

The Constitutional Status of the Head of State and Government in the Field of Foreign Relations following the 1921 Constitution of Georgia and the "Transition Period"

The Constitution of Georgia of 1921 is an invaluable achievement of the history of Georgia, it emphasizes historical aspiration of the country towards democracy, European values and independence. During the so called transition period of the country's history following the above-mentioned period, in the fundamental law of the country, the constitution, the field of foreign relations and state-political officials considered as the Heads of State responsible for implementing foreign policy were formed differently throughout different years. Depending on the model of the Government in the country at that time, the role of the Head of State was played differently at different times by the first persons of the country. Accordingly, the scope and powers of the country's representation in the field of foreign relations had been varying. This paper will discuss the constitutional status of the Head of State and Government in the field of foreign relations pursuant to the 1921 Constitution of Georgia and the so-called constitutions of the "transition period".

Keywords: *The Constitution of Georgia of 1921, "transition period", the Head of State, the field of foreign relations.*

1. Introduction

"The adoption of the 1921 Constitution of Georgia was essential not only for the existence of the fundamental law for the Democratic Republic of Georgia, but for Europe and the civilized world as well, in order to declare democratic choice of Georgia."¹ It can be stated that the Constitution of 1921 represents a certain symbol of Georgia's aspirations towards the establishment of a united, democratic and independent country. Although the country had been under Russian Empire for more than a century, the authors of the Constitution managed to create a legal act that distinguished itself for its individuality and consistency among the constitutions of the post-World War I period.²

"The evolution of Georgian constitutional thought is directly related to the fact that the history of our country is essentially a history of fighting for the purpose of gaining or maintaining independence. If we analyze this history, it becomes clear that the issues of national, legal and state importance were given special significance in the past of the Georgian nation."³

With the "Georgian Independence Act" of May 26, 1918, it can be concluded that Georgia, acting in its capacity as an independent country, started a new life by adopting the first act in the history of constitutionalism and choosing a democratic republic as a form of political organization.

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

¹ Demetrashvili A., Constitution of Georgia of February 21, 1921 From the 2011 revision, with the origins of Georgian constitutionalism - 90th anniversary of the Constitution of Georgia of 1921, Batumi, 2011, 10 (in Georgian).

² Papuashvili G., 1921 Constitution of the Democratic Republic of Georgia, 2nd ed., Batumi, 2013, 3-4.

³ Kverenchkhiladze G., Executive Power and the 1921 Constitution of Georgia, at the Origins of Georgian Constitutionalism - 90th Anniversary of the 1921 Constitution of Georgia, Batumi, 2011, 166 (in Georgian), see citation: Rukhadze Z., Constitutional Law of Georgia, Batumi, 1999, 18 (in Georgian).

"The main value of the Georgian Independence Act is the message of the Georgian nation's centuries-old dream to the world."⁴ According to the Independence Act, Georgia was established as an independent, full-fledged democratic republic. Georgia's peace goal was also stated through recognizing the principles of constant neutrality and good neighborly relations with all states, and most importantly, the state recognized its duties to ensure equal rights for its citizens.⁵ "The next step was the adoption of the fundamental law of an independent Georgian state - the Constitution of Georgia - by the Constituent Assembly of Georgia on February 21, 1921, which opened the page of Georgian constitutionalism with the model of a parliamentary government."⁶

The main goal of the Government of that time was to create an exemplary democratic state in the South Caucasus. Karl Kautsky, a prominent European politician, spoke of the successful political, legal, and economic reforms initiated by the Georgian Social Democrats, noting that Georgia's democratic path in 1918-1920 was fundamentally different from the Bolshevik path of dictatorship and tyranny.⁷

In the so-called "transitional" Georgia, various forms of organization of the state authority were applied in 1990-1995, but in some of the stated forms the separation of powers existed only at the level of declaration (the Government of Zviad Gamsakhurdia, formally restored during the 1921 Constitution), in other forms of organization it did not exist at all (Military Council, State Council), and in the model of government established on the basis of the Law on State Authority, instead of the separation of powers, one person was simultaneously holding the legislative power (he was the Speaker of the Parliament of Georgia) whilst acting as the Head of State and being responsible for controlling the executive power.⁸

Therefore, it is interesting how the powers of the first persons of the country in the field of foreign relations were distributed in the above-mentioned periods of the Georgian history. As noted, the 1921 Constitution at the time represented a strong evidence of the aspiration for democracy and the civilized world within the constitutional legal scope, taking into account democratic values. On the basis on the above, the present paper will propose an analysis of the distribution of powers and the constitutional status of the Head of State in the foreign relations on the basis of the 1921 Constitution and the so-called transition period constitutions. It is noteworthy that the institution of the Head of State was established in a different way on the basis of the Constitution of 1921 and the constitutions of the later periods as well.

⁴ *Kverenchkhiladze G.*, Executive Power and the 1921 Constitution of Georgia, at the Origins of Georgian Constitutionalism - 90th Anniversary of the 1921 Constitution of Georgia, Batumi, 2011, 166 (in Georgian), see citation: *Rukhadze Z.*, Constitutional Law of Georgia, Batumi, 1999, 18 (in Georgian).

⁵ *Ibid*, 166-167.

⁶ *Ibid*, 167, see citation: *Melkadze O.*, Georgian Constitutionalism, Book I, Tbilisi, 2009, 95 (in Georgian).

⁷ *Papuashvili G.*, A Retrospective on the 1921 Constitution of the Democratic Republic of Georgia, Vol.13, Issue 1, 2012; *Kautsky K.*, Georgia: A Social-Democratic Peasant Republic — Impressions and Observations, Chapter IX (H.J. Stenning Trans., International Bookshops Limited 1921), <<http://www.marxists.org/archive/kautsky/1921/georgia/ch05.htm>>, [17.02.2022].

⁸ *Demetrashvili A., Kobakhidze I.*, Constitutional Law, Tbilisi, 2010, 190 (in Georgian).

2. The Constitution of Georgia of 1921, its Role and Importance in the International Arena

The Constitution of Georgia⁹ of 1921 took effect for only four days; on February 25 of the same year, Georgia was annexed by the Soviet Russia. Nevertheless, it can be said that the Constitution was a classic example of the fundamental law of the state and the experience of world constitutionalism was taken into account during its drafting process, especially in the field of human rights.¹⁰

The first feature that characterizes the 1921 Constitution as such, and in particular with regard to the executive authority, is the fact that the authors of the fundamental law rejected the fundamental principle of the separation of powers to certain extent. The reason behind this was that "the distribution of power ... would violate the unity of the state. It would always be a struggle between different state authorities."¹¹

Although the 1921 Constitution did not enter into force in state life, it was intended to establish a number of important innovations in Georgian constitutionalism. The Constitution recognized the Democratic Republic as a permanent and constant form of state formation, as well as it enshrined a number of progressive ideas and norms, such as universal suffrage, freedom of speech, the abolition of the death penalty and etc.¹²

"The Constitution adopted by the Georgian legislators in 1921 can undoubtedly be considered as one of the most advanced and perfect human rights-oriented legislative acts in the world, reflecting the most advanced legal and political discourse and trends that were taking place in Western Europe or the USA at that time."¹³ In the words of former German Foreign Minister Hans Dietrich Genscher: "At that time it [Georgia's 1921 Constitution] shared values such as freedom, democracy and the rule of law on which modern Europe is founded."¹⁴

The 1921 Constitution established a parliamentary government based on a parliamentary model, but did not provide for the position of the Head of State, whose duties were to be fulfilled in some respects by the Prime Minister.¹⁵ "Such an argument is supported by the constitutional provisions, by virtue of which the Prime Minister was granted the highest representative power in

⁹ Constitution of Georgia (February 21, 1921), Date of adoption 21/02/1921, Constituent Assembly of Georgia receiving the document, <<https://matsne.gov.ge/ka/document/view/4801430?publication=0>>, [17.02.2022] (in Georgian).

¹⁰ *Kverenchkhiladze G.*, Executive Power and the 1921 Constitution of Georgia, at the Origins of Georgian Constitutionalism - 90th Anniversary of the 1921 Constitution of Georgia, Batumi, 2011, 167 (in Georgian).

¹¹ *Ibid*, 173, see citation: *Matsaberidze M.*, The Concept of a Democratic Republic in the 1921 Constitution of Georgia, Tbilisi, 2009, 14 (in Georgian).

¹² *Ibid*, 178 (in Georgian), see citation: *Papuashvili G.*, 1921 Constitution of the Democratic Republic of Georgia from the 21st Century Perspective, Constitution of the Democratic Republic of Georgia of February 21, 1921, Batumi, 2009, 4 (in Georgian).

¹³ *Papuashvili G.*, A Retrospective on the 1921 Constitution of the Democratic Republic of Georgia, Vol.13, Issue 1, 2012; *Genscher H.D.*, Introduction to Wolfgang Gaul, Adoption and Elaboration of the Constitution in Georgia (1993-1995), at 9 (IRIS Georgia 2002).

¹⁴ *Ibid*.

¹⁵ *Khetsuriani J.*, Forms of State Government and Prospects for the Restoration of Monarchy in Georgia, Research in Georgian Jurisprudence, Tbilisi, 2011, 36 (in Georgian), see citation: *Tsnobiladze P.*, Constitutional Law of Georgia, Vol. 1, Tbilisi, 2004, 104 (in Georgian).

the Republic and special powers in the field of foreign relations or declaring the state of emergency in the country."¹⁶

Hence, the role of the first Georgian Constitution in the process of preserving the state heritage is immeasurable and invaluable, which was reflected in the preamble of the current Constitution of August 24, 1995: "We, the citizens of Georgia ..relying on the historical-legal inheritance of the Constitution of Georgia of 1921 hereby declare this Constitution before the God and the Country"¹⁷

2.1. Status of the Head of State

The model of parliamentary government provided for in the 1921 Constitution can be attributed to a group of European-type parliamentary systems popular at the time, albeit with many peculiarities.¹⁸ In particular, "we cannot say that the constitution was equally balanced in all three branches of authorities, because its construction did not include mechanisms for perfecting the influence of the executive authority on the parliament or, to the contrary, refining the impact of the parliament on the executive authority".¹⁹ Another important circumstance is the fact that the Constitution did not set forth the institution of the President, which distinguishes the model of government set out in the 1921 Constitution from the classical form of the parliamentary government. Therefore, "among the peculiarities of the system of governance, which distinguished it from other parliamentary systems at the time, there may also be the absence of a neutral institution of the president (or monarch, in the case of a constitutional monarchy); establishment of only individual responsibilities of the government, etc."²⁰

Due to the fact that the leaders of the then Democratic Republic were afraid to concentrate power in the hands of one person or group of persons, when discussing the model of governance, the choice was made in favor of a parliamentary republic, which completely ruled out the existence of the institution of the Head of State.²¹ "The constitution has rejected an important institution of the republican model such as the elected Head of State, the president."²² "We want a republic without a president" - concludes Rajden Arsenidze after analyzing the political-legal nature of the institution of the President and considers the latter as an unacceptable institution for the working class, for a democratic society.²³ "It seems that a significant part of the Social

¹⁶ *Kverenchkhiladze G.*, Constitutional Law of Georgia, Tbilisi, 2017, 352 (in Georgian), see citation: *Tsnobiladze P.*, Constitutional Law of Georgia, Vol. 1, Tbilisi, 2004, 396 (in Georgian).

¹⁷ *Kverenchkhiladze G.*, Executive Power and the 1921 Constitution of Georgia, at the Origins of Georgian Constitutionalism - 90th Anniversary of the 1921 Constitution of Georgia, Batumi, 2011, 179 (in Georgian)

¹⁸ *Papuashvili G.*, 1921 Constitution of the Democratic Republic of Georgia, 2nd ed., Batumi, 2013, 20 (in Georgian).

¹⁹ Ibid.

²⁰ Ibid.

²¹ *Demetrashvili A.*, Constitution of Georgia of February 21, 1921 From the 2011 revision, with the origins of Georgian constitutionalism - 90th anniversary of the Constitution of Georgia of 1921, Batumi, 2011, 14 (in Georgian).

²² *Gonashvili V.*, Constitutional Law of Georgia, Tbilisi, 2017, 113 (in Georgian).

²³ *Arsenidze R.*, Democratic Republic, *Gegenava D.(ed.)*, 2nd ed., Tbilisi, 2014, 18 (in Georgian).

Democrats, considering the threats of one-man rule and under the influence of the Swiss model of governance, supported the establishment of a presidential republic.”²⁴

Conceptual views on the issue of the president were formed in the following two directions, particularly, the National Democrats were in favor, while the Social Democrats were against it (although the Social Democrats were in favor of the presidency of Noe Jordania and Pavle Sakvarelidze). As envisaged by the National Democrats, the introduction of the institution of the president would lead to the separation of powers, the implementation of the principle of non-interference between the authorities, since the parliamentary government together with the president was a guarantee of the existence of the strong authority.²⁵ It should be noted that in the parliamentary system, there is a great temptation for the Head of State to interfere with the competence of the government, the cabinet, if the president has had a political career in the past. Consequently, in order to reduce this risk, the president is not directly elected and in a parliamentary system, the president is usually elected by the parliament.²⁶ “Parliamentary systems owe their name to their founding principle, namely, that the parliament is sovereign.”²⁷

2.2 Status and Powers of the Government of Georgia in the Field of Foreign Relations Pursuant to the 1921 Constitution

For the Democratic Republic of that time, that established a parliamentary republic as a form of governance, the place of government was one of the major issues in the system of separation of powers.²⁸ In the 1921 Constitution, the executive branch was based on the "principle of government accountability and obedience", which is characteristic for the parliamentary system and which was derived from the system closest to Swiss democracy.²⁹ Superior Authority - the Government of the Republic represented a Board that was accountable before the Parliament.³⁰ The chairman of the government was elected for a term of one year, and he could be elected only for two consecutive terms. The remaining members of the government, and the ministers elected from the citizens eligible to run in the parliamentary elections, were appointed by the Prime Minister through extra-parliamentary means.³¹

²⁴ *Gonashvili V.*, Constitutional Law of Georgia, Tbilisi, 2017, 113 (in Georgian).

²⁵ *Gegenava D., Kantaria B., Tsanova L., Tsertsvadze T., Macharadze Z., Javakhishvili P., Erkvania T., Papashvili T.*, Constitutional Law of Georgia, Davit Batonishvili Institute of Law, Tbilisi, 2013, 59-60 (in Georgian).

²⁶ *Lijphart A.*, Patterns of Democracy, Government Forms and Performance in Thirty-six Countries, 2nd ed., Yale University Press, New Haven and London, 2012, 128.

²⁷ *Sartori G.*, Comparative Constitutional Engineering, An Inquiry into Structures, Incentives and Outcomes, second edition, New York, 1997, 101.

²⁸ *Kverenchkhiladze G.*, The Executive Power and the 1921 Constitution of Georgia, at the Origins of Georgian Constitutionalism - 90th Anniversary of the 1921 Constitution of Georgia, Batumi, 2011, 168 (in Georgian).

²⁹ *Ibid.* 169-170, see citation: *Matsaberidze M.*, Political Concept of the 1921 Constitution of Georgia, Tbilisi, 1996, 82 (in Georgian).

³⁰ *Papashvili G.*, The 1921 Constitution of the Democratic Republic of Georgia, 2nd ed., Batumi, 2013, 23-24 (in Georgian).

³¹ *Kverenchkhiladze G.*, Executive Power and the 1921 Constitution of Georgia, at the Origins of Georgian Constitutionalism - 90th Anniversary of the 1921 Constitution of Georgia, Batumi, 2011, 170 (in Georgian).

According to the 1921 Constitution, the head of Government was the chairman, who was elected by the Parliament and who at the same time held the position of the highest representative of the republic.³² Chapter 5 of the Constitution was dedicated to the executive branch and Article 70 of the said Chapter defined the powers of the executive branch in the field of foreign relations. In particular, the Prime Minister was the highest representative of the Republic, he was authorized to appoint ambassadors to other states and foreign ambassadors were presented to him, and pertaining to Article 72, the common right and duty of the Government was to protect the foreign interests of the Republic. Under Article 73, the management of the remaining affairs of the Republic was distributed among the members of the Government.³³ At the same time, as mentioned earlier, the Constitution confers on the Prime Minister the competencies related to the "Highest Representation of the Republic" and the "Calling in the Armed Forces of the Republic" (Article 70), which confirms some of the powers of the Chairman of the Government, including granting the authorities of Commander-in-Chief.³⁴ Accordingly, pursuant to Article 70 of the Constitution, the Chairman of the Government was granted the powers characteristic to the Head of State (president). For example, appointment of ambassadors, state representation, and etc.³⁵

It should be noted that the 1921 Constitution did not entail a direct record on the conclusion of international treaties and agreements. One might assume that this function would still be exercised by the executive branch and its head, given the absence of the institution of the President and the dominant role of the Government in the field of foreign relations. According to Article 54 (d) of the 1921 Constitution, the powers of parliament included the adoption of "peace, trade and similar agreements"³⁶ with foreign states. This record was presumably referring to the ratification of international treaties by the supreme legislative body. Therefore, on the basis of the review of these articles, it is possible to conclude that the adoption of international agreements was also carried out by the head of the Government or there was a possibility to delegate this function to other members of the Government. Such distribution contradicts the constitutional experience of countries having a parliamentary model of governance, deriving from the fact that the so-called "neutral arbitrator" is at least formally involved in foreign relations and exercises foreign powers with the consent and / or agreement of the government. Furthermore, there is another and important circumstance that "threatens" the concept of the parliamentary model of governance, particularly, "the 1921 Constitution cannot be considered as a classic parliamentary model, even given the fact that it did not entail a neutral figure - the Head of State as president, who "in the event of a crisis, would either dismiss the parliament or dismiss the government."³⁷ It is also important

³² *Papuashvili G.*, 1921 Constitution of the Democratic Republic of Georgia, Batumi, 2nd ed., 2013, 25 (in Georgian).

³³ *Tevdorashvili G.*, Constitutional Law of Georgia, Tbilisi, 2017, 353-354, 47-48 (in Georgian).

³⁴ *Melkadze O.*, Constitutional Law of Georgia, Tbilisi, 2011, 190-191 (in Georgian).

³⁵ *Papuashvili G.*, 1921 Constitution of the Democratic Republic of Georgia, Batumi, 2nd ed., 2013, 25 (in Georgian).

³⁶ Constitution of Georgia (February 21, 1921), Date of adoption 21/02/1921, Constituent Assembly of Georgia receiving the document, <<https://www.matsne.gov.ge/ka/document/view/4801430?publication=0>>, [17.02.2022].

³⁷ *Kverenchkhiladze G.*, The Executive Power and the 1921 Constitution of Georgia, at the Origins of Georgian Constitutionalism - 90th Anniversary of the 1921 Constitution of Georgia, Batumi, 2011, 175 (in Georgian).

to note that in a parliamentary system, if the Head of State was merely a decorative figure, it would make no sense to separate the roles of heads of state and government.³⁸

According to the 1921 Constitution, "the executive branch of the highest governance" entailed the Government, and the Chairman of the Government was, in fact, the Head of State. "Such an argument is supported by the constitutional provisions, by virtue of which the Prime Minister was given the highest representative authority of the Republic and was granted special powers in the field of foreign relations or declaring a state of emergency in the country. It is likely that after the enactment of the Constitution, the relevant laws would regulate issues that were left open by the Constitution, however, it should be emphasized that in some cases the Constitution did not even contain blanket norms on this matter."³⁹

In the model of parliamentary government established by the Constitution of the First Republic, the system of supreme bodies of state authority "ensures the primacy of the parliament, it clearly "oppresses" the government and the courts, practically nullifies the mechanism of restraint-balance" ... "the system wherein the chairman of the government can only be elected for one year and for two consecutive terms..." "would be less efficient and unstable to function".⁴⁰ Montesquieu distinguished between the functions of the legislature, the executive and the judiciary branches, he developed a system of separation of powers and argued that if any of them fell into the same hands, there was a risk of tyranny. Montesquieu believed that in the so-called system of restraint and balance, three aspects were important, namely, first the functional aspect, then the separation of personnel and then the mechanism of control and balance.⁴¹ Consequently, the branches of government had to restrain each other and their power.

3. "Transition Period" of Georgian History and its Reflection in the Constitutions of Georgia

On October 28, 1990, the first multiparty elections in the history of the Soviet Union were held in Georgia. The National Liberation Movement became member of the Supreme Council of Georgia with a majority, which, according to the results of the referendum held on March 31, 1991, was followed by the proclamation of the Act of Restoration of State Independence of Georgia on April 9.⁴² Through the Resolution of April 9, 1991, in order to improve the state system of the Republic of Georgia, to strengthen the sovereignty of the country, to ensure the rights, freedoms and security of citizens, the official position of the President of the Republic of Georgia was established. The Supreme Council of Georgia was instructed to prepare the relevant legislative amendments.⁴³

³⁸ *Linz J.*, Presidential or Parliamentary Democracy: Does It Make a Difference?, *The Failure of Presidential Democracy*, Vol. 1, Edited by *Linz J. and Valenzuela A.*, Baltimore and London, 1994, 46.

³⁹ *Kverenchkhiladze G.*, Executive Power and the 1921 Constitution of Georgia, at the Origins of Georgian Constitutionalism - 90th Anniversary of the 1921 Constitution of Georgia, Batumi, 2011, 174 (in Georgian), see citation: *Melkadze O.*, Georgian Constitutionalism, Book 1, Tbilisi, 2009, 107 (in Georgian).

⁴⁰ *Demetrashvili A.*, Constitution of Georgia of February 21, 1921 From the 2011 revision, at the origins of Georgian constitutionalism - 90th anniversary of the Constitution of Georgia of 1921, Batumi, 2011, 15-16 (in Georgian).

⁴¹ *Alder J.*, General Principles of Constitutional and Administrative Law, 4th ed., 2002, 108.

⁴² *Tevdorashvili G.*, Constitutional Law of Georgia, Tbilisi, 2017, 352 (in Georgian).

⁴³ *Kantaria B.*, Constitutional Law of Georgia, 2nd ed., Tbilisi, 2014, 59 (in Georgian).

On April 14, 1991, at the extraordinary session of the Supreme Council, the Law on the Establishment of the President of the Republic of Georgia and Amendments to the Constitution of Georgia was adopted, which amended the 1978 Constitution."⁴⁴ It is true that the 1978 constitution was significantly "cleansed" and refined, but in essence it was still the Soviet constitution and no amendment could have fixed it entirely."⁴⁵ Also on April 14, at the hearing of the Supreme Council, the chairman of the Supreme Council of that time, Zviad Gamsakhurdia, was elected President of Georgia. Later, on May 26, the first general and direct presidential elections were held in Georgia and the vast majority of voters (87.03%) supported Zviad Gamsakhurdia's candidacy as the president of Georgia. "A president elected directly by the people, unlike the Soviet party nomenclature, was associated with the development of the country's freedom and independence."⁴⁶

3.1 Foreign-Political Status of the President of Georgia

Pursuant to the constitutional amendments adopted on April 14, 1991, a citizen of Georgia (by birth) aged between 35 and 70, who had lived permanently in Georgia for at least the last five years, may have been elected President of the Republic of Georgia. The president was elected for a five-year term by universal, equal and direct suffrage by secret voting. Presidential elections would be considered valid if more than half of the voters had participated in it, whereas a candidate supported by more than half of the voters participating in the elections would be considered elected President.⁴⁷ The status of the President of the Republic of Georgia was determined in accordance with the new Chapter 13¹ named "President of the Republic of Georgia" added to the Constitution in force at that time. In particular, the Commander of the Republic of Georgia, the President of Georgia, represented the Republic of Georgia within the country and in international relations, and was the Supreme Commander-in-Chief of the Georgian military forces. The President was entitled to negotiate and sign international agreements of Georgia, receive credentials and conscription certificates of diplomatic representatives of accredited foreign states, appoint and summon diplomatic representatives of the Republic of Georgia in foreign states and international organizations, award the highest diplomatic ranks and other special ranks.⁴⁸

The full list of powers of the President was prescribed by Article 121⁴, whereunder the President of the Republic of Georgia, apart from representing the Republic of Georgia within the country and in international relations, headed the system of state governing bodies and ensured their interaction with the highest state authorities, nominated the Chairman of the Government for the purpose of appointing the Chairman to the Supreme Council and, formed the Government in agreement with the Chairman. The Supreme Council of Georgia approved the President of Geor-

⁴⁴ *Tevdorashvili G.*, Constitutional Law of Georgia, Tbilisi, 2017, 352 (in Georgian), see citation: *Tsnobiladze P.*, Constitutional Law of Georgia, Vol. 1, Tbilisi, 2004, 126 (in Georgian).

⁴⁵ *Gegenava D.*, Introduction to the Constitutional Law of Georgia, Sulkhani-Saba Orbeliani University Press, 2019, 52 (in Georgian), see citation: *Khetsuriani J.*, From Independence to the Rule of Law, Publicist Letters, Interviews, Tbilisi, 2006, 311 (in Georgian).

⁴⁶ *Tevdorashvili G.*, Constitutional Law of Georgia, Tbilisi, 2017, 352 (in Georgian), see citation: *Tsnobiladze P.*, Constitutional Law of Georgia, Vol. 1, Tbilisi, 2004, 126 (in Georgian).

⁴⁷ *Tevdorashvili G.*, Constitutional Law of Georgia, Tbilisi, 2017, 353 (in Georgian).

⁴⁸ *Kantaria B.*, Constitutional Law of Georgia, 2nd ed., Davit Batonishvili Institute of Law Publishing House, Tbilisi, 2014, 61-62 (in Georgian).

gia on the formation of the Government of the Republic of Georgia, changes in its composition, dismissal of the Chairman of the Government and members of the Government. The structure of government was determined by the Supreme Council on the basis of the recommendation submitted by the Council of the Republic. Furthermore, the President was authorized to repeal the resolutions and decrees of the Government of Georgia, to raise the issue of suspending the law of the Autonomous Republic and the resolutions of the Supreme Council before the Supreme Council, if they were contrary to the Constitution and the laws of the Republic of Georgia. The President of Georgia was authorized to sign the laws of the Republic and had the right to veto.⁴⁹

"In terms of presenting the constitutional status of the President of Georgia at that time, several constitutional provisions related to the Government of the Republic can be considered interesting". Pursuant to the constitutional amendments, the Government, on the basis on the laws of Georgia and other decisions of the Supreme Council and the decrees of the President of Georgia, was authorized to issue resolutions and decrees for the purpose of implementing them. The government was accountable before the Supreme Council of the Republic of Georgia and the President. However, pertaining to the Constitution, the Government was under the authority of the President of the Republic. Nevertheless, if we take into account the fact that the President of the Republic of Georgia was authorized to dismiss the Supreme Council, the current form of Government of the Republic of Georgia can be attributed to the form of mixed government, wherein the President does not serve as the head of executive authority and sole executor, the Government, which was being formed by the President together with the participation of the Supreme Council and to whom the Supreme Council had the right to declare a vote of no confidence."⁵⁰

At the end of 1991, the tense situation between the Government and the opposition escalated into the armed forces, resulting in the abolition of the institution of the President. The institution of the President of Georgia was re-introduced years later, deriving from the Constitution adopted on August 24, 1995.⁵¹

3.2 Constitutional Status of the Government of Georgia

On October 28, 1990, the first multi-party elections were held in Georgia, resulting in the victory of the national forces. However, as for the Government institution, no radical reforms had been implemented. Certain changes were made to the 1978 Constitution of Soviet Georgia, mainly in terms of being liberated from the Soviet appendix.⁵² On February 28, 1991, the Supreme Council of Georgia introduced amendments to the Constitution in order to set forth the constitutional status and composition of the Government. The Council of Ministers of the Republic of Georgia was replaced by the wording "Government of the Republic of Georgia" in the Constitution, and it was also stated that "the Government of the Republic of Georgia was the highest executive and governing body of the state government of the Republic of Georgia." Prior to the

⁴⁹ *Tevdorashvili G.*, Constitutional Law of Georgia, Tbilisi, 2017, 353-354 (in Georgian).

⁵⁰ *Ibid*, 354.

⁵¹ *Ibid*, 355.

⁵² *Kverenchkhiladze G.*, Constitutional Law of Georgia, Tbilisi, 2017, 398-399 (in Georgian).

presidential election, the Government was solely formed by the Supreme Council of Georgia, before which the Government was accountable.⁵³

On April 14, 1991, as noted, the Institute of the President of the Republic of Georgia commanding the system of state governing bodies and exercising the leadership of the government was introduced to Georgian constitutionalism.⁵⁴ The Government was the executive-governing body of the Republic, exercising its powers under the authority of the president.⁵⁵

4. The "Minor Constitution" of Georgia of 1992 and its Peculiarities

The Parliament of Georgia, elected in October 1992, adopted the Law on State Government on November 6 of the same year. In the history of Georgian constitutionalism, this law is referred to as the "Minor Constitution" because it temporarily, before the adoption of the new constitution, undertook the regulation of the government, which, as a rule, is the subject of constitutional regulation in a democratic state. "Despite the shortcomings, the first "Minor Constitution" in the history of Georgian constitutionalism put an end to the era of the Soviet constitutions in Georgia."⁵⁶

4.1 Foreign Political Status of the Head of State

The status of the Head of State was defined in Chapter Three of the law, which was titled as "Chairman of Parliament, Head of State." It was evident from the title that the highest state-political position of the country was united in the hands of one person, leading to the consideration that "the merger of these two highest positions into one instance was only a partial expression of the imperfection of the Georgian Government at that time."⁵⁷

According to the Law on State Authority, the Head of State was the official of the Republic of Georgia of highest-ranking, representing Georgia within the country and in international relations, ensuring independence and territorial integrity of the state, protection of human rights and freedoms, coordinated activities of state bodies.⁵⁸

The Chairman of Parliament - Head of State also conferred the highest diplomatic ranks and other special ranks on the basis of the recommendation of the relevant ministries, was responsible for conducting negotiations with foreign states and signing international treaties and agreements; was authorized to appoint and dismiss the Plenipotentiary and Extraordinary Ambassadors of the Republic of Georgia in agreement with the Parliament; Heads of diplomatic missions of foreign states, international organizations were accredited before the Head of State; The Parliament, headed by the Chairman of the Parliament - the Head of State, set forth the main directions of the domestic and foreign policy of the Republic of Georgia, state activities; was authorized to exercise

⁵³ *Kantaria B.*, Constitutional Law of Georgia, Second Edition, Davit Batonishvili Institute of Law Publishing House, Tbilisi, 2014, 62 (in Georgian).

⁵⁴ *Kverenchkhiladze G.*, Constitutional Law of Georgia, Tbilisi, 2017, 398-399 (in Georgian).

⁵⁵ *Kantaria B.*, Constitutional Law of Georgia, 2nd ed., Davit Batonishvili Institute of Law Publishing House, Tbilisi, 2014, 62 (in Georgian).

⁵⁶ *Tevdorashvili G.*, Constitutional Law of Georgia, Tbilisi, 2017, 355 (in Georgian).

⁵⁷ *Ibid.*

⁵⁸ Article 17 of the Law of Georgia on State Government, <<https://www.matsne.gov.ge/ka/document/view/5002871?publication=2>>, [17.02.2022] (in Georgian).

control over the activities of the state authorities and governing bodies. Further, the Chairman was required to submit a report to the Parliament on the domestic and foreign situation of the country at least once a year or at the request of Parliament. The Chairman was entitled to appoint and dismiss the Deputy Prime Ministers, members of the Cabinet of Ministers and submitted to the Parliament for approval.⁵⁹

Consequently, it can be stated that not only in the field of foreign relations, but also in the executive branch in general, the role of the Head of State was immeasurable and less consistent with the principle of separation of powers between the executive and the legislative authorities.

According to the model of governance in the country, the scope of competencies varies between the branches of the authoritative powers. "The constitution tries to regulate their powers and relations between each other as much as possible."⁶⁰ It is important to precisely separate the powers between the branches not only in the legal constitution, but in the de facto constitution as well, since "a society wherein the separation of powers is not defined has no constitution at all."⁶¹

4.2. Constitutional Status of the Government of Georgia

The next stage in the development of the institution of government is related to the Law on State Authority adopted on November 6, 1992, which served as the "Minor Constitution". "The main positive aspect of the "Minor Constitution" was referring to the fact that it put an end to the era of Soviet constitutions in Georgia, and for the next three years, until 1995, it served as the country's main law."⁶²

Chapter 5 of the Law on State Authority entrusted the executive function in the country to the Cabinet of Ministers, which was accountable to the Head of State and the Parliament. In particular, pursuant to Article 22 of the stated law, the executive-regulatory activity in the Republic of Georgia was carried out by the Cabinet of Ministers of Georgia, consisting of the Prime Minister, his deputies and other members of the Cabinet of Ministers. The Cabinet of Ministers comprised of the Chairmen of the Councils of Ministers of the Autonomous Republics on the basis of their positions held. Interference with the competence of the Cabinet of Ministers was prohibited, unless explicitly provided by law.

The Cabinet of Ministers consisted of the Prime Minister, his deputies and other members of the Cabinet. Pursuant to Article 25 of the very same law, the Cabinet of Ministers was authorized to decide on any and all issues of state governance, which did not fall within the competence of the Parliament, the Chairman of the Parliament, the Head of State. The powers of the Cabinet of Ministers, its arrangement and rules of operation were set out by the above-mentioned law and the Law on the Cabinet of Ministers.⁶³

⁵⁹ Article 17 of the Law of Georgia on State Government, <<https://www.matsne.gov.ge/ka/document/view/5002871?publication=2>>, [17.02.2022] (in Georgian).

⁶⁰ *Gegenava D.*, Constitutional Law of Georgia, Second Edition, Davit Batonishvili Institute of Law Publishing House, Tbilisi, 2014, 23 (in Georgian).

⁶¹ Declaration of the Rights of Man – 1789, art. 16, <http://avalon.law.yale.edu/18th_century/rightsof.asp>, [17.02.2022].

⁶² *Kverenchkhiladze G.*, Constitutional Law of Georgia, Tbilisi, 2017, 399 (in Georgian).

⁶³ Law of Georgia on State Government, <<https://www.matsne.gov.ge/ka/document/view/5002871?publication=2>>, [17.02.2022] (in Georgian).

Accordingly, the "Minor Constitution" entrusted the powers and rules of operation of the Cabinet of Ministers, their regulation, to the Law on the "Cabinet of Ministers", which was adopted on December 22, 1992. The law regulated the competence, structure and relations of the government with other state bodies.⁶⁴

5. Conclusion

The Constitution of Georgia of 1921 did not provide for the institution of the President, therefore, in the field of foreign relations it did not recognize the principle of distribution of powers and gave the Prime Minister, the powers characteristic to the Head of State (the President). Therefore, it can be said that the Prime Minister was solely empowered to act in the field of foreign relations, to represent the country in the international field, to appoint the ambassadors, and etc. The latter implies that in the field of foreign relations, regardless of the model of governance, a one-man approach to the executive branch would be taken into account, which, among the other factors, in the absence of a "neutral arbitrator" would make the model and form of governance unclear.

Wolfgang Babek / Gaul in his book "Development and Adoption of the Constitution in Georgia" states that "the Constitution of 1921 was considered one of the most progressive constitutions at that time and entailed many social-democratic elements" ... These norms provided for the existence of a parliamentary republic."⁶⁵ Thus, "despite some shortcomings, the 1921 Constitution is still the most important legal document in the history of the development of Georgian statehood."⁶⁶

Pursuant to the constitutional amendments adopted by the Supreme Council of Georgia on April 14, 1991, the President of the Republic of Georgia represented the Republic within the country and in international relations, headed the system of state governing bodies of the Republic of Georgia, negotiated and signed international agreements, received diplomatic representatives and Certificates of conscription, appointed and summoned the diplomatic representatives of the Republic of Georgia in foreign countries and international organizations, granted the highest diplomatic ranks and other special ranks and exercised these powers independently. Hence, the role of the President in the field of foreign relations can be considered to have been dominant and one-man. At the same time, the Government was under the authority of the President, therefore, there was no separation and distribution of powers with the executive branch.

As for the Law on State Authority adopted on November 6, 1992, the Head of State is the Chairman of Parliament, the highest official in the country in international relations, conferring the highest diplomatic ranks and other special ranks upon the submission of relevant ministries,

⁶⁴ *Kverenchkhiladze G.*, Constitutional Law of Georgia, Tbilisi, 2017, 399 (in Georgian).

⁶⁵ *Gauli V.*, Development and Adoption of the Constitution in Georgia, Tbilisi, 2002, 10 (in Georgian), see citation: *Kverenchkhiladze G.*, Executive Power and the 1921 Constitution of Georgia, at the Origins of Georgian Constitutionalism - 90th Anniversary of the 1921 Constitution of Georgia, Batumi, 2011, 179-180 (in Georgian).

⁶⁶ *Kverenchkhiladze G.*, Executive Power and the 1921 Constitution of Georgia, at the Origins of Georgian Constitutionalism - 90th Anniversary of the 1921 Constitution of Georgia, Batumi, 2011, 179 (in Georgian).

negotiating with foreign states and signing International treaties and agreements. The Parliament determined the main directions of domestic and foreign policy and state activities of the Republic of Georgia. Consequently, in this case as well, the balance between the executive and the legislature is disturbed.

On the basis of the above-mentioned, it can be concluded that following the constitutional past of Georgia, the powers in the field of foreign relations were solely exercised by the Head of State, appearing in the form of unification of various higher state-political positions. The latter itself indicates the lack of distribution of state authority and, thus, powers, given the model of governance.

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