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The Role of the President of Georgia in the Appointment and Dismissal of the Ambassadors of Georgia and the Heads of the Diplomatic Representations

The field of foreign relations has been subject to dispute between the President and the Government of Georgia since 2013. Apart from the representation power and conclusion of the international treaties, the matter of appointment and dismissal of the ambassadors and heads of the diplomatic representations has been subject to controversies followed by the constitutional claims dated 16 August 2022 and 10 June 2022 submitted by the Government against the President of Georgia.¹ In particular, for the first time in the history of Georgia, the matter of the constitutionality of the President's inaction in appointment and dismissal of the ambassadors and the heads of the diplomatic representations has been made subject to the discussion of the Constitutional Court of Georgia.² However, the Government of Georgia revoked its constitutional claims on unknown grounds³, therefore, the Court was deprived of the possibility to hear and consider the said constitutional claims.

Deriving from the above mentioned, the present work discusses the constitutional status of the President of Georgia and the role granted to the President in relation to the appointment and dismissal of the ambassadors and the heads of the diplomatic representations.

Keywords: *the field of foreign relations, ambassadors, dispute on the competence, the President of Georgia and the Government*

1. Introduction

Pursuant to Article 52 of the Constitution of Georgia, along with other powers, with the consent of the Government of Georgia the President of Georgia receives the accreditation of the ambassadors and other diplomatic representations of other states and international organizations and on the upon the nomination of the Government, appoints and dismisses the ambassadors and the heads of the diplomatic representations.

Pursuant to the Constitution of Georgia, irrespective of the fact that the Government of Georgia exercises the foreign policy on an exclusive basis, it is deprived of the full independence with regard

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¹ The constitutional claim of the Government of Georgia against the President of Georgia, dated 10 June 2022, №1711.

² The constitutional claim of the Government of Georgia against the President of Georgia, dated 16 August 2022, № 1723.

³ See the Orders of the Constitutional Court dated 03 February 2022 №3/1/1711 and №3/2/1723.

to the appointment and dismissal of the ambassadors and the heads of other diplomatic representations, provided that the President of Georgia is also involved in this process. However, the matter of whether the role of the President in this process is to be construed as an obligation or discretionary power under the Constitution of Georgia shall be determined. In order to answer this question, not only the governance model existing in the country shall be assessed but the President's powers and the material essential part of such powers shall also be analyzed on a systemic basis.

Pursuant to Article 53 of the Constitution of Georgia, the legal acts of the President, save for the exemptions, shall be subject to the co-signing by the Prime Minister, whereunder the political liability is borne by the Government. However, this fact along with the nomination of the Government and the exercise of the foreign policy, is not sufficient to prove that the appointment of the ambassadors and the heads of the diplomatic representations fall solely under the competence of the Government and the President's participation in this process is achieved by the mere signature. It shall be discussed whether the President is entitled to object to the signing on the respective ground and/or substantiation, or whether the President is entitled to exercise such objection in relation to the appointment of the ambassador without such substantiation. It is evident that the said discussion will be of relevance only in the event wherein the President's role will be assessed as the discretionary power – if such role is to be discussed in terms of a formal power, in such a scenario the question whether the President breaches the Constitution by refusing to sign would become relevant.⁴

2. Dispute on the Competence to Appoint the Ambassadors

On the basis of the amendment introduced to the organic law of Georgia “On the Constitutional Court of Georgia” dated 14 April, 2022, the Constitutional Court of Georgia discusses the matters in relation to the disputes concerning the competence of the President, Parliament, Government of Georgia and other bodies on the basis of the constitutional claim or constitutional submission, if the aforementioned subjects/bodies consider that their constitutional entitlement has been infringed upon not only through the legal act, but through the action or inaction as well.⁵ That means that commencement of the disputes concerning the competence is possible on the basis of a normative act, as well as on the basis of “action”/ “inaction”. The Constitutional Court had to assess each action or inaction of the President of Georgia, including in the field of foreign affairs that also involved issuing approvals/objections on the appointment or dismissals of the ambassadors and heads of the diplomatic representations.⁶

In 2022, for the first time in the history of Georgia, the Government of Georgia has referred to the Constitutional Court of Georgia by filing a constitutional claim against the President aimed at the

⁴ The statement of the political union of the citizens “Georgian Dream – Democratic Georgia” <<https://gd.ge/news>> [07.07.2024].

⁵ Organic Law of Georgia “On the Constitutional Court of Georgia”, Article 19, Parliamentary Gazette of the Parliament of Georgia, 001, 31/01/1996.

⁶ *Kavelidze T.*, Dissertation on the “Powers of the President and Government of Georgia in the Field of Foreign Affairs”, 2023, 146.

assessment of the constitutionality of the inaction of the President with regard to the appointment and dismissal of the ambassadors and heads of diplomatic representations.⁷ According to the constitutional claim, the Foreign Affairs Minister of Georgia has nominated Mr. Kakha Imnadze on the position of the office of the extraordinary and plenipotentiary ambassador of Georgia in Canada (meaning the early termination of his office as the permanent representative at the United Nations Organization) and nominated Mr. David Bakradze as the permanent representative at the United Nations Organization as well.⁸ The nominations of the Government of Georgia had not been approved by the President of Georgia as she did not consider it reasonable to appoint the said candidates on these positions.⁹

According to the constitutional claim, the Government of Georgia had argued that due to the fact that the parliamentary governance model is established in the country, the President is unable to intervene in the process of exercising of the internal and foreign policy of the country, whereas the ambassador serves as one of the main mechanisms in this process – therefore, the appointment and dismissal of the ambassadors falls under the competence of the Government and by refusing to appoint the nominated candidates the president had intervened in the exclusive competence of the Government of Georgia.¹⁰

Exercise of the foreign policy does not necessarily mean taking exclusive actions only by the Government of Georgia and independently of all constitutional bodies involved in the foreign affairs – on the contrary, other constitutional bodies also participate in the field of foreign affairs, yet their participation is executed to various degrees, for instance, the Parliament of Georgia that defines the main directions of the foreign affairs – therefore, the Government of Georgia is not the only body in this respective field. The President, acting in its capacity as the head of state in the field of foreign affairs, does have certain powers that in the various countries of parliamentary systems, means conclusion of the interstate international agreements, appointment of the ambassadors and the heads of diplomatic representations, provided however that the President requires approval of the Government or the consent thereof – therefore, cooperation is essential in this field. It is essential to note that the Government is deprived of the power to act independently in terms of appointing the ambassadors even in the parliamentary governance model, since, irrespective of the fact that the President is not involved in the executive branch of the government and the political liability with regard to the appointment of the ambassadors is borne by the Government, the ambassador cannot be considered appointed without the signature of the President (see next chapters for detailed analysis).

⁷ The constitutional claim of the Government of Georgia against the President of Georgia, dated 10 June 2022, № 1711.

⁸ Kavelidze T., Dissertation on the “Powers of the President and Government of Georgia in the Field of Foreign Affairs”, 2023, 4.

⁹ The Constitution of Georgia, Article 52(1)(“a”), Parliamentary Gazette of the Parliament of Georgia, 31-33, 24/08/1995.

¹⁰ The constitutional claim of the Government of Georgia against the President of Georgia, dated 10 June 2022, №1711.

3. Systemic Analysis of the Powers of the President of Georgia and her/his Role with regard to the Appointment/Dismissal of the Ambassadors¹¹

Until 2013, the matter of appointment of the ambassadors was regulated differently through the Constitution of Georgia, in particular, the President acting with the consent of the Parliament of Georgia (and not the Government of Georgia) was responsible for the appointment and dismissal of the ambassadors of Georgia and other diplomatic representatives. The said regulation, along with the change of the governance model, was changed and the appointment-dismissal of the ambassadors of Georgia and other diplomatic representatives was made subject to the nomination of the Government of Georgia – the said provision is an existing regulation.¹²

On the basis of the law of Georgia “on the Structure, Powers and Rules of Operation of the Government of Georgia”, the President of Georgia exercises the powers set out in Article 52(1)(„a”) of the Constitution of Georgia (exercise of the representation power, conducting negotiations with other states and international organizations, conclusion of international treaties, receiving accreditations of the ambassadors and other diplomatic representatives of other states and international organizations; appointment and dismissal of the ambassadors and diplomatic representations of Georgia on the basis of the nomination of the Government of Georgia) with the consent of the Government of Georgia and for such purpose the President submits written proposals to the Government of Georgia – such proposals are considered by the Government of Georgia on the hearings of the Government, whereas the approvals of the Government are issued in the form of a decree.¹³ Pursuant to Article 52(1)(„a”) of the Constitution of Georgia, along with other entitlements in the field of foreign affairs, the President of Georgia *inter alia* appoints and dismisses the ambassadors of Georgia and the heads of diplomatic representations on the basis of the nomination of the Government of Georgia, meaning that the President’s proposals may be related *inter alia* to the appointment of the ambassadors. Therefore, the Government of Georgia considers the proposals submitted by the President *inter alia* concerning the appointment of the ambassadors. Further, Article 5 of the Statute on the Foreign Affairs Ministry of Georgia entails an interesting provision whereunder the responsibilities of the Minister of Foreign Affairs of Georgia entail a responsibility to submit proposals on the appointment or dismissal of the extraordinary and plenipotentiary ambassadors, Georgia’s permanent representations in the international organizations and the heads of diplomatic missions.¹⁴ The legislation introduces the communication between the Minister of Foreign Affairs and the President of Georgia and the obligation of the Minister to submit proposals to the President that strengthens the assumption that the President’s involvement in the process of appointment of the ambassadors shall not be solely limited to the merely formal signature.¹⁵

¹¹ For detailed analysis See: *Kavelidze T.*, Dissertation on the “Powers of the President and Government of Georgia in the Field of Foreign Affairs”, 2023, 144-168.

¹² *Ibid*, 76.

¹³ The Law of Georgia “on the Structure, Powers and the Rules of Operation of the Government of Georgia”.

¹⁴ The Statute of the Ministry of Foreign Affairs of Georgia adopted on the basis of the Decree of the Government of Georgia N°206 dated 16 November 2003, Article 5(1) (“m”), SSM, 134, 16/11/2005.

¹⁵ For detailed analysis see: *Kavelidze T.*, Dissertation on the “Powers of the President and Government of Georgia in the Field of Foreign Affairs”, 2023, 160. See the Statement of the President of Georgia <<https://fb.watch/fxm4RIH-o8/>> [07.07.2024].

Pursuant to the Order of the Minister of the Foreign Affairs of Georgia “on the Completion of the Diplomatic Office”, the President participates in the dismissal proceedings of the ambassadors as well, in particular, upon the issuance of the President’s decree on the appointment and dismissal of the head of the diplomatic representation, participation of such person in the business trip through rotation and revocation of such person shall be executed on the basis of an individual administrative-legal act of the Minister, whereas in the event of the dismissal of the head of the diplomatic representation by the President of Georgia the early revocation of such person shall be executed by the Minister.¹⁶

What is the intention of the legislator in this process? This is the question that is to be answered through the systemic analysis of the functions and powers of the President deriving from the Constitution of Georgia. Pursuant to Article 53 of the Constitution of Georgia, following legal acts of the President of Georgia are not subject to the co-signing procedure: appointment of the Prime Minister, appointing the parliamentary elections, signing of the law and publishing, returning the law with the justified remarks to the Parliament and etc.

For instance, the Constitution envisaged such entitlements of the President the mandatory prerequisite of which is the request of the responsible body/electorate, for example: the President is entitled to appoint the referendum on the matters determined under the Constitution and the Law on the basis of the request of the Parliament, Government or at least 200000 voters, within 30 days upon the receipt of the respective request in relation to such appointment.¹⁷ In accordance with the same example, the President is entitled to (and not obligated to) appoint the referendum. The Constitution also entails such powers that require the approvals of certain bodies, for instance, the President of Georgia concludes international agreements with the consent of the Government of Georgia.¹⁸

When discussing the said powers of the President, the main question refers to her/his discretionary powers, in particular, whether pursuant to the Constitution, the President of Georgia is entitled to act independently – the legislator’s answer to this question is positive. The legislator considers the events wherein the President has an obligation to act and the scenarios wherein the President may use the discretionary power. The matter of signing the constitutional law is a particularly interesting example – this matter is considered an obligation of the President since the legislator determines it directly that the President shall sign the law – the President signs the constitutional law adopted on the basis of the votes of no less than two thirds of the entire members and publishes the law within 5 days upon the receipt, without the right to return the law with justified remarks to the Parliament.¹⁹

As for the possibility to exercise the discretionary powers by the President, the best examples thereof is the possibility to publish the law, whereunder, if the President fails to sign the law within 2 weeks or fails to return the law with justified remarks to the Parliament, the law will be signed and

¹⁶ The Rules on the Completion of the Diplomatic Office adopted on the basis of the Order of the Minister of Foreign Affairs of Georgia N°01-74 dated 02 May 2019, Articles 22 and 22, 02/05/2019.

¹⁷ The Constitution of Georgia, Article 52, the Parliamentary Gazette of the Parliament of Georgia, 31-33, 24/08/1995.

¹⁸ Ibid.

¹⁹ The Constitution of Georgia, Article 46, the Parliamentary Gazette of the Parliament of Georgia, 31-33, 24/08/1995.

published by the Chairman of the Parliament within 5 days.²⁰ The President is entitled to choose, meaning that the President is able simply not to sign the law. The legislator has also considered the potential results and has determined that if the President fails to sign the law, the said procedure will be executed by the Chairman of the Parliament. Further, the next example refers to the appointment of the Prime Minister, wherein the President also benefits from the discretionary power, since if the President does not appoint the Prime Minister at his/her office within 2 weeks upon the declaration of trust to the Prime Minister, he/she will be considered appointed.²¹ Therefore, the legislator also sets out the ability to exercise the discretionary power of the President of Georgia and considered the Prime Minister appointed so that the country is not left without the Prime Minister.²²

If the President's powers are analyzed on the basis of material law, we will conclude that the legislation of the Georgia does not entail the consequence of a scenario wherein 1. the President does not appoint a certain person as the ambassador; 2. The President neither consents nor refuses to appoint an ambassador for indefinite period of time. Furthermore, the legislation does not entail the regulation on: 1. The term wherein the ambassadors shall be appointed by the President or the term wherein the President shall object to the appointment of such person; 2. The legal consequences of an event wherein the President refuses to appoint a person as an ambassador, therefore, the Constitution of Georgia does determine neither the term nor the legal consequence thereof.

When analyzing the powers granted to the President through the Constitution, the conclusion can be drawn that if, for instance, the President acting on the basis of her/his discretionary power, refuses to appoint an ambassador, the legislator considers such person as appointed. Hence, the legislator does envisage an alternative. The Constitution of Georgia does not even assume the probability that the appointment of the Prime Minister can be delayed, since the latter may result in the governmental crisis in the country and etc. Therefore, the legislator considers the Prime Minister to be appointed if the President acting within its discretionary powers, refuses to appoint the Prime Minister. On the other hand, the Constitution of Georgia offers a different approach pertaining to the appointment of the ambassadors, in particular, it entails a possibility to delay the appointment of the ambassador for an indefinite period of time and does not entitle the Government with the possibility to appoint the ambassador without the formal signature of the President. Furthermore, if the President refuses or delays the appointment of the ambassador for an indefinite period of time, the Constitution does not consider such person to be appointed, unlike the regulation in relation to the appointment of the Prime Minister.

On the basis of the abovementioned discussion, it can be concluded that the Government of Georgia is deprived of the ability to appoint an ambassador without the involvement of the President, therefore, if the President refuses to appoint the candidate as an ambassador, pursuant to the legislation of Georgia, the appointment procedure cannot be simply resumed that further highlights the role of the President in this process.²³

²⁰ Ibid.

²¹ Ibid, Article 56.

²² For detailed analysis see: *Kavelidze T.*, Dissertation on the "Powers of the President and Government of Georgia in the Field of Foreign Affairs", 2023, 164.

²³ For detailed analysis see: *Kavelidze T.*, Dissertation on the "Powers of the President and Government of Georgia in the Field of Foreign Affairs", 2023, 171.

4. International Practice in relation to the Appointment/Dismissal of the Ambassadors in Parliamentary System

The regulation of the matter related to the appointment and dismissal of the ambassadors in the countries having the parliamentary system is particularly interesting. For instance, in the countries having the parliamentary governance system such as Hungary²⁴, Bulgaria²⁵, Estonia²⁶, Latvia²⁷, Italy²⁸, Lithuania²⁹ and various other countries applying parliamentary system, the president appoints and dismisses the ambassadors and the heads of the diplomatic representatives on the basis of the nomination of the Government and within the scope of the co-signing mechanism.³⁰

If we analyze the legislation of various countries having parliamentary governance system in a more detailed manner, it will become evident that the president does necessarily participate in the process of appointing and dismissing the ambassadors. For instance, pursuant to the act Czech Foreign Service Act, diplomatic and consular titles are granted to the ambassadors, public servants and etc.³¹ Under the same Act, the President appoints and dismisses the head of the representative office on the basis of the Government's respective nomination.³²

Pursuant to the law of Latvia "on the Consular and Diplomatic Office", the President appoints and dismisses the extraordinary, plenipotentiary and permanent representatives, on the basis of the joint proposal of the Minister of Foreign Affairs and the Foreign Affairs Committee of the Parliament.³³

Pursuant to the Estonian Foreign Service Act, the diplomatic title is granted by the President for an indefinite period of time, whereas the proposals pertaining to the granting and removing of such

²⁴ The Constitution of the Republic of Hungary, Art. 30/A <<https://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex2.pdf>>, [07.07.2024].

²⁵ The Constitution of Bulgaria, Art. 92, Art. 98, <<http://www.parliament.bg/en/const>>, [07.07.2024].

²⁶ The Constitution of the Republic of Estonia, Art. 78, <https://www.constituteproject.org/constitution/Estonia_2015.pdf?lang=en>, [07.07.2024].

²⁷ The Constitution of the Republic of Latvia, Art. 41, <<https://www.satv.ties.gov.lv/en/2016/02/04/the-constitution-of-the-republic-of-latvia>>, [07.07.2024].

²⁸ The Constitution of the Italian Republic, Art. 87, <<https://www.senato.it/istituzione/la-costituzione>> [07.07.2024].

²⁹ The Constitution of the Republic of Lithuania, Art. 84, <https://www.constituteproject.org/constitution/Lithuania_2019>, [07.07.2024].

³⁰ For detailed analysis see: *Kavelidze T.*, Dissertation on the "Powers of the President and Government of Georgia in the Field of Foreign Affairs", 2023.

³¹ Czech Foreign Service Act, section 15, <https://www.mzv.cz/file/2566085/zakon_zahranicni_sluzba_EN_01032019.pdf> [07.07.2024].

³² For detailed analysis see: *Kavelidze T.*, Dissertation on the "Powers of the President and Government of Georgia in the Field of Foreign Affairs", 2023, 165.

³³ Latvian Diplomatic and Consular Service Law, section 10, <<https://www.vvc.gov.lv/en/laws-and-regulations-republic-latvia-english/diplomatic-and-consular-service-law-amendments-30092021>> [07.07.2024], For detailed analysis see: *Kavelidze T.*, Dissertation on the "Powers of the President and Government of Georgia in the Field of Foreign Affairs", 2023, 165.

titles is submitted by the Government to the President.³⁴ The Government submits a nomination on the candidate of the ambassador for the President's respective approval, the President within 30 days upon receipt of such proposal, approves such nomination and appoints the ambassador, followed by the Ministry of Foreign Affairs informing the Foreign Affairs Committee of the Parliament on such approval.³⁵ The President appoints the extraordinary and plenipotentiary ambassador and signs the respective letter of credence within thirty calendar days upon receipt of such proposal.³⁶ Further, the President acting on the basis of the proposal submitted by the Government, dismisses the extraordinary and plenipotentiary ambassador within thirty calendar days upon receipt of such proposal.³⁷

Pursuant to the German Foreign Service Act, the ambassador serves as a personal representative of the Federal President before the head of state of the receiving country.³⁸

The Italian example in relation to the above matter is also interesting to discuss. In particular, the President Sergio Mattarella refused to appoint the former Minister Paolo Savona on the position of the Finance Minister, since he was negatively assessing certain financial restrictions imposed by the legislation of the European Union.³⁹ The President's action was considered as the abuse of power and biased approach to the highly qualified person.⁴⁰ The President's veto has become subject to discussion in the scientific-political circles, particularly, the matter of whether the President had the right to object to the appointment of the Minister and whether such action was in violation with the Constitution was to be assessed.⁴¹ Pursuant to Article 92 of the Constitution of Italy, the Government consists of the President of the Council and the Ministers forming the Council of Ministers, whereas the President of the Republic appoints the Head of the Council of Ministers and the Ministers on the basis of the nomination of the Head of the Council.⁴² The powers of the President of Italy are subject to interpretation in the Italian constitutional law, provided however, in accordance with the existing opinion, the President is granted the discretionary power that is being exercised in accordance with the Constitution for the purposes of functioning of the state system – although, when the respective bodies of the government are acting in a coherent and orderly fashion, the President acting in his/her capacity as the neutral arbitrator tends to shift towards the background as envisaged within the flexible nature

³⁴ Estonian Foreign Service Act, Arts. 22, 23 <<https://www.riigiteataja.ee/en/eli/520122016002/consolide>> [07.07.2024].

³⁵ See Art. 27.

³⁶ Ibid.

³⁷ Ibid, Art. 41, see: *Kavelidze T.*, Dissertation on the “Powers of the President and Government of Georgia in the Field of Foreign Affairs”, 2023, 165-166.

³⁸ Gesetz über den Auswärtigen Dienst (GAD), Art. 3, <<https://www.gesetze-im-internet.de/gad/GAD.pdf>>

³⁹ *Kirchgaessner S.*, Italian president names interim prime minister until fresh elections, Mon 28, May 2018, <<https://www.theguardian.com/world/2018/may/28/italy-president-sergio-mattarella-names-interim-prime-minister-carlo-cottarelli>> [07.07.2024].

⁴⁰ Ibid.

⁴¹ Presidente della Repubblica, <<https://www.quirinale.it/elementi/1345>> [07.07.2024].

⁴² The Constitution of the Italy, Art 92, <https://www.constituteproject.org/constitution/Italy_2012.pdf?lang=en> [07.07.2024], see: *Kavelidze T.*, Dissertation on the “Powers of the President and Government of Georgia in the Field of Foreign Affairs”, 2023, 153.

of the parliamentary system.⁴³ The actions of President Sergio Mattarella represents not the only example in the history of Italy, yet similar scenario is related to President Scalfarro who refused to appoint the attorney of Berlusconi as the Minister of Justice in 1994 – in 2004 President Napolitano also refused to appoint the Judge as the Minister of Justice since he believed that there would not be a distinct boundary between the executive and judiciary government.⁴⁴

Croatian example is also interesting. It can be said that the relationship between President Zoran Milanovic and Prime Minister Andrei Plenkovic in the field of foreign affairs was characterized as tense. Pursuant to the opinion of the President, he could not see the perspective in cooperating with the Prime Minister, whereas in accordance with the statement made by the Prime Minister, the President had not even expressed his mere interest in resolving the relevant matters that could have been considered within the scope of the joint powers.⁴⁵ The President stated that pursuant to the Constitution of Croatia, his responsibility referred to the regular and coordinated functioning of the state government and stability, whereas the Government of Croatia was not acting in a coordinated manner with regard to the foreign policy – for example, Milanovic named unfilled job openings in the diplomatic office, including the opening for 4 ambassadors, that (in his view) was leading to the infringement of the Constitution – the Prime Minister, on the contrary, was stating that he would not meet the President.⁴⁶ It is important to note that, the Constitution of Croatia envisages the cooperation between the Government and President in relation to the formation of the foreign policy and the exercise thereof.⁴⁷ Since 2020, President Milanovic had only approved the appointment of Hidaet Bishkevic on the position of the ambassador of the Croatin Republic in Belgrade and that was based on the proposal submitted by Prime Minister Andrei Plenkovic whose intention was to have this person specifically appointed on such diplomatic position.⁴⁸ The said scenario is an evident example of the fact that not only this appointment, but any appointment on any position is possible on the condition that both parties are in agreement and willing to resolve such matters.⁴⁹

Another evident example is the ambassador's act on behalf of the government, wherein the Croatian Ambassador voted against the resolution that referred to the ceasefire in Gaza.⁵⁰ The President's office stated that it had not been informed on the position of the ambassador and that the

⁴³ Diletta T., Michele M., *Why the Italian President's Decision was Legitimate*, *VerfBlog*, 2018/5/28, <<https://verfassungsblog.de/why-the-italian-presidents-decision-was-legitimate/>> [07.07.2024].

⁴⁴ See Kavelidze T., *Dissertation on the "Powers of the President and Government of Georgia in the Field of Foreign Affairs"*, 2023, 154.

⁴⁵ Tesija V., *Croatia Faces Fallout from Personal Animosity between President, PM*, <<https://balkaninsight.com/2023/03/16/croatia-faces-fallout-from-personal-animosity-between-president-pm/>> [07.07.2024].

⁴⁶ Ibid.

⁴⁷ The Constitution of the Republic of Croatia, Art. 99, <<https://www.sabor.hr/en/constitution-republic-croatia-consolidated-text>> [07.07.2024].

⁴⁸ Tesija V., *Croatia Faces Fallout from Personal Animosity between President, PM*, <<https://balkaninsight.com/2023/03/16/croatia-faces-fallout-from-personal-animosity-between-president-pm/>> [07.07.2024].

⁴⁹ Ibid.

⁵⁰ 2024 Office of the President of the Republic of Croatia, <<https://www.predsjednik.hr/en/news/the-president-of-the-republic-was-neither-consulted-nor-informed-of-how-croatia-would-vote-on-the-un-resolution-the-government-has-marked-croatia-as-an-opponent-of-peace/>> [07.07.2024].

Government had not conducted any consultations with the President in relation to the said decisions.⁵¹ Pursuant to the international humanitarian law, the action of the Croatian ambassador was assessed as Croatia's action against the peace.⁵²

5. Examples of the Disputes on Competence between the President and Prime Minister

The example of the dispute between the Prime Minister and President in relation to the competence, has been referred to as the "Media War".⁵³ In 1991, the Prime Minister nominated new candidates on the position of the Vice President of the State Media.⁵⁴ The President Árpád Göncz refused to sign the proposal of the Prime Minister, whereas the Prime Minister argued that the President was deprived of the entitlement to refuse to sign the nomination, therefore, the Prime Minister referred this matter to the Constitutional Court.⁵⁵ On 23 September, 1991, the Constitutional Court held that the President shall not be in disagreement with the proposal submitted by the Government if the appointment of the nominated candidates does not pose threat to the democratic functioning of the state institutions.⁵⁶ With respect to the question whether the President was bound with any term established in relation to the signing of the appointment proposals of state servants, the Constitutional Court held on 28 January, 1992, that the President shall sign the proposals submitted by the Government in a timely fashion, followed by the President Árpád Göncz signing the proposal after 1 month.⁵⁷

In 1992, the Prime Minister Antali once again referred to the Constitutional Court to determine whether the President could refuse the appointment and dismissal of the state officials and whether the President was obligated to substantiate his/her decision – in particular, whether President Göncz had a constitutional right to object to the decision of the Prime Minister in relation to the dismissal of the heads of the broadcasting media and whether his proposal would infringe the fundamental democratic principles of the freedom of expression.⁵⁸ The legitimate constitutional right of the President and the "triggering" of such entitlement was dependent upon the President's consideration of the existing situation – in his public statement, President Göncz argued that his decision not to sign the nomination submitted by Antali was based on the existing state of the media and its potential consequences on democracy, since within the condition of non-existing new media law, Göncz had considered dismissal of the heads of broadcasting media, as the intervention in the right of the Göncz of expression that might have imposed threat to the transformation of Hungary as the democratic state.⁵⁹

⁵¹ Ibid.

⁵² Ibid.

⁵³ *Bajomi-Lázár P.*, *Freedom of the Media in Hungary, 1990–2002*, Budapest, 2003, 95.

⁵⁴ *Kim d.*, *A political biography of Hungary's First Post-Communist President, Árpád Göncz*, Glasgow Theses Service, University of Glasgow, 2011, 141.

⁵⁵ Ibid.

⁵⁶ Ibid, 141.

⁵⁷ Ibid.

⁵⁸ *Kim d.*, *A political biography of Hungary's First Post-Communist President, Árpád Göncz*, Glasgow Theses Service, University of Glasgow, 2011, 147.

⁵⁹ Ibid, 154.

The Court had actually rendered a decision in favor of the Government and against the so called weak President, whereas the decision itself was regarded as ambiguous and controversial.⁶⁰ The Constitutional Court explained that the head of state was entitled to refuse to the appointment of the nominated candidates as the heads of broadcasting media only in the event such nominations impose threat to the democratic functioning of the state institutes, provided however, the practical meaning of the latter phrase is leading to the controversies among opinions (including, among the judges).⁶¹

The above decision was accompanied by the dissenting opinion of three judges, Géza Kilényi, Péter Schmidt and Imre Vörös, arguing that there were two extremities: 1. The President's signature was of symbolic nature and that the President did not have discretionary power; and 2. The President could refuse to sign the proposal on the basis of a valid ground, even without the respective substantiation.⁶² The judges had noted that both alternatives are considered as extremities, even more so that the existing text of the Constitution envisaged *proposal*, *decision making* and *signing*, meaning that the President's entitlement may be exercised on the basis of the nomination and within the scope of the co-signing.⁶³ The dissenting opinion states that the essence of the joint power entails that no participant involved in the decision-making is entitled to exclusively decide on the appointment of a person, but the latter is related to the intention of another person involved in the decision-making.⁶⁴ The judges have highlighted in the dissenting opinion that the Constitution did not specify the legal grounds that could be used as the basis of the President's approval or rejection to the Government's decision, further, the court had played an excessively active role when the court discussed the necessity to adopt a new law, since that falls under the competence of the legislative body and not of the judiciary system.⁶⁵ The justice Schmidt argued that the endless so-called "Constitutional Scrutiny" of the Presidential powers, posed threat to the "exhaustion" of the position of the head of state that could lead to serious consequences, that would weaken the balanced role of the President.⁶⁶

6. Conclusion

Within the scope of analysis of the powers of the President of Georgia and the Government, the conclusion can be drawn that in the field of foreign affairs, in contrast to other entitlements, when appointing the ambassadors, in the event the President refuses to appoint an ambassador nominated on

⁶⁰ Kiss C., Constitution al Democracy in Eastern Europe The Role of Constitutional Courts in Democratic Consolidation in Post-Communist Hungary and Poland, A thesis submitted to McGill University in partial fulfilment of the requirements of the degree of Doctor of Philosophy, 2004, 209.

⁶¹ Kim d., A political biography of Hungary's First Post-Communist President, Árpád Göncz, Glasgow Theses Service, University of Glasgow, 2011, 147.

⁶² Decision of September 26, 1991 (Power Distribution Case), Alkotmánybíróság [Constitutional Court], 148/1991 (IX.26) AB (Hungary), <<https://njt.hu/jogsabaly/1991-48-30-75>> [07.07.2024].

⁶³ Ibid.

⁶⁴ Decision of September 26, 1991 (Power Distribution Case), Alkotmánybíróság [Constitutional Court], 148/1991 (IX.26) AB (Hungary), <<https://njt.hu/jogsabaly/1991-48-30-75>> [07.07.2024].

⁶⁵ Ibid.

⁶⁶ Kiss C., Constitution al Democracy in Eastern Europe The Role of Constitutional Courts in Democratic Consolidation in Post-Communist Hungary and Poland, A thesis submitted to McGill University in partial fulfilment of the requirements of the degree of Doctor of Philosophy, 2004, 209.

the basis of the Government's proposal, the Government is deprived of the exclusive entitlement to appoint the ambassador on the basis of the Government's decision. The same conclusion can be drawn on the basis of examples of various countries analyzed herein. When making the decision, the President is not limited to considering such factors as the candidate's qualification and experience for the certain diplomatic position, as well as potential conflict of interest that may become an argument to substantiate the refusal. Pursuant to the Constitution of Georgia, the systemic analysis of the powers of the President leads us to the conclusion that the legislator assumes the possibility of granting the President with the discretionary power in certain scenarios, the clear example of which is the appointment of the Prime Minister. In particular, if the President refuses to exercise the discretionary power and fails to appoint the Prime Minister within the designated term, the country will not be left without the Prime Minister, yet the Prime Minister will be considered as appointed. However, the legislator does not assume the possibility to consider the ambassador appointed by the Government in the event the President refuses to appoint an ambassador. The latter highlights the fact, including on the basis of the example led by various countries, that with regard to the appointment of ambassadors, the head of state, the President (acting on the basis of the proposal submitted by the Government) benefits from the so-called universal entitlement and the President's participation in the process of appointment of an ambassador is required.

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