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Normative Regulation of the President's Veto in Georgian Legal Reality

In modern constitutionalism, the mechanism of checks and balances between the highest executive bodies is one of the main characteristics of a legal and democratic state. The interaction of the government branches is limited by the constitution and includes many tools, among which the right of the head of a state to make the reasoned statements on the law adopted by the legislative body and return the law to political discussions, must be highlighted. This right, which is often specified as the presidential veto in republican countries, has an exceptional importance in terms of the practical implementation of checks and balances principle.

In Georgian legal reality, constitutionalization of the presidential veto is connected to adoption of the Constitution in 1995. Since this period, the procedural rules defined by the Constitution of Georgia have undergone many changes, and finally, on the basis of the constitutional reform of 2017, they were formed with the current version. The abovementioned constitutional reform led to a new regulation of the president's involvement in the legislative process. The purpose of this article is to identify and discuss issues related to the normative regulation of the president's veto.

Keywords: *promulgation, presidential veto, parliament, reasoned statements, legislative process, checks and balances principle.*

1. Introduction

The organizational arrangement of the modern state is based on the principle of separation of powers, the practical implementation of which ensures the effective functioning of the state. The principle of checks and balances, which is one of the important elements of the separation of powers, includes various mechanisms of interaction between the central branches of government in the constitutional framework, among which the power of the President to sign and publish the law or return it to the parliament with reasoned statements (later – the president's veto). The legal nature of the presidential veto and its importance are determined by many political and legal factors, the practical implementation of which makes the presidential veto a powerful competence tool or an act of symbolic importance.¹ However, along with political factors, the issue of legal regulation of this

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¹ *Javakhishvili P.*, Anatomy of the Normative Regulation of the Veto of the President of Georgia, in the Collection: “800 years of constitutionalism”, Tbilisi, 2017, 116 (in Georgian).

institution is major. The normative institutional setup of the President's veto essentially settles the model feature of the veto and the anatomy of the president's relationship with the branches of government. From this point of view, the Georgian legal reality where the institution of making statements on laws by the President belongs to the type of issues, which from a normative aspect, has withstood the challenges of constitutional amendments and maintained a special importance connected with the supervisory powers of state bodies.²

In Georgian legal reality, providing the President with the power of veto by the constitution is connected to the adoption of the Constitution of Georgia in 1995. Constitutionalizing the President's veto as a supervisory authority was aimed at establishing the standards of contemporary constitutionalism in Georgia, however, in this way, the legislator also conditioned the regulation of the power of the President and the determination of its scope.³ In accordance to the constitutional reform of 2017, the Constitution of Georgia experienced extensive changes, as a result, a new version of the Constitution was formed. Along with other articles of the Constitution, the changes also impacted the procedure of signing and publishing the law by the President of Georgia. As specified by the constitutional amendments, the institution of the presidential veto of Georgia was formed with different editing than the normative regulation before 2017, which arises the high interest to the mentioned issue and defines its relevance. The purpose of this article, based on analytical, teleological, systematic and historical research methods, according to the current version of the Constitution of Georgia, is to discuss the main features of the legal regulation of the veto of the President of Georgia and to draw attention to the issues which can give rise to the different opinions in the practice and doctrine of Georgian constitutionalism.

2. The Evolution of the Institutionalization of the Presidential Veto

In Georgian legal reality, on the constitutional level, the right of the President to address the Georgian Parliament with reasoned statements on the law, is related to the adoption of the 1995 Constitution of Georgia that created one of the important aspects of the interaction between the President of Georgia and the Parliament and strengthened the scope of the powers of the President of Georgia in the field of law-making activities.⁴ It should be mentioned that the Constitution of the First

² The President of Georgia addressed the Parliament of Georgia with motivated remarks for the first time on December 21, 1995 regarding the Law of Georgia “On Parliamentary Factions”. The second President of Georgia, in 1995-2003, vetoed about 20 bills of the Parliament of Georgia, most of which were taken into account by the Parliament of Georgia. In 2004-2008, the Head of State of Georgia did not address motivated remarks to the Parliament of Georgia, and in 2008-2013, this right was used 16 times, most of which were overcome by the Parliament. The fourth President of Georgia used the right of veto 11 times, only 2 of which were shared by the Parliament of Georgia. It is worth noting that the third President for the first time submitted reasoned statements to the draft constitutional law, which included changes in the Constitution of Georgia. Since 2018 the 5th President of Georgia has used the right of veto only twice. For details, See *Javakhishvili P.*, Chronicle of the evolution of the veto of the President of Georgia, in the collection: “Avtandil Demetrashvili 80”, Tbilisi, 2021 (in Georgian).

³ *Javakhishvili P.*, Anatomy of the Normative Regulation of the Veto of the President of Georgia, In the Collection: “800 years of constitutionalism”, Tbilisi, 2017, 114 (in Georgian).

⁴ Ibid.

Democratic Republic of Georgia of 1921 did not contain any provisions even regarding the adoption of the law. The Article 54 of the Constitution established imperatively – “The right of the Parliament is to legislate”.⁵

The adoption of the 1995 Constitution was preceded by the quasi-constitutional reforms of the 1990s, which had a fragmented and chaotic nature due to the political instability. In this period, a range of control and supervisory powers of the acting President (head of the state) were acclaimed with unique meaning, and a precise analogue cannot be found in the constitutional reality of foreign countries of that period. For the first time in the legislation of Georgia, the veto institution got regulated by the Law of the Republic of Georgia of April 14, 1991 “On establishing the position of the President of the Republic of Georgia and in connection with it providing amendments and additions for the Constitution of the Republic of Georgia”.⁶ It was the first time in the history of Georgia, the head of the state had been allowed to use the suspensive, latent veto on the law.⁷

The President of Georgia was granted the right to refuse to sign the bill and return it to the legislative body with the reasoned statements within two weeks. If the Supreme Council approved the decision by two thirds majority of members, the President had to sign the bill or put it to a referendum.

The procedure for signing and publishing the law is explicated by the 1992 Law of the Republic of Georgia “On State Power”, which is referred to as the “small constitution”⁸ due to the fragmented arrangement of constitutional and legal issues. In compliance with the Article 13 of the mentioned law, for publishing the law it was essential to have the signatures of the speaker and the chairman of the parliament, the head of the state⁹ that was a unique institution in Georgia at that time. According to the paragraph 4 of the Article 17, the head of state signed the law, however, he could return it with “his points of view ” to the parliament “for reconsidering and voting again” no later than within ten days, and if the parliament approved the previous decision by the same procedure established for adopting the law, the Chairman of the Parliament signed the law.¹⁰ The identical rule was specified by the regulation of the Parliament of Georgia made in 1994.¹¹

In order to create a complete picture of the legal nature of the institution, it is important to evaluate the evolutionary process of the legal regulation of the presidential veto. From this frame of reference, it is to mention the original version of the 1995 Constitution of Georgia and the analysis of the changes made in it until today.

The Article 68 of the original edition of the Constitution of Georgia established the procedure for signing and promulgating the law, which also provided several procedures about the involvement

⁵ Constitution of the Democratic Republic of Georgia, 1921, Article 54.

⁶ Law of the Republic of Georgia “On Establishment of the Office of the President of the Republic of Georgia and Amendments and Additions to the Constitution of the Republic of Georgia”, 1992 (in Georgian).

⁷ *Javakhishvili P.*, Anatomy of the normative regulation of the veto of the President of Georgia, in the collection: “800 years of constitutionalism”, Tbilisi, 2017, 114 (in Georgian).

⁸ Law of the Republic of Georgia “On State Power”, 1992.

⁹ It should be noted that, considering the peculiar form of state government of Georgia at that time, the chairman of the Parliament and the head of state represented the same position.

¹⁰ *Ibid*, the Clause 4 of the Article 17 (in Georgian).

¹¹ Regulations of the Parliament of Georgia, 1994, the Article 56 (in Georgian).

of the President of Georgia in this process. The constitutional edition of this period enabled the President of Georgia to utilize the right of classic, suspensory veto which the legislative body could overcome in case of getting support from the increased number of members of the parliament. In the framework of constitutional reform, the authentic edition of this norm had altered three times before the constitutional revision of 2017: in 2004, 2010 and 2011.

However, the mentioned changes were only related to the certain procedural details connected with signing and introducing the law, for example, the required number of votes of PMs and the procedural terms to overcome the veto.¹² The constitutional reform of 2017 defined a new arrangement of the institution of the presidential veto of Georgia and a different role of the President in this process.

3. The Main Elements of the Legal Arrangement of the Presidential Veto

The current edition of the Constitution of Georgia entitles the President the right to sign and introduce the law or return it to the Parliament with the reasoned statements. The mentioned right is only of a suspensive nature and the parliament has the opportunity to overcome it, however, it belongs to the important supervisory powers of the President over the legislative function of the Parliament of Georgia, which, to some extent, is regarded as a powerful tool for protecting the rights of citizens from the powerful political class in the majority.¹³ The constitutional and regulatory arrangement of this institution is characterized with diverse aspects, both in terms of normative and practical realization that makes it be discussed in detail.

3.1. Sending the Law to the President

In accordance with the first paragraph of the Article 46 of the Constitution of Georgia, the law adopted by the Parliament of Georgia is sent to the President of Georgia within 10 days, who signs and publishes it within 2 weeks. Before the constitutional reform of 2017, the Constitution of Georgia established a 7-day deadline for sending the bill adopted by the parliament to the President, who would make the relevant decision within 10 days. Hence, as stated by the constitutional changes, the terms for sending the bill to the President and making the decision, altered. In addition, before producing the constitutional amendments, holidays and days off were not taken into consideration when calculating the deadlines.¹⁴ As for the current legal arrangement, the regulations of the Parliament of Georgia establishes that the terms, which are defined by the Constitution of Georgia in

¹² According to the constitutional reform of 2004, the term for forwarding the law to the President increased from 5 to 7 days under the Article 68 of the Constitution. Based on the 2010 amendments the number of votes to override the veto changed and the list of PMs for organic laws was determined by 3/5, and for constitutional laws by 2/3. The 2011 amendment also affected the number of votes on the constitutional law (in Georgian).

¹³ *Dzamashvili B.*, The Feasibility of Equipping the President with the Right of Veto in the Legal and Political Reality in Georgia, *Student Law Journal*, 2013, 99 (in Georgian).

¹⁴ See the Article 6 of the Law of Georgia “On Normative Acts” effective before the constitutional law of October 13, 2017.

days shall refer to calendar days.¹⁵ The mentioned issue is similarly assigned by the Organic Law of Georgia “On Normative Acts”.¹⁶

It should be pointed out that the constitutional amendment also affected apparently terminological, but important legal nuance – the President of Georgia will be given a “law” and not a “bill”. Provided the Constitution of Georgia, the Parliament of Georgia is the highest legislative body, and law-making is its exclusive authority. It is clear even in the way of explaining the norm by grammar-based approach that sending the “bill” to the President of Georgia, which was envisaged by the pre-2017 edition, made the process of signing and publishing a bill as a requirement for “becoming it a law” and in this sense got the President to be a participant in the law-making process. This was inconsistent with the principles of institutional and functional separation of powers. It did not correspond to the practice of foreign countries where a law is sent to the president for signature, not a bill.¹⁷

3.2. The Refusal of the President to Sign the Law

In consonance with the paragraph 2 of Article 46 of the Constitution of Georgia, the President of Georgia signs and makes a publication of the law within 2 weeks or returns it to the Parliament with the reasoned statements. However, the paragraph 6, Article 46 of the Constitution sets that if the President does not perform the actions specified by the paragraph 2, Article 46 of the Constitution (he did not sign a bill into law and return it to the parliament of Georgia without reasoned statements the law will be signed by the chairman of the parliament. In this regard, the valid norm was drawn up with a different edition before the constitutional reform of 2017 that was limited to general formulation only. The Paragraph 5 of Article 68 of the Constitution stated that if the President did not publish the law within the stipulated period of time, it could be signed by the Chairman of the Parliament and there was no reference to the relevant paragraphs of this Article. Simultaneously, the paragraph 5 of Article 68 (pre-2017 edition) was formulated after the paragraph of the Constitution, which defined the procedure for overcoming the reasoned statements. Respectively, the abovementioned referred to the case when the Parliament overcame the reasoned statements of the president, re-sent the president the initially adopted law and the president did not sign the law, eventually.

Recent edition accurately states that if the president does not perform at least one of the actions defined by the paragraph 2, Article 46 of the Constitution, as well as the action defined by the paragraphs 3, 4 and 5 of the same Article of the Constitution, the mentioned is explained in practice not as a violation of the norm of the constitution but the constitutional decision of the president to refuse to carry out this action, and as a result, the speaker of the parliament acquires the authority to sign and publish the law, which has taken place in many cases.¹⁸ Hence, the consequences determined

¹⁵ See the Article 4 of the Regulations of the Parliament of Georgia.

¹⁶ See the Article 6 of the Law of Georgia “On Normative Acts”.

¹⁷ *Papashvili T.*, The President's Veto Right: Dimensions and Context, Models of State Governance: Georgia's Constitutional Reality and Perspective, *Gegeava D. (ed.)*, Tbilisi, 2016, 28 (in Georgian).

¹⁸ The Law of Georgia “On Amnesty” adopted on December 28, 2012 was signed by the Chairman of the Parliament of Georgia. Also, the Chairman of the Parliament of Georgia signed the Law of Georgia “On Amendments to the Law of Georgia on Broadcasting” adopted on February 21, 2018. The Chairman of the

by the paragraph 6 of Article 46 applies not only to signing of the law by the president after overcoming the veto by the parliament, but also the occasion when the president neither makes reasoned statements nor signs the law.

3.3. Formation of Reasoned Statements

In agreement with the Constitution of Georgia, the president has the power to return the law to the Parliament with reasoned statements. In turn, the paragraph 2, Article 122 of rules of procedures of the Parliament of Georgia establishes that the statements of the President of Georgia must be drawn up in the form of a bill. Consequently, the President of Georgia, except for the statements conveying the critical opinions in relation to the law adopted by the Parliament, presents the Parliament of Georgia a bill with the notes that are produced in the form of proposal. So, the argumentation listing the reasons why the President does not agree with the legislative amendments accepted by the Parliament is introduced to the supreme representative body of the country. The bill formed in accordance to the notes is based on the president's recommendations and proposals regarding the law. This can be an alternative version to resolve the issue or an offer of valid amendment before making the changes. However, it might be controversial when a primary law is initiated without a current edition. In this case, an alternative version for revising it is considered appropriate.

It should be noted that the President of Georgia lacks the ability to use the right of veto on the law only partially. In particular, the president formulates reasoned statements with respect to the whole law and cannot veto one part of the law and sign and publish the another one. Reasoned statements are made in a joined form, based on the perception of the law as one unit. Presenting the president several laws (legislative packages) to be signed is different case from the above. If the president considers only a part of the several laws merged in a legislative package "problematic", he/she can make reasoned statements only in relation to these laws, and sign the rest (if the reasoned statements admit this).

And finally, from the perspective of practical realization, the case can be complicated when the President of Georgia is sent the amendments of a particular law adopted by the Parliament, which the President does not accept and returns it to the Parliament with reasoned statements. However, the alternative arrangement of the issue forwarded by the President to the Parliament (reasoned statements of the President), in addition to the change in that one law, also requires modifying another legislative act. It is significant to define how possible it is to prepare and make additional amendments to the new legislative act by the president to resolve the issue. Especially, since the Constitution of Georgia does not provide the right of legislative initiative for the President of Georgia.

3.4. Consideration of Reasoned Statements in the Parliament

In accordance with the Constitution of Georgia, the further procedure involves considering reasoned statements of the President of Georgia by the Parliament. In particular, if the President of Georgia returns the law to the Parliament with reasoned statements, the latter will vote the statements

Parliament of Georgia signed the Law of Georgia "On Amending the Criminal Procedure Code of Georgia" adopted on September 6, 2022.

of the President of Georgia, which will be discussed at the plenary session of the Parliament and adopted in one reading. Primarily, the law with reasoned statements, returned by the President of Georgia is voted, and then – the original edition of the law.¹⁹ If the parliament accept the reasoned statements, the final version of the law is introduced to the President of Georgia within 5 days, who signs and publishes it within 5 days. If the Parliament does not welcome the reasoned statements of the President²⁰, the original version of the law is voted. In case the law is supported, it is presented to the President of Georgia within 3 days, who signs and publishes it within 5 days. If the Parliament does not accept the President's reasoned statements, and the initially adopted law is unable to get the required number of votes, the law is considered rejected.

Conforming to the legislation of Georgia, the procedure of scrutinizing the reasoned statements of the President of Georgia does not allow to evade because the reasoned statements have to be supported completely not in part. In particular, the reasoned statements and the bill presented by the President are voted simultaneously. Thus, if the Parliament of Georgia is submitted several reasoned statements the latter should either accept or completely refuse them, which can hinder the process of political dialogue and agreement between the branches of government to create a better legislative arrangement.²¹

3.5. Reasoned Statements of the President Related to the Constitutional law

The current version of the Constitution states two different ways of revising the Basic Law. The process of re-examining the Constitution established the principle of “plural vote”, which implied the incorporation of elections and being adopted by the parliament of two convocations of the constitutional law. In particular, the constitutional law is considered adopted in the case of three readings of the bill by the Parliament and gaining its support by at least two-thirds of the full composition. However, the constitutional law is introduced to the President for signature within 10 days after the bill is reviewed by the Parliament of the next convocation and approved by at least two-thirds of the full members.²²

The second way of revising the constitution involves adopting the constitutional law by the Parliament with a majority of three-fourth of the votes. According to the Constitution of Georgia, the constitutional law, which is supported by at least three quarters of the full composition of the Parliament, is presented to the President of Georgia for signature and it is signed within the time limit and in the manner established by Article 46 of the Constitution. Especially, the constitutional law adopted by the Parliament is sent to the president within 10 days who makes a decision within 2 weeks.

¹⁹ See, paragraph 3 of Article 122 of the Rules of the Parliament of Georgia.

²⁰ It should be noted that in accordance with Article 66, paragraph 7 of the Constitution of Georgia, accepting the statements of the President of Georgia by the Parliament on the State Budget Law is allowed only with the approval of the Government.

²¹ In the case of the possibility of partial approval, the issue may be problematic: accepting only a part of the President's reasoned statements by the Parliament, should it be considered as accepting the President's veto or not, and by what procedure should it be discussed.

²² See, *Gegenava D.*, Introduction to the Constitutional Law of Georgia, Sulkhan-Saba Orbelian University Publishing House, Tbilisi, 2019, 31 (in Georgian).

The constitutional law on amendments to the Constitution, which was adopted by the Parliament with a majority of not less than two-thirds of the full composition, is signed and published by the President of Georgia within 5 days after its introduction, without the right to return it to the Parliament with statements. Apparently, the legislator has not considered it rational to establish the right of the president to veto the constitutional amendments approved by the parliament of two convocations, especially since the parliament of the second convocation only approves the law in one reading and cannot make changes to it.

And finally, it is interesting to highlight the issue of reasoned statements in the sense of the constitutional law related to the restoration of territorial integrity. In accordance with the Constitution, the constitutional law related to the restoration of territorial integrity is adopted by a majority of at least two-thirds of the full composition of the Parliament and presented to the President of Georgia for signature not as stated in the procedure established by the Article 77 (after discussion and approval by the Parliament of the next convocation in one reading), but as specified by the Article 46 within the stipulated period of 10 days.

Thus, it is important to determine whether the basic that does not provide the president with the authority to address the parliament with reasoned statements on the constitutional law approved by a two-thirds majority of the members of the parliament should be applied to him or not. The explanatory note of the constitutional law “On Amendments to the Constitution of Georgia” clarifies that the constitutional law related to the restoration of territorial integrity²³ is not a subject to the right of veto, since “it was appraised unreasonable to delay the enactment of the constitutional law adopted on the quoted issue by the presidential veto”²⁴, however, the legal regulation of the mentioned norm might be interpreted in a different way.

3.6. Signing and Promulgating the Law

According to the Constitution, after the President signs the law, it is sent for promulgation. In consonance with the Organic Law of Georgia “On Normative Acts”, normative acts are published in electronic form on the website of the LEPL – “Legislative Herald of Georgia”. The official publication of a normative act is regarded to be the first publication of its full text on the “Legislative Herald of Georgia” website. The law comes into force on the 15th day after its publication by an official body, unless another deadline is established by the same law. “Normative Act enters into force upon publication” means that the Normative Act comes into force at 12 p.m. on the day of publication. If the President of Georgia neither returns the law to the Parliament with reasoned statements nor promulgates it within the stipulated period of time, the Chairman of the Parliament signs the law within 5 days from the expiration of the time. In this case, it is necessary to determine why the Constitution indicates the expiration of the relevant term, and what happens if it is already clear (announced in advance or it became known on the day it was forwarded to the President) that the President does not sign the law? Based on the constitutional record, the speaker of the Parliament is

²³ The explanatory note of the Constitutional Law of October 13, 2017 “On Amending the Constitution of Georgia”, see <<https://info.parliament.ge/file/1/BillReviewContent/152295>> [25.02.2023].

²⁴ Kobakhidze I., Constitutional Law, 1st ed., Tbilisi, 2019, 290 (in Georgian).

only authorized to sign the law within 5 days after the expiry of the term defined by the Constitution for the President. Besides, the legislation of Georgia does not claim what legal consequences will arise if the Speaker of the Parliament of Georgia does not sign and promulgate the law within the established period. It is rational to assume that the law will not have one of the mandatory requisites defined by the legislation of Georgia for a legislative act – the signature of an authorized person, and accordingly, the law will not acquire binding legal force.

4. Conclusion

Signing and promulgating a law by the President of Georgia is the exclusive constitutional authority, which clearly defines the legal nature of the relationship between the President and the legislative body of Georgian political system. Making the reasoned statements on a specific law and presenting it to the parliament by the President is an additional way to once again introduce the law into the discourse of the political body. Taking into consideration the abovementioned, it is important to regulate the normative arrangements of the President's veto and its unified definition. The purpose of this article was to focus on the main aspects of the legal regulation of the right of the President's veto and to identify such features that are associated with the signing and publication of the law, making reasoned statements and parliamentary debate.

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