

Beka Zegardeli*

Amendments of Constitution of Georgia in Attempt to Determine and Resolve the Issues Concerning the Status of Autonomous Republics, Separation of Powers and Territorial Arrangement

This article discusses the amendments to the Constitution of Georgia relative to attempts to resolve the issues of territorial arrangement.

The issues falling into the exclusive competence of the supreme state authorities of Georgia and the so-called “residual powers” are analyzed.

Also, the article focuses on the regulations for determining the status of the autonomous republics of Georgia and the separation of powers.

It demonstrates the types of problems that existed in the past and the issues that have been resolved in this regard.

Ultimately, the presented article highlights the expediency of the emergence of the norms clarifying the Constitution on the issues of territorial arrangement.

Keywords: *Constitution, Autonomous Republic, competence, territorial arrangement, legislation.*

1. Introduction

Our country has long been deprived of the opportunity to determine the form of territorial arrangement of its state independently. The state government system that was imposed without considering the centuries-old traditions of the state of Georgia and its historical development raised many complex problems, which could not be solved taking into account the reality existing in the 90s of the 20th century and before that.

In general, the system of state government implies the establishment of a correct and proper state-territorial structure of the state. A state territorial unit is created to ensure a balance between the need for the central government to exercise the state policy and the rights of citizens to express the local interests and, consequently, the development of the country.

One of the main problems of all democratic countries is to ensure a balance between the requirement for the central government to exercise a state policy and the rights of citizens to express local interests. The government of a democratic state, based on its actions, should strive for the unity of the nation, for strengthening the national security, and at the same time, the moral perfection of the individual and inner freedom.

Nowadays, the structure of public administration in Georgia is still in the process of establishment and it is under a strong influence of historical factors and political culture. In this regard, in the process of decentralization and deconcentration of the government, the issues of the state-territorial arrangement of the state, granting of the appropriate status to the territorial units of the state,

* PhD Student of Ivane Javakhishvili Tbilisi State University Faculty of Law.

the separation of powers and the full establishment of a proper management system are of fundamental importance, especially when the government of the state cannot exercise its jurisdiction over these territories.

2. Drafting the Constitution of Georgia of 1995

The Parliament of Georgia, elected on October 11, 1992, had to draft and adopt the Constitution of Georgia of 1995.

The work of the State Constitutional Commission – consisting of 118 members and chaired by the then Head of the Government – of drafting the new version of the Constitution of 1921, which was established on February 16, 1993, was reportedly delayed and the draft was not completed and published on time. Since the fall of 1993, independent versions of the constitution drafts had been submitted to the Constitutional Commission by various political organizations and initiative groups. A total of 12 drafts were submitted.

In terms of the forms of the government system, five drafts provided for a mixed system, which was **conventionally close to the “French system”**. In these drafts, the president was granted more or less important powers. The system established in the two drafts (National Independence Party, “Voice of the Nation”) was close to the presidential republic, as one person had to be both the head of state and the head of government. Two projects (of the Communist Party of Georgia and Z. Okujava’s Party) implied the establishment of a Soviet republic. One draft (“Aisi” Bank) discussed the Soviet Republic, in which the presidential election was incorporated. Two projects (of the Republican Party and Al. Shushanashvili’s Party) envisaged the **forming of a parliamentary republic**.

According to the six drafts, the presidential election of the Republic by the people was envisaged **in two rounds**; One of the drafts proposed the first round to be the general elections and the second round – the Parliamentary elections; Another draft focused on **the indirect election of the president by the people**; Under this draft, **the president was elected by the parliament**.

This brief overview of the drafts submitted to the Constitutional Commission is an indication of the attitudes and opinions regarding the organization of the central government of Georgia in the first half of the 1990s.

Two drafts of the Constitution were created with the help and direct participation of foreign experts:¹

A) Developed under the Georgian Republican Party aegis, which envisaged **forming a classical parliamentary republic similar to Italy or Germany**;

B) A draft was drawn up in the Secretariat of the Constitutional Commission, **which was close to the idea of creating a similar type of mixed government in France, which provided for the relatively limited powers of the President**.

These two directions dominated the editorial commission. By the end of 1994, a unified, **agreed-upon draft had been created**, although as a result of additional work on the draft, **the powers**

¹ *Matsaberidze M.*, Political System of Georgia, Tbilisi, 2019, 233-238 (in Georgian).

of the president expanded and replaced the French-style model of state government with a model similar to that of the United States.²

As a result, on May 29, 1995, a draft was submitted to the Constitutional Commission that was **named as The Draft on the Head of the State**. The power of the presidential government dominated at the expense of parliament and local government. At the same time, the president was the head of the executive authority.

From today's perspective, the head of the state, as one of the key elements of the central government system of the state, can be considered as a representative of both the executive and the legislative authorities.

In the process of the discussion on the Constitution occurred in the Parliament, the issue of the powers of the President and **the administrative-territorial arrangement of the country was extremely acute**. At the same time, part of the opposition party was ready to make some compromises on the issue of the presidency, **but any compromises on the issue of state government were ruled out**.

In the process of drafting the Constitution of 1995, various drafts of the Constitution were submitted to the Constitutional Commission by various organizations. 5 of them **declared Georgia as a unitary republic** granting the status of Autonomous Republics to Abkhazia and Adjara. 7 projects envisaged **regional division**, one of which (People's Party) **declared Georgia as the Federal Republic**.³

Prior to the drafting of the Constitution of 1995, a draft was submitted on behalf of the Head of the State, according to which Georgia **was to be a federal republic**.⁴ Its subjects included: **Abkhazia, Adjara, Tskhinvali self-governing region, and the parties** that were not defined in the draft. The constitutions of Abkhazia and Adjara would be drafted and approved by the supreme representative bodies of Abkhazia and Adjara after being approved by the Parliament of Georgia. The scope of self-government of the Tskhinvali region should have been determined in the Organic Law of the Republic of Georgia On the Region and in the regulations adopted by the authority representing this district.

The approach of the Head of the State, who spoke of federalism as a step we had to take, is typical: "After a throughout and, to tell you the truth, a complex analysis, we came to a conclusion that the entire Georgian territorial integrity should be based on federal principles." If the issue of Abkhazia did not exist "the idea of federalism might not have even emerged."

Representatives of the opposition pointed out that the federation itself could not be considered the best form of state government, as for Georgia federalism was an act against the national and state interest. They believed that the idea of statehood of Georgia would be erased as a result of its federal division. Arranging the federal system in Georgia would not neutralize the separatist tendencies, but on the contrary, would create additional problems.⁵

² Constitution of the United States, Article II, Section 1, Published by the united states Senate, in operation since 1789.

³ *Matsaberidze M.*, Political System of Georgia, Tbilisi, 2019, 233-238 (in Georgian).

⁴ Newspaper, Georgian Republic, July 1, 1995 (in Georgian).

⁵ Newspaper, Caucasus, May 30, 1995 (in Georgian).

3. Basis of Territorial Arrangement Under the Constitution

The Constitution of Georgia, adopted on August 24, 1995, **left the issue of the territorial arrangement of the country open.**⁶ The provisions related to the territorial integrity of Georgia and its arrangement were determined by the very first chapter of the Constitution, namely:

Georgia is an independent, unified and indivisible state as confirmed by the Referendum of 31 March 1991 held in the entire territory of the country, including the Autonomous Soviet Socialist Republic of Abkhazia and the former Autonomous Region of South Ossetia, and by the Act of Restoration of State Independence of Georgia of 9 April 1991. The type of the political system of the state of Georgia is a democratic republic, and the name is “Georgia”.

Therefore, **the territory of the state of Georgia was determined on 21 December 1991.** The territorial integrity of Georgia and the inviolability of the state border were confirmed by the Constitution and laws of Georgia and recognized by the world community of nations and by international organizations. The alienation of the territory of the state of Georgia was announced as a prohibited act. As for the state, the border could be changed only by a bilateral agreement with a neighboring state.

The state territorial arrangement of Georgia was revised by a constitutional law of Georgia on the basis of the principle of the separation of powers after the complete restoration of the jurisdiction of Georgia over the entire territory of the country.

By providing this entry, the constitutional legislature left the issue of territorial arrangement of the country open. This would grant the government more freedom, and through negotiations with the separatist regimes of Sokhumi and Tskhinvali, the status of these regions within Georgia would be determined later.

The Constitution also addressed the issues **falling into the special competencies of self-government and supreme state authorities.** According to that:

Citizens of Georgia would regulate issues of local importance through representative and executive bodies of local self-government without violating the sovereignty of the state. The rules for establishing local self-government authorities, their powers and relations with state authorities were defined under the Organic Law.

The issues that fell within **the exclusive competence of the supreme state authorities of Georgia** were exhaustively determined. **For example,** legislation on Georgian citizenship, human rights, and freedoms, emigration and immigration, entry into and exit from the country, and the temporary or permanent stay of aliens and stateless persons in Georgia; Status, regime and protection of state borders; Status of territorial waters, airspace, continental shelf and status of an exclusive economic zone, their defense; State defense and security, military forces, military industry, and arms trade, etc.

The issues falling into the joint competence should have been defined separately.

⁶ The Constitution of Georgia, The Original Version of the Constitution of Georgia adopted in 1995, 24/08/1995 (in Georgian).

Also, Article 4 of the original version of the 1995 Constitution is noteworthy, according to which, after the creation of appropriate conditions on the entire territory of Georgia and the formation of local self-government authorities, **the Parliament of Georgia would have two chambers: The Council of the Republic and the Senate.**

The Council of the Republic would be composed of members elected by a proportional system, as for the Senate – members elected from Abkhazia, Ajara and other territorial units of Georgia, and five members appointed by the President of Georgia. The membership, powers, and procedures for the election of chambers were determined by the organic law.

Speaking of the Senate, an opinion of G. Gogiashvili's is noteworthy, according to which consent of the upper chamber was mandatory for **the legislative initiative that directly raised the status of territorial units**, he/she would also have the right to veto.⁷

Also, it is important to mention Articles 8, 10, and 11 of the first chapter, according to which the following was defined: the state language of Georgia is Georgian, and **in Abkhazia also – Abkhazian, the capital of Georgia is Tbilisi. The state symbols of Georgia are established by organic law.**

In addition to the above, the Articles of the original version of the Constitution of Georgia, which directly addressed the issues of Ajara and Abkhazia, are also important. Namely, Articles 55, 67 and 89 outlined exclusive powers for Ajara and Abkhazia, such as:

Election of each Deputy Chairman of Parliament from the members of the Parliament elected from Abkhazia and Ajara by their own nomination; The Right of legislative initiative for the Supreme Representative Body of Abkhazia and Ajara and the competence of the Constitutional Court of Georgia made a decision on the compliance of the normative acts of supreme representative bodies of Abkhazia and Ajara under the Organic Law, based on a lawsuit or submission of the Supreme Representative Bodies of Abkhazia and Ajara.

As the original version of the Constitution shows, with respect to both Ajara and Abkhazia, their status of any kind is not defined, although this approach is changed by the constitutional amendments made on April 20, 2000.⁸

On the surface it seems that the addition and amendments made on 20 April 2000 point out changes only in words, however, these are substantial issues with respect to Ajara and Abkhazia.

It can be said that the mentioned amendments reveal the given circumstances established by the legal norm of Ajara – as a legal entity- namely, the amendments to the Constitution directly indicate that **Ajara is the Autonomous Republic of Georgia, which was not specified in the original version of the Constitution.** However, in this regard, the issue of Abkhazia is still left open.

In addition, Article 3 of the original version of the Constitution, which defined specific issues falling into **the exclusive competence of the supreme state authorities of Georgia**, is supplemented

⁷ Gogiashvili G., Comparative Federalism, Tbilisi, 2000, 262 (in Georgian).

⁸ On the Amendments and Additions in the Constitution of Georgia” Constitutional law №260 of Georgia 20/04/2000 (in Georgian).

with Paragraph 3, **according to which the status of the Autonomous Republic of Ajara is defined by the Constitutional Law of Georgia “On the Status of the Autonomous Republic of Ajara.”**

According to the amendments to the Constitution of Georgia made on October 10, 2002,⁹ a **similar reservation is made in the case of Abkhazia**. In particular, another paragraph is added to Article 3 of the Constitution and reads as follows: **“The status of the Autonomous Republic of Abkhazia is defined by the Constitutional Law of Georgia “On the Status of the Autonomous Republic of Abkhazia.”** Relevant changes are made in other entries of the Constitution and, like in Ajara, in the case of Abkhazia, it is indicated that **Abkhazia is the Autonomous Republic** within Georgia.

Among the further amendments to the Constitution should be mentioned the emergence of another paragraph in Article 3 of the Constitution on June 29, 2012. Namely, it was pointed out that **“the status and powers of the city of Lazika are determined by the organic law.”**¹⁰

4. Constitutional Amendments of Georgia in 2017

New amendments to the Constitution of Georgia, including issues related to the territorial arrangement, were introduced on October 13, 2017.¹¹ In fact, as a result of these changes, the whole

Constitution was completely re-formed, **as well as its first chapter with the title of the relevant articles. In some cases, the drafts were left unchanged. In particular, these changes included the following:**

Georgia is an independent, unified and indivisible state as **confirmed by the Referendum of 31 March 1991 held in the entire territory of the country, including the Autonomous Soviet Socialist Republic of Abkhazia and the former Autonomous Region of South Ossetia, and by the Act of Restoration of State Independence of Georgia of 9 April 1991.**

The territory of the state of Georgia was determined on 21 December 1991. The territorial integrity of Georgia and the inviolability of the state border is confirmed by the Constitution and laws of Georgia and **recognized by the world community of nations and by international organizations.** The alienation of the territory of the state of Georgia shall be prohibited. The state border may be changed only by a bilateral agreement with a neighboring state. These entries also existed in previous versions of the Constitution.

Article 2 was titled **State Symbols**. The previous edition of this Article included the inviolability of state borders, territorial arrangement and self-government issues, **however, according to the new 2017 edition, Article 7 was devoted separately to the Basis of Territorial Arrangement** (including the issues of exclusive governance of supreme state authorities, the status of Autonomous Republics of Ajara and Abkhazia, self-government issues and Anaklia Etc).

⁹ On the Amendments and Additions in the Constitution of Georgia, Constitutional law № 1089 of Georgia 10/10/2002 (in Georgian).

¹⁰ On the Amendments and Additions in the Constitution of Georgia, Constitutional law № 6602 of Georgia 29/06/2012 (in Georgian).

¹¹ On the Amendments and Additions in the Constitution of Georgia, Constitutional law № 1324 of Georgia 13/10/2017 (in Georgian).

The Article on State Symbols refers to the following: the name of the state of Georgia is “Georgia”, the capital of Georgia is Tbilisi. **The state language of Georgia is Georgian, and in the Autonomous Republic of Abkhazia, also Abkhazian.** The state language is protected by the organic law. **The state flag, coat of arms and anthem of Georgia are established by organic law, which shall be revised in accordance with the procedure established for the revision of the Constitution. Here it is demonstrated the rise of the standard of protection of the Georgian language** and giving the norms regulating the status of the state language the same legal force as the organic law. At the same time, the Constitution maintains the legal force of the Abkhazian language.

It is important to pay attention especially to the amendments of Article 7, which, based on the relevant title, determines that **there is a basis of territorial arrangement in the Constitution and offers certain directions in this way. For example, Section 4 outlines that the separation of the powers of state authority and self-governing units is based on the principle of subsidiarity.**

The issues **falling into the exclusive powers of the supreme state authorities of Georgia** are being formed in a new way. For example, instead of “emigration and immigration”, the legislation addressed **the issues of “migration”** fully; In the legislation of pharmaceuticals, the term “**drug**” was replaced by “**pharmaceutical legislation**”; Instead of “**military forces**” “**armed forces**” was defined; The term “**aviation**” included – airports and aerodromes, air traffic control and air transport registration; Instead of the “Meteorological Service”, the **whole “meteorology”** was outlined, etc.

As it turns out, in the list of issues falling into the exclusive competence, **some issues are only moved** to different paragraphs, however, **there are issues that are new and substantial, unlike the old edition**, such as the legislation on the National Academy of Sciences, courts and prosecutor's offices, money emission, only as legislation on the trade of “national significance”. **It is also noteworthy that some of the above terminological corrections have included and combined some of the previous drafts**, such as aviation. In addition, the constitution reflected the previous amendments to various legislation (the term “state security”, “armed forces”, etc.).

Another important issue needs to be mentioned. Namely, a paragraph was removed from the previously approved version of the Constitution, according to which **the issues falling into the joint competence were defined separately.**

It should also be noted that the constitutional changes no longer specify the status of Ajara and Abkhazia in the constitutional law, but it is just indicated that “**The powers of the Autonomous Republic of Abkhazia and the Autonomous Republic of Ajara, and procedures for exercising such powers shall be determined by the constitutional laws of Georgia that are an integral part of the Constitution of Georgia.**”

Another essential change that is directly related to the state territorial arrangement is the following:

If the Constitution up until now stated that “The state territorial arrangement of Georgia shall be defined by a constitutional law on the basis of the principle of the separation of powers after the complete restoration of the jurisdiction of Georgia over the entire territory of the country.” – the new edition defined the issue differently. Namely, under Article 7, Section 3:

“The state territorial arrangement of Georgia shall be revised by a constitutional law of Georgia on the basis of the principle of the separation of powers after the complete restoration of the jurisdiction of Georgia over the entire territory of the country.”

As for **the issues of local importance, in accordance with Paragraphs 4 and 5 of the same Article**, it is outlined that “The citizens of Georgia **shall regulate affairs of local importance** through local self-government in accordance with the legislation of Georgia. **The separation of the powers of state authority and self-governing units is based on the principle of subsidiarity.** The State ensures that the financial resources of self-governing units correspond with their powers as determined by the organic law. Self-governing units shall be authorised to take decisions, on their own initiative and in compliance with legislation, on all matters that do not fall within the exclusive powers of the State or of the autonomous republics, and which are not excluded from the powers of self-governing units by law. **An exclusive economic zone shall be established in Anaklia** on the basis of the organic law, where a special legal regime shall apply. Other exclusive economic zones with special legal regimes may also be established on the basis of the organic law.

In the given draft introduction of **“the principle of subsidiarity”** is also completely new, as well as **granting Anaklia the status of “an exclusive economic zone”**. In addition, the new version of the Constitution introduces new grounds for establishing **other exclusive economic zones by the special legal regime under the organic law. In addition to this, entries** on the definition of the status and powers of the city of Lazika by the organic law **have been removed from the previous edition.**

It is noteworthy that even decades ago, hierarchical governance and strict centralization in the world were gradually being replaced by a model of decentralization, which is based on the principle of subsidiarity. Since a strict system of standardization and supervision of results can also have negative consequences, it is important to find some balance here so that the positive effects inherent in the system can be used without endangering local self-government. However, in the circumstances of universal approval of the modern tendencies of decentralization and the principle of subsidiarity, the administrative decisions made by the local authorities and the fields they cover increase significantly. Mandatory supervision is gradually losing its effectiveness; thus, there is the need to subject only the decisions of a special type and content to the supervision arises, otherwise, the supervision system will be overloaded and exercising an effective control will be impossible in a short period of time.¹²

It is true that other amendments were made to the Constitution of Georgia after October 13, 2017, but no substantial changes were made in the first chapter of the Constitution, neither on the issues of territorial arrangement.

The issue that we will discuss is the so-called **“Residual Powers”**. It can be said that the Constitution exhaustively lists the issues falling within the exclusive competencies of the supreme state authorities. As for the Autonomous Republics, for example, the fields falling under the special jurisdiction of the Autonomous Republic of Ajara are already defined by the Constitutional Law of

¹² *Kakhidze I., Administrative Oversight of Local Government Activities (Comperative Analysis), Tbilisi, 2012, 254-258 (in Georgian).*

Georgia “On the Autonomous Republic of Ajara”.¹³ In addition to the fact that the first Article of this law states that the Autonomous Republic of Ajara is an integral territorial unit of Georgia, Article 2 of the same law lists the exclusive powers that fall under the special jurisdiction of the Autonomous Republic of Ajara exercised independently by the authorities of the Autonomous Republic of Adjara.

Within the framework of special jurisdiction, the Autonomous Republic of Ajara may also establish ministries of specific fields. These fields are economy, agriculture, tourism, health and social security, education, culture, sports and youth policy, environmental protection. The Autonomous Republic of Ajara **may exercise authorities** in these fields which pursuant to the legislation of Georgia does not belong to the exclusive competencies of the state authority or own exclusive powers of the local self-government and exercise of which is not excluded from the powers of the Autonomous Republic of Ajara in accordance with the legislation of Georgia.

The court practice is also interesting in terms of the separation of such powers. By its decision of September 29, 2016, the Constitutional Court of Georgia did not share the standpoint of the Supreme Representative Body of the Autonomous Republic of Ajara that the regulation of **all the issues related to the property of the Autonomous Republic of Ajara fell within the competence of the Management and Administration of the Property and not under the Civil Law**. In this case, the law of the Autonomous Republic of Ajara unilaterally determines the property obligations of third parties in relation to the property of the Autonomous Republic of Ajara, namely, the rules for compensating for the unauthorized use of this property. Resolving such issues goes beyond the competence of the management and administration of the property and **shall be regulated under the civil law, which, according to Article 3 of the Constitution of Georgia, is the issue falling within the competence of supreme state authorities of Georgia only**.

Based on the above, the Constitutional Court concluded that Article 19, Paragraph 3 of the Law of the Autonomous Republic of Ajara “On the Management and Administration of the Property of the Autonomous Republic of Ajara” (“A property user who does not have a document certifying the right to use this property legally and who uses the property for entrepreneurial activity / commercial purposes, is obliged to pay the price of transfer for use to the budget of the Autonomous Republic of Ajara pursuant to a written request of the Ministry of Property of the Autonomous Republic of Adjara) regulates, **on the one hand, issues pertaining to civil law and, on the other hand, procedure code**. According to Article 3,

Paragraph 1, Subparagraph “p” of the Constitution of Georgia, these issues fall within the exclusive competence of the supreme state authorities of Georgia, the Parliament of Georgia. Therefore, the issue belonging only to the Jurisdiction of the Parliament of Georgia is resolved by the supreme representative body of the Autonomous Republic of Adjara. At the same time, as mentioned, according to Article 6, Paragraph 3 of the Constitutional Law of Georgia “On the Status of the Autonomous Republic of Ajara”, it is inadmissible for the Autonomous Republic of Ajara to even delegate the powers under the special jurisdiction of supreme state bodies of Georgia. Thus, paragraph 3 of Article 19 of the Law of the Autonomous Republic of Ajara on the Management and

¹³ The Constitution of the Autonomous Republic of Ajara 20/02/2008 (in Georgian).

Administration of the Property of the Autonomous Republic of Ajara is unconstitutional in relation to sub-paragraph “p” of paragraph 1 of Article 3 of the Constitution of Georgia.¹⁴

As we analyze the issue of separation of powers, **the process of adopting and amending the Constitution of the Autonomous Republic of Ajara** itself is noteworthy. The first constitution of Ajara was approved on February 20, 2008. The Constitution of the Autonomous Republic was adopted by the Supreme Council of the Autonomous Republic of Ajara with two-thirds of the total membership and entered into force as “On the Approval of the Constitution of the Autonomous Republic of Ajara” **upon the enactment of the Organic Law** of Georgia. Here we are dealing with a **two-stage system**¹⁵ for the adoption of the Constitution, on the one hand at the local level and on the other hand at the central level. The rule for its revision is similar. A similar rule for adopting a basic act by an autonomous union is typical for regional states (Spain¹⁶, Italy¹⁷). There is no such two-stage regulation system with respect to Abkhazia. Therefore, it becomes interesting how this issue would be regulated if the relevant constitutional law “On the Autonomous Republic of Abkhazia” was adopted.

The Constitution of the Autonomous Republic of Abkhazia¹⁸ is also important in terms of separation of powers. Namely, the Autonomous Republic of Abkhazia, in accordance with the legislation of Georgia, resolves issues within its jurisdiction independently, while **the Autonomous Republic of Abkhazia also exercises powers that do not fall under the exclusive powers of the state government under the law of Georgia** and exercising it is not excluded from the powers of the Autonomous Republic of Abkhazia.

This analysis shows that with these changes, the Constitution is gradually trying to facilitate the resolution of the issue of territorial arrangement. As important challenges such as the separation of powers between the central government and the autonomous republics, the list of issues falling under the special jurisdiction, “residual powers”, etc., are an important precondition for laying the foundations for resolving the issue of territorial arrangement. However, the type of arrangement that shall ultimately be determined, must be decided by constitutional changes as well.

It is noteworthy that the constitutional experience of some countries in terms of determining the form of state government. The constitutions of a number of countries directly determine the form of its state government considering its territorial arrangement. For example, according to the very first article of the Constitution of Belgium, Belgium is a federal state composed of communities and regions.¹⁹ The issue of territorial arrangement of the Republic of Brazil is regulated by the Constitution of the Federative Republic of Brazil. Both the title and the first article of the Constitution

¹⁴ Decision of the Plenum of the Constitutional Court of Georgia 3/4/641 of September 29, 2016 on the case “Constitutional Submission of the Kutaisi Court of Appeal on the constitutionality of Article 19, Paragraph 3 of the Law of the Autonomous Republic of Adjara” (in Georgian).

¹⁵ *Gonashvili V., Kverenchkhiladze G., Kakhiani G., Chighladze N., Eremadze St., Tevdorashvili G.*, Constitutional Law of Georgia, Tbilisi, 2017, 151 (in Georgian).

¹⁶ *Gonashvili V.*, Lawyers for the Rule of Law – “Constitutions of Foreign Countries” – Tbilisi, 2007, part 3, 163 (in Georgian).

¹⁷ *Ibid*, part 5, 325 (in Georgian).

¹⁸ The Constitution of the Autonomous Republic of Abkhazia, 21/11/2019 (in Georgian).

¹⁹ La Constitution Belge, coordonné du 17 février 1994, Titre Ier, Art. 1er.

state that the form of territorial arrangement of the Republic of Brazil is a federal republic.²⁰ According to the first part of Article 2 of the Constitution of the Republic of Bulgaria, the Republic of Bulgaria is unified and those autonomous territorial entities are not allowed in it.²¹, etc.

When discussing the issue, it is necessary to explain the forms of territorial arrangement. In general, the form of the state government refers to the territorial-organizational features of the internal structure of the state, the mutual dependence between the state as a whole and its constituent parts, between the central government and the local authorities. In this respect, countries are mainly divided into simple (unitarism) and complex (federation, confederation) states.²²

Federalism is derived from the Latin word: “foedus” and means “pact”, “union”.²³ Building on the principle of unity ensures the existence of the Federation as a single sovereign state.²⁴

A common form of state territorial arrangement is also the unitary regime. The word “unitary” is derived from the Latin word, which means “one”. A unitary regime implies a unified legal and political organization of state power throughout the whole country.²⁵

The difference between the forms of state government²⁶ is manifested in the fact that:

- A unitary state consists only of administrative or political-administrative units;
- The units of the federal state are state-like formations, without sovereignty.
- In the case of a confederation, parts of the state retain de facto sovereignty.

The theory of modern (constitutional) law also distinguishes regionalism²⁷, which, unlike the unitary state, is characterized by a higher degree of decentralization and autonomy of territorial units.

There are a number of cases where the autonomous regions of non-federal states even achieve degrees of federal independence (e.g. Spain, regions with special status in Italy)²⁸ and some doctrines view a unitary decentralized state as a transitional form between a federal and a unitary state.²⁹

In addition to the Confederation, according to some scholars the commonwealth is also considered to be a form of state government. Namely, it is rare, more amorphous than a confederation, but still an organized union of states characterized by somewhat of similar features (economy, law, language, culture, religion, etc.). Commonwealth This is not just a union, but rather a peculiar union of independent states. Commonwealth as a union of states may have a transitional character. It can develop in both the confederation and the federation.³⁰

²⁰ Constituição da República Federativa do Brasil, Senado Federal, Texto promulgado em 05 de outubro de 1988, Título I, Art. 1º.

²¹ Конституция на Република България, Конституция на Република България, приета от Народното събрание на 13 юли 1991 г., Чл. 2. (1).

²² *Intskirveli G.*, General Theory of State and Law, Tbilisi, 1997, 50-51 (in Georgian).

²³ *Khubua G.*, Federalism as a Normative Principle, Tbilisi, 2000, 14 (in Georgian).

²⁴ *Rukhadze Z.*, Constitutional Law of Georgia, 1999, 186 (in Georgian).

²⁵ *Gonashvili V., Kverenchkhiladze G., Kakhiani G., Chighladze N., Eremadze St., Tevdorashvili G.*, Introduction to Constitutional Law, Tbilisi, 2016, 150 (in Georgian).

²⁶ *Matsaberidze M.*, Political System of Georgia, Tbilisi, 2019, 299 (in Georgian).

²⁷ *Demetrashvili A.*, Guidebook for Constitutional Law, Tbilisi, 2005, 124 (in Georgian).

²⁸ *Perntaler P.*, Allgemeine Staatslehre und Verfassungslehre, Auftr. Wien, 1996, 289.

²⁹ *Perntaler P., Kathrin I., Weber K.*, Der Föderalismus im Alpenraum, Wien, 1882, 44.

³⁰ *Tsnobiladze P.*, Constitutional Law, Tbilisi, 1997, 80-81 (in Georgian).

5. Conclusion

In consideration of the aforementioned, it is clear that in case of the separation of powers of the Autonomous Republics it is mainly exercised **the principle of universality**, according to which the Autonomous Republic of Georgia **exercises other powers in a number of fields** (e.g. in case of Ajara – Economy, Agriculture, Tourism, etc.) except for the issues falling within the exclusive competences, unless that does not fall within the special jurisdiction of the state or the exclusive powers of local self-government, the exercise of which is not excluded from the powers of autonomous republics by the legislation of Georgia.

This means that pursuant to the recent amendments made in the Constitution so-called “residual powers” fell within the powers and competencies of the Autonomous Republics, which is a step towards decentralization. However, there is still the other part of the “residual powers”, which do not fall within the fields mentioned above and do not explicitly belong to the central government either. It can be said that the “residual powers” are divided between the central government and the autonomous republic. One part was handed over by the state to autonomy, while it left the other part to itself.

In general, as known, according to the most common definition of an autonomous republic,³¹ an autonomous republic is **a state entity based on political autonomy within a state**, which, although not independent, has its own territory, legislation, governmental authorities, and other attributes of statehood.

Based on the above, it can be concluded that first of all, autonomy is the status for Abkhazia and Ajara, which was established by the constitutional amendments of Georgia, and as for the scope of this autonomy, is already specified directly by the constitutions of autonomous republics, except for the Constitution of Georgia. In other words, the basic status of Abkhazia and Ajara is already defined by Article 7 of the Constitution itself, when it outlines that Ajara and Abkhazia are autonomous republics. This is their status, and the rest is already within the scope of this status. According to this analysis, we can conclude that the constitutional status of the autonomous republics is already well defined and that the existing errors in the constitutional records in this regard have been eliminated.

In addition, it should be noted that the recent constitutional amendments, which were also accompanied by the amendments to the constitutions of the Autonomous Republics, better separated the powers and regulated them between the central government and the Autonomous Republics. For example, not only the issues falling under the special jurisdiction of the supreme state bodies were reviewed and clarified, but the special jurisdictions of the Autonomous Republic were established as well. Moreover, the exclusive powers of the Autonomous Republic are separated from the competencies of **the state and local self-government**. Also, the constitution clarifies that **an exclusive economic zone is being established in Anaklia, where a special legal regime applies.**

Finally, it can be concluded that when the constitutional amendments speak of the fact that the issue of territorial arrangement is not “determine” as outlined in the old version of the Constitution,

³¹ The National Parliamentary Library of Georgia, Encyclopedic Definitions, <<http://www.nplg.gov.ge/gwdict/index.php?a=term&d=5&t=163>> [21.12.2021] (in Georgian).

but is “revised”, it indicates that some new constitutional amendments have already tried to resolve the issue of territorial arrangement, however, if this is the case then what type of arrangement is it? Unitary, federal or something else? The Constitution does not outline anything about it, nor do other laws make any reservations about it. Consequently, the following question arises: if the form of territorial arrangement is not defined, then in such case the entry “definition” should have been changed by “revision” or not. The latter may lead to preconditions for constitutional verifications in the future. The ultimate goal of the new constitutional amendments is to resolve the issue of territorial arrangement of our country together with the population of Abkhazia and the Tskhinvali region.

Bibliography:

1. The Constitution of Georgia 24/08/1995.
2. On Additions and amendments in the Constitution of Georgia, The constitutional law №260, 20/04/2000.
3. On Additions and amendments in the Constitution of Georgia, The constitutional law №1089, 10/10/2002.
4. On Additions and amendments in the Constitution of Georgia, The constitutional law № 6602, 29/06/2012.
5. On Additions and amendments in the Constitution of Georgia, The Constitutional Law №1324, 13/10/2017.
6. The Constitution of the Autonomous Republic of Ajara 20/02/2008.
7. Constitution of the Autonomous Republic of Abkhazia, 21/11/2019.
8. *Gonashvili V., Eremadze K., Tevdorashvili G., Kakhiani G., Kverenchkhiladze G., Chighladze N.*, Introduction to Constitutional Law, Tbilisi, 2016, 150 (in Georgian).
9. *Gonashvili V., Kverenchkhiladze G., Kakhiani G., Chighladze N., Eremadze K., Tevdorashvili G.*, Constitutional Law of Georgia, Tbilisi, 2017, 151 (in Georgian).
10. *Gonashvili V.*, Lawyers for the Rule of Law – Constitutions of Foreign Countries, Tbilisi, 2007, part. 3, 163; part 5, 325.
11. *Gonashvili V.*, Comperative Federalism, Tbilisi, 2000, 262.
12. *Demetrashvili A.*, Guidebook for Constitutional Law, Tbilisi, 2005, 124.
13. *Intskurveli G.*, General theory of State and Law, Tbilisi, 1997, 50-51.
14. *Kakhidze I.*, Administrative Oversight of Local Government Activities (Comperative Analysis), Tbilisi, 2012, 254-258.
15. *Matsaberidze M.*, Political System of Georgia, Tbilisi, 2019, 214, 233-238, 299.
16. *Rukhadze Z.*, Constitutional Law of Georgia, 1999, 186.
17. *Tsnobiladze P.*, Constitutional Law, Tbilisi, 1997, 80-81.
18. *Khubua G.*, Federalism as a Normative Principle, Tbilisi, 2000, 14.
19. The National Parliamentary Library of Georgia, Encyclopedic definitions, <<http://www.nplg.gov.ge/gwdict/index.php?a=term&d=5&t=163>> [21.12.2021].
20. Newspaper, Georgian Republic, July 1, 1995.
21. Newspaper, Caucasus, May 30, 1995.

22. Decision of the Plenum of the Constitutional Court of Georgia 293/4/641 of September 29, 2016 on the case “Constitutional Submission of the Kutaisi Court of Appeal on the constitutionality of Article 19, Paragraph 3 of the Law of the Autonomous Republic of Adjara”.
23. Constitution of the United States, Article II, Section 1, Published by the united states Senate, in operation since 1789.
24. La Constitution Belge, coordonné du 17 février 1994, Titre Ier, Art. 1er.
25. Constituição da República Federativa do Brasil, Senado Federal, Texto promulgado em 05 de outubro de 1988, Título I, Art. 1º.
26. *Pernthaler P.*, Allgemeine Staatslehr und Verfassungslehre, Auft, Wien, 1996, 289.
27. *Pernthaler P., Kathrin I., Weber K.*, Der Föderalismus im Alpenraum, Wien, 1882, 44.
28. Конституция на Република България, Конституция на Република България, приета от Народното събрание на 13 юли 1991 г., Чл. 2. (1).