</sup>

The Constitution of Italy holds in the rare cases, when the principle of subsidiarity is directly recognized by the Constitution, pursuant to which, “Administrative functions are attributed to the Municipalities, unless they are attributed to the provinces, metropolitan cities and regions or to the State, pursuant to the principles of subsidiarity, differentiation and proportionality, to ensure their uniform implementation...”<sup>66</sup> The subsidiarity is the Constitutional principle in Portugal as well. Portugal is a unitary state which is organized and functioning on the basis of subsidiarity, democratic and decentralization principles of the state governance under the Constitution of Portugal.<sup>67</sup>

In the Constitution of Poland the subsidiarity principle is enshrined in the preamble of the Constitution as well. The principle is contextually stipulated by Article 163 according to which the state functions are performed by the local government unless otherwise defined as the functions of other bodies by the Constitution and Law. The public objectives, the goal of which is to meet the demands of the local society, shall be realized by the local government as its direct obligation.<sup>68</sup>

## 6. The Challenges of Implementation of the Principle of Subsidiarity in Georgia

In the paper the evaluation of the prospects of implementing the principle of subsidiarity in Georgia is presented on the basis of the analysis of five major challenges. From our point of view, overcoming the mentioned challenges adequately has the decisive importance for the effective enforcement of the principle of subsidiarity. Particularly, they are: mobilizing the political will; providing the efficient separation and division (distribution) of powers; strengthening the financial autonomy of the local self-

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<sup>63</sup> *Couzigou T.*, France – Territorial Decentralisation in France: Towards Autonomy and Democracy, Local Government in Europe, The Fourth Level in the EU Multilayered System of Governance, *Panara C., Varney M.* (eds.), Routledge, London, New York, 2013, 82..

<sup>64</sup> Article 102 (1), Constitution of Greece, 1975, <<http://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/>>, [15.04.2018].

<sup>65</sup> Article 120 (1), Constitution of Romania, 21/11/1991, <<http://www.cdep.ro/pls/dic/site.page?id=371>>, [15.04.2018].

<sup>66</sup> *Villamena S.*, Organization and Responsibilities of the Local Authorities in Italy Between Unity and Autonomy, Local Government in Europe, The Fourth Level in the EU Multilayered System of Governance *Panara C., Varney M.* (eds.), London, New York, 2013, 196-97.

<sup>67</sup> Article 6, Constitution of the Portuguese Republic, 1976, <<http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>>, [15.04.2018].

<sup>68</sup> Articles 163, 166, Constitution of the Republic of Poland, 02/04/1997, <<http://www.sejm.gov.pl/prawo/-konst/angielski/konl.htm>>, [15.04.2018].

government; carrying out the territorial reforms in compliance with the local conditions and demands and at last, creating the system for the development of appropriate human resources at the local level.

### **6.1. The Political Will**

The principle of subsidiarity is the principle of decentralization, accordingly, its implementation is related to the decentralization reform. The enforcement of the principle requires the substantial changes of methods of public administration to be made by the public authorities. Therefore, the existence of the political will is attached the decisive importance for the implementation of the principle.

As the past period has shown the reform of decentralization is frequently perceived to have a single, narrow “field” remits and its scales are not adequately realized. After perceiving its real scale it is difficult to mobilize the political will for taking the thorough measures. That is why, despite several attempts of implementing the reform of decentralization, the process is progressed too slowly and the advancements are frequently followed by the regress. Consequently, the positive results of decentralization are less tangible in the country.<sup>69</sup>

The decentralization reform is the complex issue. It implies not only changing of the vertical structure of the state but the significant transformation of the whole system of public governance. The decentralization encompasses almost all the spheres and fields of state policy (economics, environmental protection, social security, culture, sports, health care, agriculture, finances, elections, etc.). Along with the legal and institutional changes the decentralization requires the transformation of the behaviour of subjects involved in the process of public administration. This is the prolonged and complicated process. In particular, the state’s politicians should conform to weakening their political control over the local level, the authorities of the state power and the local self-government should become aware of the necessity of their mutual cooperation, in addition, the citizens should assume more responsibility to solve the local problems and exercise the effective civil control over the local self-government.

The decentralization is like the learning process, when the outcome is a result of the prolonged and determined work, however, the long duration of the process should not account for postponing its start point for decades. The decentralization requires from the government to apply the complex approaches and pursue the consistent policy. In the process the principle of subsidiarity “In the form of a “constitutional leitmotiv”... could at least be regarded as a permanent "anti-upward" clause... Subsidiarity could be more than just a questioning of the principle of unity of action; it could serve as a basis for debate.”<sup>70</sup>

In this regard, the initiative concerning the long-term strategy of decentralization to be developed is definitely a great step forward declared by the Government of Georgia in 2018, however, if taking into consideration the unenviable experience of the previous years, the mentioned initiative should be necessarily followed by the specific and duly measures as well.

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<sup>69</sup> See *The International Centre for Civic Culture, Local Self-Government in Georgia, 1991-2014, Losaberidze D., Bolkvadze T., Kandelaki K., Chikovani T.* (eds.), Tbilisi, 2015, (in Georgian).

<sup>70</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 25.

## 6.2. The Separation and Division of Powers

### 6.2.1. The Principle of Subsidiarity in the Constitution of Georgia

Before reviewing the issue related to the separation and division of powers among the public authorities it is necessary to define what the term itself – “power” implies. The power is the right to act which is legally conferred to the public authorities or persons and has a certain goal. The power, is expressed in combination with the functions, rights and duties, for example: the right of the governmental authorities to enact the legislative act, to purchase a certain goods, to create the legal entities, etc. is always linked to the specific function, e.g. the waste management, regulating the issues concerning domestic animals, providing water supply or pre-school education. The functions, in their turn, are the issues pertaining to which the rights and duties of public authorities are applied. Accordingly, the powers without any function have no sense, whereas the functions cannot be analyzed without considering the powers and duties.<sup>71</sup>

The term – power is conceptually perceived together with the relevant functions in the Constitution of Georgia. Hereinafter, in the text of the paper, the terms – power and function are used in compliance with the above mentioned definitions.

After the Constitutional Reform of 2017 the Constitution of Georgia joined the group of the rare types of constitutions where the principle of subsidiarity is directly enshrined. According to the Constitutional Amendment and envisaged by the 4<sup>th</sup> section of Article 7 of the Constitution of Georgia: “The citizens of Georgia shall regulate the affairs of local importance through local self-government in accordance with the legislation of Georgia. The separation of powers between the state authorities and self-governing units is based on the principle of subsidiarity. The State ensures the compliance of financial resources of self-governing units with its powers defined by Organic Law.”<sup>72</sup>

Despite the fact that it was the first time the principle of subsidiarity had been enshrined in the Constitution of Georgia, the legislative norm premised on the concept of subsidiarity is prescribed in the current version of the Constitution of Georgia as well. In particular, pursuant to the 3<sup>rd</sup> section of article 101<sup>2</sup>, “A self-governing unit shall have the right to take any decision on its own initiative, provided that the decision does not fall within the competence of any other government agency or is not prohibited by law.”<sup>73</sup> Before determining the responsible authority for the function, its automatic imposition to the local self-government completely corresponds to the idea of subsidiarity.

Pursuant to the 4<sup>th</sup> section of Article 7 enshrined in the Constitutional Amendment the following brief comment should be made: the term – “separation of powers” does not completely depict the concept of subsidiarity. The essence of the principle of subsidiarity is not the separation of powers (i.e. the prevention of the duplication of functions), but it implies the transferring, division (distribution) of the powers and function to the lower territorial units. Thus, the precise term has not been selected in the

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<sup>71</sup> Study of the European Committee on Local and Regional Democracy (CDLR) with the collaboration of *Marceau G.*, *Local Authorities Competences in Europe*, 2007, 12, <<https://rm.coe.int/1680746fbb>>, [13.04.2018].

<sup>72</sup> Constitutional Law of Georgia on Amendments to the Constitution of Georgia, Legislative Herald of Georgia, № 1324-RS, 19/10/2017.

<sup>73</sup> Constitution of Georgia, Herald of Parliament of Georgia, № 786, 31-33, 24/08/1995.

Constitution. Accordingly, the relevant norm of the article of the Constitutional Amendments should be referred to in the sense of the division (distribution) of powers and functions.

According to the concept of subsidiarity the choice regarding the division of power is made in favour of the local government, which is the closest public entity to the population and this principle equally applies to all the territorial units of the state authorities. In the Constitutional Amendments the mentioned element of the concept of subsidiarity is disregarded. The Constitution indicates to the division of powers only between the state and local government, whereas the issue concerning the division of powers between the autonomous republic and local government is not deemed to be noteworthy. We hope, that the mentioned article of the Constitution will be defined more broadly in the process of enforcement and the principle of subsidiarity will become the guideline principle also for the division of powers between the autonomous republic and local government.

In addition, in the process of the division of powers the effective implementation of the principle of subsidiarity requires the existence of the adequate legal guarantees. The experts of the Congress explicitly indicate that the enforcement process of the principle of subsidiarity requires the regular supervision. In this respect, one of the mechanisms is considered to be the Constitutional control exercised by the constitutional court.<sup>74</sup>

Unfortunately, the legislators of Georgia abstained from strengthening the legal significance of the principle of subsidiarity with the effective Constitutional control mechanism. Pursuant to the Constitutional Amendments the self-governing units does not reserve the right to apply the Constitutional Court of Georgia for protection of the principle of subsidiarity. All in all, the issue related to the practical enforcement of the principle mainly depends on the political will of the state power which offers the vague prospect of launching the principle.

### **6.2.2. The Challenges of Separation and Division of Powers**

As it has been mentioned the principle of subsidiarity implies the implementation of the public duties by the government closest to the citizens. Correspondingly, the first stage of implementation of the principle in Georgia should begin with the reconsideration of the issues related to the division of powers between the State and local self-government. The overall agreement which functions are vested on the categories of the local importance does not exist. The functions of local authorities in different countries considerably vary from each other. The general criteria and principles to be taken into consideration in the process of the enforcement of subsidiarity principle were reviewed above, but the issue concerning the transfer of the certain functions to the local authorities requires to conduct the separate research. In the process the peculiarities of geographic, historic and territorial arrangement should also be taken into account. Thus, within the scope of the presented paper it is possible to discuss only the major objectives and principles of the relevant reform to be implemented in Georgia.

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<sup>74</sup> *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M., Definition and Limits of the Principle of Subsidiarity, Report Prepared for the Steering Committee on Local and Regional Authorities (CDLR), Local and Regional Authorities in Europe, № 55, 1994, 34.*

Despite the slight increase of functions of the local self-government in 2013-2014 years, on the whole the limited number of functions are assigned thereto (see Appendix). The aforesaid is confirmed on the basis of the comparative analysis of the foreign countries as well. In particular, in 2014 the research evaluating the process of decentralization in 39 European countries during the last 24 years was published. According to the results of the research, despite the fact that the tendency of increasing the autonomy of the local self-government has been fixed in Georgia since the 90s up today, the country still belongs to the group of the least decentralized countries. Particularly, it is ranked as the 36<sup>th</sup> - one of the last among 39 countries. Such position is mainly conditioned by the extremely low quality of financial autonomy and the insignificant functions of the local self-government. The research reveals that the local self-government performs the restricted functions in the most important fields of local affairs, such as: education, health care, social security and public order. According to the extent of decentralization Georgia is outrun by almost all the countries of Eastern Europe: Moldova, Ukraine, Macedonia, Czech Republic, Slovenia, Serbia, Croatia, Baltic Republics and etc.<sup>75</sup>

On this basis, the discussion on the issue regarding the transforming of the new functions to the local self-government is possible to be started with the fields mentioned in the study (the education, healthcare, public order and social security). The list of authorities, which fell within the competence of the district governance authorities of Georgia pursuant to the Law of 1997, may also come useful (see Appendix).

As it was reviewed above, for the purpose of efficient realization of the principle of subsidiarity it is of equal importance to make the clear separation between functions. The analysis of the legislative acts reveals that there exist the serious problems in Georgia to this extent. Specifically, it is often impossible to understand whether the authority is endowed on the central government bodies, an autonomous republic or on the local self-government or whether it is the delegated or own power.<sup>76</sup> The similar problems complicate the identification of the public bodies responsible for exercising the certain authorities. Eventually, this bureaucratic labyrinth damages the interests of Georgian citizens.

In order to respond to the mentioned problems, in 2013 pursuant to the Local Government Code<sup>77</sup> the Georgian Government assumed the responsibility for making the relevant legislative amendments. In April 2016, the set of amendments to 174 of laws were introduced to the parliament to be considered. In Spring of 2016, at the Spring Session the Parliament of Georgia adopted the proposed amendments with the first hearing, however, the further discussion on the legislative package was terminated for the unknown reasons.

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<sup>75</sup> See *Ladner A., Keuffer K., Baldersheim H.*, Measuring Local Autonomy in 39 Countries (1990-2014), *Regional and Federal Studies*, Vol. 26, № 33, 2016, 321-357.

<sup>76</sup> See *Zardiashvili D.*, *The Powers of the Self-Governing Units*, Tbilisi, 2009, 38-70 (in Georgia).

<sup>77</sup> Article 165, Sec. 2, Organic Law of Georgia, Local Self-Government Code, *Legislative Herald of Georgia*, 1958-IIS, 19/02/2014.

### **6.2.3. The Issue Concerning the Separation and Division of Powers in Autonomous Republic of Adjara**

The analysis about the vertical (territorial) separation and division of the powers of the public authorities would be unaccomplished without reviewing the problems of separation and division of the powers of the Autonomous Republic. Due to the occupation of the Georgian territories the issue concerning the administrative-territorial arrangement of the State is unresolved. Accordingly, within the present paper the analysis of the issue of separation and division of powers could be conducted only related to the Autonomous Republic of Adjara.

Before the Constitutional reforms of 2017, under the Constitutional Law “on the Status of Autonomous Republic of Adjara”, the powers of the Autonomous Republic were stipulated by the Constitution of Georgia, Constitutional Law and the Constitution of Autonomous Republic of Adjara. At the same time, in case of not regulating the issues included in the exclusive powers of the Autonomous Republic of Adjara by the Autonomous Republic, it could have been regulated by the legislative act of the state.<sup>78</sup> The aforesaid rule attached the sign of competitive powers to the exclusive powers of the Autonomous Republic.

In addition, the Constitutional Law encompassed a number of norms making the functions included in the scopes of exclusive powers of the Autonomous Republic identical to the functions of the local self-government<sup>79</sup> (e.g. construction of the local roads and issuing local construction licenses etc.).

Pursuant to the new Constitutional Law on “The Autonomous Republic of Adjara” of October 13, 2017 the issues concerning the powers of the Autonomous Republic has been substantially revised. The new Constitutional Law envisaged the possibility of prescribing the powers of the Autonomous Republic of Adjara by the Law of Georgia and the Law of the Autonomous Republic of Adjara too.<sup>80</sup> In addition the Constitutional Law of Georgia enshrined new legislative norm responding to the idea of subsidiarity. In compliance with the Constitutional law, “Autonomous Republic of Adjara may exercise any authority in the fields of economy, agriculture, tourism, health care and social security, education, culture, sport and youth policy, environmental protection, which does not belong to the exclusive powers of the state authority or own exclusive powers of local self-government and the exercise of which is not excluded from the powers of the Autonomous Republic of Adjara based on the Legislation of Georgia”<sup>81</sup> Furthermore, the above mentioned problem of duplication of the duties of the local self-government has been solved.

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<sup>78</sup> Article 6, Sec. 1 and Article 7, Sec. 2, Constitutional Law of Georgia on the Status of the Autonomous Republic of Adjara, Legislative Herald of Georgia, № 16, 04/07/2004.

<sup>79</sup> See *Kakhidze I.*, Administrative Supervision over Local Self-Government Bodies, Comparative Analysis, Tbilisi, 2012, 308-309, (in Georgian).

<sup>80</sup> Article 2, Sec. 1, Constitutional Law of Georgia on Autonomous Republic of Adjara, Legislative Herald of Georgia, № 1324-RS, 19/10/2017.

<sup>81</sup> *Ibid*, Article 2, Sec. 3.

Despite some of the positive amendments, the Constitutional Reform has raised the new questions. Particularly, they are as follow:

The functions included in the exclusive powers of the Autonomous Republic of Adjara have been significantly reduced. Despite the fact that the Autonomous Republic of Adjara is vested with the significant rights and guarantees by the Constitutional Law of Georgia (e.g. the right to property, financial autonomy, right to enact the laws of the autonomous republic, organizational autonomy, etc.), the exclusive powers of the autonomous republic include only a few functions, such as: spatial planning; management of the roads of the autonomous significance; the management of educational, scientific, art and sports organizations; the operation of archive of the autonomous republic and the management of land, water and forest resources.<sup>82</sup>

The reason of the substantial contraction of the list of functions included in the area of the exclusive power is ambiguous. The field of the exclusive powers of the Autonomous Republic of Adjara may have encompassed at least those functions which are stipulated as the functions of the Autonomous Republic by the various laws of Georgia. For example, what legal or other type of reasoning may the inclusion of the function of operating the autonomous republic archive in the scopes of the exclusive powers, while the functions, such as: the management of landfills of solid waste, the implementation of fire-rescue measures over the territory of Autonomous Republic of Adjara, the maintenance of the primary schools, regulating hunting activities, the management of the hospitals and healthcare organization of the Autonomous Republic, etc. - are excluded?<sup>83</sup>

Some other issues pertaining to determining the powers of the Autonomous Republic have not been clarified either. According to the old Law, the exclusive powers of the Autonomous Republic could be defined only by the Constitution, Constitutional Law and the Constitution of the Autonomous Republic. Whereas the new Constitutional Law envisages (Article 2, section 1.)<sup>84</sup> the possibility of prescribing (transferring) of the powers by the Law of Georgia as well. At this point the following logical questions arise: what type of powers can be prescribed by the Law of Georgia? The Constitutional Law recognizes only two types of powers of the Autonomous Republic, such as: exclusive and delegated powers. In case the legislator admits the existence of the third type of the power, the issue requires more distinct and detailed regulation. In particular, the issues concerning the procedures transferring the new functions and imposing the new obligations of the Autonomous Republic should be laid down by the Law of Georgia as well as the necessity of consultations or the question related to the reimbursement of costs incurred require to be determined. These are the issues which should be responded at least by the new Constitution of Adjara which is in the process of drafting.

In addition, upon comparing the 2<sup>nd</sup> section of Article 75 of the Constitutional Amendment with the 4<sup>th</sup> section of Article 2 of the Constitutional Law on the Autonomous Republic of Adjara, the principle of division of powers between the local self-government and the Autonomous Republic of Adjara is

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<sup>82</sup> Ibid, Article 2, Sec. 2.

<sup>83</sup> 25 laws comprising the functions and duties of the Autonomous Republic are identified by us.

<sup>84</sup> Article 2, Sec. 1, Constitutional Law of Georgia on Autonomous Republic of Adjara, Legislative Herald of Georgia, № 1324-RS, 19/10/2017.

ambiguous in the part of so-called “undistributed” competence. In particular, it is not clear which government enjoys the privilege of the performance of those functions which neither belong to the state authorities and the field of the exclusive power of the Autonomous Republic nor represent the exclusive power conferred on the self-governing units.<sup>85</sup>

It is noteworthy, that the Constitution as well as the Constitutional Amendments highlight the issue concerning the necessity of separation of powers between the state authorities and the local self-government. But the issue as regards the need for the separation of powers between the Autonomous Republic and the local government is still ignored.<sup>86</sup>

### **6.3. Financial Autonomy**

The capability of the local self-government to exercise the transferred authorities successfully greatly depends on the quality of financial autonomy of the local self-government.

The financial autonomy consists of three components: the revenue autonomy, expenditure autonomy and the budget autonomy, which implies that the local government should have its own income and be eligible to manage it independently and on its own liability as well as enjoy the freedom to determine its own budget.<sup>87</sup>

According to the overall evaluation, the financial autonomy is considerably low in Georgia. Particularly, the local self-government has the limited degree of expenditure and revenue autonomy. The major sources of income of the self-governmental units are the state transfers and the only local tax is a property tax. The transfers allocated from the central budget often assume the specific purpose and the local self-government is constrained to freely manage it. At the same time, the high dependence on the central transfers reduces the possibility of independent planning and regulating of the revenues. According to the conditions of the above mentioned system, the local government does not take any interest in the development of the local economy as the increase of local income does not make any substantial changes to local self-governing units’ revenues. Moreover, the increase of local incomes may account for the reduction of the amount of transfer guaranteed by the central government.<sup>88</sup> The solution to this problem is to transfer the independent sources of revenues (e.g. the local taxes, the pro rata share from the state taxes, payments, etc.) and entrust the control and regulation of the expenditure to the local self-government.

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<sup>85</sup> Comp. Article 75, Sec. 2, Constitutional Law of Georgia on Amendments to the Constitution of Georgia, Legislative Herald of Georgia, № 1324-RS, 19/10/2017; with Article 2, Sec. 4, Constitutional Law of Georgia on Autonomous Republic of Adjara, Legislative Herald of Georgia, № 1324-RS, 19/10/2017.

<sup>86</sup> See Article 101<sup>2</sup>, Sec. 1, Constitution of Georgia, Herald of Parliament of Georgia, № 786, 31-33, 24/08/1995 and Article 75 Sec. 2, Constitutional Law of Georgia on Amendments to the Constitution of Georgia, Legislative Herald of Georgia, № 1324-RS, 19/10/2017.

<sup>87</sup> *Beer-Toth K.*, Local Financial Autonomy in Theory and Practice, The Impact of Fiscal Decentralisation in Hungary, Fribourg, 2009, 70, <<https://doc.rero.ch/record/12729/files/Beer-TothK.pdf>>, [15.04.2-18].

<sup>88</sup> See *The World Bank*, Georgia Public Expenditures Review, Strategic Issues and Reform Agenda, Vol. 1, Washington, 2014, 56-66; *Ladner A., Keuffer K., Baldersheim H.*, Measuring Local Autonomy in 39 Countries (1990-2014), Regional and Federal Studies, Vol. 26, № 33, 2016, 321-357.



Due to the range of the topic it is impossible to conduct more detailed analysis of the local financial autonomy within the scopes of this paper. Correspondingly, the financial autonomy of the local self-government will be discussed below only in terms of the constitutional guarantees.

According to the 1<sup>st</sup> section of Article 76 of the Constitution of Georgia the local government has its own property and finances. This citation from the Constitution is rather general only indicating to the possibility for the self-governing unit of possessing its own property and finances. The Constitution of Georgia would have provided the better guarantee for protecting the financial autonomy of the local government, if it had directly indicated that the self-governing unit enjoyed the financial autonomy. Let alone, the term – “financial autonomy” has already been used in the Constitutional Law of the Autonomous Republic of Adjara by the legislator.<sup>89</sup> Unfortunately, within the framework of the Constitutional Reform of 2017 the mentioned term was rejected to be used again.

The sufficient constitutional guarantee for financial autonomy of the local self-government is not provided by the 4<sup>th</sup> section of Article 7 of the Constitutional Amendments either, pursuant to which “the state ensures the compliance of the finances means of the self-governance units with the authorities thereof stipulated by the Organic Law.”<sup>90</sup> The term -“the means of finances” (financial means) allows the state to execute the extremely broad interpretation and implies the probability to make no changes to the existing situation. It was desirable, in order to change the above mentioned situation, the legislator had used the phrase - ensuring “the own revenue sources” instead of referring to the term “the means of finances.” It is worth noting, that exactly such approach is envisaged by the Constitution of Estonia, Hungary, Germany, Poland, Armenia, Portugal, France, Spain, Slovenia and Italy. In addition, the Constitutional value of the mentioned Article is even more reduced by the fact that according to the Constitutional Amendment, the self-governing unit does not reserve the right to apply the Constitutional Court of Georgia to protect the local autonomy pursuant to the mentioned article.

To sum up, it may be concluded that in Georgia the extent of implementation of the principle of subsidiarity will be directly depended to the financial decentralization reform, which should ensure the real financial autonomy of the local government.

#### **6.4 The Territorial Reform**

The implementation of the principle of subsidiarity always raises the question concerning the territorial level and its extent within which the most effective enforcement of the principle is possible. The issue leads us to the reconsideration of the current administrative-territorial division of the country.

Today in Georgia the existing borders of the municipalities coincide with those of districts established in the period of the Soviet Union. This arrangement was reestablished as a result of the local self-government reform of 2006, when more than 1000 small self-government units were abolished and the authorities of the district governance were replaced by the local self-government bodies. As a result of the

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<sup>89</sup> Article 2, Sec. 5, Constitutional Law of Georgia on Autonomous Republic of Adjara, Legislative Herald of Georgia, № 1324-RS, 19/10/2017.

<sup>90</sup> Comp., Article 7, Sec. 4, Constitutional Law of Georgia on Amendments to the Constitution of Georgia, Legislative Herald of Georgia, № 1324-RS, 19/10/2017.

reform Georgia is ranked as one of the first positions according to the size of the self-governing units (under the average population) in Europe (following Denmark, the United Kingdom of Great Britain). There are the cases when the areas of a separate municipality exceed the territory of Autonomous Republic of Adjara or approximately equals thereto (e.g. the municipalities of Dusheti, Dedoplistsyaro, Mestia, Akhmeta).

The outcome of the reform of 2006 is not unequivocal; for example, according to the research conducted by the Polish scientist *Pavel Swianiewicz*, the mergers of self-governing units were not resulted by improving the quality of local self-government autonomy.<sup>91</sup>

Under the conditions of existing large municipalities a number of practical problems arise. For instance, in some cases the administrative centre of the municipality extends a long way from the peripheral villages, in addition, it is difficult to achieve the balance of interests between the administrative centre – a city and villages (within one large municipality). The aforesaid problems reduce the involvement of the population in resolving the local issues and the possibility to provide the efficient management at local level. All in all, the positive effect of the principle of subsidiarity – the opportunity of the management adapted to the local conditions and requirements is eventually missed out on.

In Georgia since 2013 after the reform the status of a self-governing city has been additionally granted to seven cities – the administrative centres of historic-geographic regions of Georgia. The Code envisaged the further continuation of the territorial reform,<sup>92</sup> however, in 2017 the Parliament of Georgia abolished the newly – created cities and declined to proceed with the territorial reform.<sup>93</sup>

Thus, more flexible and efficient enforcement of the principle of subsidiarity requires the objective reassessment of the existing territorial division. The existing system and boundaries of the authorities of local self-government should be revised in compliance with the challenges and objectives facing the state and local population needs.

In the mentioned process, on the one hand, it should be taken into consideration whether the local government maintains the close territorial proximity to the local population, on the other hand, the reform should discharge the central government from the communal functions. The process may illustrate the reasonability of the existing municipal borders as well as the need of establishment additional level (including regional level) local self-government too.

## **6.5. The Human Resources**

The effective implementation of the principle of subsidiarity is related to the real ability of the local self-government to exercise its powers. And the mentioned ability requires the existence of relevant financial as well as the human resources.

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<sup>91</sup> See *Swianiewicz P., Lielczarek A., Georgian Local Government Reform: State Leviathan Redraws Boundaries?*, *Local Government Studies*, Vol. 36, № 2, 2010, 307-309.

<sup>92</sup> Article 152, Sec. 1, Organic Law of Georgia, Local Self-Government Code, Legislative Herald of Georgia, 1958-IIS, 19/02/2014.

<sup>93</sup> Within this article it is impossible to assess 2013 territorial reform in Georgia as well as decision of the Government of Georgia made in 2017 therefore there is only indication to the relevant facts.

Today in Georgia one of the main challenges of the decentralization reform is the lack of the qualified personnel at the local level. By the Code of 2013 the municipalities were imposed the obligation concerning the amount of money to be allocated for training and further professional development of the public officials employed in the municipalities. Pursuant to the Code, this amount of money should have been equal to no less than 1 percent of the total volume of public servants' remuneration envisaged by the budget of the municipality. In order to ensure the effective implementation of the mentioned obligation, "The system of lifelong education of local self-government's public servants, the powers of the agencies involved therein and the system and rule of implementing this system" was adopted by the Government of Georgia in accordance of the Article 132 of the Public Service Law of Georgia of 1997. Unfortunately, the practical realization of this system could not be managed.

In particular, the new Law of Georgia on Public Service having been entered in force in 2017 didn't envisage any specific regulations related to the vocational education of the public officials employed in the municipalities and the above mentioned resolution of the Government of Georgia was declared to be annulled. Regrettably, the requirements and challenges facing the municipalities and state authorities are reviewed in the same terms and no differentiation is made by the new Law of Georgia, whereas the deep acuteness of the shortage in the qualified staff at a local level and the need of specific approach is generally acknowledged.

In conclusion, one of the primary objectives of the state power shall be to form the system of development of the qualified human resources in the municipalities, otherwise all the reform of decentralization is doomed to failure.

## **7. Conclusion**

As mentioned above, the role of a state in the system of public administration is being transformed. The modern states have discovered that they are not alone anymore and the world around them has substantially changed. The structure of the society has become more complicated and diverse revealing more difficult and divergent interests as well. The model of the centralized governance is becoming less appealing due to the anonymity and complexity of the decision-making process.<sup>94</sup> In such a situation, the principle of subsidiarity, which is premised on the idea of autonomy (self-government) and requires to take into account the interests of various groups, unions and territorial units, has become the attractive conception.

The major benefit of subsidiarity is the maintenance of diversity under the idea of the unified state. It is centred on the interests and freedom of each person. The principle of subsidiarity introduces new criteria in the process of assessing the effectiveness of the public administration. While analyzing the governance process it emphasizes on the qualitative criteria alongside to the financial and economic criteria. The subsidiarity provides the creation of equal conditions by applying the individual and diverse approaches. Its

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<sup>94</sup> *Vischer K. R.*, Subsidiarity as a Principle of Governance: Beyond Devolution, *Indiana Law Review*, Vol. 35, № 103, 2001, 126.

final objective is to promote the existence of the government caring for the interests of the specific groups, unions, territorial units and individuals, which is based on the idea of common well-being.

The implementation of the concept of subsidiarity pertains to the substantial transformation of the governing process that demands the considerable change of behaviour of all the subjects involved in the process. The attempts of enforcement of the principle of subsidiarity in Georgia has not achieved much success up today. The reforms conducted in different periods are controversial, the positive advance of the reform is sometimes followed by regress, and more frequently the situation is stagnating.

The present paper reviews five major challenges to the implementation of the subsidiarity principle in Georgia, overcoming of which is the essential condition for the effective enforcement of the principle. In particular, first of all, the principle of subsidiarity will be left only on pages of the Constitution of Georgia, unless there exists the real political will for its enforcement; secondly, the “benefit” of the principle will not be sensed unless the authorities are effectively distributed between the central and local levels and the subject responsible for exercising the power is not precisely defined; thirdly, the execution of the principle will not start unless the local government is transferred the adequate sources of revenues; the fourthly, the various local interests and demands will not be adequately satisfied unless the accurate local territorial boundaries for the enforcement of the principle is fixed and at last, unless the system of development of the appropriate human resources is created, any attempt to implement the principle of subsidiarity is doomed to failure.

*Appendix*

**Local Government Functions in Georgia 1997-2018<sup>95</sup>**

1997-2006	2006-2013	2013-2018
<b>Economic Profile</b>		
Solid Waste (household) Management;	Solid Waste (household) Management	Solid Waste (household) Management
Management of the Local Roads;	Management of the Local Roads;	Management of the Local Roads;
Outdoor Lighting;	Outdoor Lighting;	Outdoor Lighting;
Organization of the Public Transportation Service;	Organization of the Public Transportation Service;	Organization of the Public Transportation Service;
Amenities of the Area of the Municipality Planting of the Territory;	Amenities of the Area of the Municipality Planting of the Territory.	Amenities of the Area of the Municipality Planting of the Territory;
Water Supply and Sewage;		Water Supply and Sewage;

<sup>95</sup> The Graph is prepared based on the analysis of the Organic Law on Local Self-Government and Governance of Georgia, Legislative Herald of Georgia, N44, 11/11/1997; The Organic Law on Local Self-Government of Georgia, Legislative Herald of Georgia, N2, 09/01/2006; The Organic Law of Georgia, Local Self-Government Code, Legislative Herald of Georgia, 1958-IIS.

The Development of the Melioration Systems of Local Importance;		The Development of the Melioration Systems of Local Importance.
Housing;		
Gas Supply;		
Electricity Supply.		
<b>Town Planning and Regulatory Profile</b>		
Spatial Planning;	Spatial Planning;	Spatial Planning;
Organization of the Traffic;	Organization of the Traffic;	Organization of the Traffic;
Issuance of Construction Permits;	Issuance of Construction Permits;	Issuance of Construction Permits;
Regulation of the Outdoor Trade, Exhibitions, Markets and Fairs	Regulation of the Outdoor Trade, Exhibitions, Markets and Fairs	Regulation of the Outdoor Trade, Exhibitions, Markets and Fairs
Arrangement and Maintenance of Cemeteries;	Arrangement and Maintenance of Cemeteries;	Arrangement and Maintenance of Cemeteries;
Regulation of the Outdoor Advertising Placement	Regulation of the Outdoor Advertising Placement	Regulation of the Outdoor Advertising Placement
Assigning Names to the Geographical Objects;	Assigning Names to the Geographical Objects.	Assigning Names to the Geographical Objects;
<i>Make Decisions on the Usage of the Natural Resources</i> <sup>96</sup> .		Make Regulations on Keeping Pets, and Homeless Animals.
<b>Education and Social Profile</b>		
<i>Pre-school (kinder gardens) and Out-of-School Education;</i>	Pre-school (kinder gardens) and Out-of-School Education;	Pre-school (kinder gardens) and Out-of-School Education;
Libraries, Cinemas, Museums, Theatres, Sports -Recreational Facilities;	Libraries, Cinemas, Museums, Theatres, Sports -Recreational Facilities;	Libraries, Cinemas, Museums, Theatres, Sports -Recreational Facilities;
Protection and Development of local Identity and Cultural Heritage;	Development of appropriate and adapted Municipal Infrastructure for Disabled, Children and Elderly;	Development of appropriate and adapted Municipal Infrastructure for Disabled, Children and Elderly;
Maintenance and Preserving of Local Cultural Monuments;		Protection and Development of local Identity and Cultural Heritage;
<i>Maintenance Primary and Secondary Schools, Special Schools;</i>		Maintenance and Preserving of Local Cultural Monuments;
<i>Hospitals and Primary Healthcare;</i>		Provision of shelters to the homeless People;

<sup>96</sup> Italic shrift indicates to the functions of the District Local Governance during 1997-2005.

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<i>Elderly Shelter Homes and Orphanages;</i>		
<i>Organizing Sanitary, Veterinary and anti-Epidemic Activities;</i>		
<b>Public Order and Security Profile</b>		
<i>Fire and Rescue Services;</i>	<i>Fire and Rescue Services;</i>	Regulation of the Issues, Related to Organizing Public Meetings and Demonstrations.
<i>Maintenance of the Public Order and Civil Defense;</i>	Regulation of the Issues, Related to Organizing Public Meetings and Demonstrations.	
<i>Environment Protection and Ecological Security.</i>		

**Bibliography:**

1. Constitution of Georgia, Herald of Parliament of Georgia, № 786, 31-33, 24/08/1995.
2. Constitutional Law of Georgia on Amendments to the Constitution of Georgia, Legislative Herald of Georgia, № 1324-RS, 19/10/2017.
3. Constitutional Law of Georgia on the Autonomous Republic of Adjara, Legislative Herald of Georgia, № 1324-RS, 19/10/2017.
4. Constitutional Law of Georgia on the Status of the Autonomous Republic of Adjara, Legislative Herald of Georgia, № 16, 04/07/2004.
5. The Organic Law of Georgia, Local Self-Government Code, Legislative Herald of Georgia, 1958-IIS, 19/02/2014.
6. The Organic Law on Local Self-Government and Governance of Georgia, Legislative Herald of Georgia, № 44, 11/11/1997.
7. The Organic Law on Local Self-Government of Georgia, Legislative Herald of Georgia, № 2, 09/01/2006.
8. Constitution of Greece, 1975, <<http://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/>>.
9. Constitution of Romania, 1991, <<http://www.cdep.ro/pls/dic/site.page?id=371>>.
10. Constitution of the Portuguese Republic, 1976, <<http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>>.
11. Constitution of the Republic of Poland, 02/04/1997, <<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.-htm>>.
12. Council of Europe, European Charter of Local Self-Government, European Treaty Series, № 122, Strasbourg, 15/10/1985, <[http://www.coe.int/t/dgap/localdemocracy/WCD/CS\\_Conventions\\_en.asp#](http://www.coe.int/t/dgap/localdemocracy/WCD/CS_Conventions_en.asp#)>.
13. Council of Europe, Explanatory Report, European Charter of Local Self-Government, European Treaty Series, № 122, Strasbourg, 15/10/1985, <<http://conventions.coe.int/Treaty/EN/Reports/HTML/122.htm>>.
14. *Aristotle, Politics, Jowett B. (trans.), Kitchener, 1999, 23-24.*
15. *Aroney N., Subsidiarity in the Writings of Aristotle and Aquinas, Global Perspectives on Subsidiarity, Evans M., Zimmermann A. (eds.), Heidelberg, London, New York, 2014, 24-25.*

16. *Beer-Toth K.*, Local Financial Autonomy in Theory and Practice, The Impact of Fiscal Decentralisation in Hungary, *Fribourg*, 2009, 70, <<https://doc.rero.ch/record/12729/files/Beer-TothK.pdf>>.
17. *Bell D.*, Previewing Planet Earth in 2013, *Washington Post*, B3, 1988.
18. *Bermann A. G.*, Taking Subsidiarity Seriously: Federalism in the European Community and the United States, *Columbia Law Review*, Vol. 94, № 2, 1994, 331-456.
19. *Bonde J. P.* (ed.), Consolidated Reader-Friendly Edition of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as amended by the Treaty of Lisbon (2007), *Foundation of the EU Democracy*, 3<sup>rd</sup> ed., *Notat Grafisk*, 2009, 16-17.
20. *Bröhmer J.*, Subsidiarity and the German Constitution, *Global Perspectives on Subsidiarity*, *Evans M., Zimmermann A.* (eds.), Heidelberg, London, New York, 2014, 133-37, 144-145.
21. *Cheema S., Rondinelli D.*, Decentralizing Governance: Emerging Concept and Practice, *Washington*, 2007, 4-6.
22. *Couzigou T.*, France – Territorial Decentralisation in France: Towards Autonomy and Democracy, *Local Government in Europe, The Fourth Level in the EU Multilayered System of Governance*, *Panara C., Varney M.* (eds.), London, New York, 2013, 82.
23. *Delcamp A., Balducci M., Busch J., Nemery J., Pernthaler P., Uyttendaele M.*, Definition and Limits of the Principle of Subsidiarity, Report prepared for the Steering Committee on Local and Regional Authorities (CDLR), *Local and Regional Authorities in Europe*, № 55, 1994, 7-8, 10-11, 15-16, 34, 24-29, 30.
24. *Delors J.*, The Principle of Subsidiarity: Contribution to the Debate, *Subsidiarity: The Challenge of Change*, Proceedings of the Jacques Delors Colloquium Subsidiarity – Guiding Principle for Future EC Policy Responsibility?, *European Institute of Public Administration*, Maastricht, 1991, 9, 17.
25. *Eberdhard H.*, Austria – Municipalities as the “Third Tier” of Austrian Federalism, *Local Government in Europe, The Fourth Level in the EU Multilayered System of Governance*, *Panara C., Varney M.* (eds.), London, New York, 2013, 13.
26. *Endo K.*, The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors, *Hokkaido Law Review*, № XLIV/6, 1994, 568, 63-37, 640-39.
27. *Evans M., Zimmermann A.*, Editors’ Conclusion: Future Directions for Subsidiarity, *Global Perspectives on Subsidiarity*, *Evans M., Zimmermann A.* (eds.), Springer, Heidelberg, London, New York, 2014, 221-223.
28. *Follesdal A.*, Subsidiarity, *The Journal of Political Philosophy*, Vol. 6, № 2, 1998, 195-96.
29. *Kakhidze I.*, Administrative Supervision over Local Self-Government Bodies, *Comparative Analysis*, Tbilisi, 2012, 308-309, (in Georgian).
30. *Kiiver P.*, The Early Warning System for the Principle of Subsidiarity: Constitutional Theory and Empirical Reality (*Routledge Research in EU Law*), 1<sup>st</sup> ed., New York, 2012, 23, 70-71.
31. *King D.*, *Fiscal Tiers (Routledge Revivals): The Economics of Multi-Level Government*, 1<sup>st</sup> ed., New York, 2016, 17-18.
32. *Khubua G.*, Federalism as a Normative Principle and the Political Order, Tbilisi, 2000, 110, (in Georgian).
33. *Ladner A., Keuffer K., Baldersheim H.*, Measuring Local Autonomy in 39 Countries (1990-2014), *Regional and Federal Studies*, Vol. 26, № 3, 2016, 321–357.
34. *Martin A.*, The Principle of Subsidiarity and Institutional Predispositions: Do the European Parliament, the German Bundestag, and the Bavarian Landtag Define Subsidiarity Differently?, *CAP Working-Paper*, München, 2010, 3.
35. *Pius XI*, *Quadragesimo Anno: Reconstructing the social order and perfecting it conformably to the precepts of the Gospel in Commemoration of the Fortieth Anniversary of the Encyclical Rerum Novarum*, Melbourne: Australian Catholic Truth Society, № 19, 1931, 21.

36. *Pollitt C., Bouckaert G.*, Public Management Reform: A Comparative Analysis: New Public Management, Governance and the Neo-Weberian State, 3<sup>rd</sup> ed., Oxford, 2011, 12, 15, 135.
37. *Pollitt C.*, Advanced Introduction to Public Management and Administration, Cheltenham, Northampton, 2016, 46.
38. *Rondinelli D., Nellis J., Cheema S.*, Decentralization in Developing Countries A Review of Recent Experience, World Bank Staff Working Papers, № 581, Management and Development Series, № 8, 1983, 13.
39. *Rossell C.*, Using Multiple Criteria to Evaluate Public Policies, The case of school desegregation, American Politics Quarterly, Vol. 21, № 2, 1993, 164.
40. *Schutze R.*, Subsidiarity after Lisbon: Reinforcing the Safeguards of Federalism?, Cambridge Law Journal, Vol. 68, № 3, 2009, 525-536.
41. Study of the European Committee on Local and Regional Democracy (CDLR) with the collaboration of *Marcau G.*, Local Authorities Competences in Europe, 2007, 12, 40-41, <<https://rm.coe.int/1680746fbb>>.
42. Study of the European Committee on Local and Regional Democracy (CDLR) with the collaboration of *Marcau G.*, Regionalization and its Effects on Local Self-Government, Local and Regional Authorities in Europe, № 64, 1998.
43. *Swianiewicz P., Lielczarek A.*, Georgian Local Government Reform: State Leviathan Redraws Boundaries? Local Government Studies, Vol. 36, № 2, 2010, 307-309.
44. *Swianiewicz P., Lukomska J.*, Is Small Beautiful? The Quasi-experimental Analysis of the Impact of Territorial Fragmentation on Costs in Polish Local Governments, Urban Affairs Review, № 55(3), 2017, 1-24.
45. *The World Bank*, Georgia Public Expenditures Review, Strategic Issues and Reform Agenda, Vol. 1, Washington, 2014, 56-66.
46. *The World Bank*, Decentralization in Client Countries An Evaluation of World Bank Support, Washington, 2008, 3.
47. *The International Centre for Civic Culture*, Local Self-Government in Georgia 1991-2014, *Losaberidze D., Bolkvadze T., Kandelaki K., Chikovani, T.* (eds.), Tbilisi, 2015, (in Georgian).
48. *Villamena S.*, Organization and Responsibilities of the Local Authorities in Italy Between Unity and Autonomy, Local Government in Europe, The Fourth Level in the EU Multilayered System of Governance, *Panara C., Varney M.* (eds.), London, New York, 2013, 196-97.
49. *Vischer K. R.*, Subsidiarity as a Principle of Governance: Beyond Devolution, Indiana Law Review, Vol. 35, № 103, 2001, 525.
50. *Zardiashvili D.*, The Powers of the Self-Governing Units, Tbilisi, 2009, 38-70 (in Georgia).