Saba Elizbarashvili*

Resignation of a Member of Parliament – The Disputed Essence of the 5th Paragraph of the 39th Article of the Constitution of Georgia and a Practice Leading to its Unconstitutional Interpretation

The Constitution of Georgia stipulates that the mandate of a member of the Parliament will be terminated before the expiration of the term if he/she submits a personal application for terminating his/her powers to Parliament. Based on this norm, in December 2020, 54 opposition MPs applied to the Parliament with the request to terminate their parliamentary powers. They initiated "boycotting" the Parliament of the tenth convocation and tried to express their political protest by refusing the authority of a member of the Parliament. In response to this, the Parliament of Georgia did not satisfy the request of 51 members of the Parliament to terminate their powers before the expiration of the term. This decision of the parliamentary majority is based on a new interpretation of the constitutional norm, which has become the subject of controversy.

This article discusses the controversial content of Article 39, Clause 5 of the Constitution of Georgia and presents an analysis of its interpretation. Based on the methods of interpretation of the norm, the shortcomings of the interpretation proposed by the Parliament have been checked and the corresponding shortcomings have been identified. In the context of the decision made by the Parliament, a discussion is presented on the relationship between the interpretation and construction of the constitutional norm. In addition, the article discusses the relationship between the termination of the powers of the member of the parliament and the free mandate of the decision-making deputies.

***Keywords**: Constitution, termination of powers of the Member of Parliament, interpretation of the constitutional norm, free mandate.*

1. Introduction

Parliament is the highest representative body of the country, effective action of which is one of the main determinants of the democratic development of the state. Its role in the state government system is special. It is, as the source of power of the people,[1] the central body of representation,[2] where the public will and its interests are reflected[3] in the planning and implementation of state policy,

* Master of Law, Ivane Javakhishvili Tbilisi State University, Strategic Litigation Lawyer at Tolerance and Diversity Institute (TDI).

1 *Sajó A.,* Limiting Government: An Introduction to Constitutionalism (1999), publishing house "Sezani", edited by T. Ninidze, 2003, 62 (in Georgian).

2 *Laundy P.,* Parliaments in the Modern World, Dartmouth, 1989, 11.

3 *Demetrashvili A., Kobakhidze I.,* Constitutional Law, Tbilisi, 2011, 210 (in Georgian).

and in which the gathered representatives are united by the goal of seeking a common public interest,[4] that is manifested in the confrontation of opinions surrounding public problems of great or small importance.[5] This tendency of the parliament is expressed not only in its institutional form, but also in the activities carried out,[6] within the framework of which the members of the parliament are equipped with certain rights, obligations[7] and freedom[8] – to follow their personal inner beliefs.[9] However, naturally, the people retain the ability to take back the power transferred to someone else,[10] which is manifested in its authority – to change the parliament, which has failed to live up to its hope and trust.[11]

The rights and obligations of MPs under the idea of representation itself are perceived differently in different parliamentary systems.[12] In this regard, along with many other components of the activity of a member of the parliament, it is interesting where the limit of his/her authority is in the process of using the parliamentary mandate given to him/her by the people.

According to James Madison, the representatives of the people are distinguished by having been preferred by their fellow-citizens. Therefore, Madison suggests, we should think that they will also be distinguished by their qualities, which will show us that they will sincerely and meticulously fulfill the duty assigned to them.[13] Among many other manifestations, this may mean taking such an unpopular step on the part of the deputy, such as resignation for one reason or another (including expressing political protest).[14] Therefore, it is interesting whether he/she has/should have the right to request early termination of his authority, and if he/she has/should have it, then in what form and within what scope can this will be expressed? Also, it should be assessed whether the Parliament, as a collegial body, is authorized to reject a member of Parliament's personal application for terminating his/her powers.

The issue acquired a special relevance in the process of activity of the Parliament of the 10th convocation of Georgia. In general, the Constitution of Georgia explicitly stipulates that the mandate of a member of the Parliament will be terminated before the term if he/she applies to the Parliament

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4 *Sajó A., Uitz R.,* The Constitution of Freedom: An Introduction to Legal Constitutionalism, Oxford University Press, 2017, 221.

5 *Mill J. S.,* Considerations on Representative Government [1861], Prometheus Books, 1991, 118.

6 *Rai S.M., Johnson R.E.,* Democracy in Practice: Ceremony and Ritual in Parliament, Palgrave Macmillan, 2014, 21.

7 E.g., see *O'Donnell G.,* Delegative Democracy (1994), from Politics and Democracy, ed. *Nabakhteveli E.,* Intellect Publishing House, Tbilisi, 2020, 263 (in Georgian).

8 E.g., see *Eremadze K.,* Fundamental Rights for Freedom, Tbilisi, 2020, 8 (in Georgian).

9 *Jones P., Berrington H.,* Party, Parliament and Personality: Essays Presented to Hugh Berrington, London, Routledge, 1995, 135.

10 *Locke J.,* Two Treatises of Government, *Laslett P. (ed.),* Cambridge University Press, 1999, 366-367, (§149).

11 *Linn S., Sobolewski F.,* The German Bundestag: Functions and Procedures: Organisation and Working Methods: the Legislation of the Federation, NDV, 2015, 12.

12 *Iliec C.,* Analytical Perspectives on Parliamentary and Extra-parliamentary Discourses, Journal of Pragmatics 42, no.4, 2010, 879-884, 880.

13 *Madison J.,* Federalist Letters – #57 (with Alexander Hamilton), to the People of the State of New York, February 19, 1788 (in Georgian).

14 *Burke E.,* The Writings and Speeches of Edmund Burke, Vol. 3, *Langford P., Todd W.B.(eds.),* Oxford University Press, 1996, 63.

with a personal statement about the termination of the mandate.[15] Based on this norm, following the 2020 parliamentary elections, in December of the same year, 54 opposition MPs applied to the Parliament with a request to terminate their parliamentary powers. They announced a "boycott"[16] to the Parliament of the tenth convocation and tried to express their political protest by refusing the authority of a member of the Parliament. In response to this, on February 2 of 2021, the Parliament of Georgia rejected the request of 51 members of the Parliament for the early termination of their powers.[17] It is significant that in the history of the existence of the parliament of Georgia, it made such a decision for the first time. It is also worth noting that this decision of the Parliament was appealed by several deputies to the Constitutional Court,[18] where the substantive review session was held on June 10-11 of 2021,[19] although it is not yet known what decision the court will make.

The difference between opinions is caused by the scope of the parliament's authority in the process of termination of the powers of the deputy – according to the parliamentary majority, the constitution gives the parliament not only a formal but also an active role and entrusts the issue of termination of the powers of the member of the parliament to the decision of the representative body. According to the opposite position, the role of the parliament in the process of termination of authority is limited to the formal confirmation of the deputy's statement.

Despite the differences in political opinions, the aforementioned decision of the Parliament should be considered as the result of a wrong interpretation of the constitutional norm, since it contradicts with the explicitly expressed will of the text of the constitution and does not derive from the unified spirit of the norm. The purpose of this article is to analyze in detail the content of the discussed norm of the Constitution and, based on the analysis of the practice or theory of constitutional law, to determine what flaws the controversial definition presented by the Parliament contains and what threats it may pose to the future activities of the Parliament.

2. Legislation Regulating the Issue and the Georgian Experience of Early Termination of the Mandate of a Member of Parliament based on a Personal Statement

The Constitution of Georgia and the Rules of Procedure of the Parliament of Georgia regulate the status of a member of the Parliament, the scope of his powers, the grounds for recognizing and early termination of powers, procedures and other related issues.

One of the important issues regulated by the Constitution of Georgia and the Regulations of the Parliament of Georgia is the recognition and early termination of the powers of a member of the Parliament. According to the Constitution, "the issue of recognition or early termination of the powers of a member of the Parliament is decided by the Parliament. … the authority of a member of the

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15 Constitution of Georgia, Article 39, paragraph 5, 24/08/1995.

16 See <https://1tv.ge/news/parlamenti-51-opozicioneristvis-sadeputato-uflebamosilebis-shewyvetaze-mimdinare-kvirashi-imsjelebs/> [14.09.2022].

17 E.g., see Resolution #153-IVმს-Xმპ of February 2, 2021 of the Parliament of Georgia.

18 Constitutional complaint N1565 and N1569 of February 10 and 16, 2021.

19 See <https://bit.ly/3IAYWNM> [14.09.2022].

Parliament will be terminated before the expiration of the term, if he/she a) applies to the Parliament with a personal statement about the termination of the authority".[20]

According to the rule established by the Rules of procedure of the Parliament of Georgia, a written statement on the removal of authority by a member of the Parliament shall be submitted to the Chairman of the Parliament, who will immediately forward it to the Committee on Procedural Issues and Rules of the Parliament. In turn, the committee determines the validity of the submitted application, the circumstances that formed the basis of the application, and prepares a relevant report no earlier than 8 and no later than 15 days[21] and submits it to the Bureau of the Parliament. The purpose of this record is for the Legislature to determine whether the personal statement made by the Member of Parliament is truly a free expression of his/her will, or the result of coercion, before taking a decision on the early termination of its member's powers..[22]

On January 28 of 2021, the Committee on Procedural Issues and Rules of the Parliament of Georgia, based on the written statements of the members of the Parliament, discussed the issue of early termination of the powers of the 51 MPs at the committee meeting. In accordance with the paragraph 3 of article 6 of the Rules of procedure of the Parliament of Georgia, the committee established the validity of the statements submitted by the MPs on the termination of their powers, based on which, the committee considered that the powers of the MPs should have been terminated before the expiration of the term.[23] It is worth noting that the mentioned decision was adopted by the committee unanimously,[24] thus it confirmed the authenticity of the will expressed by the MPs to terminate their powers and their compliance with the rules defined by the regulations. However, it can be said that the Parliament did not share the committee's conclusion, as it did not approve the request of the MPs to terminate their powers.

Special attention should be paid to the fact that in the history of Georgian parliamentarism, this was the first time when the parliament did not approve the request of its members to terminate their mandate before the expiration of the term. It should be noted that the Parliament of the same convocation approved the application and terminated the mandate of 4 members of the Parliament,[25] whose request for termination of mandate was based on the same factual circumstances as of other 51 deputies. The mentioned circumstance gives rise to the assumption that such an interpretation of the constitutional norm may lay the foundation for the practice of making decisions based on narrow party interests and subjective perceptions regarding the recognition/termination of the authority of individual MPs by the parliamentary majority, which will cause significant damage to the goal of

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20 Constitution of Georgia, Article 39, paragraph 5.

21 Constitution of Georgia, Article 39, paragraph 3.

22 *Khetsuriani J.,* The Authority of the Constitutional Court of Georgia on the issues of constitutionality of recognition or early termination of the powers of a member of the Parliament, Justice and Law, #3(42)14, 2014, 19 (in Georgian).

23 E.g., see Conclusion of the Procedural Issues and Rules Committee of the Parliament of Georgia dated January 28, 2021 N-2-882/21.

24 Minutes of the meeting of the Procedural Issues and Rules Committee of the Parliament of Georgia on January 28, 2021 N13.

25 Resolutions of the Parliament of Georgia of January 4, 2021 N53-IIრს-Xმპ; N54-IIრს-Xმპ; N55-IIრს-Xმპ and Resolution of May 25, 2021 N487-IVმს-Xმპ

establishing a healthy parliamentary environment. Democracy does not mean that the position of the majority always appears as a "winning" position. It is important to achieve a balance that creates the basis for equal and fair treatment of the minority and avoids the danger of abuse of the dominant position of the majority.[26] It is necessary that the legislation regulating the activity of the Parliament, as well as the normative content obtained as a result of the interpretation of this legislation, should not act as a weapon directed against the opposition in the hands of the parliamentary majority,[27] but should serve the purpose of implementing democratic principles.

3. Definition of the Disputed Norm of the Constitution of Georgia

The analysis of the Georgian legislation reveals that the decision of the Parliament of February 2 of 2021, regarding the refusal of the statements of 51 deputies of the Parliament, was not based on a specific formal legislative basis, which would be explicitly expressed in the Constitution of Georgia or the Rules of Procedure of the Parliament, but on the flawed interpretation of the entries in the aforementioned acts. In such case, it is important to analyze how correctly the definition of the norm was made and how it corresponded to the recognized methods of interpretation.

Constitution is a living organism, which, in order to adapt to modern challenges, may require clarification and revision from time to time, and at that time it is important to choose the right method of interpretation of the norm.[28] In general, "grammatical", "logical", "historical" and "systematic" ways of interpreting the norm are distinguished.[29] In the constitutional context, interpretation is an action that primarily aims to determine the linguistic meaning of the provisions of the constitution.[30] However, one thing is clear that "in every interpretation of the law, the problem of legitimacy arises".[31] Therefore, it is important, when interpreting the norms of the Constitution, that the interpreter does not go beyond the goals and scope of regulation of a specific norm of the Constitution itself. In addition, it is necessary to support the interpretation of legal norms with appropriate legal argumentation, which will make the process reasonable and understandable, both directly to the addressee of the decision and to society as a whole.

According to the formalist approach of interpretation, which implies a literal interpretation of the text, "the Constitution clearly defines who should do what",[32] in other words, the Constitution precisely prescribes the basic framework of the powers of state bodies, which limits the activities of

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26 *Gorzelik and Others v. Poland [GC]*, Application no. 44158/98, Judgment of 17 February, 2004, para. 90, <http://hudoc.echr.coe.int/eng?i=001-61637> [14.09.2022].

27 *Karácsony and others v. Hungary* [GC], Application nos. 42461/13 and 44357/13, Judgment of 17 May 2016, para. 147, <http://hudoc.echr.coe.int/fre?i=001-162831> [14.09.2022].

28 *Redish M.H., Arnould M.B.,* Judicial Review, Constitutional Interpretation, and the Democratic Dilemma: Proposing a "Controlled Activism" Alternative, 64 Fla. L. Rev. 2012, 1486.

29 *Zippelius R.,* Juristische Methodenlehre (10th Revised ed.), München, 2006, 53 (in Georgian).

30 *Solum L.B.,* The Interpretation-Construction Distinction, Georgetown Law Faculty Publications and Other Works, 95-118, 2010, 101.

31 *Zippelius R.,* Juristische Methodenlehre (10th Revised Edition), München, 2006, 88 (in Georgian).

32 *Sajó A.,* Limiting Government: An Introduction to Constitutionalism (1999), Publishing House "Sezani", edited by *T. Ninidze, Maisuradze M. (trans.),* 2003, 95-96 (in Georgian).

each of them. Thus, it is of particular importance to correctly define the constitutional scope of authority of a particular institution.

In this regard, the opinion of Hamilton is particularly interesting, who believed that it is not permissible to assume the following: as if the constitution provides for the people's representatives to replace the will of the people with their own will. ... If incompatible contradictions appear, of course, supreme obligation and legality must prevail. In other words, we should consider the constitution prevailing over the law, and we should put the will of the people above the will of the people's representatives.[33] Thus, according to Hamilton, what is determined by the constitution – that is, the supreme law expressing the will of the people, is decisive, and no one, including the representatives elected by the people, has the right to change its content by interpreting the text of the constitution.

3.1. Controversial Content of Paragraph 5 of Article 39 of the Constitution

Sometimes it happens that the content of individual words and phrases used in the text of the Constitution is vague, unclear, contradictory, insufficiently clear[34] and allows for more than one linguistic interpretation. However, even from such a vague text, it is always possible to draw an objective conclusion if the context in which this particular word/phrase is placed is properly analyzed.[35]

Constitutions of many states clearly and directly define the procedure for making the final decision on the termination of the powers of the deputy by the parliament. For example, the Swedish constitution mandates that a member of the Riksdag does not have the right to resign without the consent of the Riksdag.[36] The decision on the issue is entrusted to the authority of the parliament in Turkey as well.[37] We see a similar approach in the cases of Ukraine[38] and Belarus.[39] However, as mentioned above, paragraph 5 of article 39 of the Constitution of Georgia, as it appeared during the activity of the Parliament of the 10th convocation, may cause some confusion and differences of opinion. In such case, it is important to choose the alternative definition of the norm, which is supported by the strongest argumentation.

In general, when interpreting a norm, one of the main goals of the interpreter is to understand the objectified content of the norm, that is, the content that a standard reasonable person would read

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33 *Hamilton A.,* Federalist Letters – #78, to the People of the State of New York, May 28, 1788 (in Georgian).

34 *Goldsworthy J.,* Interpreting Constitutions: A Comparative Study, Oxford University Press, 2006, 1.

35 *Solum L. B.,* The Interpretation-Construction Distinction, Georgetown Law Faculty Publications and Other Works, 95-118, 2010, 102.

36 The Constitution of Sweden, article 11, https://www.constituteproject.org/constitution/Sweden_2012?lang=en> [14.09.2022].

37 The Constitution of Turkey, article 84, <https://www.constituteproject.org/constitution/Turkey_2017?lang=en> [14.09.2022].

38 The Constitution of Ukraine, article 81, <https://www.constituteproject.org/constitution/Ukraine_2016?lang=en> [14.09.2022]

39 *Chmyha A.,* The Legal Grounds of Emergence and Termination of Mandates of Members of Parliaments in Belarus and Poland: a Comparative Analysis, Biaostockie Studia Prawnicze vol. 24, #4, 2019, 143-152, 149.

from the text of the law.[40] Therefore, when interpreting the norm, the aim should be to search for the meanings of the words that most closely correspond to the ideas prevailing in the society about the specific norm.[41] In addition, according to the practice established by the Constitutional Court, "it is impossible to fully resolve the constitutionality of the disputed issue, if the court does not read/interpret the norms of the Constitution in connection with each other".[42] Therefore, it is necessary to evaluate in details the entire structure of paragraph 5 of Article 39.

3.1.1. The Identical Rule Established for Recognition and Early Termination of Powers of a Member of Parliament

First of all, attention should be drawn to the fact that the first sentence of paragraph 5 of Article 39 concerns not only the issue of early termination of the mandate of a member of the Parliament, but also the issue of recognition of his/her mandate. Thus, the will of the legislator is read that the words "the issue is decided by the Parliament" should apply equally to one and the other issue, and accordingly, it should have the same force of action both for the recognition of the powers of the MP and for its early termination.

Based on the above, if we follow the approach proposed by the parliament for the definition of the norm in question, it turns out that being beyond and evading the rules provided by the constitution and the law, the parliament will be authorized, based on certain arguments,[43] to consider and make a positive or negative decision not only to terminate the powers of a member of the parliament, but also on the issue of recognition of the authority, which will directly contradict with the spirit of the constitution and the essence of the mandate of the deputy.

It should be noted that the exercise of power should not go beyond the scope established by the text of the Constitution.[44] This is the essence of the textual method of interpretation – the law must be read in the way it is written.[45] In the case under consideration, the will of the legislator is observed – both in the process of making a decision regarding the recognition of the authority of a member of the parliament and its early termination, the role of the parliament was defined by a formal function, which should be expressed in its unconditional confirmation by the parliament in the event of determining the compliance of the statement of the member of the parliament with the formal-procedural conditions defined by the law.

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40 *Scalia A., Wood G., Tribe L., Glendon M., Dworkin R.,* A Matter of Interpretation: Federal Courts and the Law, *Gutmann A. (ed.),* Princeton, New Jersey: Princeton University Press, 1997, 17.

41 *Zippelius R.,* Juristische Methodenlehre (10th Revised Edition), Verlag C.H. Beck München, 2006, 28.

42 Decision N3/1/659 of the Constitutional Court of Georgia dated February 15, 2017 on the case – Georgian citizen Omar Zorbenadze against the Parliament of Georgia, II-20.

43 Among them, political expediency.

44 *Pakte P., Melen-Sukramaniani F.,* Constitutional Law, 28th edition (as of July 2009), Tbilisi, 2012, 49 (in Georgian).

45 *Scalia A., Wood G., Tribe L., Glendon M., Dworkin R.,* A Matter of Interpretation: Federal Courts and the Law, *Gutmann A. (ed.),* Princeton, New Jersey: Princeton University Press, 1997, 23.

3.1.2. "The powers of a member of parliament will be terminated before the expiration of the term, if..."

Sentence 3 of paragraph 5 of article 39 of the Constitution is formulated as follows: "The powers of a Member of Parliament shall be terminated early if he/she: ... [submits a personal application for terminating his/her powers to Parliament]". As already mentioned, the vagueness of the norms of the constitution is usually clarified by their interpretation, which is based on the use of the words and phrases in the text of the constitutional provision to be evaluated with the generally recognized content.[46] According to this approach, the considered provision and the phrase "shall be terminated" used in its text are read in such a way that the powers of the member of the parliament must be terminated and that it should be enough for the member of the parliament to submit an appropriate application. When defining the mentioned issue, the legislator uses an imperative tone, thereby emphasizing his/her will – in case of the existence of the grounds listed in Article 39(5), the powers of the member of the Parliament will be terminated. In addition, the Constitution does not say anything about the grounds or conditions that would grant the Parliament the power to review the deputy's application and, based on political or other motivations, to disapprove it. As already mentioned, the only condition established by the Rules of Procedure of the Parliament is to determine the validity of the will expressed by the MP by the Committee on Procedural Issues and Rules.

Thus, it is more likely that if the creators of the Constitution were motivated by the will and purpose of granting certain freedom of action to the Parliament, then the Constitution would have used an alternative set of words instead of the imperative term "shall be terminated", such as, for example, "may be terminated", which would leave the parliament with a wide discretion.

3.1.3. Relation of other grounds for termination of powers to the rule of termination of powers by personal application

It is also noteworthy that in relation to the other grounds[47] for the termination of the powers of a member of the Parliament prescribed by the Constitution, the Rules of Procedure of the Parliament provide for a procedure similar to the one established for the termination of the powers by personal application. It is related to the preparation of the relevant conclusion by the Committee on Procedural Issues and Rules of the Parliament and passing it to Bureau, and afterwards to the plenary session for voting.[48] Therefore, allowing the possibility of the parliament refusing to approve the personal application of the deputy regarding the termination of the powers itself creates the danger of the spread of a similar possibility with respect to other grounds for the termination of the powers. In other words, such a definition of the norm includes giving the Parliament the opportunity, for personal, political or any other reason, not to terminate the powers of a member of the Parliament who engages in entrepreneurial activity, who the court found guilty, or even a member of the Parliament who has died,

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46 *Solum, L. B., The Interpretation-Construction Distinction*, Georgetown Law Faculty Publications and Other Works, 95-118, 2010, 102.

47 The Constitution of Georgia, Article 39, sub-paragraphs "b-t" of paragraph 5.

48 Paragraphs 4-12 of Article 6 of the Rules of Procedure of the Parliament of Georgia.

etc. Such an approach will endanger the reputation and authority of the Parliament, which will ultimately affect the legitimacy of its decisions.

In the conditions, when the Georgian legislation applies equally to all the grounds for early termination of the mandate, there is a danger that the political expediency of such decision will be defined as the motive for refusing to terminate the mandate for a member of the Parliament on one or another basis,[49] which is unequivocally unacceptable, since the criterion of political expediency does not have a normative basis, it is extremely vague in nature and entirely dependent on the subjective perception of the decision maker. Therefore, the potential danger caused by allowing the possibility of the parliament to refuse to approve the application for the termination of the mandate may turn out to be much more harmful than just neglecting the interest of the individual MP who wants to terminate the mandate.

3.2. The Decision of the Parliament from 2 February 2021 and a New Way of Interpreting Article 39(5) of the Constitution

Contrary to the reasoning developed above, the Parliament of the 10th convocation of Georgia, by the decision of February 2, 2021, did not terminate the powers of 51 members of the Parliament, despite the fact that all of them had submitted the relevant application, and the Committee on Procedural Issues and Rules had issued a positive conclusion on each of them, that As a proof that the will expressed in the statements really belonged to their authors and that all the conditions stipulated by the law for early termination of their powers were in place.

In relation to the issue of the termination of the powers of a deputy, the approach of the Constitutional Court is interesting, according to which, "the effective functioning of democracy itself requires that there must be a mechanism for early termination of the powers of a representative of the people, which should be used only when there is an appropriate basis... That is why paragraph 5 of article 39 of the Constitution of Georgia exclusively and exhaustively lists the grounds, the existence of which leads to the early termination of the powers of a member of the parliament and minimizes the scope of discretion of this decision-making body.[50]

In general, "the Constitution, by the very fact of its existence, with its formal meaning, opposes arbitrariness by defining a legal state, where only that which is in accordance with the rules established by the Constitution is allowed".[51] However, despite the fact that neither the Constitution nor the Rules of Procedure of the Parliament does not include any indication of consideration of the application of the MP on the termination of the powers and even refusing to satisfy it, in the discussed case, the Parliament, in fact, arbitrarily, without the existence of the necessary normative basis for this, expanded the scope of discretion and "introduced" into the parliamentary life such an authority as refusing a request to terminate the powers for a deputy. Accordingly, by interpreting the provisions of

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[49] As it happened during the decision of the Parliament of Georgia on February 2, 2021.

[50] Decision № 3/2/1473 of the Constitutional Court of Georgia dated September 25, 2020 on the case – Nikanor Melia vs. Parliament of Georgia, II-7.

[51] *Pakte P., Melen-Sukramaniani F.,* Constitutional Law, 28th edition (as of July 2009), Tbilisi, 2012, 93 (in Georgian).

the Constitution on this scale, the Parliament went beyond the scope provided by the text of the Constitution and invaded the space of its construction.

The doctrine of law separates the interpretation of the norm and its construction. The difference between them is the quality and intensity of the intervention of the entity explaining the provision and the definition itself.[52] As it was said in the reasoning developed above, the interpretation of the provision includes the definition within its existing linguistic framework[53],[54] and if there is such a scale of the ambiguity of the norm, which is referred to in the law literature as "irreducible ambiguity", then the methods of interpretation to clarify such a provision will be useless and it will be necessary to construct it,[55] which, on the other hand, goes beyond the scope of determining the linguistic content of norms and is expressed in determining its foundation.[56]

If there is a constitutional dilemma about which the text of the constitution is silent, in such case, the mechanism of construction may prove to be a useful mean for filling the gap in the legislation.[57] In other words, in the case of Article 39(5) of the Constitution of Georgia, behavior aimed at determining the linguistic content of its existing text should be considered as an attempt to interpret the norm, and all attempts to read the content from the provision in question, which is fed by general and abstract constitutional principles (which might even be contradictory to the opinion explicitly expressed in the norm), it should be considered as a construction of the said norm. The analysis of the provision discussed within the scope of the article reveals that the words and terms presented in it, both autonomously and systematically (in relation to each other), allow the interpretation of the norm and do not require the Parliament to "fill the void" in the norm through construction, as long as the existence of such a void is not even apparent at all.

3.3. Refusal to Terminate the Powers, as a Possible Result of Realization of the Free Mandate of Individual Members of the Parliament

An opinion can be expressed with regard to this issue, that the members of the parliament being present at the plenary session, who do not support the issue of terminating the powers of the deputy based on his/her personal statement, act within the framework of a free mandate and personally make a decision about what they will support and what they will not. On one hand, it is true that "every individual governs his own destiny",[58] and the free mandate includes the right of the deputy to act in

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52 See e.g. *Redish M. H., Arnould M. B.,* Judicial Review, Constitutional Interpretation, and the Democratic Dilemma: Proposing a "Controlled Activism" Alternative, 64 Fla. L. Rev. 2012, 1489.

53 *Barnett R.E.,* Interpretation and Construction, Georgetown Public Law and Legal Theory Research Paper 34 Harv. J.L. & Pub. Pol'y – 65-72, 2011, 66.

54 Which in itself may include, among others, the definition of the norm by a grammatical, historical, systematic or teleological method.

55 *Solum L. B.,* The Interpretation-Construction Distinction, Georgetown Law Faculty Publications and Other Works, 95-118, 2010, 102.

56 Ibid, 104-105.

57 Ibid, 107.

58 *Sajó A.,* Limiting Government: An Introduction to Constitutionalism (1999), publishing house "Sezani", edited by T. Ninidze, Trans. *Maisuradze M.,* 2003, 137 (in Georgian).

accordance with his beliefs[59] and frees him from the legal obligation to follow the instructions of the voter[60] or the political party[61] presenting him. However, it is interesting, based on the logic of the constitution, whether there is a certain category of issues, the acceptance of which should be considered as a constitutional obligation, not as a choice of MP.

For example, paragraph 5 of article 39 of the Constitution, along with the termination of the mandate, also regulates the issue of recognition of the mandate of the newly elected deputy, which, in fact, establishes the same rule as in the case of termination. Article 6 of the Parliament's Rules of Procedure shows a similar approach. There is no doubt that in case of determining the procedural relevance of the issue, the powers of the candidate for membership of the Parliament must be necessarily recognized.

Although, formally, the "resolution" of the issue is entrusted to the members being present at the plenary session of the Parliament, it can be said that in case of preliminary determination of the candidate's formal compliance with the status of a member of the Parliament, there is no constitutional mechanism for refusing to recognize his authority. It turns out that there is a sort of directive of the constitution to the members of the parliament – to support the resolution on the recognition of the authority of the member of the parliament.[62]

In the case of a different interpretation of the mentioned norm, the parliamentary majority would have the right, for example, to evaluate the issue of political expediency of recognizing the authority of a member of the parliament, and based on personal subjective views, decide whether or not to recognize the powers of a deputy. Such an approach would contradict the principles of the Constitution and its general essence.

Therefore, it will not be an exaggeration if we say that the Constitution entails certain regulations, the implementation of which can be considered not as the authority of the Parliament, but as a kind of informal obligation. The issue of making decision by the Parliament regarding recognition and termination of powers of MPs should be considered as one of such obligations. And in the case when the members of the parliament refuse to support the issue of recognition/early termination of the authority of the deputy, referring to the free mandate, the case needs to be considered by the Constitutional Court,[63] which will have to cancel the formally correct, but actually unconstitutional, resolution adopted by the parliament.

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59 Venice Commission, Opinion on the Amendments to the Rules of Procedure of the Verkhovna Rada of Ukraine, adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017), [CDL-AD(2017)026], 33, <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)026-e> [14.09.2022].

60 *Van Der Hulst M.,* The parliamentary mandate: A global comparative study, Studies on comparative parliamentary law, Inter-Parliamentary Union, Geneva, 2000, 9, <http://archive.ipu.org/pdf/publications/mandate_e.pdf> [14.09.2022].

61 *Linn S., Sobolewski F.,* The German Bundestag: Functions and procedures: Organisation and working methods: the legislation of the federation, NDV, 2015, 11-12, <https://www.btg-bestellservice.de/pdf/80080000.pdf> [14.09.2022].

62 In this regard, the case considered by the US Supreme Court – Powell v. McCormack, 395 U.S. 486 (1969). <https://supreme.justia.com/cases/federal/us/395/486/> [14.09.2022].

63 Paragraph 5 of Article 39 of the Constitution allows for this possibility – "... this decision of the Parliament can be appealed in the Constitutional Court".

Conclusion

In conclusion, it should be noted that such an interpretation of the norm is not allowed, which "obviously contradicts the legislator's decision about the purpose and expediency of the norm, because with such an interpretation, the user of the law would change the legislative decision with his own political opinion."[64] As it appeared from the reasoning developed above, in relation to the issue under consideration, the Constitution unconditionally establishes the rule of early termination of the powers of a member of the Parliament based on a personal statement. Thus, according to the current legislation in Georgia, "resignation" can really be considered an absolute right of a member of the parliament, which he/she should be able to use at any time and on any basis, regardless of whether the MP's behavior is founded on personal or political motives.

As for the decision made by the Parliament on February 2 of 2021 and justification of the new interpretation of paragraph 5 of article 39 of the Constitution: it can be said unequivocally that the definition proposed by the Parliament does not meet the standards of interpretation of the constitutional norm, since the authority of the Parliament cannot be read from the text of the provision – not to approve the personal application of the MP submitted for early termination of the term of office. In the process of applying the provision in question, the Parliament went beyond the scope of the interpretation of the norm and invaded the space of its construction, when there was no necessity. Such approach roughly violates the recognized standards of interpretation of the constitutional norm.

It should also be noted that, in general, in the practice of world constitutionalism, we may encounter cases when, by rejecting the statement of a member of the parliament on termination of powers, the parliament aims to prevent possible manipulation of the quorum by specific deputies,[65] or to prevent the deputy from evading disciplinary responsibility.[66] However, according to the recommendation of the Venice Commission,[67] the parliamentary opposition should not be restricted from the reasonable use of such tactics, which even prolong or complicate the political processes, although they are allowed by the procedural rules of the parliament. According to the Constitution of Georgia, termination of authority by personal statement belongs to the number of "permitted" measures of this category.

It is important to emphasize that if the constitutional majority of the members of the parliament considers a specific entry of the text of the constitution to be "outdated" or faulty, it is obliged to express its will through the procedure of revision of the constitution, and not by abstractly assigning the political content desired by a simple parliamentary majority to the basic law. Such an approach would lose the essence of the constitution as the supreme document expressing the will of the people

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64 *Zippelius R.,* Juristische Methodenlehre (10th Revised Edition), Verlag C.H. Beck München, 2006, 75.

65 *Chafetz J.,* Leaving the House: The Constitutional Status of Resignation from the House of Representatives, Duke Law Journal, vol. 58, no. 2, 2008, 226.

66 *Strøm K., Mueller W.C., Bergman T.,* Delegation and Accountability in Parliamentary Democracies, Oxford University Press, 2005, 354.

67 Venice Commission, Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist, adopted by the Venice Commission at its 119th Plenary Session (Venice, 21-22 June 2019), [CDL-AD(2019)015-e], 25.

and would make it a subject of manipulation by the holders of political power, which is totally unacceptable.

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5. Resolution #153-IVმს-Xმპ of the Parliament of Georgia from February 2, 2021.
6. Resolution of the Parliament of Georgia of January 4, 2021 #53-IIრს-Xმპ;
7. Resolution of the Parliament of Georgia of January 4, 2021 #54-IIრს-Xმპ;
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