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Caucasus Institute for Peace,
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Constitutional/Political Reform Process in Georgia, in Armenia and Azerbaijan: Political Elite and Voices of the People

Joint Project: *Voices of Georgia in Constitutional and Political Reform*

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Table of Contents

FOREWORD.....	4
Georgia	
GOVERNMENT OF GEORGIA ON THE CENTRAL LEVEL: THE BALANCE BETWEEN ITS BRANCHES, Policy Paper by Avtandil Demetrashvili, Zurab Jibgashvili, Vakhtang Khmaladze, Alexander Nalbandov, Levan Ramishvili, Davit Usupashvili.....	6
COMMENTARY ON THE POLICY PAPER GOVERNMENT OF GEORGIA ON THE CENTRAL LEVEL: THE BALANCE BETWEEN ITS BRANCHES by Jonathan Wheatley...23	
DISTRIBUTION OF STATE POWER BETWEEN THE CENTRAL AND LOCAL LEVELS, Policy Paper by Ivliane Khaindrava, Zaur Khalilov, Lela Khomeriki, Davit Losaberidze, Davit Melua, Tengiz Shergelashvili, Arnold Stepanian, Otar Zoidze.....	31
COMMENTARY ON THE POLICY PAPER DISTRIBUTION OF STATE POWER BETWEEN THE CENTRAL AND LOCAL LEVELS by Alexander Mihaylov.....	57
COMMENTARY ON THE POLICY PAPER DISTRIBUTION OF STATE POWER BETWEEN THE CENTRAL AND LOCAL LEVELS by Mkrtych (Sos) Gimishyan	63
COMMENTARY ON THE POLICY PAPER DISTRIBUTION OF STATE POWER BETWEEN THE CENTRAL AND LOCAL LEVELS by Sergey Minasian.....	70
CONSTITUTIONAL CHANGES IN GEORGIA, Research Paper by Marina Muskhelishvili (Center for Social Studies).....	74
POLITICAL PERCEPTIONS OF GEORGIA'S POPULATION, Research Paper by Marina Muskhelishvili, Luiza Arutiunova (Center for Social Studies)	91
Armenia	
POLITICAL AND CONSTITUTIONAL REFORM IN ARMENIA by Mkrtych (Sos) Gimishyan.....	109
EU- ARMENIA COOPERATION AND THE NEW EUROPEAN NEIGHBORHOOD POLICY by Sergey Minasian.....	129
Azerbaijan	
THE POLITICAL INSTITUTIONS OF AZERBAIJAN: A DICHOTOMY BETWEEN TEXT AND REALITY by Rahman Badalov and Niyazi Mehdi.....	141
POLITICAL REFORMS IN AZERBAIJAN (1989-2004) by Mayis Gulaliyev.....	159
INTERNATIONAL CONFERENCE REPORT March 2005- Constitutional/Political Reform Process in Georgia, in Armenia and Azerbaijan: Political Elite and Voices of the People.....	180
About CIPDD	193
About International IDEA	195



FOREWORD

International Institute for Democracy and Electoral Assistance (International IDEA) an intergovernmental Organization (based in Sweden) and Caucasus Institute for Peace, Democracy and Development (CIPDD) a Georgian NGO, are pleased to present the publication **Constitutional/Political Reform Process in Georgia, in Armenia and Azerbaijan: Political Elite and Voices of the People** - the result of the joint Project of International IDEA and CIPDD *Voices of Georgia in Constitutional and Political Reform*, June 2004- August 2005.

This undertaking was stimulated by the political reform process that started immediately after the Rose Revolution in Georgia. The revolution opened up a new period of reforms of the Georgian political system. These reforms involve important constitutional changes. In fact, in February 2004, the Georgian parliament amended the Georgian Constitution that alongside other changes redesigned the system of power on the national level. However, this happened without sufficient public debate. Further important reforms and constitutional changes are on the agenda of the government.

The joint project of International IDEA and CIPDD focused on reforming two most important issues of the Georgian political system: the balance between different branches of power on the central level, and devolution of power from national to regional and local levels. Main objective of the project was to strengthen public debate on these issues and strengthen international community involvement into Georgian constitutional processes. This would increase both quality and legitimacy of the process of constitutional change. Two groups of leading Georgian experts developed policy papers on the two respective issues. Draft policy papers were then discussed in five Georgian regions and the capital with participation of government representatives, NGOs, academics, journalists. Suggestions developed in these public debates were incorporated in the policy papers. Two European experts have commented those policy papers. In addition a sociological research has been also conducted separately which identified public discourses on the current constitutional process.

Furthermore, the project had a regional dimension including expert analyses on political reforms in Armenia and in Azerbaijan within a European integration perspective. Three experts from Armenia and three from Azerbaijan prepared research and policy papers on these issues. The four policy papers are included in the present publication.

Within the framework of this joint project International IDEA and CIPDD organized on 18-19 March the International Conference in Tbilisi, Georgia. The International conference **Constitutional/Political Reform Process in Georgia, in Armenia and Azerbaijan: Political Elite and Voices of the People** was dedicated to the exchange of information about the reform process in the three South Caucasus countries, Armenia, Azerbaijan and Georgia and the prospects for their European integration. On this subject all policy papers prepared by the group of Georgian, Armenian, Azeri and European experts/practitioners were presented at the conference.

The conference was opened by Ms. Armineh Arakelian (Regional Representative and Head of Programme for South Caucasus-Europe, International IDEA), Mr. Ghia Nodia (Chairman of CIPDD), H.E. Nino Burjanadze (Chairperson of Parliament) and Mr. Jacques Vantomme (First Counselor,

European Delegation for Georgia and Armenia). Up to 55 participants- representatives of Georgian Authorities and Civil Society, experts from Armenia and Azerbaijan, as well as, International Organizations and Diplomatic guests took part in the conference.

At the final stage of the project International IDEA and CIPDD published the outcomes of this joint undertaking. The present publication summarizes views of Georgian policy community as well as present European reactions to it; it also includes analyzes of the constitutional processes in two other South Caucasus countries – in Armenia and Azerbaijan.

We hope that the outcomes of this process of public discussion and expert work on political reform issues and process at national level will be taken into account by the national authorities in the public policy development in the three countries, as well as, by international and donor community in their partnership policies.

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26th April, 2005

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26th April, 2005

Policy paper

Government of Georgia on the Central Level: The Balance between its Branches

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1. Brief Description of the Principle of the Separation of Powers

Democracy is defined as the government by the people. According to the main principle of democracy, government should be administered through the consent of the people. Direct or representative democracies are the forms of public consent. In a representative democracy, the people express their will through their representatives. This means that power is invested in the majority of these representatives. At first glance, this is the way to exercise the will of the majority of the people. However, in reality, the majority of representatives, as a rule, are elected by less than the half of the voters. While executing the will of the majority, especially when this is the will of the representatives and not that of the voters, there is a potential threat of suppressing the will of the minority. Besides, the practice shows that governments have a tendency for self-expansion and strengthening of their presence in all aspects of life, thus jeopardizing the human rights and freedoms.

Constitutionalism serves to defend society and its each particular member from such jeopardy inherent to democracy. According to this idea, government should be administered so that it can on one hand prevent the democracy or government by the people from tending towards despotism and, on the other hand, avoids the establishment of dictatorship (the dictatorship of an individual, a party or a group).

The stability of democracy should be guaranteed not by the motto ‘the winner takes it all’, but by the necessity and inevitability of the collaboration of ‘the winner’ and ‘the loser’ in order to avoid turning the latter, threatened by the prospect of destruction, into an enemy of the system. This problem is solved by the constitution that implements the concept of constitutionalism through reasonable limiting of the state (implying the government) as well as the people.

To prevent the government from trespassing its limits within the political system and to ensure proper performance of its functions, it is necessary to follow some principles of its arrangement and functioning. One of these requirements is the establishment of an optimal system of supreme bodies of the government based on *the principle of the separation of powers*.

The Declaration of the Rights of Man and of the Citizen, adopted by the National Assembly of France in 1789, states that “A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all”.

The separation of powers is a set of guidelines for the arrangement and functioning of the state which rules out arbitrariness on the part of the rulers and anarchy on the part of the governed.

Specific aspects of the doctrine of the separation of powers were much discussed as early as the times of the great Greek philosophers. John Locke and Charles Montesquieu developed the notion further, while the legal formalization and institutionalization of the idea is connected to the era of the great revolutions.

Since then, almost all non-communist constitutions see the separation of powers as the main principle for arranging the government, though the constitutions of different countries use different versions of this principle.

Under the classical model of the separation of powers, power is divided between three branches of government – legislative, executive and judicial. This model was first introduced in England in the 18th century. The classical model of the separation of powers, as well as its practical application have undergone certain structural and content-related changes over time.

There are many different forms of the separation of powers and the formation of the government. Each of them has the right to existence, provided that the ways of limiting freedom are ruled out or avoided – Andras Sajo said.

Evidently, there are many models which satisfy the ideal of constitutionalism, and presumably it does not matter which model will be chosen for a given state. However, it is also obvious that not all models can be equally suitable for a specific state for a simple reason that each country has its unique historical experience, different traditions and system of relationships. The choice of a model is influenced by the situation in a particular country, the balance of political forces and the expectations of society. While it is very difficult to make a perfect choice, one thing is beyond doubt: *the model of the government should correspond to the concept of the separation of powers.* In the modern world, this implies the following:

- a) The horizontal and vertical separation and division of the government, i. e. the exercise of the state authority by different branches which are hierarchically independent (separation of authorities) and have their own competences (division of power). The degree of the separation and division of the government is defined by the constitution and represents the necessary and indispensable element of the separation of powers. Usually, three branches are specified – legislative, executive and judicial, but recently the presidential, controlling, supervising, electoral and other authorities are quite often mentioned as the branches of government as well.
- b) The system of checks and balances which enable different branches to control and resist any abuse or exceeding of authority by other branches.
- c) Cooperation between the branches stemming from the governmental nature common to all the branches. All branches should coordinate their activities regarding principal issues of public policy. Otherwise, the state governance would become impossible and thus leading to anarchy and damaging the public interest.

Depending on particular ways by which these principles are implemented, they distinguish between different models of government. Usually, three main models are described: presidential, parliamentary and semi-presidential (mixed government). Each model has many variations. There are numerous factors that determine the extent to which this or that model corresponds to the concept of constitutionalism, that is, the extent to which it guarantees the protection of human rights and freedoms and the effectiveness of governance. The constitutional legislation is one of the most important factors that define how the government is separated and divided, how effective the system of checks and balances is and how the cooperation between the government branches proceeds. It also determines how the election system guarantees the representation¹ of the minority (the opposition), secures the effectiveness of government and the protection of rights and freedoms of the people, and provides the means of establishing stability and overcoming political crises smoothly.

Other factors that can be mentioned here include:

¹ For example, the high barrier in the proportionate elections against the background of the underdeveloped party system, absence of democratic traditions and low level of political and legal awareness supports the establishment of a dominant government party. If this is combined with the party of the president gaining the parliamentary majority, which may be quite likely, the system of checks and balances becomes very weak if not purely formal.

- The legitimacy of the government and the coincidence of objectives declared by the government with the objectives and aspirations of the majority of society: This factor is of special importance to the collaboration among the government branches).
- The party system and the configuration of political forces on the political arena: When there is a dominant governing party and a weak opposition (or no genuine opposition at all), the collaboration among the government branches is becoming stronger while the system of checks and balances – even though it is provided for by the legislation –deteriorates dramatically or ceases to exist altogether;
- Civil society institutions, namely mass media and non-governmental organizations;
- Political and legal awareness of the public.

It should be noted that those post-Soviet countries that rejected classical parliamentarianism are characterized by a significant expansion of the president's powers and the absence of the system of checks and balances. This resulted in the distorted presidential/semi-presidential systems that are sometimes referred to as *super-presidentialist* or *absolute presidentialist*. Such a situation can be explained by a wish for a “strong presidential hand” often embodied in a charismatic leader. Apparently, though, it is very dangerous to introduce a form of government custom-tailored for a ‘good’ ruler with a huge authority. This is not only because a ruler can turn out to be ‘bad’, but also because huge and unchecked power has a degrading effect and, as a rule, turns a ‘good’ ruler into a ‘bad’ one.

The concept of head of state does not implicitly define limits of his/her authority, that is limits to the power of the head of state in a constitutional democracy. This does not mean, however, that there are no legitimate values that define the limits of such authority. The criteria such as the separation and division of powers among the branches of the government, checks and balances, collaboration among the branches and the division of competences provided for in the constitution, should limit the president's powers as well as powers of other government agencies.

The implementation of the concept of constitutionalism can only be guaranteed by a model which would not allow even a ‘bad’ ruler to cause significant damage to the country. This concept implies the separation of powers and the establishment of such a relationship among the government branches whereby none of them could take over another's authorities, force the other to act against its will, or act unchecked and go unpunished. The government, in which powers are separated, may appear to be less efficacious if the parliamentary majority cannot be formed (in any system), or if it is formed but it is in opposition to the executive (in the presidential and semi-presidential systems). It is true that the government may be more effective when power is concentrated in one person's hands rather than separated, but if the effect turns out negative then it will be much more difficult to protect the country from the damage than it would have been had the powers been separated. That is why violating the principles of constitutionalism is highly dangerous for any country and more so for Georgia, which has no tradition of democratic governance.

2. Constitutionalism in the Post-Soviet Georgia

The process of strengthening the principles of constitutionalism and separation of powers has been very difficult and controversial in the post-Soviet Georgia. The reason is that the two centuries when Georgia was a province of Tsarist Russia and the Soviet Union did not help developing the civic values or formulating public demand for democratic state institutions. A new aspiration for national independence and individual freedom that emerged in the 1980s, in independent Georgia occasionally expressed itself as a general desire for democracy. These movements, however, implied resistance to undesirable political regimes rather than establishment of any specific political system. Presumably, the removal of an undesired government would by itself bring about a desired one. Society required all the new political leaders aspiring to power to bring down the old unwanted regime but did not put

forward any specific demands as to what the new regime should be like. Consequently, the people who were unaware of their rights and abilities found themselves alienated from the founding constitutional processes, that is, from the process of defining how the country should be governed and how the irreversibility of the democratic rule and the protection of human rights can be guaranteed. Many terms and concepts, among them 'binding the government and the people with the constitution' and 'the separation of powers' became buzzwords in the speech of well-educated Georgians without acquiring real meaning. The meanings of these terms had no value for the citizens and they became useless, meaningless rhetoric of the new Georgia which served only to prove that the speaker belongs to the intellectual elite, along with other phrases such as "The Universal Declaration of Human Rights" or "leasing".

In such circumstances, whereby society was not ready to formulate and articulate a particular political demand for democratic institutions, the role of political elites increased significantly. These elites were to offer society what it itself did not demand. However, since 1990, none of the political leaders in the government and the groups associated with these leaders took responsibility for this task and offered the disoriented society a model of governance based on the principles of constitutionalism and separation of powers. Every leader who came to power felt that he or she had a very important historical mission to fulfill and in this process regarded the supremacy of the constitution and the separation of powers as a handicap and not as a means for fulfilling this mission. Arguably, some leaders considered the denial of the supremacy of the Constitution and the concentration of power in single person's hands to be a temporary tactical step, whereas for others it was a cornerstone of their ideology. However, this did not make any essential difference in practice.

Consequently, since 1990 to this day, the country has been governed either according to a constitution custom-tailored to political tastes of specific rulers and their political tasks, or without a constitution at all. Most importantly, no leader has governed the country over this period in a manner that would communicate to society the idea of the supremacy of the Constitution. That is to say, no leader has positioned the Constitution above his personality and has respected it properly. There were many ways of showing disrespect towards the Constitution – ranging from the direct and clear disregard of political norms to the adoption of the amendments to the Constitution that suited narrow political interests.

All kinds of violation of constitutionalism by the government were met with 'understanding' not only from the governing political elite, but also from the majority of the intellectual elite. In other words, the Constitution did not gain the relevant public value even for the majority of that part of society, which was more or less knowledgeable about constitutionalism. They too perceived the Constitution as a political and legal means of governance in the hands of the ruler rather than the basis for democratic governance.

The elite sometimes criticizes the leader and blames him for ignoring the country's fundamental law. But such criticisms are made not for the sake of defending the Constitution, but in order to tarnish the reputation of a leader they have already grown tired of – when the desired governor comes to power, the same segment of society forgets the Constitution and lets the new 'clever' leader 'take care of it'.

Along with such attitudes of the political and intellectual elites towards the Constitution and constitutionalism, the established de-facto one-party political systems impeded establishment of the system of separation of powers in Georgia. Although many political parties have stood for the elections since October 1990 and there have always been more than one party in the Georgian parliament, at any given stage a ruling party considered itself to be the only political actor and strived to establish a complete dominance and control over state institutions. Such self-perceptions as well as the ruling parties' tendency for merging with the state were nothing but the continuation of the Soviet Communist Party traditions. The figure of the single political leader, the chief, is part and parcel of these traditions. Such a figure makes the principle of the separation of powers inadmissible – otherwise, the chief would cease to be the chief, that is the wisest person who has the final say. Consequently, the principle of the separation of powers, which was at least declared in the

Constitution during 1996-2003, has never transformed into a fundamental principle for the formation and functioning of government institutions. Even for the most well-educated sections of the political establishment that subscribe to liberal democratic values, the separation of powers remained desirable in theory, but unattainable in the Georgian context. The majority of the opposition political parties that argue most vehemently against the extreme concentration of power in the hands of the ruling political leaders, are themselves governed in an authoritarian manner and the separation of powers or checks and balances are alien notions within their parties. Moreover, the vast majority of active non-governmental organizations are managed autocratically and they themselves fail to maintain allegiance to the principles they require the government to abide by.

Therefore we can conclude that in the post-Soviet Georgia there has been no public demand for constitutionalism or the separation of powers. Nor have the political elites been able to guarantee such democratic benefit to society. However, there have been some attempts from the latter to either establish a model based on the principle of the separation of powers declared by the Constitution or modify the principle and establish a “Georgian model”. Below we will look at the Constitution of Georgia of 1995 in its initial form and the changes made to it in February 2004, focusing our attention on the horizontal division of state powers.

3. The Constitution of Georgia of 1995

3.1. The Constitutional Principles for the Arrangement of the Government

The main characteristics of Georgia’s government are defined by the Constitution adopted in 1995, namely by:

- a) The preamble where the people of Georgia express their strong will to establish a democratic social order, economic independence, a social and legal state, to guarantee universally recognized human rights and freedoms...’;
- b) Article 1 – ‘the form of political order of Georgia is a democratic republic’;
- c) Article 5 that stipulates that:
 - ‘1. The people are the sole source of state power in Georgia. State power is only exercised within the framework of the Constitution.
 - 2. Power is exercised by the people through referenda, through their representatives and through other forms of direct democracy.
 - 3. No individual or group of individuals has the right to seize or unlawfully take state power.
 - 4. State power is exercised and based upon legal state principles’;
- d) Article 7, which says that ‘The state recognizes and defends universally recognized human rights and freedoms as eternal and supreme values. The people and the state are bound by these rights and freedoms as well as by current legislation for the exercise of state power.’

Dozens of articles, dedicated to the implementation of these fundamental provisions, define the model of the government and enable us to discuss the branches of the government, the extent of the division and separation of powers and the types and effectiveness of checks and balances.

3.2. The Model of the Separation of Powers until February 2004

The state government of Georgia is divided into three branches² - legislative, executive and judicial. The legislative power is exercised by the parliament, the executive – by the president and the judicial power is exercised by the constitutional and common courts. The parliamentary elections take place once every four years and the presidential elections – once every five years. This model of state governance falls under the presidential system, though there are distortions in the balance of power advantageous for the president (in reality this balance was significantly skewed, especially, with regard to the parliamentary control of the executive, mostly due to the then parliamentary majority's support of the president).

The source for the independent existence of all three government branches is the will of the people expressed directly (in the parliamentary and presidential elections) or through their representatives (judges). Although all three branches are clearly separated, they cannot function in full isolation from each other (this is least applicable to the judicial power).

In this section, we will focus our attention on the system of checks and balances and the cooperation among the branches.

The constitution defines the functions of the parliamentary, presidential and judicial powers as follows:

- ‘The parliament of Georgia is the supreme representative body of the country which exercises legislative power, determines the main directions of domestic and foreign policy and exercises general control over the activities of the government and other functions within the framework determined by the Constitution.’ (Article 48).
- ‘1. The president of Georgia is the head of state and of the executive.
2. The president of Georgia is responsible for and exercises the domestic and foreign policy of the state. He guarantees the unity and integrity of the country and the activity of state bodies according to the Constitution.
3. The president of Georgia is the supreme representative of Georgia in foreign relations.’ (Article 69).
- ‘1. Judicial power is exercised by constitutional supervision, the administration of justice and other forms determined by law.
2. Acts of courts are binding on the whole territory of the country for all state bodies and people.
3. The judiciary is independent and its function is exercised only by courts...’ (Article 82).

For exercising these functions the governmental bodies are furnished with the relevant constitutional authorities. The parliament as well as the president possess the whole set of discretionary powers but some of these powers are divided between them so that both participate in addressing the most important issues, namely:

- When the parliament passes a law, the president has the right of suspensive veto, which the parliament can overrule with three fifths of votes.
- The president, like any other public entity, has the right to legislative initiative. This is not characteristic of the classical presidential system (we believe that such privilege distorts the balance between the parliament and the executive power and benefits the latter).

² We should note here that there are independent constitutional institutions – *National Bank*, that elaborates and implements the monetary-credit and exchange rate policy according to the main directions defined by the parliament and guarantees the functioning of the monetary-credit systems, and *Audit Chamber*, that supervises the use and spending of the state finances and other material values of the state - , which cannot be put under any of these three branches.

- International agreements are concluded by the president, but their ratification, denunciation and abrogation is performed by the parliament.
- The state of emergency and the martial law are introduced by the president, but ratified by the parliament;
- Ambassadors and other diplomatic representatives are appointed and dismissed by the president but only with parliament's consent.
- The president appoints the members of the government – ministers – with parliament's consent, but makes a decision about their dismissal unilaterally.
- The parliament elects the members of the councils of the National Bank and the Supreme Court, and appoints the prosecutor general and the head of the Audit Chamber, but only after they are nominated by the president; the head of the Supreme Court, the prosecutor general, the head of the Audit Chamber and members of the National Bank Council are dismissed through impeachment (a government member can also be dismissed through impeachment).
- The budgeting process is especially important. Laws concerning the state budget are adopted by the parliament, but only the president has the right to propose a draft of the budget whereas the parliament has no right to make any amendments to it without the president's consent. If the parliament does not pass the budget, the government expends public finances following the budget of the previous year.

The president does not have the right to dissolve the parliament, but the parliament is authorized to impeach the president (though the impeachment procedure is so complicated that it is almost impossible to administer). One of the main functions of the parliament is to supervise the activities performed by the government. This supervision is exercised through the parliamentary committees, investigative and other ad hoc commissions or sending questions to ministers that they should answer at parliament sessions. But since the executive government is not accountable to the parliament, its power to check the executive is rather weak – the parliament has no right to dismiss the ministers and the executive (there is no no-confidence vote procedure in place) and dismissal through impeachment can occur only if the minister violates the Constitution or commits crime.

As we see, there are many issues that require collaboration of both sides to guarantee reaching of a balanced decision; this will remain so (despite the fact that constitutionalism allows for a certain extent of conflict between the legislative and executive branches) until there is a sharp political controversy between the parliamentary majority and the president³, in which case a deadlock may occur. This means the possibility of destabilization is inherent. The reason is the inflexibility of the presidential system – the president cannot dismiss the parliament, the parliament cannot dismiss the president. Very often breaking the deadlock occurs through violating the Constitution (examples of this include violent coups in African states and in Central and South America).

The judicial branch plays an important role in the system of checks and balances. It enjoys considerable independence from the other branches (except for its budget being determined by the president and the parliament). The judicial power balances both the legislative and executive branches through Constitutional supervision, judicial decisions and other forms defined law. Since the legislative and executive branches can make independent decisions within their competences that cannot be abrogated by other branches, the role of the Constitutional Court becomes especially important. The Constitutional Court, on the basis of a relevant suit or appeal, can decide whether a normative act is constitutional or not. It also deals with disputes between government bodies over their competences and the constitutionality of referenda and elections. The decision of the Constitutional Court is final, and a normative act deemed unconstitutional by the court loses legal force as of the moment of the publication of the court ruling. The Supreme Court and the

³The probability of creating such situation is quite high, especially during the transition period and against unfavorable economic background. The president and parliament (the parliamentary majority) may be elected at different times and represent political forces strongly confronting each other.

Constitutional Court participate in the impeachment of the president, the chairman of the Supreme Court, government members, the prosecutor general, the head of the Audit Chamber and the members of the National Bank Council.

Common criticisms of this model include the following:

- a) The inflexibility of the model (the president cannot dismiss the parliament and the parliament cannot dismiss the cabinet – they have no right to do so; the parliament cannot dismiss the president and a member of the cabinet – they have the right, but it is practically impossible);
- b) The weak and ineffective parliamentary oversight of the activities of the executive power (there is no no-confidence vote procedure in place);
- c) The weak influence of the parliament on the preparation of the state budget;
- d) Too high election threshold for political party lists in the parliamentary elections.

3.3. The Model of the Separation of Powers after February 2004

Political leaders who came into power after the Rose Revolution of November 2003 and the resignation of Eduard Shevardnadze drafted amendments to the Constitution, which after being debated briefly and perfunctorily, were passed by the parliament on 6 February 2004. These amendments led to a substantive change of the model of the separation of powers and, correspondingly, the state governance system in Georgia in general.

In particular, the adoption of the constitutional amendments resulted in a significant expansion of the president's authorities and significant weakening of the parliament, the setting up of a new executive body⁴ of the government and the separation of the Prosecutor's Office from the judicial branch.

Judging from the nature of the changes, it can be said that in addition to the three traditional branches of the government, one more branch was established – the *power of the head of state* in the person of the president. His authority, that had already been quite significant, was further expanded to encompass some powers of the other three branches. These changes distorted the principle of the separation of powers significantly and opened up possibilities for establishing a presidential unilateralism.

The amendments, in terms of their number, affected the judicial power the least. But two changes were conceptual and thus very important. Namely, the changes introduced the institution of jury trial (though in order to enforce this clause a relevant law has yet to be passed) and separated the prosecutor's office from the judiciary, without redefining its authority or its place in the government. The issue has to be determined by the organic law. This is quite dangerous because in lieu of constitutional limitations, the authority of the prosecutor's office may significantly increase following political objectives of the day. According to the third amendment, the government of Georgia was added to the list of entities that can act as a plaintiff in the Constitutional Court.

The most important change was made with regard to the constitutional statuses of and the relationship between the president and the parliament. The change bestowed the president – the head of state – with the rights he enjoys in both presidential and parliamentary systems without putting any balancing mechanisms in place.

The role of the president in the system of constitutional institutions is primarily determined by the extent of his executive power. The constitutional changes were triggered by the desire for a "strong presidential hand" and they have effectively made the president the only source of executive power. It is true that the government should enjoy the parliament's confidence, but this is a pure formality, because if the parliament does not express its confidence in the government, the president will still have the right to appoint the prime minister and to dismiss the parliament. At present, even though the constitution declared the cabinet to be the executive body in the system of central state

⁴ Though a question still remains to be answered: is the cabinet an independent body of the executive power?

bodies, the entire constitutional organization of the system results in a dualism of the executive power obviously skewed in the president's favour. The constitutional organization of governance is such that it effectively rules out the possibility of forming a Cabinet by the opposition parliamentary majority. The Cabinet is under the president's full control. The Cabinet was set up following the presidential elections and not the parliamentary elections and in fact is accountable only to the president (though it is formally accountable to the president and the parliament) and cannot be dismissed while it enjoys the president's confidence. There is one exception – if three-fifths of the parliament vote's no-confidence in the government, the president is obliged to dismiss it. This is only possible in a parliament with a three-fifths opposition majority.

There is no separation of powers between the president and the executive power. The president:

- appoints the prime minister (with only the formal participation of the parliament);
- gives his consent to the prime minister for appointing the ministers;
- is authorized to dismiss the government and to dismiss the ministers of internal affairs, defence and state security;
- is authorized to call for a government meeting and act as a chair;
- is authorized to terminate or abrogate the acts passed by the government and other bodies of the executive power if the acts are in conflict with the Constitution, international agreements or accords, laws and normative acts issued by the president.

All the abovementioned provisions undermine the independence of the government and the doctrine of parliamentary constitutionalism. Such an imbalance between powers given to the president and to the government is characteristic to the super-presidential system in which one of the most important principles of the rule of law, the principle of the separation of powers, is ignored.

The president formally is not the head of the executive power, rather “he exercises the domestic and foreign policy of the state” (Article 69). But according to Article 78 “the government guarantees the exercise of the executive power and the implementation of the domestic and foreign policies of the state. The government is responsible to the parliament and president of Georgia”. It can be argued that the government is a supplementary body to the president rather than an independent carrier of an executive power. Despite this, the responsibility for the activities of the executive power lies with it and not with the president who “enforces the internal and external policies of the state”. As a result, we have a clear imbalance between the responsibilities and rights. In fact, the prime minister who is the head of the Cabinet of Ministers is not the head of the executive. Within the executive, he is engaged only in secondary coordinating activities. His main duty is to supervise the execution of major tasks assigned to the government by the president and his legal status gives him the functions of an “administrative premier”. Despite having formal rights, the government, in essence, is the president's advisory body and the executor of his decisions.

The new model has put the members of the Cabinet – the ministers – in a very awkward position. This is the position of double subordination. Under the Constitution, both the president and the prime minister exercise executive functions whereas neither their functions nor their scopes of authority have been separated. The prime minister is responsible to the president for the functioning of the government. The prime minister also coordinates the activities of the Cabinet members and chairs the government meetings (except in those situations when the president wishes to chair them).

Under such circumstances, the ministers on one hand are obliged to work under the supervision of the prime minister and carry out his/her instructions, and on the other hand they have to carefully observe the attitudes and opinions of the president (and officials from the president's office). If the president is displeased with a minister's performance, then he himself can pass acts mandatory for the minister, cancel his decisions, call a government meeting and correct the minister's policy or dismiss the whole government. In such circumstances, the ministers will need to get

approval from both supervisors before they can make an important decision. This will often be impossible or it may take certain time, causing delays in the decision-making process. Meanwhile, because of the president's dominant status, an instruction given by the president at a news conference can gain more power for the ministers than a decision reached at a government meeting chaired by the prime minister.

The president's powers in the legislative sphere have significantly expanded. As was mentioned before, the president is authorized to suspend or abrogate any act passed by the Cabinet or the bodies of the executive. The ground for this, however, cannot be that they are inappropriate (this is correct because the president is not formally the head of the executive) but that *'they do not correspond to the Constitution of Georgia, international agreements and accords, laws and normative acts issued by the president'* (Article 76.3). This provision is still in conflict with the principle of the separation of powers in two ways: 1) the above provision stipulates that the acts by the cabinet and the bodies of the executive should correspond to presidential acts. An inflexible institutional hierarchy is thus established for legal acts which does not take into consideration either the division of competences among these institutions or the fact that both presidential acts and acts by the executive are by-laws and are passed only on the basis of existing laws and only in the cases stipulated by the law. Besides, we have to point out that under Article 78.3 not only the Constitution and the laws are regarded as legal acts that define the government's activities but also presidential acts which challenges the notion of government as the supreme and independent body of the executive from the point of view of classical constitutionalism.

Secondly, under the said provision, the president is obliged to carry out constitutional oversight and administrative justice and is granted a quasi-judicial function, which can be deemed as an intervention into the judicial competences.⁵

The president is given the authority to pass decrees that will have the same power as the laws on the tax and budget issues (if the parliament is dismissed), or approve the state budget by decree if the parliament does not meet the deadline (previously the president had the authority to pass decrees only during the state of emergency). This is the delegation of the parliament's legislative powers to the president and a conceptual rejection of the principle of the separation of powers defined by the constitution. By getting such authority, the president temporarily (though for quite a long spell – for approximately four months) becomes entitled to make policy decisions with regard to the tax and budget legislation⁶ instead of the parliament.

In the presidential, parliamentary and semi-presidential systems, it is very unusual for a president to have both the right of suspensive veto and legislative initiative. These two rights increase the president's ability to influence the parliament and correspondingly weaken the parliament's discretionary powers in the legislative sphere. At first glance, the president's right of legislative initiative looks limited, because the constitution says that he exercises this right only in the case of an 'emergency', though it is not clear what is meant by 'emergency' or who defines what constitutes an emergency. It is hard to imagine that the parliament will initiate a special law to define such cases (the constitution does not refer to any specific law whereas the president can easily rescind the law through the Constitutional Court), or that the president himself will submit a self-restricting bill to the parliament. It is the president who defines whether a case constitutes an 'emergency' at any given time, that is, the president exercises the unlimited right of legislative initiative. Although the government has the right of legislative initiative as well, it is most likely that if the president decides to initiate a bill, the government will refrain from an alternative initiative.

Under the constitutional changes the parliament's status has also changed significantly, and its legislative and political influence has decreased. The most important change was the one that entitled the president to dismiss the parliament. However, this entitlement is not so important (such

⁵ The Venice commission also noted this in its comments.

⁶ Remember that the main purpose for establishing the parliament was the definition of the tax policy.

right is characteristic of the parliamentary and semi-presidential systems as well) as are the cases in which the president can exercise this right. These include:

- *Forming a new cabinet.* If the parliament votes no confidence in a newly formed government, the president will either appoint the prime minister (who will appoint the ministers with the president's consent) and disband the parliament, or if at that time he has no right to do so⁷, it will form the cabinet within one month after the dismissal ban is lifted and submit it to the parliament for a confidence vote, and in case the parliament still votes no confidence, the president will dismiss parliament;
- *Voting no confidence in the government.* If the parliament votes no confidence in the government, the president can choose either to dismiss the government or not to do so. If in the period between the next ninetieth and hundredth days, the parliament again votes no confidence in the government, the president will dismiss either the government or the parliament. If this coincides with the period when the parliament cannot be dismissed, the re-vote of no confidence shall be held within 15 days after the dismissal ban is lifted. If the parliament again votes no-confidence in the government, the president will have the right to disband the parliament;
- *Initiating by the prime-minister a motion of no confidence in the government (regarding the draft laws on state budget, tax code and the government's structure, powers and activities).* If the parliament votes no confidence in the government, the president will dismiss either the government or the parliament;
- *Passing the law on state budget.* If the parliament does not pass the draft budget within three months after it is submitted for discussion in accordance with the constitutional procedures, the president either removes the government or dismisses the parliament.

As we can see, if the president fails to create or retain the desired government (the only possible reason being the presence of the opposition majority in the parliament), he, at his discretion, decides whether to dismiss the parliament or to approve/retain the rejected government. Therefore, the president can use the no confidence motion as a ground for the dismissal of the parliament. In fact, the Constitution regards the no confidence vote as a recommendation. Besides, the parliament can become a victim of this "recommendation" any time. This is tantamount to putting the parliament under constant blackmail. It is obvious that if the parliament has the opposition majority then it will either be disbanded, or becomes unprincipled and conformist.

The constitutional changes have also limited the legislative function of the parliament. A legislative initiative is an initial step in the legislative process. Although this right has been retained for the parliamentary factions, committees and the members of parliament, Paragraph 3(d) which was added to Article 67 of the Constitution reads as follows: "*In case the Government does not submit the remarks with regard to a draft law considering in the Parliament within a term provided for by law, the draft law shall be deemed approved.*". This provision in the constitution has created the need for setting up mechanisms for the government's participation in the lawmaking activities of the parliament. It is very difficult to ascertain what kind of mechanisms will be included in the law (or laws) adopted to create such mechanisms, but it is already apparent that the parliament will not be able to vote a bill until the government expresses its position within the timeframe set by the legislation (this can be a week, or a month). This also means that the government, referring to the Constitution, may solicit similar authority regarding all bills. Therefore, although ostensibly this norm appears to simplify the legislative activities of the parliament (failure to present a conclusion is equal to approval), in reality, it increases the role of the executive.

⁷ The president has no right to dismiss the parliament during the first 6 months after the parliamentary elections were held, during an impeachment procedure of the president, during a state of emergency and martial law, or during the last 6 months of his presidency.

Article 93 is putting the parliament in a still more difficult situation. The article reads: “A draft law which results in increase of expenditure of the State Budget of the current year, reduction of an income or taking of the new financial obligations by the State, may be adopted by the Parliament only after the consent of the Government, whereas the above mentioned laws with regard to the next financial year- by the Government within the scope of the basic parameters of the State Budget agreed with the Parliament”. It is very difficult to draft a law that would not lead to increase in the expenditures, decrease in revenues or certain new liabilities. But even if we assume that such a law exists, the parliament will still have to depend on the government’s position because determining whether the bill can lead to the above consequences is up to the government. A question that arises here is: if the bill that does not cause any increase in expenses is still undesirable for the government, and the government declares (even if it is unfair) that the bill causes an increase in expenses – what should the parliament do? If we take into consideration that the government has the right to make the laws related to the budget, the tax code and the government’s authority subject to a confidence vote (Article 81) and it can force the parliament by threatening to disband it to agree to the government’s position, and if we also take into account the president’s right of veto, then it becomes apparent that the parliament has either to accept the dominance of the government in the legislative activities or resign.

4. Recommendations⁸

A single conclusion can be drawn from this analysis – the current constitutional model of governance in Georgia does not correspond to any universally accepted democratic model of the separation of powers. Those components of the separation of powers which imply a rational separation of state authorities and the establishment of the system of checks and balances are distorted. This should be dealt with in the shortest time possible, but in no case in a hasty manner. Below we offer our recommendations to this effect:

1. The system of governance should be a balanced system, whereby the executive and the parliament are independent and competent constitutional bodies: there should be a balanced (rational) separation of powers between the government branches and effective mechanisms of checks and balances need to be established.
2. The election threshold for political party lists should be reduced to 4 or 5 per cent.

The reduction of the threshold will increase the representative nature of the parliament as well as the effectiveness of the parliament’s check on the executive.

As we mentioned above, the high election threshold in the proportional representation vote against the backdrop of an underdeveloped party system facilitates the establishment of a dominant, so called governing party, the absence of democratic traditions and a low level of political and legal awareness. If in such circumstances the presidential party gains the parliamentary majority, which is highly probable, the component of checks and balances may become perfunctory and weak.

According to the 1995 Constitution, parties and electoral blocs that crossed the 5% threshold in the proportional representation vote got seats in the parliament. In July 1999, about three months prior to the elections, the threshold was increased up to 7%. This resulted in an overall decrease of the number of parties in the parliament as well as in a small portion of the opposition MPs. For instance, in 1999, only three and in 2004, only two parties crossed the threshold, with one of the parties receiving slightly more than 7% of votes in both cases. This was a narrow escape from having a one-party parliament which would have been a

⁸ Levan Ramishvili, one of the authors of this paper, did not share these recommendations inasmuch they imply certain model of relations between parliament and president. He prefers the model of implementation of the principle of checks and balances on which the Constitution of the United States of America is based.

breach of the principles of parliamentarism and pluralistic democracy. There can be only one conclusion – the higher the election threshold the higher the risk of danger.

3. The president's right of legislative initiative should be abrogated or limited significantly.

The fact that both the president and the cabinet have the right of legislative initiative, while the president also has the right to veto, on the one hand reduces the independence of the cabinet and makes it easier for the president to define the legislative policy thus weakening the parliament. This also creates problem with respect to the stability of the government.

The right of veto is rarely exercised in parliamentary systems, because the president is significantly distanced from the executive power and he or she does not stand to directly benefit from the execution of any specific law. Therefore, the right of veto is exercised rarely and on the initiative of the cabinet. The rare occurrence of veto in parliamentary systems can be explained by the fact that the government is made up of leaders of the parliamentary majority and the latter shares responsibility for the execution of laws.

But in Georgia the president, who has actual executive functions, also has particular political interests with regards to adopted legislation. Having both the rights of legislative initiative and the right to a veto, the president is able to single-handedly define the state policy. This also limits the independence of the government and turns the provision that the government is the supreme body of the executive into a mere fiction. This renders it almost impossible for the parliament to make any significant changes to the bills submitted by the president.

Nullifying or significantly limiting the president's right of legislative initiative will lead to a rational separation of legislative powers among the government branches and strengthen the status of the parliament as the legislative body. At the same time, it will reinforce the president's role as the head of state and the arbiter.

4. The two-chamber parliament needs to be established, following the restoration of the country's territorial integrity.

In accordance with the results of the referendum of 2 November 2004 (which have not been implemented so far), the preparation for this reform should start immediately. The first step in this direction must be a reduction in the number of parliament members to 150 by the next parliamentary elections and their reasonable allocation to two chambers. There is also a need for the separation of powers and the division of competences between the chambers. The Upper Chamber should not be an "expanded" chamber of the European type (were that to happen, it would make no sense to decrease the number of the parliament members). Two representatives should be elected from each territorial unit, four from Abkhazia and Tbilisi each, and probably three from the former autonomous district of South Ossetia.

5. The absence of a minimum voter turnout requirement in the presidential elections may significantly affect its representative nature and correspondingly the quality of the legitimacy of this institution too.

Therefore, either the constitutional stipulations which existed before 6 February 2004 should be restored or the following regulations for electing the president should be introduced. Direct elections may be held in the first round. If the president is not elected in the first round, it is desirable that the president be elected by the parliament in the second round. On one hand, this will neutralize the polarization of society ahead of the second round, and on the other hand it will not provide the grounds for the presidential candidates to refer to the majority support. However, this mechanism has its drawbacks too: it is the majority support that the president will refer to if he is elected in the first round. It should be guaranteed that these regulations will not be used to expand his rights; this should not become

a means for the president to present himself as a defender of public sovereignty. This burden should only be borne by the parliament.

6. *The president should not have the right to dismiss the government*
The right of the president to dismiss the government unilaterally represents a considerable gap between the public will and the obligations of the multi-party parliament established by this will. When dismissing the government as a collegial body the president should be bound by the will of the political forces within the parliament, which in turn will depend on the balance between these forces.
7. *The president should not have the right to approve the state budget and to issue any acts regarding tax and budget issues that have force of law.*
It has always and everywhere been within the competence of the parliament to approve the state budget and the tax code. Only pluralistic bodies should be endowed with such authority.
8. *In order to ensure a reasonable division of competences, establish checks on government branches and strengthen cooperation between them, all within the model of the separation of powers, we deem it necessary to introduce procedure of the constructive vote of no confidence.*

A motion of constructive vote of no confidence can be initiated by the parliament or it can be the parliament's reaction to the government's request to hold a confidence vote. (If the parliament votes no confidence, it has the right to elect a new prime minister.) If the parliament fails to accomplish this task within the set period, the president will dismiss the parliament.

The constructive no-confidence vote is particularly useful for political regimes in transition characterized by a fresh formation of unstable multi-party systems. The constructive no-confidence vote is advantageous because it helps preventing the governmental crisis and the instability of the political system. It is in this very system that this advantage is more outstanding. Under such circumstances, the constructive no-confidence vote is a mechanism which defuses the emotions stirred up in the parliament by a particular unpopular step of the government and prevents a high turnover of governments.

The major principle of the constructive no-confidence vote is that the parliament cannot dismiss the government unless it names its successor. Thus, in the absence of a shadow cabinet, there is no point in dismissing the government until a new coalition is formed. All the above factors increase the effectiveness of the constructive no-confidence vote in unstable and emotive party systems.

A specific advantage of the constructive vote of no confidence, compared to the zero vote of no confidence, is that it renders long-term governmental crises (a situation when the old government is dismissed, but the new one is not formed yet) extremely unlikely. The no confidence motion on one hand prevents the persistence of the government crisis and on the other hand, guarantees that the parliament does not become a victim of its own decision and the cabinet cannot retain office after it loses confidence of the Parliament. This is how the constitutions adopted by many countries after the World War II have dealt with this issue. The main prerequisite for dismissing the parliament in these countries has been the parliament's inability to form a government.

At the same time, this system facilitates emergence of a political force that takes full responsibility for the state policy. Members of this political group become policy makers in the parliament as well as direct implementers of these policies as they make up the executive.

Thus, the constructive vote of no-confidence provides a set of benefits including among other things the government's accountability to the parliament as well as guarantees for the government's stability. There is no need for additional resources to guarantee a politically

stable relationship between the parliament, president and government. At all times, there is a political force responsible for forming the government: Either this is the president and the parliamentary majority together, or, in the event their political platforms and ideology are conflicting – the parliamentary majority. Therefore, if the parliament fails to form a cabinet on its own, the president dismisses the parliament (for the bicameral parliament – its lower chamber) and the president and the newly elected parliament together bear the collegial responsibility for forming the government

9. *In order to strengthen the component of the separation of powers which provides a balanced relationship among the branches of the government, the right of the president of Georgia to dismiss the parliament should be revised. It is necessary to limit the basis for dismissing the parliament and improve the procedures.*

The dismissal of Georgian parliament should not have a political motivation (as it is stipulated by the current Constitution). It should serve the purpose of defusing a constitutional (governmental, parliamentary) crisis while considering as much as possible the voters' will. Therefore, it is necessary to limit the president's right to dissolve the parliament to a few cases that should be clearly defined in the Constitution. In addition to that, the newly elected parliament should have an important (decisive) influence on forming the new government. All this is hard to achieve if the president's authority surpasses his functions as the head of state and the arbiter.

We recommend that the parliament be dissolved when:

- (a) Following resignation of the government (which should happen after a new Parliament is elected or may happen any time) Parliament votes no-confidence in a government proposed by president but fails to create a government on its own.
- (b) It fails to pass the draft budget submitted by the government within the timeframe set by the Constitution and at the same time fails to pass a no-confidence motion.
- (c) It votes no-confidence in the government but fails to form a new government within the timeframe defined by the Constitution;
- (d) It is dysfunctional (if a significant portion of its members boycotts the sessions or if the number of its members decrease by more than half or if it cannot exercise the legislative function).

We believe that the president's decision to dissolve the parliament should be preceded by his consultations with the Constitutional Court and/or with the speaker of the parliament. If these recommendations are implemented, the parliament will be able to secure the functioning of state institutions in accordance with the Constitution and at the same time, will ensure its own independence and security. In no case should the dismissal be a punishment for the parliament exercising its constitutionally-ordained functions.

10. *The relations between the president and other branches of the government with regard to legislative activities shall be revised and improved further.*

The president of Georgia should not have the right to annul the acts passed by the government and the institutions of the executive power on the grounds that these acts do not correspond to the Constitution, international agreements and Georgian law. By doing so the president takes on the functions of the Constitutional Court of Georgia, and on the other hand he assumes the responsibility for exercising the administrative legislation that is one of the functions of courts in general. If the president considers that the legal act does not correspond either to the constitution or to the legislation and he, as an arbiter, wishes to restore its legal state (or if he wishes to "guarantee the functioning of state institutions in accordance with the Constitution"), he is constitutionally authorized to address the Constitutional Court or any other court.

Secondly, granting the president's acts the status of legal acts that define the activities of the government undermines the most important principle of the separation of powers declared by the Constitution of Georgia – the independent status of the government as the only executive branch.

It is true that the Constitution of Georgia does not include any direct indication to this effect, but such interpretation may be given to certain provisions (Paragraph 3(j) of Article 73, and Paragraph 3 of Article 78) according to which the president of Georgia is entitled to suspend or abrogate acts issued by the bodies of the executive branch whereas the government shall be guided not only by the Constitution and the law (in accordance with the principle of the separation of powers) but also by presidential acts.

We believe that a step on the way to tackling the issue could be the introduction of a procedure according to which it will be mandatory to have a countersignatory for all important issues which are related to governance and which require to be regulated by a norm.

11. *The role and place of the Prosecutor's Office in the central state system should be defined.*

The idea of distancing the Prosecutor's Office from the "Triad of Government" and its establishment as an independent state body has its origins in the Communist law whereby it used to be a repressive institution in the hands of the state apparatus to establish effective control and influence over the state bureaucracy. Some countries of the post-Soviet region have a prosecutor's office which is independent from the legislative, judicial, and executive branches. In contrast to the countries of "classical democracy", the principles and bases for the activities of the Prosecutor's Office have yet to be articulated in "post-Socialist democracies". This is largely due to the fear that the Prosecutor's Office could resume its old functions if it continued to be regulated by the current legislation.

Almost everywhere the Prosecutor's Office is part of the central state system and is closely connected to the judiciary. Usually, it supports the state's lawsuits and supervises the bodies engaged in criminal investigation and research, carries out the sentences, and, in some countries, even participates in the settlement of public cases and conducts criminal investigations. The role of the Prosecutor's Office has not yet been defined in Georgia. The constitutional changes of February 2004 removed the article defining the function of the Prosecutor's Office from the Constitution, but discussions over its future status have yet to start. This causes concern.

The function and the place of the Prosecutor's Office in the national state system should be defined by the Constitution. We suggest that the Prosecutor's Office be positioned within the executive. More precisely, it should be an autonomous agency attached to the Ministry of Justice. On one hand, this will maintain its present functions (those concerning criminal prosecution though it will not possess the authority for preliminary investigations) of supervising inquests, investigations and supporting public prosecution, and on the other, its activities will be evaluated by the judiciary. Because of special functions assigned to him/her, the prosecutor general may be appointed by the president with the parliament's consent.

12. We recommend that the Constitution define so called shared governance issues as well as the issue of competing legislation.

13. The inaccurate wording of certain provisions (probably a result of the changes made so hastily in February 2004) need to be corrected.

Paragraph 7 of Article 70 shall be changed as the minimum voter turnout requirement to validate the first and the outcome of the second rounds of the presidential elections has been cancelled (see revised paragraphs 4 and 6 of Article 70).

Paragraph 31 of Article 50 shall also be changed as the current formulation does not provide the possibility for exercising Article 46 which can result in irrevocable consequences. Neither does the Constitution define the basis for the president's inability to exercise his authority, or the procedures for declaring this hypothetical situation, while such a situation may lead to a severe political crisis and destabilization.

Commentary on the Policy Paper

Government of Georgia at the Central Level: The Balance between its Branches

Jonathan Wheatley

According to the authors of the paper, the principle of constitutionalism defends society against the twin dangers of popular despotism and dictatorship. In the republics of the former Soviet Union, where the rule of law was subordinate to the arbitrary exercise of power and where social subsystems independent of the state played little or no role in political life, the obstacles encountered in establishing this principle have proved hard to surmount.

Two main factors have complicated attempts to establish a constitutional model in the former Soviet Union. First, the need to carry out several social, political and economic transformations simultaneously (including state-building, nation-building, economic reform and democratization) at the same time as minimising the deleterious effects of these transformations in terms of economic collapse and civil and ethnic conflict have in many cases led to a desire to create a strong executive, most often in the form of a strong presidency. However, the absence of a history of constitutionalism and the ingrained tendency of power-holders to exercise power arbitrarily without respect for the law makes it likely that a strong presidency will degenerate into presidential dictatorship. The trajectory of regime change in many former Soviet republics confirms this tendency; the eight republics in which the Constitution gives widest powers to the presidency (the Russian Federation, Belarus, Azerbaijan, Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan) also happen to be the eight most authoritarian republics in the former Soviet Union according to recent surveys by the non-governmental human rights organization, Freedom House.

However, while it is true hyper-presidentialism is often incompatible with democracy, there is another area-specific factor that is frequently ignored by advocates of a parliamentary system of government. This is the fact that party systems in the former Soviet Union are not institutionalised. Parties are hierarchical, lack the ability (or will) to elaborate policy and frequently fragment or disappear. This has serious implications for a parliamentary form of government, firstly because voters are not presented with a realistic set of alternative policies during parliamentary elections, and secondly because the party/parties or bloc(s) that form(s) the parliamentary majority may fragment shortly after the elections. Such fragmentation could lead either to a new majority being formed that does not adequately reflect the will of the voters (as occurred after both the 1998 and the 2002 parliamentary elections in Ukraine) or (worse) to the total incapacity of the Parliament to form a government.

Given the above perils, probably the most appropriate constitutional model for Georgia is semi-presidentialism and it is this model that the authors clearly favour. According to Maurice Duverger:

A political regime is considered semi-presidential if the constitution which established it combines three elements: (1) the president of the republic is elected by universal suffrage; (2) he possesses quite considerable powers; (3) he has opposite him, however, a prime minister and ministers who possess executive and governmental power and can stay in office only if the parliament does not show its opposition to them.⁹

⁹ Maurice Duverger, "A new political system model: Semi-presidential government". *European Journal of Political Research*, Vol. 8 (1980), pp. 165-187.

Despite claims that the amendments made to the Georgian constitution in February 2004 were intended to transform a presidential system into a semi-presidential one, the new model still did not correspond to Duverger's definition as it did not fulfil the third of the above conditions. The 2004 amendments failed to ensure that the ministers and the prime minister could only stay in office with the consent of the parliament. As the authors point out, in Georgia today the president is effectively the only source of executive power.

In the particular post-Soviet context in which Georgia finds herself, semi-presidentialism in Duverger's sense should mean that parliament has the power to check a potentially despotic president, while the president has the power to break the deadlock in the event of an incompetent, corrupt and/or fragmented parliament. A carefully crafted Constitution based on the principle of semi-presidentialism could provide a "double safety mechanism" to make these two potentially damaging scenarios less likely.

In the following paragraphs, I will begin by commenting on the authors' proposals for amending the Georgian constitution. I will then turn to those aspects of their proposals that I believe require further elaboration, most notably the need to make the government more responsive to the results of parliamentary elections.

1. Recommendations of the Authors

In the following paragraphs, I shall deal with each of the authors' recommendations in turn.

The system of governance should be a balanced system, whereby the executive and the parliament are independent and competent constitutional bodies

As the authors state, "there should be a balanced (rational) separation of powers between the government branches and effective mechanisms of checks and balances need to be established."

The election threshold should be reduced to 4 or 5%

Even 5% may be rather too high. The authors mention correctly that "in 1999, only three and in 2004, only two parties crossed the threshold"; however even in the 1995 elections, in which the threshold was set at 5%, only three parties crossed this threshold and 61.5% of the party list vote was "wasted" on parties that failed to gain representation in Parliament through the lists. The Citizens' Union of Georgia (CUG) was able to dominate the new parliament despite having garnered just 23.71% of the vote.

The president's right of legislative initiative should be abrogated or limited significantly

The president's right of legislative initiative does not correspond to the principle of separation of powers and therefore should be reduced or even abrogated entirely. As to the President's right to veto laws passed by Parliament, there is some logic to retaining this right; some safety mechanism may be needed in case Parliament passes rushed or ill thought-out legislation. In addition to the Georgian Constitution, the Polish Constitution also stipulates that the President may veto laws passed by Parliament with Parliament requiring a three-fifths majority to reverse the veto (compare Article 68.4 of the Georgian Constitution with Article 122.5 of the Polish Constitution). The Polish constitutional model is considered compatible with EU membership.

A two-chamber parliament needs to be established, following the restoration of the country's territorial integrity

The argument here seems a little unclear. At one point, the authors state: “The first step in this direction must be a reduction in the number of parliament members to 150 *by the next parliamentary elections* and their reasonable allocation to two chambers.” (Italics mine). It is not clear whether the authors mean that the allocation of members of Parliament is to be a second step following the restoration of the country's territorial integrity, or whether *both* the reduction in the number of parliamentarians *and* the establishment of a two-chamber Parliament is to occur prior to the 2008 parliamentary elections. If the latter is their intended meaning, surely it is based on the questionable assumption that the breakaway regions will be returned to full Georgian sovereignty by 2008. Moreover, the composition of the proposed upper chamber is also both unclear and debatable. First, it is unclear what the authors mean by a “territorial unit”; presumably they refer to the nine provinces (*mkhare*) as well as Adjara. Second, such an arrangement risks excluding two of Georgia's ethnic minorities: the Armenians and the Azeris, who between them make up about 12% of Georgia's population. According to the 2002 Census only just over 50% (54.6%) of the population of Samtskhe-Javakheti is Armenian and rather less than 50% (45.14%) of the population of Kvemo Kartli is Azeri. Given the fact that a significant proportion of the male (Armenian) population of Akhalkalaki and Ninotsminda districts are often out of the country for seasonal labour, it is quite possible that elections for members of the upper chamber would return two ethnic Georgians in both regions, unless clear mechanisms were put in place to prevent this eventuality (such as dividing each *mkhare* into two “constituencies”).

It is also somewhat unclear what function the proposed upper chamber is to serve. Generally speaking, upper chambers have been developed to protect various groups within society against an undesirable concentration of power. Specifically, they are designed **either**: a) to protect the people against governmental tyranny (Madison's rationale for the US upper house in the ‘Federalist Papers’), **or** b) (in federal states) to protect individual member states against encroachment by the federal capital (such as in the US and Germany), **or** c) to protect minority interests against ‘tyranny by the majority’ (for example, the British House of Lords). Each of these considerations has its own implications for how the upper chamber should be designed. If its purpose is to protect the people against governmental tyranny, the role of the upper house will be to supervise other government bodies (i.e. the lower house and the executive branch), which implies that they must enjoy a substantial degree of independence from these bodies. If, on the other hand, its role is to represent regional interests, it is most likely that the upper house will represent the regional governments of the federal sub-units. Finally, if its role is to protect minority interests, one would assume that these minority interests would be over-represented in the upper house. In this case democratic considerations may mean that the upper house is weaker than the lower house with the power of review rather than the power of veto (e.g. the British House of Lords).

The main danger in the former Soviet Union is the concentration of power in the hands of an unaccountable and authoritarian government. Perversely, however, second chambers in the former Soviet Union have tended to increase this risk, rather than alleviate it. In Kazakhstan, for example, seven deputies of the upper house (Senate) are appointed by the President. Moreover, laws promulgated by the Parliament of Kazakhstan can be vetoed by the President and the veto can only be overturned by a two-thirds majority in *both chambers*. It seems therefore that the upper chamber was established with the clear intention of weakening the legislative branch of government in comparison with the presidency, rather than to protect the population against governmental tyranny.

So how can an upper house in a country such as Georgia fulfill its role of protecting the population against an authoritarian consolidation of power by government? In Georgia's fourteen years of

independence, there has not been a single instance of power changing hands as a result of elections. Instead there is an apparently perpetual opposition between state and society, only temporarily assuaged by the forcible replacement of unpopular governments. The need for a mechanism to make the political elite responsive to social pressure and to process the conflict between state and society within the legal and constitutional framework is particularly pressing. It is hard to see how an upper house could fulfill this function but the following points should be borne in mind.

First, simply having senate members elected in single-mandate constituencies is unlikely to be conducive to an independent upper house. The last ten years of Georgian parliamentarianism has shown that “independents” from single-member constituencies tend to be more loyal to the government than those elected proportionally and would therefore be unlikely to oppose an undemocratic consolidation of power in the hands of the executive.

Secondly, some mechanism needs to be put in place to build a link between the upper house and civil society. This is not easy to accomplish, given the relative weakness of civil society and its tendency to remain confined to small, foreign-funded and predominantly urban NGOs. Nevertheless, work could be done to think of ways in which this may be accomplished.

Third, ethnic minorities should be represented in any upper house and have a real voice. This includes the Armenian and Azeri populations as well as the Abkhaz and Ossetian populations.

Fourth, the logic of establishing a second chamber in order to represent the member states of a federation will only be relevant when Georgia’s territorial integrity is restored and a federal arrangement is established. It may be premature to establish a Senate in order to represent the regions before territorial integrity is restored.

Finally, does Georgia really need two chambers at the present moment – at least before the country’s territorial integrity is restored? Not all European countries have second chambers; Denmark (in 1953) and Sweden (in 1970) abolished their second chambers on the grounds that they were redundant. Typically smaller countries and those that are unitary rather than federal states have unicameral parliaments, rather than bicameral parliaments.

The absence of a minimum voter turnout requirement in the presidential elections may significantly affect its representative nature and correspondingly the quality of the legitimacy of this institution too. That is why either the constitutional stipulations which existed before 6 February 2004 should be restored or the following regulations for electing the president should be introduced

Restoration of the status quo prior to 6 February 2004 seems the less favourable of the two options. First, if turnout is less than 50%, it is unlikely that a repeat round with a new list of candidates will increase turnout significantly, especially in Georgia where there are relatively few high profile and popular politicians. Under such circumstances a “Serbian scenario” in which repeated attempts fail to produce a President is very likely.¹⁰ Second, as the 2000 presidential elections in Georgia clearly demonstrated, the prospect of a new contest with a new list of candidates in the event of a failure to secure a 50% turnout provides incentives for electoral fraud. To have the President elected by Parliament in the event of the failure to secure a 50% turnout is not ideal, but is probably the more desirable alternative.

The president should not have the right to dismiss the government

¹⁰ Boris Tadic was finally elected President of Serbia in June 2004 after the 50% threshold for voter turnout had been scrapped. Three previous attempts at electing a head of state had failed due to low voter turnout.

Or as a minimum, the president should not have the right to dismiss the government except under a limited set of circumstances defined by the Constitution. Possibly allowing some mechanism whereby the President is able to dismiss the government could be retained if other constitutional amendments make the government answerable primarily to Parliament, rather than to the President. A restricted right for the President to dismiss the government could act as a “safety mechanism” in case a Parliament-backed government acts irresponsibly (see Section 2 below).

The president should not have the right to approve the state budget and to issue any acts regarding tax and budget issues have force of law.

Indeed, the budget should be the responsibility of the government and of parliament. It is highly unusual in the European context for a President to issue acts regarding tax and budget issues.

In order to ensure a reasonable division of competences, establish checks on government branches and strengthen cooperation between them, all within the model of the separation of powers, we deem it necessary to introduce procedure of the constructive vote of no confidence.

While a constructive vote of no confidence is far more effective in overcoming a government crisis than a zero vote of no confidence, it may be necessary to impose some restrictions on Parliament’s ability to dismiss the government except at the beginning of a parliamentary term. To endow Parliament with the right to vote down the government (even through a constructive vote of no confidence) by a simple majority at any time within the parliamentary cycle could actually be detrimental for good governance. The Georgian party system is not institutionalised and it is quite possible that the make-up of Parliament in terms of factions may change radically without parliamentary elections having taken place. Thus in 2002, the Georgian Parliament had very little in common with the Parliament elected in 1999 in terms of its factional make-up. It is quite possible, therefore, that a new parliamentary majority may be formed one or two years after parliamentary elections that no longer reflects the will of the voters and contains political forces that did not even exist at the time of these elections. In such circumstances, it is quite feasible that a government that has been functioning quite effectively is dismissed, only to be replaced by a new, less effective government that reflects vested interests rather than the will of the voters. This would be both undemocratic and detrimental to good governance.

The need to establish a mechanism granting Parliament far-reaching powers to declare no-confidence in the government would be less pressing if the Constitution required the government to be approved by Parliament immediately after parliamentary elections without incurring the risk of being disbanded by the President (see Section 2 below). The government would then reflect the will of the newly-elected Parliament. Of course, a mechanism would still be needed to dismiss the government in the event of a mid-term crisis in which it is unable to fulfil its functions competently. However, in such circumstances, the question arises as to whether it should be exclusively the remit of the Parliament to dismiss a government that it itself approved a year or two previously or whether the other directly-elected authority (the President) should also be involved in this decision. Possible ways of resolving this conundrum are discussed in Section 2 below.

In order to strengthen the component of the separation of powers which provides a balanced relationship among the branches of the government, the right of the president of Georgia to dismiss the parliament should be perceived in a new light. It is necessary to limit the basis for dismissing the parliament and improve the procedures.

The three (limited) conditions suggested by the authors to determine the circumstances under which the President can disband Parliament are entirely consistent with a semi-presidential model and capture both the need to prevent a constitutional crisis and to respect the will of the voters. If, however, the Constitution were to stipulate that the government must automatically be approved by a newly-elected Parliament, then there may be an argument also to grant the President the right to disband Parliament in the event of its declaring no-confidence in the government later in the parliamentary term (see Section 2 below).

The relations between the president and the branches of the government with regard to legislative matters need to be refined and improved further.

Both the right of the President to annul acts passed by the government on the grounds that they do not correspond to the Constitution and the apparent equal status of the President's acts with legal acts appears to contradict the principle of separation of powers. Clearly, therefore, the relations between the president and the branches of the government with regard to legislative matters need to be refined and improved further.

The role and place of the Prosecutor's Office in the central state system should be defined.

There is no standard European model for the Prosecutors' office. However, given the Soviet legacy of the Prosecutors' Office as an instrument of arbitrary repression, it is highly desirable that its role and place be defined by law. The suggestion that it be an autonomous agency attached to the Ministry of Justice but subject to the supervision of the judiciary seems a sensible one.

We recommend that the Constitution define so called common governance issues as well as competing legislation.

It would be helpful if the authors could elaborate a little more on this point.

The inaccurate wording of certain provisions (probably a result of the changes made so hastily in February 2004) need to be corrected.

In addition to the examples given by the authors, several other clauses merit attention. First, there is a lack of harmonization between articles 79.5 and 73.1 c. According to these two articles, *both* the President and the Prime Minister appear to have the right to dismiss the Ministers of Internal Affairs, State Security and Defence. Second, Article 73.1 p gives the President the right to chair the Supreme Council of Justice of Georgia, even though this body is not defined elsewhere in the Constitution. Finally articles 78.2 and 81².3 are ambiguous as they do not make it clear whether there are to be one or more State Ministers. These ambiguities were noted by the Venice Commission in its comments on the February 2004 amendments.¹¹

2. Additional Suggestions

According to the Georgian constitution (both the 1995 constitution and the later amended version), the government is not required either to resign or to submit itself to a confidence motion when a newly-elected parliament is convened. The authors appear to want to ensure that the government is responsible to parliament by means of the mechanism of the constructive no-confidence motion,

¹¹ European Commission for Democracy through Law (Venice Commission), "Opinion on the Draft Amendments to the Constitution of Georgia", adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004), available at [http://www.venice.coe.int/docs/2004/CDL-AD\(2004\)008-e.pdf](http://www.venice.coe.int/docs/2004/CDL-AD(2004)008-e.pdf).

which could be used *at any time* during the parliamentary term (although they do make passing reference to the need for the government to resign after a new parliament is elected). For reasons elaborated above, this may not be the best mechanism to ensure that government is administered through the consent of the people.

One mechanism of ensuring that the government reflects the will of a newly-elected parliament within the context of a semi-presidential republic is provided by the Polish constitution (Article 154). According to the Polish constitution, the president shall, within fourteen days of the first sitting of the Sejm, nominate a candidate for prime minister, who in turn must nominate a council of ministers. The proposed prime minister and council of ministers must then submit themselves and their programme of activity to a vote of confidence by parliament. If the parliament does not express confidence in the prime minister and the council of ministers, it then becomes the prerogative of parliament to elect its own candidate for prime minister and members of the council of ministers as proposed by him/her. If parliament still fails to agree on a prime minister and council of ministers, the president shall once again appoint a prime minister and, on his/her application, other members of the council of ministers. This time, however, failure on the part of the parliament to approve the council will allow the president to dissolve it.

A mechanism such as this, which ensures that the government reflects the will of the voters as expressed in the results of parliamentary elections, would need to be combined with a further mechanism that allows for the government to be dismissed in the event of a government crisis at other times within the parliamentary term. However, as I suggested above, given the high volatility of parties and parliamentary factions, it may be wise to fashion this mechanism in such a way that the parliament does not have the exclusive right to dismiss the government by a simple majority (even on the basis of a constructive no-confidence motion). For example, it would be possible to establish the procedure of a constructive motion of no-confidence, as suggested by the authors, but to give the President the right to veto the motion. The Parliament would then be able to overcome the presidential veto with a three-fifths or a two-thirds majority. Alternatively (and this may be a better solution if the make-up of the Parliament has changed radically since the parliamentary elections), in the event of Parliament passing a constructive motion of no-confidence in the government, the President could be given the option either of accepting the Parliament's alternative candidate for Prime Minister or of dissolving Parliament and scheduling new elections. To overcome a government crisis it may also be advisable for the President to retain his right to dismiss the government, but to ensure that if he does so the same procedure that governs the appointment of a Cabinet of Ministers immediately after parliamentary elections (i.e. the Polish model) also applies if the President dismisses the government at other points in time.

The model described above has two main advantages. The first is based on pragmatic considerations and relates to the likelihood of any proposed amendments emerging from the Tbilisi Conference being accepted by the Georgian authorities. The amendments I have proposed above have the advantage that if they were passed tomorrow, their main impact would only be felt immediately after the 2008 parliamentary elections when the President would be obliged to turn to the new Parliament when nominating a new Cabinet of Ministers. This would allow the current authorities "three years' grace" in dealing with the country's most pressing problems. This, presumably, was the rationale behind the rather hastily drafted constitutional amendments passed in February 2004. At the same time, the prompt passage of constitutional changes to establish a truly semi-presidential model of government would demonstrate the government's long-term commitment to a European constitutional model based on the principle of the separation of powers.

A second advantage of this model is that over time the parliament – provided it acted responsibly – would gradually extend its influence over political life. With time, parties and blocs would start

declaring their preferred candidates for prime minister prior to parliamentary elections and any party, bloc or coalition that won an absolute majority would be able to ensure that its own preferred candidate be appointed prime minister. This would be in conformity of the principle of democracy as government by the people.

A final consideration that has not been mentioned by the authors is whether or not there is a need to propose a moratorium on amendments to certain parts of the constitution for a given period (say, five or ten years). Allowing frequent changes to the most fundamental parts of the Constitution, especially those that deal with the separation of powers between the three branches of government, may undermine public respect for the Constitution and delay the consolidation of democracy.

Policy paper

Distribution of State Power between the Central and Local Levels

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1. Introduction

1.1. Historical Overview

The collapse of the Soviet Union led to the processes of democratization and the establishment of the rule of law and the market economy in the post-socialist countries, and in Georgia in particular. The establishment of institutions that will be based on the decentralized and genuine self-governance should be one of the main directions of the country's transition.

It is possible to identify two levels of administrative and territorial organization in Georgia. These are: the first or lower (local – town, borough, community, and village) and medium (regional – district, region, and province) levels. They have been formed for centuries on geographically defined territories with common economic or social conditions (mountainous landscape, rivers, etc.). The borders of individual provinces remained intact even when foreign conquerors (the Romans, Arabs, Mongols, Persians, Ottomans, Russians, etc.) controlled the country. Obviously, this was due to specific economic and geographic factors rather than the desire to maintain the established traditions.

After the annexation of Georgia by Russia in 1801, significant changes took place in the administrative and territorial arrangement of the country. Georgia was divided into new administrative units, *mazras*, and because of the same geographic and economic considerations, their borders largely coincided with those of historical districts. No significant changes occurred with regard to individual settlements apart from the introduction of limited local governance in big cities during the 60s of the 19th century.

In the Democratic Republic of Georgia (1918-1921), the first democratic municipal elections were held in 1919, on the basis of the country's division into *mazras*. Further reforms were hindered by a military aggression from the Bolshevik Russia (1921) and Georgia's annexation to the Soviet Union (1922).

The current territorial division of Georgia was established in 1921 and was based on the Soviet 'democratic centralization' principle. The country was divided into two autonomous republics, one autonomous district, 65 rayons (districts), 10 cities directly subordinate to the centre and 942 village councils.

District borders, as a rule, did not coincide with the traditionally established geographic and economic borders. Very often the regions were formed with the purpose of meeting the political or mercantile interests of the communist bureaucratic elite.

There was no division of competences between the central, regional and municipal levels in the Soviet system, and similar responsibilities and rights were allotted to the councils at all levels.

Such a flawed system triggered controversy between different levels of government after Georgia regained its independence that eventually led to a war of laws.

The situation was further compounded by the fact that there were territories in the country that were significantly different from each other by their status: autonomous units, regions mainly populated with ethnic minorities, administrative units of dissimilar resources and size.

The autonomous republics of Achara and Abkhazia, as well as the autonomous region of South Ossetia were institutionally established on the territory of Georgia.

Since the late 80s of the past century, when the rapid collapse of the Soviet Union began, and when Georgia started its way towards regaining independence, a set of political and ethnic problems provoked armed conflicts in Abkhazia and South Ossetia.

Later another type of problem which emerged in Achara triggered a deep crisis in the relationships between the central and autonomous governments; since May 2004, after these relationships returned to their normal constitutional framework, the controversy was resolved for the time being, but a difference of opinion still exists in Georgian society regarding the final set-up of these relationships.

Worsening relationships between the centre and autonomous entities overshadowed the issue of Tbilisi's relations with its largest ethnic enclaves, Samtskhe-Javakheti and Kvemo Kartli, representing 19% of Georgia's population. A number of acute problems can be identified in the above regions, including:

- **Education.** Due to the absence of a unified strategy of teaching the state (Georgian) language to ethnic minorities, the absolute majority of the population in these regions do not speak the state language and consequently, is not fully involved in the civil life.
- **Human resource policy.** The worst situation in this regard is in Kvemo Kartli. The local Azeri people represent the minority in the local government. Non-locals appointed to their posts by Tbilisi occupy key positions.
- **Using ethnic distinction for strengthening the positions of the central government.** Ethnic enclaves have always been regarded by Tbilisi as unconditional supporters during elections. The government usually received close to hundred per cent of the vote here. In exchange for such loyalty, the local power elites and mafia groups enjoyed an almost absolute freedom of action.

The failure to solve problems in these regions in a timely manner gradually builds up tensions and heightens the risk of secessionism.

The central government has also failed to pay an adequate attention to the development of government on the municipal level. The government believed that a centralized system of governance was the only way to save the country and its state system. The administrative organization was completely in line with the principles of a centralized state. In reality, however, the central government's policies in the regions effectively strengthened local clans.

Flawed laws in this area further complicate this situation. The 1995 Constitution of Georgia has left the issue of the country's territorial organization open.

Paragraph 1 of Article 2 of the Constitution defines the state territory within the borders as of 21 December 1991 (the moment of the dissolution of the USSR), while Paragraph 3 of the same article stipulates that the internal territorial organization of Georgia shall be decided after the full restoration of Georgia's jurisdiction throughout the whole territory of the country. In the future the territorial arrangement must be determined by the constitutional law and on the basis of the principle of the separation of powers. According to Article 4, when conditions are appropriate, a two-chamber parliament shall be formed. The article also defines a general rule for forming the upper chamber (senate), specifying that the senate should consist of members elected from Abkhazia, Achara and other territorial units of Georgia.

The president of Georgia, with parliament's consent, is authorized to terminate the activities of representative bodies of territorial units, or dismiss them if their activity threatens the country's sovereignty and territorial integrity or the implementation of constitutional authority of state institutions in the country (Article 73 paragraph 'h'). According to Article 89, the supreme representative bodies of the autonomous republics of Abkhazia and Achara have the right to bring a suit to the Constitutional Court of Georgia.

Thus, the Constitution of Georgia legitimizes the existence of two autonomous republics in the country whose status should be defined by the relevant constitutional law, based on the principle of the division of competences. The constitution provides for the representation of the autonomous republics in the upper chamber of Georgian parliament and reserves the positions of deputy speakers for their representatives as well as guarantees for them the powers that are characteristic of a federal state (e.g. Article 67.1 and Article 89.1). At the same time Georgia has apparent similarities with the countries whose state systems are based on the principle of asymmetric regionalization (e.g. Spain).

The municipal level is relatively well defined. The organic Law of Georgia on Local self-government and local government passed in 1997 made specific amendments to the then existing administrative and territorial organization. The law established several levels of self-government (village, community, borough, and town) and government (region, cities with special statuses) were defined.

1.2.Theoretical Issues

The over-centralization of the government poses a potential danger not only for the government, but also for the state. For instance, one of the significant sources of the problems that existed with the autonomous units of Georgia was the nominal nature of their autonomy. Striving for centralization has been an immanent feature of the authorities. If this tendency is not checked, it will result in the absolute usurpation of power by the central government and, ultimately, its absolute degradation. The relationship between the centre and local governments in such circumstances are governed by corruption; the alienation between the citizens and the government reaches its maximum limit whereas the government's patronizing attitude towards the citizens ultimately suppresses all initiatives.

Therefore, only declaring allegiance to human rights and freedoms is not sufficient, rather all the issues should be dealt with so as to respect and prioritise human rights and freedoms. Freedom can thrive only in a competitive environment.

This should be used as the basic principle for both the country's territorial organization and the organization of government in Georgia: whatever can be done through an individual initiative and effort should not be left to the government, nor should the upper level government be forced to do what a lower-level government can accomplish. Such a system will guarantee the freedom of an individual. Public structures may interfere in the lives of individuals only based on the principle of necessary sufficiency.

Upper-level bodies may only meddle with the issues of competence of lower-level bodies if the latter cannot settle them with their own resources. At the same time, a hierarchy should be observed: the family has a priority over public institutions, public institutions have a priority over community interference, and community interference has a priority over region interference. The central government should only deal with the problems that cannot be solved by any of the lower bodies. Frameworks of governance should be strictly defined for all levels of government in order to guarantee that the freedoms of an individual are not violated by the communal government, that of a community and an individual by the regional government, that of the regional government, community and an individual - by the central government. For its part, the central government

guarantees that the human rights and freedoms are protected by the constitutional legislation (the constitution and organic laws) provided that the principle of territorial integrity is observed.

Such a territorial organization and the structure of government are based on the principles of **non-centralism**. Non-centralism is not decentralization, which implies centralization and the devolution of power from the centre to the regions; rather it implies quite the opposite – the division of competences based on the bottom-up principle. An upper level has the right to tackle only those issues that a lower level is unable to settle.

The organization of territories and government on the principle of non-centralism ensures most desirable structure of the state organization. It does not place the state organization within any theoretical framework (federalism, centralized unitarianism, decentralized unitarianism), thus allowing us to avoid useless theoretical discussions on the advantages and disadvantages of federalism or decentralized unitarianism in the Georgian context.

At a later stage of the model's development, it is possible to expand self-government's competences, if the principle of delegating power rather than the principle of non-centralism is applied.

Considering that all the governing functions are performed by the central government in Georgia at present, we should start our discussions on reforms with the topic of decentralization. Below we will consider the size of self-governance units.

When we are talking about an optimal administrative and territorial organization of the country, it is desirable that we take into consideration the existing traditions and current needs. Regardless of the administrative and territorial division that initially existed during the Russian Empire and then during the Soviet Union, most of Georgian society considers province (region) as one of the main aspects of identity. The perception of citizens of Georgia as representatives of specific province (Kartli, Kakheti, Imereti, Samegrelo, Meskheta, etc.) is deeply rooted.

As for the pragmatic approach, first of all there is a need to consider the resources needed for performing the functions whose implementation should become the prerogative of local governments today, and more importantly, in the future.

Consequently, the territorial aspects of local self-governance need to be defined so that they guarantee:

- a) Real independence of local self-governments in making decisions on local issues.
- b) The delivery of local public services by local self-governments using local resources.

The resource issue should also be taken into consideration. The size of the self-government should be proportionate to the anticipated services and should meet public demand as well as government requirements regarding public services. In the leading European countries, reforms aiming at enlarging self-governance bodies were carried out as early as the 1960 and 1970s. A minimum required number of residents was established for a self-government unit to be formed at the first level. This standard varies for different countries and ranges from 8,000 to 80,000.

For comparison, in more than two thirds of functioning self-government units (68.1%) in Georgia (village, community, borough and town) the number of population per each unit is less than 3,000 and the number of voters is less than 2,000. In almost 50% of administrative units the population is less than 2,000. The number of the population is of course only one criterion that together with the taxation base should be used for defining the optimal level of self-governance. Hence, we can conclude that in order to provide high-quality public services to the population, the administration system should be simplified and material/human resources available to local governments should be mobilized as much as possible.

Regardless of how the administrative-territorial reforms are implemented and what type of political organization a country has, one thing is clear – the powers of local-level (primary level) governments should be enhanced by all means.

2. Regional Arrangement of Power

2.1. Current situation and problems

In the introduction we briefly referred to the problems of relationships between the centre and ethnic autonomies (Abkhazia and former South Ossetia). The settlement of these problems goes beyond the decentralization or the state's administrative-territorial organization and is part of international politics. At the same time it is very important what Georgia is offering to the secessionist regions, and we will touch upon this later. Now we will briefly discuss the relationship of the central government with the Acharan autonomy where ethnic separatism is completely excluded and where the jurisdiction of Georgia is fully administered.

On 1 July 2004, Georgian parliament passed the constitutional law on the status of the Acharan Autonomous Republic, Article 1.2 of which declared the law as an inseparable part of the Constitution of Georgia. There was almost full agreement between the Georgian experts and the experts of the Venetian Commission on the point that the status defined by this law hardly corresponded to the status of an autonomous republic. Although competences are formally divided between Tbilisi and Batumi, the law provides for a hierarchical structure that makes the Acharan government a puppet in the hands of Tbilisi. For example:

- The president of Georgia is authorized to dismiss the Supreme Council of Achara (the highest representative body) if the latter fails to perform its duties, or if it rejects twice the candidates for the position of the head of government of the Acharan Republic. In case of the Supreme Council's dismissal, the temporary presidential council appointed by the president will perform its duties. The phrase "fails to perform its duties" is certainly vague. Neither is it clear why the president of Georgia should nominate the head of the Acharan government.
- The Acharan government is accountable to the president of Georgia and the latter is authorized to suspend or abolish an act by the Acharan government 'if it is in conflict with either the Constitution of Georgia, or this law, the international treaties and agreements signed by Georgia, Georgian laws or legal acts by the president of Georgia'. The president of Georgia is authorized to exercise a similar right with regard to the acts issued by the head of the Acharan government. Thus, the president himself defines the constitutionality of the acts of the Acharan government and nullifies them.
- A new member of the Acharan government is appointed by the head of the Autonomous Republic of Achara if the candidacy is agreed upon with a relevant government body of Georgia.

According to the law, the parliament and the government of Georgia are regarded as "hierarchically superior agencies" with regard to the Supreme Council and the government of Achara, as Georgian parliament is authorized to suspend the act of the Supreme Council of Achara and the government of Georgia is authorized to participate directly in selecting and appointing the ministers in Achara.

Therefore, the law on the status of the Autonomous Republic of Achara contradicts not only the idea of autonomy, but also contemporary standards of self-governance. In such circumstances "autonomy" loses its meaning. It was this status that led some political groups to saying that it was better to abolish the autonomy than to let it function in that manner.

Another serious problem is the relationship of the central government with ethnic enclaves. In 1989, the population of Georgia was 5.6 million people, 30% of which were ethnic minorities. The largest minorities were Armenians (450,000), Russians (about 400,000) and Azeris (about 300,000) followed by Ossetians (160,000), Greeks (about 100,000) and Abkhazs (90,000). The number of other ethnic minorities (Ukrainians, Kurds, Jews, etc.) did not exceed 50,000 each.

The events that unfolded after the collapse of the Soviet Union (economic collapse and emigration, ethnic conflicts) resulted in a significant decrease in the population of the country. According to the census of 2002, the population of Georgia is 4,371,000 but the data is considered unreliable. We must assume that the number of people residing in Georgia is less. On the territories under the jurisdiction of Georgia the share of ethnic minorities is 16.2%. The most numerous groups are Azeris (285,000, 6.5% of the total population), Armenians (249,000, 5.7% of the total population), Russians (68,000, 1.5% of the total population) and Ossetians (38,000, 0.9% of the total population). Other ethnic groups do not exceed 20,000 each.

	1989		2002	
	In thousands	%	In thousands	%
Georgians	3,880	69.9	3661	83.7
Armenians	450	8.1	249	5.7
Russians	390	7.0	68	1.6
Azeris	290	5.2	285	6.5
Ossetians	165	3.0	38	0.9
Greeks	105	1.9	15	0.3
Abkhazs	90	1.6	3.5	0.1
Other	180	3.2	52	1.2
Total	5550	100.0	4371.5	100.0

Excluding the population in the conflict zones (where the population has decreased dramatically), the largest ethnic minorities in Georgia are Armenians and Azeris. A significant part of both groups is concentrated in the Kvemo Kartli (Azeris) and Samtskhe-Javakheti (Armenians) regions, where they are the majority.

Over the past years of independence, the Georgian political establishment and society were concerned about secessionist and irredentist claims coming from local political groups in the latter regions. The activities of some radical groups in the region make one think that the fear of secessionism has a real basis.

The problems in these regions can be explained largely by the absence of the state's unified strategic vision and the flawed administrative-territorial organization, further compounded by deep poverty and vulnerability, the dominance of corrupt relationships and the patrimonial system, the weak regulatory role of the state and the weak security system, as well as the absence of genuine self-governance.

Along with the similarities between these regions there are also some distinctions that we will refer to below.

The population of Samtskhe-Javakheti is 232,000 people, about half of which are Armenians. In Javakheti alone, that is Akhalkalaki and Ninotsminda districts (91 thousand people), more than 98% of the population are ethnic Armenians. High-level local governments (especially in Javakheti) are staffed with local Armenians. Since the Soviet times, Tbilisi has had a concrete strategy in this region. It took advantage of infighting within local clans and required loyalty from specific groups in exchange of support.

That is why the radical nationalist and marginalized political groups (Javahk since 1989, also Virk since 1998) have had only informal influence and have never been overtly supported by the local bureaucracy.

Radical requirements, such as seceding from Georgia and joining Armenia, or merging Samtskhe-Javakheti with Achara proposed by Aslan Abashidze who led explicit pro-Russian policies only annoyed ruling elites in Tbilisi and provoked anti-Armenian attitudes in the central media. Against this background the Armenian nationalist movement's demand that the regions' status be

enhanced up to the status of autonomy (like Achara and South Ossetia) or the rights of the local self-government be expanded, was harshly criticized by the Georgian society. The establishment of a party, Zari, in 2001, which was relatively loyal towards Tbilisi, did not influence much the centre's attitudes.

Since the late 90s, non-governmental organizations (NGOs) established and strengthened in the region. They aimed to popularise civil values and to protect civil, political and social rights of the regions' population. Although these NGOs do not have any significant influence on the civic life of the region at this stage, they may play quite a serious stabilising role in the long-term perspective.

The population of Kvemo Kartli, according to the official data, is 587,000 people, half of which are ethnic Azeris, who are in absolute majority in four of the six administrative districts (between 60% and 95%).

Overall, the centre paid less attention to Kvemo Kartli than to other regions (e.g. Samtskhe-Javakheti). The Azeri people regarded personnel policies discriminating as Georgians from other regions largely occupied high-level positions in the region. The government explained such policies by the lack of qualified Georgian-speaking individuals among the local Azeri population. With regards to the knowledge of the state language, the situation was very bad indeed. Moreover, to date, the ethnic minorities living in the region pay insufficient attention to the participation in formal state structures as their functions are largely taken over informal patrimonial relationships.

Signs of ethnic tensions became apparent during last years of the Soviet rule (the late 1980s). Local informal movements issued demands for establishing the so-called Borchalo autonomy on the territories populated by ethnic Azeris. But these demands, which had irredentist implications (creating conditions for coming closer to Azerbaijan, the 'historical motherland') and were characterized by mythical, anti-Georgian features, did not find any significant support in the Azeri-populated provinces.

The following factors accounted for the weakness of the nationalist movement in the region:

1. Baku, which had been involved in the Karabakh conflict since 1988, evinced a negative attitude to the idea of forming new autonomies in the South Caucasus.
2. Nor did Azerbaijan want to worsen its relationship with Georgia who was a strategic partner. The threat of potential conflict is decreased by the common pro-western (and anti-Russian) orientation and the construction of the Baku-Tbilisi-Ceyhan pipeline, which is in the interest of both Azerbaijan and Georgia.
3. Kvemo Kartli is the main supplier of agricultural produce to Tbilisi, and the local Azeri population would not want to have new administrative barriers setting it apart from the capital.

In the mid-90s public Azeri movements gained momentum (Birliki, Geyrati). They started their activities by defending the cultural rights of Azeri population, but then moved on to political demands (change of toponyms, land distribution, equal representation of Azeris' in public service, etc.).

In the 90s, during the rule of Eduard Shevardnadze, the situation in the minority-populated regions was relatively stable. Clan relationships, political deals and a high level of corruption somewhat balanced the existing controversies. Tensions increased in the fall of 2003 when the new government came to power in Tbilisi as a result of the Rose Revolution. Despite the fact that the new president of Georgia has vowed to guarantee the protection of the rights of ethnic minorities, the latter in Samtskhe-Javakheti and Kvemo Kartli still fear that Mikheil Saakashvili will restore policies of ethnocentric nationalism that was characteristic for Zviad Gamsakhurdia, the first president of Georgia.

It is apparent that the old methods of governance will not be effective in the future and there is a need to establish a new, unified and all-embracing state policy that, by reforming the existing system, will solve the problems of minority-populated provinces, which have been accumulated for

years. Otherwise, the radicalisation of ethnic minorities may occur, and this may create serious problems for Georgia in the future.

Other regions of Georgia also face many problems. Although there are no serious political (autonomies) or ethnic (minority-populated regions) controversies with the centre, the problem of administrative and territorial organization of the country may lead to a new confrontation between the centre and the regions in the future.

The settlement of the problems faced by the regions depends to a great extent on how quick the processes of municipalisation and decentralization will be in the country. These issues will be discussed below.

2.2. Recommendations

There are different ideas concerning the country's regional organization within the political establishment. The following three main approaches may be distinguished:

1. Apart from autonomous regions, there should be no other provinces (mkhare) at all.
2. The autonomous regions and mkhare should remain the same as they are today.
3. It is necessary to create new smaller regional units (from 12 to 20 according to different viewpoints).

We believe it is more reasonable at this stage to define the functions of territorial units rather than argue about the legal substantiation of the regional division or about the number of regions. Only after that will it be possible to argue about the criteria that should be met by the territorial units.

In this regard the following factors are to be emphasized:

1. In order to bring about a genuine decentralization, it is necessary for the centre to transfer a significant part of its competences to self-governments. However, there are functions that require larger territorial units and concentration of resources sufficient for their implementation. It would not be wise to devolve such competences (e. g. law enforcement, some fiscal and economic competences, etc.) to smaller territorial units.
2. There are a number of natural, historically developed regions in Georgia whose cohesion is not only historical but also social and economic.
3. The regions in Georgia complement each other with their diverse social and economic resources, which increases each region's social and economic potential.
4. The existence of regions will become the basis for forming the second chamber of the parliament - the country's supreme representative body. The formation of the upper chamber (senate) is guaranteed by the Constitution of Georgia, but there is no governmental vision about the composition of the chamber. In order to maintain the economic and political balance with the autonomous republics, it is reasonable to have the regions similar in scale to the autonomous republics.
5. Parochial mentality in Georgia is likely to step up the competition among the regions, which may be reflected in the social and economic development of these regions.

Decisions on creating regions and defining their borders must be made by the central government (Georgian parliament). At a transitional stage of the regional organization, it may be appropriate to pass organic laws on the formation of each region. There may be some differences between the legal statuses of the regions, but this should not imply any privilege.

These regions must possess not only the competences that will be clearly delineated from those of other levels of governance (central government, municipalities), but also regional governing bodies that will be formed through democratic elections.

It is also possible to transfer a significant part of state competences exclusively to regions. Exclusive competences of a region must include the socio-economic organization of the region, the exercise of a whole series of functions in health and education sectors and the development of the regional infrastructure.

As for the delegated functions, it is impossible to draw up a comprehensive list of these; it is up to the central government to define the forms and types of functions to be delegated to regions.

One of the most important aspects of the regional organization of Georgia is the regulation of relationships between the centre and the autonomous entities.

Non-centralism, as the principle of state organization, provides for differentiated statuses of Abkhazia and the Tskhinvali region, ranging from an autonomous cultural-administrative entity (Tskhinvali Region) to a state entity of limited sovereignty with no right to external sovereignty (Abkhazia) within the unified state of Georgians and Abkhazs.

The status of the Tskhinvali Region will be more similar to the statuses of other regions of Georgia (in terms of the scope of authority), whereas Abkhazia may have all the authority except the competence to ensure the state's integrity.

Abkhazia. Discussions about the status of Abkhazia started belatedly, when the conflict was already inevitable. However, it did start quite a long time ago, in the early 90s. Moreover, the issue was on the agenda of the government of the First Republic as early as 1918-21, but neither the government then, nor the succeeding administrations have managed to resolve the problem of Abkhazia.

In summer 2004, a group of independent experts published a document that provides a basis for intense and earnest discussions about the status of Abkhazia.

This concept is based on the following core theses:

1. Abkhazs are regarded not as an ethnic minority, but rather as one of the nations that establishes the Georgian state. It has been considered that the identity of the Abkhaz people is based on their perception of Abkhazia as their only motherland as well as their distinction from the rest of the population;
2. Abkhazia is regarded as a member of Georgia (member-country) and not as its part. The status of Abkhazia is based on the division of "state sovereignty" between a sovereign federal state and its founding member;
3. The government of Abkhazia holds an independent source of legitimacy: the government is elected and formed by the population of Abkhazia, that is why Abkhazia acts as an independent partner having equal rights in the relations with the highest-level state authorities of Georgia ("internal sovereignty").

The relationship between Abkhazia and Georgia must be regulated on the basis of the following principles:

1. Separation of powers is based on the so-called "double listing" whereby the exclusive competences of both the supreme state government and its founding member are strictly defined. Other competences are regarded as competing competences, with an allowance to grant such competences to Abkhazia;
2. In addition to the standard powers that founding members of federal states usually enjoy, Abkhazia may be granted additional rights such as the right to conclude agreements, the right to participate in foreign relations (cultural, social, trade and economic, scientific, educational, sports and tourism) and the right to form its police units;
3. Abkhazia will have a broad financial autonomy, as it will be entitled to establish, collect and manage its own taxes, duties and other fees;

4. The constitution of Abkhazia must follow the principles of democracy, rule of law and republicanism enshrined in the Constitution of Georgia.
5. In case one of the parties passes a legal act within the sphere of the exclusive authority of the other party, the other has the right to file a suit in the Constitutional Court of Georgia.

Additional mechanisms should be put in place in order to protect the interests of Abkhazia and the Abkhaz people:

- Permanent residents of Abkhazia will have Abkhaz citizenship. A citizen of Abkhazia will at the same time be a citizen of Georgia.
- Abkhaz delegation in the upper chamber of Georgian parliament (Senate) will have the right to the decisive vote regarding any issue connected to Abkhazia through the right of veto and a high quorum requirement.
- The consent of both parties will be necessary to effect any changes in the relationship between Abkhazia and the supreme authorities of Georgia.

Achara. In accordance with the principles of self-governance and the state territorial organization of Georgia, the Acharan autonomy should have:

1. Special powers granted to any autonomous region;
2. Powers delegated by the Georgian state;
3. Powers defined by special laws as part of the common competence.

The system of the supreme government bodies of the Acharan Autonomous Republic should be based on the model of the parliamentary republic: the supreme representative body of Achara shall define the socio-economic policy of the autonomy as well as form and control the government of Achara.

Any dispute between the governments of Achara and Georgia regarding the separation of powers should be settled by the Constitutional Court of Georgia, according to the guidelines set forth by the Georgian legislation.

It should be pointed out that there have been other viewpoints regarding Acharan autonomy: some politicians think that there is no basis and need for Acharan autonomy and the best time for annulling the autonomy was after the events of May 2004. However, this point of view has not been supported either by the political elites or by the society.

Tskhinvali Region. In the prevalent Georgian discourse, the autonomous district of South Ossetia is a product of the Soviet regime, which lacks historical or political grounds of its own. Ossetians are considered an ethnic minority in Georgia (which also happens to be relatively small numerically) and therefore discussions are limited to cultural autonomy considerations.

Considering specificities, the former South Ossetia may be granted the status which will be different from those of Abkhazia and Achara (a lower status) and which will also differentiate it from other regions of Georgia (in terms of cultural and linguistic autonomy).

Thus, the reality obligates Georgia to create a model of the state-territorial organization whereby Abkhazia, Achara and South Ossetia will have different powers. At an initial stage it would be logical to grant other regions of Georgia the status of administrative-territorial units with the prospect of further expanding their powers in the future. Merging the principles of federalism and regionalism will result in a specific and unique model of the state-territorial organization of Georgia and in the interaction of central authorities and the autonomous governments.

3. Municipal Arrangement of Power

3.1. Current Situation and Problems

There are three de facto levels in the current territorial organization of Georgia:

1. *The upper – province (region, mkhare) level (the capital city of Tbilisi and the autonomous republics of Abkhazia and Achara may provisionally be considered as belonging to this level).* This level was created in 1993-1995, when the pre-existent smaller districts (rayons) were grouped according to their economic, geographical, historical and ethnic characteristics. This resulted in the factual division of the country into nine regions (excluding the autonomous republics). However, no legal basis for the mkhare was created save for presidential decrees. To date, only the status, competences and powers of the capital city, Tbilisi, have been defined by law. Thus, the regional level comprises 12 units, of which only three - the capital and the autonomous republics of Abkhazia and Achara - are constitutionally defined.
2. *The medium level – districts (rayons) and six cities that are not part of districts.* Georgia is divided into 67 districts and six so-called independent cities. Of these, six districts and one city are in Abkhazia and five districts and one city are in Achara. In 2001, the cities that are not under district subordination were granted the status of self-governing units along with other settlements. However, the powers that the organic law defines as local government competences have also been granted to these cities.
3. *The lowest level – village, community, borough and town.* In total, in Georgia there are 55 towns under district authority, 49 boroughs, 843 communities and 164 villages where local self-governing bodies are elected. Thus, there are 1,111 self-governments on the lower (municipal) level that comprise 4,597 settlements. In 2002, self-government elections were held in 998 self-governing units.

According to the organic law *On Local Self-Government and Local Government*, the decentralization of governance should have been implemented on the lower level where self-governing units possess exclusive competences provided by law. It is noteworthy that this law has maintained the district level of local governance in Georgia until the constitutional law is passed. The state-delegated authorities are implemented on this level, so the district represents the de-concentrated level of governance.

The deficient administrative-territorial organization or its 'transitional' nature constitute the main impediment for the government's decentralization at the current stage of the development of self-governance. The following problems are characteristic of such transitional systems:

- Number of small self-governing units on the lower level is too large. As it was mentioned above, less than 200 people live in almost half of the 998 self-governing units (47%). Total tax and non-tax budget revenues of all the villages, communities and boroughs are less than 12 million lari, which means that local per capita budget in the settlements of the above-mentioned type averages 5-6 lari. Self-governing units are unable to implement their exclusive competences because their resources are inadequate for this. Notably, these units do not seek voluntary mergers, although the law provides for such possibility.
- One of the strongest motivations for the further division of self-governing units is connected to the creation of new public positions that allows individuals to fulfil their political ambitions. This motivation is in some way encouraged by the irrational character of the governing system. Such irrationality is inherited from the "democratic centralism" system in which it was impossible to perform the functions assigned to the self-government. The

Soviet-type multi-tier system of governance in which there is no separation of powers and no division of competences, is almost unchanged.

- Failure to carry out the genuine budget decentralization in the country causes fiscal problems. The law *On Budget System* provides for the independence of each level (central, district and local), but in practice, the budgets of lower levels completely depend on those of the upper level.

As a result, the population has been gradually losing confidence in the elected representatives or executive bodies because these bodies seem to be doomed to apathy and often to most unwanted excessive politicization.

The process of decentralization in Georgia is proceeding slowly. The political elite has not realized completely what kind of administrative-territorial organization the country should have in the future and what responsibilities and obligations local self-governments should have.

As a rule, decentralization has two main objectives:

1. Delivering a whole series of public services using local resources by local self-governments;
2. Ensuring the maximum closeness of local structures with the population in order to ensure the legitimacy of the authorities and the development of local democracy.

The first objective is necessary for delivering those services the provision of which by local structures will be more effective. In this case the functions of self-governing units must correspond to their material, financial and human resources. The second objective implies establishing the system that will maximally represent and consider local interests in the policy implementation and formation process.

In this regard, there exist two kinds of attitudes:

- Some support small municipalities, which may have limited capacities and be assigned minor functions, but will take better care of the requirements of small interest groups.
- There is an increasing need for enlarging municipalities in order to concentrate scarce resources and, consequently, increase the quality and effectiveness of public services.

The idea of a two-level self-government allows that the functions, competences and relevant resources are redistributed to the lower, more democratic level and the upper level that controls more resources.

All of this depends to a great extent on defining the functions and competences of local self-governments. Based on the international experience, we can recommend to include the following in the exclusive competences of self-governments: pre-school education, primary and emergency healthcare, cultural institutions of local importance (libraries, theatres, parks, etc.) utilities (water, electricity and gas supply systems, cleaning, etc.), local roads, public transportation, spatial planning and local economic development, fire service, local governance.

Other functions of governance should be performed by the upper (regional) level of government, while national functions (foreign policy and security, macroeconomic stimulation, defending the constitutional order, etc.) by the central government.

Thus, a two-level self-government model is based on the following principle:

- The medium level self-government assumes the responsibility for implementing more resource-consuming competences delegated to it by the state, as municipalities rarely possess the resources needed for the implementation of such competences.

- Municipalities significantly enhance their financial capabilities and human resources and perform the majority of the functions to be implemented by self-governments under Georgian law and in accordance with international practice.

Administrative-territorial units should carry out their duties on the basis of common legal principles defined by the state.

Finally, the two-level system will facilitate a compromise between the increase of municipal competences and resources on one hand and on the other, closeness with the population and the protection of local interests.

3.2. Recommendations

In order to facilitate the reform, it is necessary to identify problems related to the above issues and reach consensus on how to tackle them. This principle should be applied with regard to all major aspects:

- *The absence in the political elite of common and well thought through visions, objectives and ways of decentralization.* At this stage, it is necessary to develop a conceptual framework of a targeted policy, which will be shared and accepted by all political forces in the country.
- *Complexity of the integration of the breakaway regions (Abkhazia and Ossetia).* True interests of these regions (as well as ethnic minority-populated areas) shall be considered in the course of developing the concept of the country's administrative-territorial arrangement so that the probability of emerging new conflicts in the future is avoided.
- *The imperfect legislation.* The existing legislation shall be revised to eliminate discrepancies among the laws. Moreover, a package of laws shall be adopted where lack of regulation does not allow the local self-government system to function properly.
- *The absence of a clear and distinct division of competences among different levels.* State shall enact regulating mechanisms and introduce practices that will prevent the duplication of functions in legislative and in day-to-day governance. For this end, the principle of double subordination shall be eliminated.
- *The absence of proper conditions for developing the local infrastructure.* State shall legislate to delegate to the municipalities the right to planning municipal development.

Municipalities should be formed as a result of the amalgamation of the present local councils (sakrebulo) taking into consideration the human resources, territory and communication infrastructure. At the same time the amalgamation should take place not only at the first (municipal) but also the medium (district/rayon) level.

The establishment of unified municipalities has certain negative implications related to the complexity of the process of unification. Namely, it is likely that the unification of different territorial units will be complicated because the centralized management of these processes contradicts the international principles according to which the public opinion should be considered to the maximum extent. The location and the name of the municipality's administrative centre along with other similar issues are likely to become controversial issues.

Still, there are naturally established groups of villages and communities where the existence of one self-governing body is reasonable. Such areas have complementarity of transport and other infrastructure, landscape (gorges, ranges), culture and agriculture, as well as of economic and social entities and many other factors.

On the positive side, and with a view towards developing self-governance, the following should be pointed out:

- The unification of different territorial units will result in the entities that will have better economic potential. There will be less self-governing units with small economic potential.
- A small number of self-governing units within the state will make it easier to implement programmes aimed at social and economic equity.
- The shortage of qualified human resources will be a lesser problem as there will be smaller number of units requiring such personnel.

While discussing the medium level of governance we should consider that there are certain public services that would be hard to deliver by the municipal level. Besides, these functions may not be included in the central government's competences. At the moment, discussions are ongoing between the supporters of districts and the mkhare. We should also point out that to date it has not yet been clearly defined what is understood under a 'mkhare' and a 'district'.

The existence of districts in their present form will create serious problems during the amalgamation of municipal units. If there are three levels in the country, central, district and local self-governments, then we will have two levels of self-governance and it will not be easy to optimally divide competences between them, because the comparison of their territories or administrative and economic resources does not provide any basis for differentiating between their competences. Besides, considering the present scale of districts it will be difficult to delegate broad competences to these administrative units, because:

- Administrative resources available in districts are not sufficient for implementing a whole range of delegated competences.
- Under decentralization there are certain differences in the administrative activities of different territorial units. In our case we will have more than 80 territorial units in the country with broadly different environments (for instance, in the fiscal sphere).

Existence of branches of national agencies (such as the ministry of justice, the ministry of education, etc.) on the district level is sometimes used as an argument in support of maintaining this level of governance. But this is an issue of deconcentration rather than decentralization of power. It does not have much to do with the administrative-territorial arrangement of the country. The central government can select a model most appropriate for implementing its competences irrespective of such arrangement.

When speaking about the amalgamation of self-government units, we have to take into account that certain difficulties may arise regarding the protection of the rights of interest groups and population in some communities. Namely, small communities under municipalities may experience discrimination by the dominant unit (e.g. municipal centre) during the process of resource allocation and activity planning. Therefore, equalizing mechanisms need to be put in place.

- First of all, the corporate principle should be considered. It is possible to unify resources of individual communities as well as those of neighbouring municipalities in the process of meeting a specific objective (water supplies, common communications and facilities, etc.).
- The role of the private sector is very important in delivering specific public services. The commercialization of services, the establishment of a transparent system of municipal contracting and the prioritising of economic interests will largely prevent confrontations.
- It is also important to put administrative levers into force. It is possible to form a structure of community representatives, which will make consensus-based decisions.

Finally, the described version should not be necessarily introduced throughout Georgia. Administrative systems in high mountainous regions (with a large number of small settlements

located quite far from each other) and the capital city (huge territorial units and the need for their further division) should be approached differently.

The capital city is currently divided into five districts, but there are no representative bodies in these districts. There are only executive bodies – local administrations (gamgeoba). The capital has a unified representative body – city council (sakrebulo). The unified executive body is the government that is formed by the heads of district administrations (gamgebeli) of Tbilisi.

The current system of the city's division does not meet any of the municipal requirements: the districts are too large and do not provide closeness to the population. At the same time, they are too small to ensure reasonable management of city services.

In order to streamline government of the city it is increasingly important to develop unified system of city services on one hand, and on the other to form smaller units (based on historical districts), which will allow for government's closer contact with the public. Therefore, the present functions of the city's districts should be re-allocated between the upper (Mayor's Office) and lower (district municipalities) levels.

4. Economic Issues

4.1. Present Situation and Problems

The decentralization process also faces financial and economic problems. No progress will be possible either on the central or local levels unless the finance- and budget-related issues are settled. The political elite often regards the scarcity of finances as the only finance-related problem. Moreover, an ineffective, undemocratic and imperfect government structure and the inefficient mode of decentralization are often explained by financial problems. International experience shows, however, that financial, economic and social problems are settled only after the democratic and effective government structures are formed. Today the weakness of governance and financial systems largely contribute to scarcity of resources that Georgia faces.

Between 1998 and 2001, the legislation provided for six types of local taxes the share of which did not exceed 5% of local budget's tax revenues. In addition, there existed also national taxes, which were first accumulated in the national budget, and later, according to quotas defined by the law, were fully or partially transferred into the consolidated budgets of the district or a city directly subordinated to the central government. That meant that the central government had the tax revenue-related relationship only with the second level of the local government. The following taxes were earmarked for the local (district) budgets: income tax (60% until 2000 and 85% afterwards), profit tax (60% until 2000 and 85% afterwards), property tax (100%), land tax (100%), property transfer tax (100%), tax on the use of natural resources (100%), environmental tax (100%).

Funds from the district's consolidated budget were distributed among the district budget and the budgets of self-governing units of the district. These revenues were fully accounted for in the budgets of independent cities. The decision about how to distribute the funds among the budgets of self-governing units and the district budget was made by the representative body of the district government.

In fact, local self-governments had nothing in their possession. In order to take care of the state property on the local level, usually limited liability companies were created where the state owned 100% of the shares. Districts and towns that were not subordinated to districts then managed these properties.

Although in 2001, the organic law changed some principles of the local finance management, the model of allocating revenues has not been changed due to the failure to pass the law on local budgets and to make relevant amendments to the existing laws. Moreover, now that the organic law provides for the separation of powers between the local self-government and the local government and makes a distinction between exclusive and delegated rights, it is clearer as to what part of

revenues may fall under own revenues and what part can be attributed to conditional transfers. It emerged that the majority of local self-government units have been given only token amounts as their own revenues for exercising exclusive rights. No serious step has been taken to separate properties either.

Each problem listed below indicates the low level of fiscal decentralization and the ambiguity of the fiscal system in Georgia:

- Legal acts regulating local budgets have not been passed to date. Under the current legislation, general principles have been developed for the execution of the local budget, but there is no detailed distinction between budget-related rights of local self-governments and centrally appointed administrations.
- There is no single comprehensive system of long-term economic norms for tax and non-tax revenues to form budgets of local self-governments. Under the current regulations, the separation of budget revenues of the state, autonomous republics and other territorial units of the country is regulated by Georgian law, while its practice, especially in the districts, is essentially flawed.
- There are still no mechanisms or formulae for defining conditional transfers and equalizing transfers in the country. The central budget makes transfers to the consolidated budget of a district whose representative body then approves and transfers funds to local self-governments.
- The state property run by local self-governments has not been transferred into their possession on the basis of normative acts. Currently, local self-governments do not have the rights to the property.
- The acting legislation does not have a uniform approach regarding the full control of local taxes and local payments by local self-governments.
- Self-governments have no levers of influencing the tax administration. Considering that meeting budget revenue targets is a problem at all levels in Georgia, it can be argued that the central taxation agencies infringe upon the interests of local self-governments most, through either disregarding their share of revenues or illegally channelling these revenues to the central budget. Taxes from large companies with great potential are collected by the Large Taxpayers Inspection which focuses on the central budget. This largely decreases the actual revenues of local budgets.
- The heads of district councils are obligated by the government to bear responsibility for mobilising tax revenues. The result is an illegal interference of district councils into the business sector whereas under the law it is the centralized taxation bodies that should be responsible for mobilizing revenues.
- District councils decide what share of revenues from the state taxes should be retained by local self-government budgets. In reality, self-government budgets retain only the funds for the “protected paragraphs” – money needed to pay salaries to self-government staff. Thus no finances are left for self-governments to implement their exclusive competences.
- District governments exercise only delegated authorities. They have no exclusive rights. Hence, they cannot have any tax or non-tax revenues and the main source of their financing can only be conditional transfers the amount of which should be defined by the centre. There is no demarcation line drawn between the independence of local governments and the limitations laid upon them by the central government
- Local self-governments have meagre financial means to exercise their exclusive functions. The total budget of both local self-governments and local governments was 440 million Lari in 2003. Local self-governments have spent no more than 130 million Lari on exercising their exclusive rights, the share of four large cities (Tbilisi, Rustavi, Poti, Kutaisi) accounting for the half of it. Less than 40 million Lari has been spent in the rest of Georgia (the population

totals 2.5 million excluding the population of these cities) (16 Lari a year per person). Local self-government bodies cannot independently forecast the revenues of their budgets by types of revenues. As the law does not regulate this issue, district governments, without any set guidelines, define the types and actual amounts of revenues of self-governments within their districts.

- Major activities of self-government bodies are confined to exercising their delegated authorities, but the extent of their independence in doing this is naturally limited and in fact, boils down to meeting the demands by superior government agencies. Consequently the institutional aspect – the right to be elected – loses any sense because the elected bodies are obligated to meet the demands of the centrally appointed administrations.
- The concept of local budget is not clearly defined. Consequently, the two different budgets – that of the local self-government (village, community, borough and town within the district) and that of the local government (district) are implied in this concept.
- Such an ambiguous system poses a great threat of corruption and ineffective government decisions. Besides, the volume of communal and public services does not increase at the self-government level. Self-governments are unable to fulfil their social obligations and consequently their social liabilities accrue.

4.2. Recommendations

Administrative and territorial units can be sustainable only if they have autonomous rights in taxation and finance. The establishment and collection of taxes by the central government in a centralized way and their redistribution through a system of transfers eliminates the autonomy of local and regional units and creates a corrupt system. As local and regional governments completely depend on the central government, they tend to defend the interests of the central government and disregard concerns and grievances of local residents.

That is why there is a need for governments at all levels to have taxation powers. The overall autonomy of an administrative and territorial unit is closely related to its fiscal and finance autonomy. An administrative and territorial unit has no autonomy if it is unable to establish and collect taxes within the framework defined by the central government.

Competition between governments of various levels with regards to their administrative and taxation systems against the backdrop of free communications (free movement of people and capital, a unified information and communications system) is a precondition for a rapid resolution of existing social, economic, and political problems. The system that comprises competing levels of government is more stable and rapidly adaptable, it reduces or prevents the negative impacts of large-scale mistakes (made by the central government) and improves the quality of the government's performance in key areas of its competence.

Discussions about fiscal decentralization should focus on the division of competences. The division of competences should be based on the administrative and territorial organization arrangement of power, considerations of state security, as well as specific policy, economic and administrative requirements.

The system of responsibilities of local self-governments should not contradict their independence. International experience shows that it is expedient that local self-governments have three types of responsibilities:

1. *Exclusive competences.* Exclusive competences imply the exercise of powers by self-governments independently from other levels of government. In this case local self-governments define the forms of their exclusive responsibilities within the frames of their

own financial sources. It is also possible that a list of such responsibilities is provided in the law. While implementing exclusive competences, local self-governments should be limited only by a law, which defines the general standards in this or that sphere. These standards must be related only to particular public security concerns.

2. *Delegated competences.* This implies such responsibilities of local self-government that constitute exclusive competences of another level of government (regional, central), but have been delegated together with the relevant financial sources to self-governments for their implementation. Delegated competences may pose a particular threat to the independence of local self-governments if the delegation mechanisms are not clearly stated. These mechanisms should ensure that the delegation is voluntary and is implemented on the basis of individual agreements made with each local self-government body, adequate finances are provided and the framework of administrative control is clearly defined.
3. *Shared competences.* This is a set of competences implemented by local self-governments together with other levels of government (region, centre) or other local self-governments. In this case the financial participation should be share-based and all the above principles related to the protection of local self-governments' independence should be considered.

In the context of the division of competences between local self-governments and regions, it is expedient that infrastructure and communal competences be delegated to local self-governments. The scope of the regions' competences should be relatively limited and such a limitation should be reflected in the financing. Overall, the new model should distribute the burden of governance in the country based on the following scheme: the strong centre and the municipal level, and a relatively weaker region.

In order for the financial system of local self-governments meet the recognized basic requirements, it is necessary that:

- Local and regional self-governments make independent decisions on the expenditure parts of local budgets. There is also a need for introducing programme-based budgets.
- The social-economic equalization of local self-governments should be carried out through the use of formula-based equalization transfers. Local self-governments should have complete freedom in using the sources generated by transfers.

It is necessary to clearly define local self-governments' own budgetary sources. Local self-governments can make independent decisions regarding these sources. They should use these sources for financing the implementation of their exclusive competences. Considering the Georgian reality as well as international experience, the following sources of income can be identified for regional and local self-governments:

- For self-governments: local taxes, local duties, local shared taxes, non-tax revenues, equalization transfers.
- For regions: shared taxes, shared regional taxes, non-tax revenues.

Currently, there are 21 types of taxes in Georgia. Six of them generate more than 80 per cent of total tax revenues. At this stage, a new draft tax code, under which the number of taxes is to be reduced, is being developed. The reduction in the number of taxes has become a priority. This step will increase the quality of administering taxes, reduce expenditures, and simplify the relationships of enterprises with the tax inspection. This principle also needs to be applied with regard to local and local shared taxes.

The role of local self-governments in tax administration should be increased. Local self-governments should administer local taxes through their taxation agencies. This will prove to be

difficult because of little experience and the lack of qualified personnel. On the other hand, the relationship of a taxpayer with two (central and local) tax inspections is likely to facilitate corruption. Therefore, the selection of local taxes should ensure that authorities of the local tax bodies with regard to auditing the taxpayer are reduced to a minimum. As for the regional taxes, they should be administered by the central taxation agencies.

Thus, it is expedient that the following types of tax revenues be considered:

- For municipalities: local taxes (property tax, property transfer tax, small business tax, fixed tax) and local shared taxes from which the municipalities will receive a fixed share (income tax, profit tax).
- For regions: regional shared taxes (income tax, profit tax), shared taxes (environmental tax, tax on the use of natural resources).

Finally, the transfer policy should be defined. Currently, transfers are made from the central budget to districts that then make transfers to local self-governments within districts. The transfers made from the central budget are neither conditional nor equalizing. As a matter of fact, they are the means of covering up misbalances between consolidated revenues and expenditures of districts.

It is necessary to develop a formula for calculating equalization transfers. Amounts of equalization funds to be transferred by the central budget to local self-government budgets should be calculated on the basis of this formula and with consideration given to the social and economic differences between the self-governments. The formula should consider the volume and parameters of the total deliverable transfers that would reflect the potentials of and differences between particular self-governments. The central government should carry out the equalization of local self-governments.

Conditional transfers should be used to finance delegated competences. Special norms and financial norms should be introduced for each delegated competence in order to define the volume of each conditional transfer so as to ensure that the services under the delegated competences throughout the country are equal and in line with the national standards.

Currently there are no financial and service standards and the above spheres are financed by the principles and methodologies applied in the Soviet period. The situation is compounded by a fear that drastic and unexpected changes in these spheres may trigger social problems (growing unemployment, salary arrears, etc.). Thus it may be more reasonable to use a two-step approach:

1. Develop a formula on the basis of the existing system, which will work out pure financial indices based on the available information in this area.
2. Develop a more comprehensive formula for conditional transfers, which will reflect new financing approaches to types and volume of service.

5. Reform and Society

5.1. Upgrading Capacity of Local Self-Government Personnel

Developing democracy on the local level requires recruiting efficient and competent staff in local self-government. Local self-governments tend to be close to the population and the service provided by them has a great impact on each family.

The European Charter of local self-government explicitly spells out guarantees for the promotion and professional development of local officers and elected individuals: "*The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.*" (Article 6, Paragraph 2).

After the collapse of the Soviet system, the Georgian society – apart from requirements of the European Charter – has become more demanding towards effectiveness and competence of public officials. In particular, local self-governance personnel require skills that had not existed before.

The Georgian law *On Public Service* differentiates between two types of public officials: government officials on the district level are state public officials whereas those employed by city and village governments are self-government public officials. Despite such a classification, public service in Georgia is unified and public officials of local self-governments can easily move to state public offices and vice versa. The law establishes the following public positions: chief public official, executive public official, senior public official and junior public officer. Each position corresponds to a rank. The law also defines the principles of public administration. The principles and positions are common for state public officials and local self-government public officials.

The law sets forth guidelines for recruiting officials by local self-government bodies as well as the mechanisms for their promotion. Namely, special committees formed by self-governments conduct qualification tests to reveal the qualifications of officials and to promote them. Those who pass the test get bonuses and additional leave days.

In fact, the law *On Public Service* has not been enforced due to the lack of finances. Moreover, there is no general list of public positions in self-governments. The old classification whereby public officials are classified by function (e.g. an economist, book-keeper, engineer, etc) is still in use. Qualification tests have not been conducted in any self-government. Research has shown that local self-governments of small cities and villages have different positions.

As a result, the degree of public trust in public officials is very low. According to a poll taken in 2001, 78% of respondents negatively estimated the effectiveness of local self-governments, with 93% believing that local officials' qualifications were very low and did not meet the current needs.

Thus, there is a need to make local governments more effective in Georgia. Nor is the public satisfied with the service provided by local public officials. The views of local authorities and NGOs split on the reasons of low effectiveness. The authorities claim the lack of finances to be the major reason, whereas the NGO sector believes that it is the low qualification of public officials.

The situation is the same with regard to local council (sakrebulo) members. After the 1998 local elections, there were more than 10,000 local council members in Georgia. After the 2002 elections, their number decreased to 8,000 members. At present, only the councils of villages and cities are elected through direct voting. As for the district level, there are associated councils that are recruited by the heads of self-government bodies. The rights and status of local council members are defined by the law *On Status of Members of Local Representative Body – Local Council*. District councils are granted the right to supervise the executive government. The members of local councils are authorized to require information from and enter any organization of local subordination. The law does not set forth any qualifying requirements for council members. Despite this, international donors pay a lot of attention to training them. For example, in 1999, the United States Agency for International Development implemented a programme, *Developing Local Councils*, within which 1,200 council members were trained. Yet, the results of such trainings were quite modest. Many of the trained members were not re-elected and many just quit the councils.

The model of training local self-government officials in Georgia is an imported one. In the Soviet times, it was the highly ideologized party schools that provided upgrading of qualifications. Unlike some of the former republics of the Soviet Union (Russia, Ukraine) that maintained this model, Georgia completely rejected the old system. The NGO sector took the responsibility for filling the gap. Many international NGOs and agencies have developed new training services.

As a result, the training system for local self-government is completely decentralized. The advantage of this model is the high competition among the training-providers, which serves as an incentive for their further development. Besides, it is very cheap for the state to train public officials. However, the coordination between providers is very poor, there is an overlap of activities and there are no general standards. It is also noteworthy that the universities and educational institutes take almost no part in the training of local self-government officials.

Training materials is another issue. Few materials are available in Georgian; only a small number of organizations have developed their own materials. Organizations often use translated materials, not adapted to the Georgian reality. Scarcity of information is also a problem. There is an informational vacuum in the regions of Georgia. Many local officials are not familiar with the laws.

In conclusion we can say the following:

- With regards to self-government bodies, the law *On Public Service* is effectively suspended; consequently, status of the local officials is not secure, neither is there any motivation for enhancing qualification.
- The training system for local self-government officials is decentralized; it encourages the development of training organizations but complicates the formation of a unified set of standards. The need to join the efforts and coordinate the activities is apparent.

Thus, it is necessary to:

- Enforce the law *On Public Service* and apply the requirements for public officials' professional development and relevant qualification to self-government bodies.
- Elaborate uniform standards for training public officials, which will minimize the training providers' essentially different visions.
- Step up the coordination in the context of the decentralized system.

Instead of the existing system of administration (the appointment of public officials for an indefinite term, the absence of the performance-based remuneration, the lower remuneration compared to that in the private sector, etc.) a new system of administration should be established that would be based on the following principles:

- Signing shorter-term contracts with public officials
- Introducing performance-based remuneration
- Allowing expressions of creative freedom in activities of public officials
- Making salaries comparable to those in the private sector.

5.2. Public Relations

Due to the absence of a long tradition of local self-government in Georgia, the involvement of citizens in the process of governance at the local level is only sporadic.

The November 2003 events showed that society in general is not nihilistic or apathetic towards political and public activities. However, specific forms and mechanisms of participation need to be identified that will guarantee the public's real involvement in governance. Cooperative models of participation should be introduced alongside with confrontation models, which will facilitate a dialogue between society and local governments, ensure public involvement in debates and participatory planning. At present, local self-governments do not use any particular form of public relations: no public discussions and meetings take place; no public opinion polls are taken on current problems. Government bodies use public relations activities irregularly. They only intensify before elections or in response to crises such as protest actions of different interest groups, blocking roads by people demanding electricity, etc.

The problems of the relationship between society and local governments are visible in almost every sphere:

1. *Public information.* The public's participation in governance depends to a great extent on the availability of public information. According to the general administrative code, public information should be disseminated immediately, or, if the information needs to be processed, it must be issued within 10 days. Evidence suggests that these timelines are not always followed. Sometimes it takes public organizations one or even two months' focused effort to obtain specific information. It is easy to imagine how difficult the procedure can be for an ordinary citizen. People find it difficult even finding their way in local self-government buildings. Very often there are no numbers at the doors and there are no building plans displayed. Nor are the lists of officials, or their positions and telephone numbers available. The reception hours are displayed mostly at the doors of officials but there are no guidelines as to how to set an appointment. No working hours are allotted for discussing appeals and complaints. All of the above violates the provisions of the general administrative code.
2. *Meetings between local councils and district administrations.* The public is unaware of the dates and schedules of meetings. Information about meetings to be held at local councils, as a rule, is displayed a day or two days ahead of the event in the local self-government building. Notices about district administration meetings are not displayed at all. The same is true about the agendas of local council and local administration meetings.
3. *Publishing normative acts.* According to law the acts issued by local governments should be published in their official newsletters, while if they do not have such media outlets, the regulations of a relevant representative body should define the way of publicizing an act. A study of local council's decrees has shown no evidence of such rules. In practice, normative acts are publicized by displaying them in administrative buildings, or in places of social gathering, as some councils practice. Publicizing the decisions by local administrations is even less organized.
4. *Response to public demands.* Paperwork is carried out in an old-fashioned way within local governments. The system of responding to letters is also out-of-date and ineffective. The laws concerning local self-governance disregard the issue of reacting to citizens' letters, only the law on the status of local councils mentions (in very general terms) that one of the forms of a council member's activities is meeting voters and considering their appeals and complaints. The law states that a council member can familiarize participants in the council meeting with the citizens' letters and appeals. This is all that the law provides for with regard to such an important issue. The charters of self-government bodies disregard completely the issue of responsiveness to citizens' letters, appeals and complaints.
5. *Legal initiatives.* The law *On Local Self-Government and Local Government* does not define rules for initiating legal acts by the public. Article 46 states in general terms that "physical and legal entities can bring a suit to court in accordance with the rule established by law and appeal the decisions of local self-government bodies, also make an initiative at a local council meeting". Stacking these two totally different statements (appealing a decision and making an initiative) under one paragraph looks quite peculiar.
6. *Citizens' involvement in the decision making process.* According to law "the member of a council's commission cannot be the member of the council". The law does not provide any guidelines for inviting a citizen to act as a commission member. This issue is defined in the statutes of local councils. In practice, many non-members participate in commissions, but mostly they are specialists in specific areas. It is not common to involve representatives of interest groups in the work of commissions that would consider the interests of people with different backgrounds in decision-making processes. There is another problem: in most local councils commissions are formally established, but their members do not gather regularly which makes them ineffective.
7. *Public meetings.* Self-governments almost never use an important form of citizen's involvement such as public meetings. Only NGOs are initiators of public meetings on site. The laws do not regulate this issue.

8. *Budgeting process.* The tradition of public discussions of budgets and the involvement of the public in its formulation has not yet been established in the country. Public control over its implementation has not been developed either. Even if the budget is published, most people do not understand much about complex financial tables and budget terminology. It is difficult to find out how the numbers on the paper reflect the performance of the public sector or the quality of the service provided by the state.
9. *Public councils.* Setting up civil committees and councils can be one of the most effective mechanisms for exercising public control over the activities of local self-governments. Such committees are acting bodies of proactive citizens, which carry out the monitoring, study the public opinion on different issues, and serve as mediators between society and the government. Such local public councils are not common in Georgia; only individual so-called civil advisory councils were established within the framework of some NGO programmes.
10. *Collaboration with public organizations.* With few exceptions, the civil society is weak in the regions and it cannot influence local policy making. Local self-governments are not very enthusiastic in maintaining the relationship and collaboration with NGOs, but certain positive experience has been accumulated. Information centres (functioning in 10 cities of Georgia) are successful examples of such collaboration. Another example is the project implemented by an NGO coalition together with the Mayor's office in Tbilisi, which made it possible for the Tbilisi budget to shift to the principles of programme planning.

In conclusion, it can be said that if and when the qualification of local government officials is low, and society has not developed civil involvement skills, it makes sense define particular forms of citizens' involvement by law and to assign more specific tasks to local bodies in order to guarantee openness in decision-making.

For example, it is desirable that in order to promote citizens' participation, the law obligates local governments to hold public discussions of the budget as part of the budgeting process. Above all, this will contribute to raising public awareness in this sphere and to developing qualified public opinion.

5.3. Ethnic Minorities and Municipalisation.¹²

The relationship with the minorities (especially with ethnic enclaves) is one of the major problems arising in the process of the country's administrative and territorial organization.

¹² One of the members of the expert group, Otar Zoidze, has a different opinion regarding the mentioned sub-paragraph. According to him, it is not justified to use the term "national minorities" in reference to the citizens of Georgia of Armenian, Azeri or Ossetian ethnic origin, because:

- a) National minority is a legal term and describing a specific group of people as a 'minority' implies the acknowledgement of specific legal consequences defined by law.
- b) There are no Armenian, Azeri or Ossetian ethnic minorities in Georgia, there are only Armenian, Azeri Ossetian Diasporas like the Armenian Diaspora in France, USA and Russian Federation, the Azeri Diaspora in the Russian Federation, the Turkish Diaspora in Germany. In the countries of strong democratic traditions the groups of individuals belonging to such ethnicities are not regarded as national minorities and, correspondingly, the conventions on the defense of national minorities are not applicable to them.
- c) Diaspora cannot be a national minority only because its members are concentrated in a given area. The issue of legal consequences can become an aggravating factor. The rights of Armenian, Azeri, Ossetian, Russian or Ukrainian Diasporas that do not live in compact settlements should differ from the rights of Armenians, Azeris and Ossetians who live in such settlements.
- d) The problems concerning the Armenians or Azeris who are concentrated in Samtskhe-Javakheti or Kvemo Kartli should be discussed in the context of their relationship with the Georgian state and their integration in the state rather than in the context of defending the rights of ethnic minorities.
- e) Therefore, it is more reasonable to use either the terms "Diaspora" or "non-titular ethnic group".

The assumption that the decentralization of the government will completely resolve the confrontations characteristic of any multiethnic society is wrong. The formation of an effective administration system may facilitate the resolution of conflicts, but it also may lead to deepening of conflicts.

The issue of the country's territorial arrangement should be separated from the issue of maintaining cultural identities of minorities or the problems related to the state integration policies. At the same time the mechanisms for tackling both problems shall be considered in the process of the country's political and administrative organization. In order to settle these problems it is necessary to create equal starting positions for all citizens.

In the case of ethnic minorities this will mean ensuring that ethnic minorities have both the right and resources to form independent unions, which will guarantee the protection and development of their culture (in the broadest sense of this word). State institutions should collaborate closely with such organizations.

Broad participation of civic institutions in government can best guarantee the protection of the interests of society as a whole, and particular groups within it (ethnic minorities among them). The government itself is interested in increasing participation in political and civil processes. In this case, settling most acute problems in regions predominantly populated by Azeris or Armenians will depend on locally elected self-governments rather than on the central government. As a result the problem will no longer have an ethno-political hue and will no longer be perceived as a conflict between the central government and the ethnic community.

Unfortunately, Georgia lacks experience in tackling such problems. Consequently, it is necessary to clearly define from the very beginning basic principles for state policies in this area and to plan specific actions to meet the needs of all groups of society.

With respect to ethnic relationships, the process of reforming the administrative and territorial system should include the following:

- To establish an electoral system which will guarantee the representation of minorities in electoral bodies at all levels of government. This will increase the legitimacy of ethnic minorities and facilitate the integration process of the representatives of different ethnic communities;
- For the government to formulate the relevant state political concept and elaborate special programmes. Specifically, such programmes should contribute to ethnic minorities' meeting the requirements of public positions;
- To make the legislation stricter with regard to everyday nationalism and offences against national dignity;
- To pass legal acts stipulating the protection of the rights of ethnic minorities living in Georgia. Georgia should join relevant international conventions (namely, the Council of Europe Framework Convention on Minority Rights) and strictly abide by them;
- To combat the information vacuum in ethnic enclaves (developing media in minority languages, etc.);
- To popularize best practices of interethnic relations and encourage new initiatives in this direction.

In addition to the above mentioned, the government of Georgia should take the following steps together with civil society in order to settle existing conflicts and prevent future crises:

- To elaborate action plans to solve particular issues;
- To monitor permanently conflict areas and conflict related problems;
- To confront and eliminate any propaganda of ethnic rivalry;
- To implement rehabilitation and restitution programs for victims of conflicts;
- To strengthen information policies as needed.

The above steps will likely improve the collaboration between the elites representing the interests of ethnic minorities and the state/public as well as minimize the probability of crises.

At the same time the protection of ethnic minority interests should not be in conflict with civil integration processes or the principles of equality stipulated by law. If an ethnic minority's interests are protected at the expense of violating another community group's (including the majority) rights, the alienation among the representatives of different ethnic communities is likely to grow further.

6. Conclusions

Georgia's administrative and territorial arrangement has become one of the most controversial issues. Over the 12 years of independence, the country has failed to develop the basic principles of future reforms in this area, let alone to settle the problem.

The current system is characterized by a whole series of problems; among which the following should be singled out:

1. The absence of a comprehensive vision on reforms in the political establishment;
2. The irrelevance of the current model of the administrative and territorial organization to the new reality;
3. A high degree of confrontation between the centre and autonomous entities, and between the centre and the regions (especially ethnic enclaves);
4. The absence of local initiatives and the confusion of competences on the municipal level;
5. Economic problems: the failure to separate property and taxes and to establish budget relations among different levels of government;
6. The poor qualification of public officials and the absence of motivation;
7. The low involvement of society in governance;
8. The absence of a clear state approach towards ethnic minorities.

In order to improve the current situation it is necessary to achieve the following:

1. Agree upon the main principles of territorial and administrative organization of the country based on the public consensus and the elaboration of relevant concepts and strategies;
2. Shift to the two-level system of local self-governance (large municipalities and regions);
3. Establish a clear division of competences of different levels of government (centre, autonomy, region) and the guarantees for protecting the rights of all levels;
4. Define the competences and rights/responsibilities based on the principle of non-centralism and a support to the local initiative on the municipal level.
5. Transfer certain portions of property and tax revenues to self-governments; introduce a decentralized budget and a transfer system;
6. Upgrade the skills and enhance the motivation of public officials;
7. Establish an effective system of public involvement in governance;
8. Develop a uniform state policy with regards to the integration of ethnic minorities and establish guarantees to defend the rights of minorities.

There is no alternative to handing the rights and relevant resources to regions, because otherwise a whole series of external (the increasingly tarnished international image of the government and the state in general, with all its negative financial and political implications) and internal (the

radicalisation of local initiatives that may lead to the escalation of tensions between the centre and local self-governments) complications will emerge.

There is no single common and verified vision on decentralization. In addition to identifying the flaws of a given model, it is necessary to develop the most appropriate model and implement the activities necessary for its implementation.

The above changes should be implemented considering two major guidelines:

1. Elaborating a realistic system based on pragmatic interests that through maximum optimisation of the government structures will facilitate the right allocation of limited resources to the sphere of public administration in order for the government to keep promises made to the population and to fulfil the assumed obligations.
2. Taking into consideration the existing traditions and expectations of society so much needed in the process of reform implementation, usually in order to gain the support of particular social strata and interest groups.

The realization of the non-centralism principle will result in the establishment of the unified polycentric political, administrative and financial-economic system that will guarantee the creation of a strong and competing environment. This will lay the basis for building a viable state and ensuring its rapid development.

Commentary on the Policy Paper

Distribution of State Power between the Central and Local Levels

Alexander Mihaylov

The final report is elaborated by a **team of experts**, as follows: Davit Losaberidze, Ivliane Khaindrava, Zaur Khalilov, Lela Khomeriki, Davit Melua, Tengiz Shergelashvili, Arnold Stephanyan and Otar Zoidze. All these experts are well known as professionals and people who work for the implementation of the local self-government reform in Georgia.

The represented material for a reference is nearly 44 pages and is structured into introduction, four chapters and a conclusion. Nevertheless the fact that there is a special conclusive chapter at the end of the material in every chapter there are specific recommendations. That makes the material **pragmatically oriented and with a practical value**.

The introduction makes a historical review and presents the theoretical aspects of the analysis.

The authors say that "In Georgia it is possible to identify two levels of administrative and territorial arrangement. These are: the first or lower (local - town, borough, community, and village) and medium (regional - district, region, and province) levels.". That quotation shows the main problems in classifying Georgian administrative-territorial organization – there is **no unified structure**, there is no clear coincidence between administrative and territorial borders and content. If we add the existence and contradictory behavior of the autonomous republics and district - the picture becomes totally complicated.

The *historical overview* shows the different types of administrative-territorial rearrangements in Georgia, the reasons for the changes and the main important results as a consequence of the existent non-optimal structure. The authors see the main problems as **low quality of education, bad human resource management in district administrations and political use of ethnical voting** in ethnic enclaves.

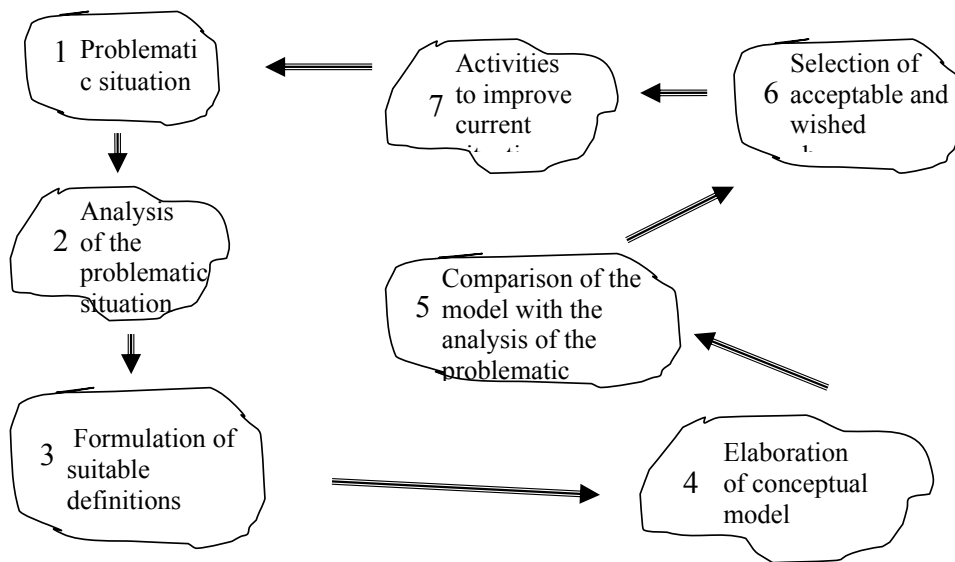
There is no clear definition what is the distinction between region and district in common and specifically in the case of Georgia. There is no analysis made on the level of assignment of functions and their optimal essence. The uncertainty – that is from regional, district or local level importance is the principal obstacle for the next steps of reasoning.

There is **no suitable comparison** of the Georgian administrative-territorial organization and the assignment of functions between different levels with the successful international practices. That makes the analysis much more limited. The same is the situation related to the nature and development of Georgian legislation in the spheres of regional and local matters.

One of the main characteristics of the modern world is that our reactions of the changing world are not fast and efficient enough. It is obvious that when the complexity of the problems grows, the process of finding solutions for these problems needs more time. At the same time, the number of possible good decisions decreases, because many of our solutions will have a connection to the problems which have lost their actuality.

The significant conclusion is that in order to manage the changes around us we have to know the nature of these changes. That is why the important thing is the choice of the theoretical model of study. In our case we have a situation analysis of the structure of local and regional governance in Georgia.

Unfortunately, the preferred method of approach is **mainly descriptive** and gives us knowledge when we need understanding. The knowledge allows us to picture the current situation, but the understanding gives us opportunity to explain it.



That is the **scheme of one of the methods of approach** in the sphere of the social changes. The process starts with the existence of problematic situation (1) and its analysis (2). After the formulation of the appropriate definitions (3) we go to the next stage – elaboration of conceptual model (4). This model is compared with the analysis of the problematic situation (5) and on that base the selection of acceptable and wished changes is made (6). These changes could be achieved through specific activities (7). Finally, if the situation is still problematic, the cycle is repeated again.

What is typical for the policy papers in the first period of the transformation in transitional countries is that they usually finish at stage 4, some on stage 5, and in very rare cases – at stage 6. That is happen because the circulation on the points of the circle requires not only research activities, which is an expert's work (stages 1-5), but also series of decisions that are **politically determined** (6-7).

The distribution of the power between the central and local levels is a question of policy. But the policy can be changed and such a change must be positive. The balance of the authorities between different levels of governance is a dynamic dimension and the maintenance of that balance needs public understanding and support. The most important thing to consider is that the total concentration of the power in the center is an obstacle for the development. The state of being of one pole of authorities, breaks off these authorities from the citizens, which grants the legitimacy of the government. But without legitimacy every power becomes non freedom. Now, it is very important for us to define the context and dimension of the assignment of the authorities and responsibilities between different government levels on the present crossroad of social development. Such an assignment should not be random, based on expert prognosis and calculations. The distribution of state power and intergovernmental relations could be sustainable not only if it is under the requirements of some good theoretical model. More important for such a distribution is to be politically motivated, to be connected to the main core of the policy, otherwise – to be based on the respective **democratic values**.

Two more other questions are interesting in the proposed concept paper. It is true that "... any issue should be resolved by giving priority to human rights and freedom. Such a system will guarantee the freedom of a single individual...". That is why it is confusing to see how in next paragraph family is put as a part of institutional interrelations - "At the same time, a hierarchy should be observed: **the**

family has a priority over public institutions, public institutions have a priority over community interference, community interference has a priority over district interference".

The second question is connected with so called principles of non-centralization. "Such arrangement of the territory and the governance is based upon the principles of **non-centralization**." The use of this term is an attempt to escape "and not be limited by the frameworks of different theoretical models (federalism, centralized unitary, decentralized unitary) that will let us avoid the abstractive-theoretical and futile discussions on the advantages of the federalism or decentralized unitary models. On the next level of development the competence of the self-governance is possible to be increased using the principle of delegating instead of the principle of non-centralism."

What we see here is in fact disclaimer of the validity of the commonly accepted concepts and ideas, putting the stress on the specific Georgian ways, which are different from the international practices.

European concept is based on the principle of **subsidiarity**. According to the principle of subsidiarity, power should generally be exercised at the level closest to local people. It is inappropriate to maintain powers and responsibilities at central level if those powers may be better exercised at local level. On the other hand, responsibilities should be exercised at the higher level if they may be exercised more appropriately at that level.

Subsidiarity is the principle that best guarantees the efficient execution of public policy at all levels of government and at the same time ensures **active public participation in local decision-making**. However, it is important that the application of the principle of subsidiary does not contradict the territorial unity and sovereignty of the national state.

The idea of subsidiarity is like a coin. There are two sides to it. On the one side is the delegation of power. On the other is the local authorities' capacity to exercise that power responsibly and effectively. This requires, for example, competent staff and committed elected representatives, along with adequate funding, organisation and facilities to deliver services properly.

The first chapter reveals current situation in the area of regional issues in Georgia. The policy paper mainly discusses the problems of relationships between the Georgian central authorities and ethnic autonomies (Adjarian, Abkhazia and former South Ossetia). Special accent is put also on the problems of the ethnic enclaves. Nevertheless the fact that a lot of historical and statistical information is presented, the analysis couldn't go out of the very narrow space of the ethnical description of the regionalism in Georgia.

The lack of analysis, concerning the existing premises and real functioning of the regions in Georgia is one of the main reasons for the contradictious conclusions in the end of this chapter. The theses suggested in the policy paper show that the discussion about regionalization of Georgia is in an early phase, when at the same time there is an enormous need of regulation and improvement of that sphere.

The problem of **regionalization is directly related** with all the kind decentralization issues. And all the decisions, concerning that sphere are part of the process of administrative-territorial rearrangement of Georgia and the distribution of competences between different state levels as whole. That is why our comments on this issue will come together with the proposal for improvement of local self-government in Georgia.

The chapter of municipal arrangement is very well elaborated and not only describes the recent development of the self-government and government on the local level, but also it establishes a frame for possible reforms.

The current situation is characterized in a very good manner. The advantage in that case is that the local government in Georgia is studied "de facto", i. e. out of the limitation of the standard believes and prejudices but according with the existing realities. It is interesting that parallel with that the issue of legalizing the regions is put here as possibility.

The missing administrative-territorial rearrangement of Georgia is identified as main obstacle for the decentralization. The absence of administrative-territorial reform defines the country as transitional. One can argue the validity of the marked as **main "transitional" problems**. It is beyond doubt that local self-government units in Georgia are very much and extremely small, but we can not

say the same for "political ambitions", "irrational character of the governing system", or even for the fiscal inadequacy.

Maybe the most important here is the conclusion, regarding the lost trust of the citizens in the local authorities. The lack of incentives and over-politization of the real problem of the people are wonderful reason not only for the defining of the needs of reforms, but as a way to amplify and use of so called "sense of urgency", which is the very precondition for every kind of positive change.

The authors have made an assumption of forming of two levels of self-governance in Georgia - regional and local. In their hypothesis they consider detailed possible distribution of the competences between different levels of the government.

It is noted once again that the "...political elite has not realized completely what kind of administrative-territorial arrangement the country should have in the future.." but we have to have in mind that that elite should take the political decisions, related to the reforms. That is why the recommendations in that chapter have a character of a political message. The last part of that chapter is full of expressions like: "it will be difficult", "it is possible to form", "there may be some difficulties" etc.

The next part of the material presents the **economic and financial premises** and issues of the improvement of intergovernmental system of Georgia. Again, very well prepared descriptive analysis of the recent development can be found. The lack of regulation of the local self-government budgets and property rights of the self-government units is noted but there is no proposition of well defined model, providing financial autonomy of the local self-government. It is also true that different possible variants are mentioned, but they can not be used as an applicable model (as a set of acceptable and desirable changes).

The policy paper make a special attention of the issues, related to the statute and functionality of the **civil officials** on local and regional level. The citizen's participation and their involvement in the policy making on local and regional level are also very well prepared. We can say that at that part the material is very good and it has operational character and direct application.

The relation of the local self-government reform and **ethnic problems** is developed in the next chapter. The need of specific targeted state policy in this sphere is crucial. It is underlined that the decentralization is one of the key decisions to find a solution of ethnic problems in Georgia. The decentralization will help to shift the relation "Center government – ethnic region" with the fair and healthy competition between different regions in the field of economical and social development.

The material emphasizes on the **need to amend the existing electoral system** in order the representation of the minorities' on local elections to be guaranteed. The improvement of antidiscrimination and integration legislation should go parallel with the special state programs.

The presented conclusion of the policy paper is too general and this makes it difficult to be transformed into operational policy documents. The conclusions are as follows:

1. **Agreement** upon the main principles of territorial and administrative arrangement of the country based on the societal consensus and elaborating relevant concepts and strategies,
2. A shift to the **two-level system** of local self-governance (large municipalities and regions),
3. A **demarkation of the different levels** of governance (centre, autonomy, region) and guarantees for depending the rights of all levels,
4. **Define clearly** the competencies and rights and obligations based on the principle of non-centralism and supporting the local initiative on the municipal level.
5. Hand **some part** of the property and tax incomes over to the self-government. Form decentralized budget and transfer system,
6. Upgrade the skills an enhance the motivation of **public officers**,
7. Establish an effective system of **public involvement** in the government processes,
8. Elaborate the **unified state integration policy** regarding the ethnic minorities and guaranteed mechanisms for defending the rights of the minorities.

Overall remarks

The proposed policy paper tries to cover a **big area of problems**. On one hand it is good to have a broader view on the situation and ongoing processes, but on the other it leads to the lack of concentration and completeness.

The theses are **too general**, and nevertheless the existing agreement and consensus on them, the way they are presented makes them standard and with universal validity which make difficult for them to be operational at the next stage of the management process. The advantage of the policy paper could be the **inventory of the existing legislation**, related to the state governance and intergovernmental structure.

The topic of the intergovernmental relations and the distribution of the competences between different levels of governance is one of the most **complicated issue for every state** not only because the national specifics but for the difficult and unique way of establishing of these relations. That means that the understanding of the content of the theme needs some level of knowledge and experience.

The material is **written in a professional manner**, in covers various dimensions, but without using complex theoretical constructions. That gives the opportunity for the ideas to be **understood from all different audiences and stakeholders** – government, citizens, international organizations. Nevertheless the transition to next stage – transformation of the theory formulation into planned changes, into strategies and action plans should be preceded by **education and training of the specific participants and supporters**. That will help them not only to be better involved into the process, but to work actively and efficiently. The best way in that case is to start with the training of journalist from local, regional and national media, working on decentralization issues.

The policy paper examines the topic from all possible point of views. The distribution of State Power to the Central and Local Levels is put into the context of economic, social and ethnical aspects both – in regional and local arrangements of Georgia. That makes the material **completely adequate to the task**. Something more, the varied directions of the analyses contributed for the excellent clearness of interrelations between the distribution of power and its influence onto different spheres of public life.

Our observations show that the prevailing number of Georgian politics share the opinion that recently, the distribution of the competences between the central and local level is completely insufficient. There is also a consensus about the need of accomplishment of reform in this sphere. The real problem in fact is that the politics refuse **to define the modernization of intergovernmental relations as problem** which needs **urgent actions**.

Many people compare the unsolved Georgian problems in the sphere of regional and local democracy with the existing similar specific situation in some developed European countries. If I could make a paraphrase of one wise man quotation, it will sound as: One of the privileges of the rich country is that it can afford itself to be unreasonable in longer term than the poor country can afford it.

To establish a **sense of urgency** is the priority task for any reform. Politics must have a reason, and a really good one at that, for doing something different. Together with experts they should examine market or competitive realities and **identify an urgent need in terms of a crisis, potential crisis or great opportunity**. This is not a sky-is-falling scare tactic. It is a necessary step to shock people out of complacency - to make them understand that the current situation is more dangerous than leaping into the unknown. This is a critical first step of every reform. According to John Kotter's experience¹³, 50 percent of change efforts failed right here. His studies further suggest that about 75 percent of the stakeholders must accept the urgency if the overall effort is to succeed.

That is 100 percent true for our case in Georgia. And the urgency of the problem with distribution of competences is not only connected to the categories of low economic, social and public efficiency and effectiveness at whole, but as an overcoming the **deficits and shortage of democracy**.

The shortage of democracy means that there is deep misunderstanding of social processes. The phrase: **“Government of the people, for the people and by the people...”** is not only a well

¹³ Kotter, John P. *Leading Change*. Boston, MA: Harvard Business School Press, 1996

sounding quotation¹⁴. Democracy is a goal based on the worth of the individual and the equality of those individuals. The goal of a democracy is a free society, in which power is shared by equal individuals, and where each person is in fact treated as a worthwhile being and where each person is free to be a diverse individual rather than a mere unit of a collective majority.

Conclusion

I consider that the represented approach copes with the whole sphere of the state modernization and is absolutely realistic. The suggested recommendations own the necessary content and internal consistency. The realization of the reform through this approach needs publicity, public support and constructive dialogue with all stakeholders.

Taking into account the extremely rich analysis of information and ideas, represented in the policy paper, I consider that it has been prepared according to the project requirements and with a highly professional sense and will be very useful in the process of state reform in Georgia.

¹⁴ Abraham Lincoln Gettysburg Address (November 19, 1863)

Commentary on the Policy Paper

Distribution of State Power between the Central and Local Levels

Mkrtych (Sos) Gimishyan

1. INTRODUCTION: THEORETICALASPECTS

Any reform of the government or redistribution of power between the central and local levels is, in a broad sense, a public governance reform. For public governance reforms to be successful, one must first of all clearly set the true goals that will determine the concept of reforms. In this concept, a crucial role will belong to the administrative and territorial division of Georgia, because without optimal and clear resolution of this problem, the goals will not be achieved and the society will be prone to conflicts. Given the fact that contemporary Georgia has a rather large proportion of non-Georgian citizens, residing both compactly or dispersed throughout the country, and that the country has administrative and territorial entities of various status, the public governance reform in Georgia can pursue various goals. For

example, the reform can aim at the creation of a unitary state; or the reinforcement of territorial integrity;

or the establishment of either a federation or a confederation of the main ethnic groups of which the Georgian nation is composed; or strengthening the state administration at the expense of the citizens, whether ethnic Georgians or not; or creating especially favorable conditions for the development of ethnic

Georgians; or enabling ethnic Georgians to dominate over the rest of the nation, under the slogan *Georgia*

for Georgians; or creating a social hierarchy of citizens in accordance with their religious identity.

One can suggest yet another goal: ensuring the fundamental rights and freedoms of all the citizens of Georgia, creating equal and favorable conditions for their intellectual, spiritual and cultural development, allowing for any traditions and customs – and all this for the good of Georgia, without special reservations for “ethnic minorities”, “ethnic enclaves”, “ethnic Diasporas”, “non-Georgian” or indeed any ethnic groups. Of course, there are many options to choose from. Unfortunately, there are plenty of bad options and only one optimal and right. The historical mission of finding this optimum lies with the political thinkers of Georgia, committed to universal human values and filled with optimism after the Rose Revolution.

Unfortunately, the paper does not clearly formulate the goal of the reform, i.e. the separation of power between various levels. Yet we must clearly define the overall goal before we formulate the concept of reforms, and then elaborate the strategy of implementation, and finally point out the specific issues that have to be addressed in order to achieve the goal. With a goal in mind, it is much easier to elaborate one of the key components of the reform: an optimal system of territorial division, which is essential for efficient separation of power and for the development of Georgia.

The constitutional reform, of which no serious mention is made in the paper, shall become another significant task. Yet it is the Constitution – the contract made by the Georgian nation – that can alone

guarantee the success of reforms, including a new system of territorial division, the separation of power between various levels, and the emergence and development of a truly democratic local self-government system.

Being the fundamental document that determines Georgia's governance system, its administrative-territorial structure, and the rights and duties of its subjects to ensure stability and mutual trust between the subjects and various groups of which the Georgian nation is composed, the Constitution, can only be adopted or amended by means of a national referendum. Of course, before this can be done, an unambiguous and final decision must be made as to who belongs to the Georgian nation. One more reason for putting the Constitution up for referendum is that central authorities worldwide, and especially in post-Soviet transition countries, try to adapt both public governance and territorial division to their corporate needs by gradually changing the laws.

Bearing in mind the ease with which presidents and governments ensure the obedience of parliaments when it comes to adopting the "right" laws, nothing short of constitutional guarantees can provide a strong foundation for the emergence and evolution of local self-government. In our opinion, the Constitution should establish the following minimal set of guarantees:

1. Execution of local self-government parallel to central governance, its autonomy, accountability to the law and voters.
2. Local self-government must be exercised solely by local authorities in the country's entire territory.
3. The design of local self-government bodies must preferably have a two-tier system.
4. Municipalities must be recognized as administrative and territorial units with local self-government bodies elected by the populace; any appointment of local officials or other interference by central authorities must be ruled out.
5. Every local self-government authority must be entitled to an autonomous budget, with revenue in the form of local taxes, duties, fees and shared taxes, the rates of which, within the limits of the law, are determined by the municipalities.
6. Every local authority must be recognized as an entity endowed with property rights; the local authority is entitled to that part of state property which is necessary for it to exercise its exclusive and delegated powers.
7. According to the general competency principle, local authorities must have full discretion to exercise their powers in the territory of the municipality with regard to any matter which is not assigned by law to any other authority.
8. According to the subsidiary principle, central authorities must delegate their powers, when economically appropriate, to local authorities which are closest to the citizen. This will make decentralization irreversible.
9. Powers assigned to local authorities must be full and exclusive.
10. Local authorities are independent in their personnel policy within the limits of the law.
11. Local authorities must have the right of recourse to a judicial remedy, including the right to appeal to the Constitutional Court.
12. Central authorities must have a clearly defined right to exercise legal or specialized control over local authorities within the limits of the law, etc.

Constitutional guarantees are needed to limit the ability of central executive and legislative authorities to change the public governance system to their corporate benefit by adopting new laws. Another essential

step is the ratification of the European Charter of Local Self-Government which provides important guarantees for the development of local self-government. After this theoretical introduction, let us directly

comment on the study made by the Expert Group, with special focus on its conclusions. We would like the reader to view our modest suggestions as a wish of success and prosperity to the Republic of Georgia and the entire Georgian nation.

2. PRINCIPLES OF REGIONAL STRUCTURE

In Chapter 2, “Regional Structure”, the authors quote from the Constitutional law on the status of the Autonomous Republic of Ajaria, adopted by the Parliament of Georgia on July 1, 2004, after the reinstatement of Georgian jurisdiction in Ajaria. The fact that the autonomy and separation of power are in reality “formal”, and the “the bodies of the Adjaran Government are turned into the marionettes of the central authorities”, attests to the undemocratic nature of this process. The paper mentions that the President of Georgia is authorised to dismiss the Supreme Council of Adjara (the highest representative body of the autonomy), to propose the candidacy of the Head of Ajarian Government, to suspend or annul decrees made by the Ajarian government, etc.; and likewise the Parliament and Government of Georgia have the status of “superior authorities” with respect to the Supreme Council and Government of Ajaria, and, consequently, the Parliament of Georgia can suspend laws adopted by the Supreme Council of Ajaria, and the Government of Georgia has the right to participate in the selection and appointment of the Ministers of Ajaria. One can conclude from this that events in Ajaria had absolutely nothing in common with the ideas and goals of the Rose Revolution.

Unless this state of affairs changes, it cannot but cause serious problems in the future. With respect to Ajaria, the Georgian authorities have, mildly speaking, made a mistake, because European presidents, parliaments and governments do not exercise such powers with regard to even the smallest communities. Bearing in mind the existing problems with Abkhazia and Southern Ossetia, it would have made sense, as soon as Ajaria was reinstated as an integral part of Georgia, to delimit powers between Tbilisi and Batumi, raising the autonomous status of Ajaria to the greatest possible extent (making it higher than that assigned to autonomies in Russia). This would have shown Abkhazia and Southern Ossetia that, as parts of Georgia, they would have greater rights and opportunities to cater to the needs of their citizens, and that it is in their interests to accept Georgian jurisdiction. After recent events in Abkhazia, this is hard to imagine. Naturally, this situation raises apprehensions in Georgia’s ethnic enclaves. In Samtskhe-Javakheti and Kvemo-Kartli, there is the problem of “education and independent cadre policies”, and “the absence of a unified strategy of teaching the state language to the ethnic minorities”. It is mentioned in the paper that local Azeris are “a minority in the governing structures. The key positions are occupied not by local representatives but by appointees from Tbilisi”. In civilized countries, such problems are solved in the light of fundamental human rights and freedoms, through local selfgovernment: even the smallest municipalities, to say nothing of provinces or larger units, have their own recruitment policies.

As regards the “non-Georgian ethnic groups” living in historically compact areas, they are entitled to education in their mother tongue but with the obligation to study the national language and history. As to those representatives of “non-Georgian ethnic groups” who wish to become public servants, they must make the effort themselves to acquire adequate command of the national language. Otherwise the implementation of “a strategy of teaching the state language to the ethnic minorities” may be reminiscent of the Soviet Russification policy and assimilation of ethnic groups that caused resentment and protests in all the Soviet republics. Such an approach to solving the problems of “enclaves” cannot lead to success. The authors are aware of grave problems that prevail in the so-called enclaves of Kvemo-Kartli and Samtskhe-Javakheti where the majority of the population is ethnic Azeris and Armenians, respectively. The paper states that problems abounding in these regions can be explained both by “the absence of unified strategic or tactic vision” on the part of the state and by unresolved “administrative-territorial” problem, exacerbated “by high degree of poverty, social

vulnerability of population, rampant corruption and patrimonial system, and non-existence of the real self-governance.” The paper does not clearly state that Georgia’s conflicts and problems with its autonomies and enclaves are the direct result of state policy. Yet one has to be aware of this connection in order to understand and remedy the political, economic and other mistakes made in those regions. Failing that, Georgia cannot achieve peace or prosperity. The administrative status of local populations does not matter as much as their ability to protect the rights and freedoms of local populations by taking responsibility for their wellbeing, economic and cultural development. One can bring examples of countries whose territorial units have the right to complete secession but do not use it, preferring to remain parts of a larger country where central authorities are responsible for financially burdensome matters such as defense, national security, foreign affairs, etc., leaving regional authorities free to solve social and economic problems, which is what people care about most.

The citizens and regions of Georgia must be given the possibility to solve their social and economic problems independently within the limits of the law, whereas central authorities will manage matters of national importance. The problems of education and personnel policy will then be promptly resolved, as will the question whether or not to privatize land in regions populated by Azeris or Armenians. No more will be heard of the so-called “political demands” (problems related to geographic names, land privatisation, unequal treatment of ethnic Azeris during admission to public service, etc.). The administrative and territorial system will be merely a tool for achieving national goals.

There is no alternative to implementing genuine democratization and decentralization while ensuring the rights and freedoms of all the ethnic groups living in Georgia. The authors are quite right in saying that otherwise radical trends may prevail amongst ethnic minorities, and in the likely crisis the Georgian state will face grave challenges.

One of the main criteria for the creation of administrative and territorial division are historical aspects and economic appropriateness. This does not contradict the paper where it says that the legal status of regions may vary but this does not imply privileges of any kind; regions must be assigned powers distinct from those of other administrative levels (central authorities, municipalities) and have regional authorities elected by democratic process. Which territories should have autonomy, what rights should be given to regions, whether enclaves or not, is the domestic affair of Georgia, but it will be doubtless difficult to avoid problems unless regions are given the right to self-expression and development. One can only agree with the authors that reality itself “pushes Georgia to create the model for state-territorial arrangement with different authorities for Abkhazia, Adjara and South Ossetia, and prospects for the expansion of these authorities. Merging the principles of federalism and regionalism will result in creation of a unique model of the territorial division of Georgia”. One can only wish success to this initiative.

3. THE MUNICIPAL SYSTEM

Chapter 3 deals with municipal structures; it describes the situation in the sphere of local selfgovernment and regional government in Georgia. The sphere does not seem to be based on a logical model of any kind. The paper distinguishes between three levels of territorial governance in Georgia: The **upper, or regional level**, according to the authors, includes the capital city of Georgia, the autonomous republics of Ajaria and Abkhazia, and nine regions. Given that Tbilisi and the two autonomous republics have directly elected representative bodies and regions have not, from the legal as well as institutional perspective it is difficult to see these twelve units as one level of governance. The **medium** level embraces 67 districts and six “independent” cities which are not subordinated to any districts based on the “self-governing status afforded them in 2001”. From the legal perspective, it is also difficult to see all these as one level: the self-governed cities with exclusive powers and the

districts having an ambiguous status with regard to self-government, with powers delegated by the state. As it is, districts represent a de-concentrated level of governance. In our understanding, regions also are on the deconcentrated level, which is evidence of illogical duplication of entities; this needs further clarification. The **lower level** is composed of villages, communities, towns and cities, a total of 1111 units that embrace 4597 settlements. Only this level is clearly institutionalized and has logically organized local authorities.

Below, the main factors that hinder decentralization in Georgia are listed. They are: the “underdeveloped territorial system of this country, numerous lower-level self-government units, which are unable to exercise their exclusive powers and do not wish to expand voluntarily”, and “fiscal problems and imperfection of the country’s budget system”. Accepting that all these factors are indeed important, we have to point out that one can hardly expect communities to merge or enlarge voluntarily. Very few such cases are known worldwide, and therefore the political powers of every country should demonstrate political will by adopting legislation that establishes the optimal administrative and territorial structure and number of municipalities. Enlargement of the size of communities within reason is a necessary measure that creates real opportunities for self-government, because the right to local self-government becomes fictitious unless financial resources concentrate at the lower level and are used to provide services to the population. If there are many communities, it may be easier to cater to the needs of various groups but, on the other hand, multiplicity causes dispersion of limited financial resources. There is not even enough money to pay salaries and expenses of executive bodies, and, for years to come, communities will not have sufficient funds to protect specific social groups. This situation is typical for post-Soviet transition countries in general.

We agree with the authors that a two-tier system of local self-government is the best for Georgia and for other South Caucasus countries as well. It will cater to the needs of numerous small municipalities that are situated in the highlands and cannot be merged. However, it is difficult to agree that in a two-tier system, only the lower level can have exclusive powers, whereas delegated powers must be exercised at the upper level because “these powers are delegated by the state but municipalities do not have sufficient resources to exercise them”.

In fact, powers delegated by the state must be financed from the state budget. Therefore, if the financing is adequate, these powers can be exercised at both levels of self-government, within economic reason. There are also certain exclusive powers whose execution goes beyond a single municipality, but extends to an entire district or region, at the second level of local self-government. Otherwise it would be illogical to establish second level of local self-government just for the execution of delegated powers, using taxpayers’ money to pay the salaries of a whole army of bureaucrats. Moreover, since powers delegated by the state must be financed from the state budget, in the event that the financing is adequate, these powers can be exercised by the lowest level of authority, thus providing better protection of local interests.

Let us now have a look at the recommendations, and point out that although “political elites do not have a consolidated vision of methods and ways of implementing decentralization”, this can not prevent the elaboration of the concept of local self-government. Furthermore, as soon as there is a strategy for the implementation of this concept, concrete steps should be made in the legislative and financial areas. One has to start somewhere, reality and practice will show what to do next and what to change, and it is up to the political forces of Georgia to decide how to handle this problem best. Fully agreeing with the authors that the “imperfect legislative basis” and “lack of clear distinction between various levels of authority” impede the emergence of local self-government, I must still point out that, lacking a consistent governance policy, practical measures may often contradict each other.

As to the expansion of territorial units, I have to challenge the opinion that a “centralized expansion is

contrary to international standards that require catering to the interests of local populations to greatest possible extent". In fact, international instruments, including the European Charter of Local Self-Government, stipulate that changes in local authority boundaries, including the merging of communities to produce larger units, must not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by law. Only this way can the government make a political decision based on the needs of the society. The experience of enlarging communities by administrative decisions is quite widespread and successful. The largest city or town in the new community usually becomes its center. The name of the community is changed by means of a referendum or by law. We fully agree with the authors that "it is reasonable to have only one local authority in the merged villages and communities". Indeed, • "The resulting administrative units have greater economic potential, and there will be fewer local entities with poor economic capacity.

- If we have fewer local entities, it will be easier for the state to implement social and economic equalization project.
- The problem of hiring skilled staff will become less acute, if there are fewer small self-governing units."

Finally, with regard to districts, we strongly disagree with the authors that "the existence of districts in their present form will lay the basis for serious problems during the merger of the municipal units", because "given the present size of a district, it is difficult to delegate broad competencies to the districts, since:

- The administrative resources of a district are insufficient for exercising certain delegated powers,
- Decentralization implies that different territorial units must have different administrative responsibilities.
- In this case we shall end up with over 80 territorial units countrywide, with different conditions in some spheres (for example, in the fiscal sphere)."

First, enlargement of municipalities has nothing to do with the existence of districts.

Second, with few exceptions, a district is a larger territorial unit than a municipality, and, therefore, has more resources; hence it can better exercise delegated powers, especially the ones that must be financed from the state budget.

Third, it is natural for districts to be different from one another (it is much harder to find two identical ones), and this need not prevent them from existing and functioning. In our opinion, there is no need to establish parallel government structures in the districts, and their powers can be delegated to district authorities.

Fourth, any problems in the fiscal sphere due to the distinctions between territorial units can be resolved using the financial equalization procedures specially designed for this purpose.

As to how many districts to draw in the capital city, this is a matter of taste. One shall bear in mind that too many districts may produce too many bureaucrats. It is especially important to determine the status of the capital and its system of self-government (one or two-tier), the procedure for forming its representative bodies (Sakrebulo) and most importantly, who and how forms its executive authorities. Also very important, is the mechanism of formation of the budget of the capital; it should be clear and its dependence on the central budget must be reduced to the minimum.

Fully accepting the authors' view that "to optimize governance, it is necessary, on the one hand, to develop centralized city services, and on the other hand, to establish relatively small units (such as the historical districts of the city) to bring authorities closer to the population", we must still point out that the classical method of doing this is the creation of a two-tier system of local self-government in the capital. The authors are quite right in suggesting that "the present functions of the city districts should be reallocated between the upper (Mayor's office of Tbilisi) and lower (district municipalities) levels."

4. BUDGETARY AND ECONOMIC ASPECTS

To establish an efficient democratic system of public governance, in addition to drawing a clear distinction between the state and local authorities, and optimizing territorial division, it is just as important to divide financial resources and budgets between various levels of state and local authorities. References to shortage of funds are not valid since we deal with the fair distribution of available resources between various levels of authorities commensurate with their share of responsibility stipulated by the constitution and the law. A budget and financial system based on this principle must also allow for ongoing decentralization of powers and of appropriate funds.

Moreover, as prescribed by law, every level of authority is entitled to a share of the state property that is necessary to fulfill its responsibilities. The authors of the paper rightly condemn the principle by which “finances from the consolidated budget were distributed between the budgets of local authorities and district budgets. The decision to distribute the finances between the budgets of self-governing units and the district budget was made by the representative body of the District government.” If this is the case, we can forget about local self-government.

Furthermore, the law must enable local self-government bodies to exercise tax policy, i.e., to determine the rate of local taxes, duties and fees, within the limits of statute. We agree with the authors that local authorities as the main stakeholders must be responsible for tax collection that are fully allocated to their budgets.

As to the powers of local authorities, we totally agree with the authors where the exclusive and delegated powers are concerned. It is, however, not clear what they mean by “joint competencies” as an individual category.

Lastly, we strongly agree with the authors that the policy of transferring funds should not depend on the whims of bureaucrats, i.e. it should be transparent and predictable, and the funds must be easy for local authorities to calculate and earmarked for specific budgets.

5. SOCIAL ASPECTS OF THE REFORM

There is no doubt that the progress and improvement of governance requires training of the staff of local authorities. The provisions of the law on public and municipal service are very well worded; one can only regret that this law is not applied at the local level.

To ensure public participation in governance, it is important to give physical persons and legal entities

the right to initiate and make decisions at the local level.

Strongly agreeing with the authors that “in the process of administrative and territorial organization of the country, the relationship with ethnic minorities (and especially with ethnic enclaves) is one of the most sensitive problems”, we must challenge the statement that decentralization of power can escalate conflicts.

Ensuring citizens’ fundamental rights and freedoms cannot do the society any harm, and it is doubtful that “the issue of territorial division should be distinguished from both the problem of preserving the minorities’ cultural identity and the integration policy of the state.” As for the next statement that “the most important principle for solving these problems is creating equal starting conditions for all citizens”, we believe that in many ways this is no longer feasible.

We would like to uphold the authors’ conclusion that “Increased public participation in political and civil processes is in the interests of the state as well. In this case, the solution of the most critical problems plaguing areas that are compactly populated by Azeri or Armenian ethnic minorities will depend on the locally elected authorities of the territorial units rather than on the central authority. As a result, these problems will lose their ethnopolitical quality, or will no longer be seen as conflicts between central authorities and a compact ethnic community. Broad participation in the management and public structures is the best guarantee for defending the interests of the whole society and the particular groups within the society (ethnic minorities among them).”

We would like to conclude by mentioning the superior professional quality of the paper. This gives us

ground for optimism, and us hoping that in the light of democratic reform, the political thinkers of Georgia will be able to find the best solutions that will bring peace and prosperity to the entire Georgian nation.

Commentary on the Policy Paper

Distribution of State Power between the Central and Local Levels

Sergey Minasian

The research prepared by the expert group from Georgia is, on the whole, rather competent and thoughtful. At the same time, there is a need for some refinement of and commentary on the aspects that, in my opinion, are not quite adequately elucidated or questionable. Section 1.1 *Historical Outline*. The inventory of urgent problems concerned with “ethnic enclaves” can not be considered complete, while the problems listed might be further specified. First, Paragraph 3, “ethnic distinctions used for the enhancement of central power”, drops out of the context of an individual problem of above mentioned spheres of “education” and “personnel policy”. Secondly, the “problem of education”, as it is defined, is rather a problem for central authorities, but not for ethnic minorities, since the latter face the problem of protecting their right to study and use their mother tongue. Hence, this can be considered an inventory of the problems facing authorities only, but not the legitimate rights of ethnic minorities. The emphases made in the “problem of education” also raise concerns. It turns out that “absolute majority of the residents of these regions do not master the state language and hence do not participate in public life” because “there is no unified strategy for teaching minority representatives the state language”. The impediment to the participation in public life, say, for the Armenians of Javakhk (Javakhetia) is not poor knowledge of the Georgian language but their reluctance to learn it, owing to socio-economic and legal realia: inability of central authorities to improve the socio-economic situation in the region and to stipulate the legal status of ethnic minorities in law. That is why it is necessary to speak not of the “strategy for teaching” but of a strategy encouraging the national minorities to learn the state language of Georgia.

As it was mentioned above, the inventory is incomplete. Thus, not mentioned is the problem of regional freedom as illustrated by the example of Muslim Azeris or the events around the Armenian church in Tbilisi. The whole range of socio-economic problems requiring broad and privileged attention also deserves to be listed amongst the most pressing ones.

The statement following the items mentioned in the research: “failure to promptly solve problems... increases the danger of separatism and secession”, first of all, concerns socio-economic problems which create the potential for “brusque movements” when unresolved. In this case, the speculations about separatism cease being topical since on the forefront is a whole system of principles of physical survival for the Armenian population of Javakhk which is sustaining a socio-economic disaster. In other words, if socio-economic standards decline so much that the physical existence of Armenians in Javakhk is at stake, so called “separatism” and “secessionism” will become a serious factor or demand comparable with the provisions of international law. Speaking of the imperfect legislation is not quite correct. Here, one shall rather speak of the lack of legislation (on ethnic minorities rights) and/or failure to enforce it. Article 4 of the Constitution of Georgia not only stipulates the creation of appropriate conditions all over Georgia, but also the establishment of local self-government as the two prerequisites for the formation of the bicameral Parliament. Thus, the formation of local self-government bodies, with mandatory observance of democratic standards, must be perceived in Georgia as an indispensable element and the foundation for effective statehood in the future. In this context, it is necessary to specify the compulsory provision for the mandatory participation of ethnic

minorities' delegates in the capacity of representatives of the future territorial units in the new Parliament of Georgia. The authorities of the President of Georgia under Article 73, paragraph "i" of the Constitution must be clearly specified in terms of applicability in concrete situations, i.e., the law must stipulate what actions of self-government and territorial administration entities "endanger the sovereignty and territorial integrity of the country and the execution of constitutional authorities by state bodies."

The "evident" affinity of Georgia to Spain pointed out in the research in terms of asymmetrical regionalism is not quite relevant. If we refer to constitutional provisions, then some distant affinity can be seen, however, the realia of life are such that the model of federalism and regional unitarism manifested in modern Georgia along with rigid and centralized model of state structure does not meet the criteria of any developed democratic European country.

In Section 1.2 *Theoretical Aspects* there is some incorrectness. It is stated that "it is impermissible when supreme state bodies solve the problems that subordinate entities must deal with. Such a system will ensure the independence of the enclaves." The term "enclave" frequently used in combination with "national" or "ethnic" and in the general context of the above mentioned issues is not quite pertinent in the given research. Under "enclave" international law means a territory of a state or part thereof surrounded with the territory of another state. Theoretically, this term suggests a certain zone that for more or less long time has been surrounded with "alien" milieu.

The following postulate, in terms of law, is vague and flawed: "the intervention of state entities into private life is admissible only when the principle of necessary sufficiency is observed." Such intervention is absolutely inadmissible in a democratic state, and when exercised, it is not on the "principle of necessary sufficiency" but based on the constitutional (i.e., legal) principle of legitimate intervention: "Private life of any individual... is immune. Restriction of the above rights is admissible by court ruling or without in the event of urgent need prescribed by law" (Article 20 of the Constitution of Georgia). By the way, there is an essential difference between necessary sufficiency (as in the text) and urgent need (Article 20 of the Constitution of Georgia).

The word "intervention" used below is also impertinent. The authorities in undemocratic countries have the inclination or habit of intervention. While in democratic countries the authorities do not intervene but promote and encourage. By the logic of the sentence mentioned in the research, the authorities must not intervene but help when the inferior authorities are "incapable of solving the problems they face on their own." Next, the "hierarchy of intervention" is mentioned. In the context of the "hierarchy of intervention", it is not quite clear what the authors mean when they say: "the family takes precedence over the community while the community takes precedence over the intervention of regional institutions." If they mean the subsidiarity principle, then the "hierarchy of intervention" is not correctly used.

Questions are bound to arise about the following concept: when executing the principle of "noncentralism" (the meaning of the term is not quite clear) "what happens is not decentralization which implies the existence of centralization and transfer of power and authorities top-down, but vice versa, redistribution of power down-top." First, logically speaking, decentralization implies the existence of centralization, whereas "non-centralization" does not imply the existence of centralization. Secondly, "redistribution of power" (division of authorities) does not lose or change its meaning depending on the direction in which this competence division is done. Third, even a superficial look at the state and legislative issues of competence division enables to suggest that this process (competence division) must at least be initiated top-down and not vice versa. This is particularly true for countries with transitory formation of democratic ways and means of efficient administration. The division of authority and spheres of responsibility in transition democracies must be definitely proceeding top-down.

As for the identification criteria mentioned in the research, it is necessary to state that, specifically, as concerns the Armenian population of Javakhk (and as in similar case with the Azeris in, say, Kvemo-Kartli), identification suggests initial identification by national identity (Armenian man, Armenian

woman) and only then by “regional identity” as discussed in the research. Moreover, the second criterion is derivative and hence determined by the first one. In other words, the identification of an Armenian with Javakhk takes place only after he identifies himself as an Armenian. On this basis when determining the territorial foundations of local self-government for ethnic minorities, along with the “pragmatic principles” (actual independence of local self-government bodies when solving local problems and providing public services based on local resources) mentioned in the research, one should note the principle of efficient legal support to the status of these minorities executing territorial self-government.

Only this statement of the problem with the emphasis on the legal protection allows us to talk of the “real independence of local self-government bodies when solving local problems” (paragraph A) regarding territorial self-government of ethnic minorities.

With respect to Section 2.1 *Current Situation and Problems* it should be noted that in this part of the research concerning the fictitious status of Ajar autonomy, the authors are rather critical and put forward grounded arguments and make reasonable conclusions. As for the part of this section dedicated to Samtskhe-Javakheti region, it should be clarified that the amount and accentuation of attention paid to the latter in the research obviously does not match the scales and urgency of the problems between the metropolis and Javakhk. Furthermore, if the ruling elite of Georgia was irritated by ostensive “demands of Samtskhe-Javakheti to secede from Georgia and unite with Armenia or Ajaria” which provoked anti-Armenian attitudes in press, then the Armenians of Javakhk and Armenian public opinion were no less irritated when the demand to promote the status of autonomy or broadening the competence of local self-government was labeled as a manifestation of “Armenian nationalism” (the text mentions the demands of “Armenian nationalists” but since there is no clarification whether they are local or external, one can refer to “Armenian nationalism” in general). In this context, one has to presume that demands to promote one’s status or broadening the competence of local self-government can be portrayed as nationalism only in a country where the predominant nation builds its mentality on nationalism. The word combination “Armenian nationalism” is in stark contrast with the “establishment of Borchalu autonomy in the territory inhabited by ethnic Azeris” as proposed by “local informal relations” (apparently, it should have been “informal structures”). Thus, the demand to broaden the competence of local self-government in Javakhk is “nationalism” whereas the Borchalu autonomy of Azeris is an issue raised by the local informal leaders?

In Section 2.2 *Recommendations*, Part 2, there is a remarkable notion: “to maintain economic and political balance in relations with autonomous republics, it is reasonable to have regions whose size will be comparable with that of autonomies.” A question is bound to arise: are the experts planning further leveling of distinctions between autonomies and regions or they want to promote the regions to a qualitatively higher level? In other words, will the economic (Ajaria) and political (Abkhazia) capability of the autonomies be comparable to the capability of future newly established regions or this capability will be unattainable for other territorial entities? It is unclear how, in these circumstances, the possible difference in legal status of the regions will be related to the abolition of privileges? With respect to the future status of Abkhazia, the following questions arise:

If the Abkhaz are not a national minority but “representatives of one of the constituent nations of the Georgian state”, why then de jure and de facto they, as a predominant nation, must be a state entity with a limited sovereignty?

If the “identification of the Abkhaz is based on the postulate that Abkhazia is the only motherland of the Abkhaz, and on the recognition that they are distinct from other population of Georgia”, then does this mean that for Georgians who had resided in Abkhazia before the conflict and constituted absolute majority there, Abkhazia is no longer a motherland and can not be one? But how then to achieve the just return of tens of thousands of Georgian refugees to Abkhazia? Does or does not the reference to the “only motherland” mean that the Abkhaz can reside only in Abkhazia? If yes, then how the right of the human being and citizen (in the text, the Abkhaz are citizens of both Abkhazia and the “unitary state”) to freely choose one’s place of residence is correlated with this principle? What does the

recognition of the distinction of the Abkhaz from the rest of Georgia's population means? Are these distinctions socio-cultural, national and religious, linguistic or something else?

Section 3, *Municipal Structure* demonstrates the competence of the experts. The options of enlargement or existence of "even of minor municipalities" are proposed (which is quite natural in mountainous Georgia). However, apparently, the experts prefer the enlargement model but doubts arise because "the enlargement of various territorial entities will be complicated since centralized implementation of this process contradicts international principles suggesting to consider the interests of the populace as much as possible."

Section 5.3 *Ethnic Minorities and Municipalization* also uses correct legal terms and reasonable political approach taking into account the rights and legitimate interests of ethnic minorities. Let us just note that the problem of territorial structure of the country can be segregated both from the maintenance of the cultural identity of a minority, and from the issues of integration policy implemented by the state, only if there are efficient legal guarantees for the ethnic minority status, especially, when the opinion of compactly residing minorities must be taken into account, and when territorial self-government is exercised. Territorial self-government for an ethnic minority in Georgia is their only avenue to efficient integration over the whole territory of the country.

SPECIAL OPINION ON THE "SPECIAL OPINION" OF Mr. O. ZOIDZE

The arguments of Mr. O. Zoidze are incorrect and faulty from the legal point of view. At the same time, it is appalling that the underpinning of Mr. Zoidze's "Special Opinion", undoubtedly, is the motive to evade from the application of the provisions of legally binding conventions and agreements Georgia signed and committed to observe during European integration with respect to ethnic minorities residing in Georgia. This fact raises rightful concerns, particularly considering the serious and sincere steps Georgia and Georgian public have been making towards Europe.

a) If Mr. Zoidze is afraid of the legal content of the term "ethnic minority" ("national minority", to be more exact), then we have to state that the civilized world has not invented anything better in this respect. Mr. Zoidze's "special opinion" does not change the legal status of national minorities residing in Georgia and all provisions of the above documents and conventions (unfortunately still not ratified by the Parliament of Georgia) are extended to them. The term "national minority" is equally applicable both to the Armenians residing in Javakhi and Batumi, and the Azeris living in Kvemo-Kartli or Tbilisi. For example, let us remember that the European Charter for Regional Languages and Minority Languages adopted by the Council of Europe in 1992 defines the languages of national minorities as follows: "the term national languages or minority languages" is used with respect to languages which:

- Are traditionally used in the territory of the state by the citizens of this state, and form a group smaller quantitatively than the remaining population of the given state; and
- Differ from the official language(s) of this state."

b) As for the statement that in "developed democracies the groups of people who belong to these races are not considered ethnic minorities", in addition to the fact that this is controversial, one shall add that

Georgia as any other state in the South Caucasus can hardly be called a "developed democracy".

c) The following statement of Mr. Zoidze sounds strange: "compact residence does not transform a diaspora into a national minority. Granting such a legal status to a settlement can be a provocative factor. If we follow this logic then a question is bound to arise: what makes the Georgians a predominant

nation in Georgia if not such political and legal parameters as "compactness" and "absolute majority" (50%+1) or "historical rights" to reside in this territory?

d) There is no such concept as "the problem of Armenians and Azeris residing in Samtskhe-Javakheti and Kvemo-Kartli". Rather one should speak of the problems facing Armenians, Azeris and other national minorities residing in Georgia.

Research paper

Constitutional Changes in Georgia

Marina Muskhelishvili

1. Introduction

As early as 1997, the well-known analyst Fareed Zakaria wrote that around the world more and more "democratically elected regimes ... are routinely ignoring constitutional limits on their power and depriving their citizens of basic rights and freedoms."¹⁵ The third wave of democratization gave rise to a new phenomenon, a new type of regime that was named illiberal democracy. The regime acquired features that were not present in liberal democracies. In contrast to old, western democracies, mass democracy and universal suffrage established themselves earlier and more substantially in these regimes than constitutional liberalism: "Democracy is flourishing; constitutional liberalism is not."¹⁶ Universally elected, popular leaders do not hesitate to bypass parliaments and constitutional limits in order to rule a country through presidential decrees, use the state against the opposition and free media and abuse the constitutional rights of the country's citizens. Such phenomena have been observed in many countries, ranging from Latin America to the former Soviet Union. Regular and universal elections in these countries fail to secure the rule of law, decrease corruption or create good governance within the constitutional framework of power. Georgia can be considered as one of such countries.

Democracy, constitutionalism and liberalism in illiberal democracies come into irreconcilable conflict with each other. Both constitutionalism and liberalism essentially embody the theory and practice of limited government, while democracy aspires to ensure the accumulation and exercise of power in the hands of the leaders elected by a majority. While in old democracies the principles of democracy, constitutionalism and liberalism created a generally balanced system, in new democracies democratic principles clearly prevail and undermine the rest of the components crucial to the presence of democracy.¹⁷ "The tendency for a democratic government to believe it has absolute sovereignty (that is, power) can result in the centralization of authority, often by extraconstitutional means and with grim results."¹⁸ Guillermo O'Donnell describes the same phenomenon when he notes that strong leaders often believe that they speak in the name of the people and are genuinely unaware of the reasons why they should subject their power to constitutional limitations if what they do (as a rule, this concerns combating corruption) is beneficial to the people.¹⁹

The experience of new democracies shows that it is much more difficult to establish constitutionalism in illiberal democracies than to run more or less fair elections. Alexis de Tocqueville's warning that the absolute sovereignty of the majority may limit freedom of individuals

¹⁵ Fareed Zakaria, "The Rise of Illiberal Democracy," *Foreign Affairs*, 1997, N6 p.22.

¹⁶ *Ibid*, p.23

¹⁷ Contrary to Zakaria, Guillermo O'Donnell does not compare democracy and constitutional liberalism; rather he underscores the need for the coexistence of democratic, liberal and republican traditions in liberal democracies. In theory, this difference in the two approaches is not insurmountable if we consider that constitutionalism is the product of a republican thought.

¹⁸ *Ibid*, p.30

¹⁹ G. O'Donnell. "Horizontal Accountability in New Democracies", *Journal of Democracy*, v.9, N3, 1998

has found its visible institutional reflection in new democracies. This dilemma is neither new nor unfamiliar in the post-Soviet world.

The constitution of the Soviet regime, which described itself as a "People's democracy," provided for many liberal values that were never enforced, especially during the totalitarian period.²⁰ Furthermore, the existence of a constitution does not necessarily mean that the principles of constitutionalism will be used as the basis of governance. The Soviet constitution did not lay down the principles of limited power. On the contrary, it established the Communist Party's governing role in society and provided for a concentration of power on a principles of democratic centralism. The philosophy behind Soviet law was also different. While the Communist Party's rule strengthened the state apparatus, its ideology, rather than justice and constitutionalism, became main source of Soviet law. Instead of securing the protection of rights, Soviet law aspired to subordinate its subjects to the state power in order to achieve the goals defined by the ruling party. The private individual and private sphere acquired certain legitimacy only during the final, post-totalitarian period, when the ideology's influence weakened and the methods of transforming society became less forceful.

If in Soviet times the concentration of power was legitimate in order to achieve communism and "to catch up and overtake the USA," why should the concentration of power for the purpose of quick reforms and to catch up with "Europe" be illegitimate in post-Soviet times? If "expropriation of the expropriators" and the elimination of the capitalists robbing the workers was considered legitimate, why should it not be legitimate to use every possible means to seize "embezzled property?" If building the state on the fundamentals of the ruling ideology was once deemed legitimate, why should the state not be built on the principles of a renewed ideology now? Democracy, as the theory of people's sovereignty, fails to provide answers to these questions if it lacks liberal and republican components or the principles of constitutionalism and rule of law. Below we will see how these approaches and principles come into conflict with each other in the political discourse of present-day Georgia.

What are the parameters that legitimize the state, law and government in present-day Georgia? What kind of political discourses characterize the regime that was described above as "illiberal democracy?" Does constitutional liberalism have any prospects in Georgia? These are the issues that will be discussed below in light of the recent constitutional changes in Georgia.

2. *Dynamics of Discussions of Constitutional Changes and Process Participants*

According to the well-known constitutionalist Jon Elster, "we can encounter instances in which democratic constitutions have been imposed in a non-democratic manner, but none in which a democratic procedure leads to the adoption of an autocratic constitution."²¹ There are two important questions to be asked in the process adopting a constitution: how democratic is the procedure and to what extent is the decision on adopting a new constitution (or making amendments to the existing one) based on wide and comprehensive deliberation?

In addition to this, in procedural terms, the introduction of mechanisms for sustainable and effective governance requires, as a minimum, agreement amongst the influential political elite on these mechanisms. The organization of the central government, first and foremost, affects the political actors who directly participate in the execution of authority. Agreement between the politicians who are in power at the time of the adopted changes cannot, however, secure the sustainability of the model after a change of government or the after ensuing elections. Thus, either forces that exist outside the government should participate in agreements over a sustainable model of organization, or these forces should be marginalized

²⁰ In the given context, it is important to distinguish between the totalitarian and post-totalitarian periods in the history of the Soviet Union because the legitimation of the state, regime, and law underwent a serious transformation in the latter (post-totalitarian) period.

²¹ Jon Elster, *Ways of Constitution-making*, in: "Democracy's Victory and Crisis", ed. Axel Hadenius, Cambridge University Press, 1997

from politics forever. Otherwise the legitimation of the constitution will have a temporary, transient nature from the outset.

Developments related to constitutional changes in January and February 2004 in Georgia were as follows: changes were developed behind the closed doors and were passed very quickly; those who developed and defined the new model of governance were only the three future heads of the three branches of government, other political forces failed to stop the process or steer it in a different direction. Chronological description of the process and of surrounding debates clearly illustrates how much did it deviate from the above parameters.

By November, during the process of searching for ways to overcome the government crisis, the constitution and its advantages and disadvantages, as well as its possible revision, had already become topical issues. As soon as power was transferred to the "revolutionary triumvirate" it became clear that constitutional changes were inevitable. It also became clear in what direction these changes would be made: three leaders – Mikheil Saakashvili, Zurab Zhvania and Nino Burjanadze – agreed amongst themselves over the division of power. Under this agreement, Mikheil Saakashvili became President of Georgia, Zurab Zhvania assumed the post of Prime Minister (a post not yet in existence then), and Nino Burjanadze retained the chairmanship of Parliament. The agreement acquired a form of public statement, thus became almost legally binding. Enforcement of this agreement, however, required constitutional changes.

Because the new organization of government was expected to be upheld, first of all, by an agreement within the new ruling elite, it was being developed behind closed doors. The media and other forces that took an active part in the November developments were excluded from the process of negotiations and attempted to make the process public. After 4 January presidential elections more and more opinions over what type of governance would be suitable for Georgia under the present circumstances appeared in the media. These discussions conveyed certain concerns regarding the expected changes ("NGOs are sceptical about future changes" Channel 1); a wish was expressed that the existing system be maintained and that constitutional changes not be made in haste, nor tailored to fit certain personalities. The government avoided reacting to opponents' criticisms and limited its reaction to indirect ripostes ("The Georgian government will do [...] under my guidance" (Mikheil Saakashvili, 10 January), perhaps indicating (given the situation) that the presidential system would be maintained.

It seems that in the middle of January, after the Parliament, using accelerated procedure, voted for a new state flag on 14 January, and the Central Electoral Commission announced the results of the presidential elections on 15 January, the government commenced working on constitutional changes more intensely. As a result this issue once again came into the focus of the media. The draft law developed by the Ministry of Justice became the object of consultations amongst the trio. This law was discussed at a meeting between Zurab Zhvania, Nino Burjanadze, Zurab Adeishvili, Gigi Tsereteli and Mikheil Machavariani on 19 January. On that same day, TV channels started speaking about the new draft law under which Georgia would have "a strong president, strong prime minister and weak Parliament"; "The chairman of Parliament slips from the number two to the number three [position] with no authority" (Imedi, 19 January). The discussions were temporarily slowed down, owing to Saakashvili's visit to Davos and his inauguration ceremony on 25 January. However, after the inauguration the discussion over constitutional changes gathered new momentum, as it seemed that a decision had already been made that the new government would be organized in accordance with the new constitution, meaning that the new constitutional arrangement of power should be enforced no later than 8 February. Otherwise, Saakashvili would have had to nominate new candidates for the posts of Ministers to the new Parliament on 9 February, in accordance with the old model.

The fact that Nino Burjanadze left Georgia for a few days following the President's inauguration was viewed as a protest against the curtailing of the Parliament's powers. Only on 1-2 February did President Saakashvili, Nino Burjanadze (who returned to Georgia) and Zurab Zhvania continue talks over the redistribution of their functions and the powers of the Parliament. An announcement was made on 2 February that a compromise would be reached. By the end of that day

the unity of the trio was restored; the Constitutional Commission met on the same day and agreed that the draft law be sent to the Parliament for debate, though the commission itself had not yet familiarized itself with the draft law, nor had the law been published for one month public consideration, required by constitutional provisions.²²

On 3 February, the spring session of the 1999 parliament opened and the sitting of its bureau was held during which it was announced that the draft law must be reviewed by the end of that week. That afternoon, the draft law was sent to Parliament and copies were made and given out to the Committee for Legal Issues for consideration. The parliamentary debate on the draft law started on 5 February and ended on 6 February, resulting in the draft's approval; the draft law was hurriedly published and thus enabled the Prime Minister to nominate ministers for the Cabinet in accordance with the new constitution. Thus, the parliamentary discussion over constitutional changes was conducted at record speed and the debates in Parliament did not have any major impact on the content of the changes.

*Though the forces that came to power through revolutionary means did not try to establish dialogue with their opponents, they did strive to reinforce the support of the majority of population. Guiding the processes hastily and within a small circle does not necessarily mean that the authorities were downplaying the importance of public opinion. On the contrary, both Mikheil Saakashvili and Zurab Zhvania, in their briefings and interviews, tried to justify the changes and haste in which they were undertaken by referring to the urgency and acuteness of the problems faced by the country – the most urgent task being to form a government that would start fulfilling its promises made to the public.*²³

*The authorities' haste in effecting constitutional changes, explained by the acuteness of governance tasks, was confronted with the demands for protection of constitutionalism, law and representation. Opponents put forward the opinion that the process should be stretched over time, they also declared that constitutional changes required more thorough discussions and "higher respect from the authorities that came to power with promises to protect the law" and that a hasty procedure may result in an unlimited concentration of power.*²⁴ Opponents believed that the very constitutional provision that requires that a draft law be published in advance and a month be given for discussion had been violated. Critics also argued that the 1999 parliament was in-valid, that it was not backed by the public and that it was not authorized to make decisions on constitutional issues.

The government, for its part, was stepping up appeals to the majority will by using two mechanisms: (a) de-legitimizing political forces who oppose "revolutionary" government (on the one hand the National Movement and Mikheil Saakashvili expressed will of all people and on the other hand those who did not stand with those people have committed political suicide²⁵); and (b) limiting criticism expressed by "legitimate" political forces. The cancellation of TV live talk-show programs starting 3 February²⁶ can be linked to attempts to avert the danger of a rift within the "revolutionary forces" rather than to avoid critique from other parties or political forces. During this time a decision was announced over the merging of the National Movement and Burjanadze-Democrats into one party (which was not

²² This decision was justified by the fact that the changes essentially reiterated the draft law that was sent by the President Shevardnadze to Parliament and published in the spring 2001.

²³ "Let us adopt these changes as presented and let the new government team design and start implementing vigorous steps toward leading the country out of the crisis" (Mikheil Saakashvili, 4 February).

²⁴ "The content of the text was kept in secret.... It has not even been published. The people did not even have the opportunity to discuss....such changes confer unlimited powers on the president." (Zakaria Kutsnashvili, 5 February Parliamentary session).

²⁵ "We know perfectly well who usurped power. The people have supported these changes for a long time now." (6 February, parliamentary hearing); "Those political groups who found themselves siding with Shevardnadze or, during the November events, were on the other side of the barricades.... have committed political suicide. This is not going to change any more." (Giga Bokeria, 12 January, Imedi).

²⁶ See addendum

enforced at that time). However, this still failed to secure a consensus over the constitutional changes among the "revolutionary forces." Sharp attacks on the draft constitutional law by Tina Khidasheli, Giga Bokeria (Rustavi-2, 2 February) and Koba Davitashvili (who resigned from his post of political secretary of the National Movement, on the grounds that "the constitution shall not be tailored to fit personalities, rather personalities should fit the constitution," 3 February) not only put the unity of the ruling party at risk but also jeopardized its legitimacy and damaged the "only-correct-way" image of its actions. Mikheil Saakashvili's reaction to Koba Davitashvili's resignation ruled out the possibility of maintaining a dialogue with such opponents: *"I am not interested in personalities; it is the Georgian people who should stand with me. I need the people's support, I have the people's support and ... with the people's support I will bring the fight against the mafia to a [victorious] end."*

Comment [JDM1]: Above, in the footnotes, the word "allow" needs revision—"accept?" or needs to be expanded—won't allow what?

We will return to this statement, which perfectly matches the legitimization of an illiberal democracy.

3. Changes in What Direction? Content of Changes

Modern constitutions, as a rule, include chapters and sections providing for the protection of human rights. This part of the constitution, while important from the point of view of establishing liberalism is not the main idea behind writing a constitution, as G. Sartori underscores.²⁷ A constitution lacking a declaration of human rights is conceivable (e.g. the original version of the US constitution), but we cannot conceive of a constitution which does not regulate the mechanisms for the execution of power or one which does not allocate functions. The constitution, first and foremost, defines the frames for state power and it was largely the organization of the central government that these particular constitutional changes affected.

The main content-related elements of the 2004 constitutional changes were the establishment of a cabinet of ministers and the introduction of the position of Prime Minister. The idea of creating a cabinet, which was repeatedly put forward by different opposition political parties and politicians during Eduard Shevardnadze's presidency, was based on the need for enhancing the effectiveness of governance and, at the same time, distancing, to some extent, President Shevardnadze from internal economic decisions. The then parliamentary majority (the "Citizens' Union"), which strived to gain more influence over the executive branch of government, also supported this idea. Many opposition parties, including the Traditionalists and Labour parties, who had elaborated their own draft laws, and the Industry Party, which had incorporated the idea of setting up a cabinet of ministers in their manifesto, also put such initiatives forward. This issue was closest to becoming a reality in the spring of 2001, when the President submitted a corresponding draft law, published for public discussions earlier that spring, to the Parliament for discussion. Parliamentary discussions on this document were never held, as it became evident that the law would not draw a sufficient number of supporters. Some critics underscored the undemocratic nature of the law and once again put the pre-eminence of parliamentary governance back on the agenda. What was less public was the hostility within the lobbies towards Zurab Zhvania's candidacy for the post of Prime Minister.

Against the backdrop of earlier discussions, the prospect of introducing the post of Prime Minister in 2004 forced many people to wonder what kind of changes in the country's political system this would lead to. The establishment of a cabinet of ministers headed by the Prime Minister does not in itself speak about the country's political system, as a cabinet of ministers can function in parliamentary, semi-presidential or super-presidential republics. "Europe," "France," "Russia" and "Turkmenistan" are often mentioned in public discourse as examples of these models. "This is a totally European model" (Zurab Zhvania, 27 January, Rustavi 2); "It is modelled on the French system" (Mikheil Machavariani, 27 January, Rustavi 2); "This is not a French model. The practice too is different. It stands in between the Russian and Turkmen models. This is not a democratic constitution," (Koba Davitashvili, 5 February, parliamentary discussion). Such statements, however,

²⁷ G. Sartori, *Comparative Constitutional Engineering*, New York University Press, 1994, 1997

do not specify unambiguously, character of desirable model. If it was semi-presidential model that was under consideration, by this time the old argument that Shevardnadze failed to lead the economy was no longer topical – people rested all their hopes for good governance on the newly elected President (in November he was still only "the leader of the victorious people" but his future ascension to the post of President was not doubted). Thus, old aspirations for limiting the President's executive authority no longer justified this change. On the other hand, constitutional changes may lead to the excessive concentration of power of the executive branch, as was stated in the criticisms of the 2001 draft law, which call into question the declared democratic nature of the revolution.

Traditionally, the parliamentary model in Georgia is associated with a higher degree of democracy, whereas the presidential model is linked with the danger of dictatorship. However, in January 2004, while debating the best desirable model for Georgia, experts rejected the parliamentary model, labeling it as desirable (in the perception of many) but unattainable in the given reality. Also, quite unexpectedly, the "non-governmental sector" deemed the mixed system unacceptable. Therefore, a few alternative proposals emerged: a) maintaining the existing presidential system and, within its framework, the delegation of executive power by the president, to the Prime Minister and the cabinet; b) introducing the post of Vice President (for Zurab Zhvania) within the existing system; c) matching the reforms of the central government with the settlement of the state's territorial arrangement and the territorial redistribution of power; d) launching large-scale constitutional reforms, stretching over two years and the holding of new parliamentary elections following the enforcement of a model based on the results of this reform.

These proposals, put forward as alternatives to the authorities' initiative, did not become the topic of discussion while the nature of the future system remained vague to the end. In the beginning, Mikheil Saakashvili often mentioned strong presidential governance which required a Prime Minister, who would relieve the President of daily concerns.²⁸ Against this background, the authorities' references to "European" and "French" models remained incomprehensible. It is only in early February that, after reaching a compromise with Nino Burjanadze, Mikheil Saakashvili stated that the adopted model "limits the presidential powers to some extent" and "if the President fails to get a majority in parliament, he will find himself in a difficult situation" (3 February) and that "Georgia is changing from a presidential [republic] into a semi-presidential republic" (5 February).

Opponents obviously did not share this judgment; to them the draft law meant the excessive strengthening of the executive branch and a risk of concurrent authoritarianism. However, we can suppose that compared to what could have been expected under the initial draft, the Parliament's powers had indeed been enhanced to some extent under the final version of the changes. Obviously, this refers mainly to the limiting of the scope of the cases which can become grounds for the Parliament's dismissal and the giving to Parliament the power to disband the cabinet unconditionally.²⁹ After bargaining, the chairman of Parliament acquired certain additional rights, including control over the Audit Chamber, the parliamentary agenda and the parliamentary budget, as well as the administration of the Parliament building.

The character of the governance model, adopted on 6 February, was never interpreted in a clear and unambiguous way. This issue obviously remains on the agenda of future political debates: what is the new system like – semi-presidential and "European" or super-presidential and "Turkmen"; is it democratic or authoritarian? The expressly transient, temporary nature of the model, which has been emphasized in speeches by all government leaders,³⁰ is partly perceived as an

²⁸ "There will be a strong presidential rule" (Mikheil Saakashvili, 18 January, Russian TV channel NTV)

²⁹ "In the first version, the Parliament was very weak, and I did not intend to chair Parliament under that version," Nino Burjanadze, *Rustavi-2*, 2 February; "I fought for these levers (implying parliamentary levers) for a month, otherwise the draft law would have been published one month ago." Nino Burjanadze, *Mze*, 4 February).

³⁰ "The changes that we introduce are the beginning of the constitutional reforms; they are not the model that should guide Georgia for decades." (Zurab Zhvania, *24 Hours*, 24 January).

implicit admission of its imperfections. However, the declared terms of its validity (six to seven years³¹), after which, as was stated, there should be a move to the parliamentary model, also indicates that the authorities associate this transitional period with the period of their own terms in office.

4. Constitutional Changes: Personalities or Institutions

Fitting the constitution to personalities was one of the critics' major arguments: "Three people stood on the stairs saying, 'I shall be the president, I shall be the Prime Minister, she shall be the speaker of parliament. Two positions exist, now we have to introduce a third one' – this is not the way to build a country" (12 January, Channel 1, Irakli Melashvili);

In general, it is in fact personality that Mikheil Saakashvili attaches great importance to, both in public speeches and political actions, despite the above quote ("I am not interested in personalities"). When he criticizes the previous political regime, he blames Eduard Shevardnadze personally for everything; when he tries to explain what will change for the better in the future, he firstly mentions the advent of new professional and decent people; in his fight against corruption, he punishes specific persons. Opponents, in stark contrast, speak about institutions and structures rather than persons.

Confusing personalities with institutions when making constitutional changes is indeed a topical issue if we take into account that three institutions – the presidency, cabinet of ministers and Parliament – already in the course of developing the model are personified by the three people who are conducting the negotiations on the issue.

In general, the rational behaviour of any politician is aimed at strengthening their power and enhancing their authority. But these are not the motives that can secure public legitimization of an action. A politician should validate his/her power publicly by certain public interest values. An example of this was Nino Burjanadze's answer to a direct question of whether there is a power struggle going on within the trio, which Burjanadze denied but admitted that "wherever you are you want to have more levers to do specific things" (2 February, Rustavi 2).

The need for public legitimation traps a politician by limiting his/her room to manoeuvre. In the public domain, politicians cannot justify their own action by using conflicting arguments; therefore publicity enhances the positive, stabilizing and predictable nature of politics. A legitimate action should look unbiased and should not be arbitrary. Opponents often make masterly use of old statements. For instance, the *24 Hour* newspaper published its 2001 interview with Mikheil Saakashvili's in which Saakashvili's arguments against Shevardnadze's project were similar to those used by the present opposition regarding the fitting of the constitution to personalities and a move towards the Kyrgyz model instead of the French model.

The authorities' strongest argument in their criticism of the parties is that the latter have always supported the idea of the establishment of a cabinet of ministers and that they should not have confronted the implementation of this idea so fiercely.

The model of the politicians' rational behaviour almost fully matches the strategy of the authors of the constitutional changes. Neither Saakashvili nor Zhvania spoke publicly about the bargaining process over the redistribution of authority between them; they presented future changes as a joint project, but we can suppose that they had to bargain over the redistribution of powers, as in public Saakashvili is more inclined to speak about a strong presidential administration whereas Zhvania is more prone to speak about a responsible cabinet of ministers. The position of the future speaker became distinct: not only did she defend the extension of the Parliament's (and her own) powers in the lobbies, but she also publicly "flaunted" her success in protecting the Parliament from

³¹ "Mr Z. Zhvania deems it expedient for Parliament to adopt the submitted draft law on the proviso that a mandatory revision of the constitution will take place in 7 years" (protocol of the Constitutional Commission session, 2 February).

being excessively weakened. One more actor – the Parliament – which at the last moment gained control over the draft law, almost failed to make changes to it (the difference between the texts submitted to the Parliament and the final text was minute), with a single exception: the article stipulating the lifting of immunity for MPs did not receive a sufficient number of votes.³²

Those changes which opponents did not have a personal stake in or hold sufficient levers for the protection of their interests were passed much more painlessly. For example, the provision under which the President does not have the right to hold the post of party leader disappeared. Another change referred to a required number of voters in the presidential elections for the elections to be considered valid. In the new version, the requirement for a 50% turnout also disappeared. Yet another limitation refers to the adoption of laws by the Parliament that may increase budgetary costs without the consent of the executive branch. All three of these were used against Shevardnadze (he was leader of the Citizens' Union; the official data on the turnout in the 2000 presidential elections was not credible; in the pre-election period, the Parliament passed populist laws, raising pensions and salaries despite the fact there was no money in the budget for this move) and could be turned against Mikheil Saakashvili (the one-man leader of the National Movement, with no alternative candidates for leadership; the turnout numbers in the 2004 presidential election were also dubious). One of these changes, which limited the lawmaking powers of the Parliament, was, as can be gleaned from Nino Burjanadze's remark, a topic of contention at the draft law's preparation stage. These changes gave rise to questions during the parliamentary discussions but eventually the Parliament voted for them. On the other hand, the authorities' relations with their opponents seemed constructive regarding at least one issue that was in no way related to power issues – the issue of dual citizenship. Saakashvili made serious concessions in the formulation of this article.

The interests of those forces making claims to political influence, or getting ready for future political struggles in general, were linked exactly to the defence of the principles of constitutionalism and rule of law, which will be discussed below. Defending necessity of consolidation, The President addresses them with the phrase "I am not interested in personalities, as the people stand with me". This phrase implies that "the people," as a source of democratic legitimation, may have only one representative governor under whom the whole governance will be consolidated. While everybody has the right to take part in this governance, such participation rules out political confrontation: "Nothing will stand in the way of Georgia's consolidation, this is my initiative; I want the parties to unite and politicians to unite if we want to pull ourselves out of the swamp into which Shevardnadze threw us" (Saakashvili, 3 February)³³.

Comment [JDM2]: This sentence was confusing and I changed to what I felt the author was trying to express

5. Why Changes? Legitimation and De-Legitimation

Enhancing the effectiveness of governance as an argument for the introduction of a cabinet of ministers was employed even during the previous period. Virtually all political forces supported the idea of establishing a cabinet and separating the posts of the head of state and the head of the executive government. The government's team's responsibility, the highest possible focus on day-to-

³² The new convocation of parliament has already amended this article.

³³ As already mentioned, consolidation of governance was declared to be needed to successfully tackle the transitional period. For example, the draft law which was sent to Parliament together with the draft constitution, envisaged the appointment of the heads of district administrations by the President and strengthens the institution of the presidential representatives in the regions. These provisions were argued to be justified by the fact that this was temporary and was required because otherwise the districts would be governed by supporters of the old authorities - "we cannot accept in a transitory period governing the country's region using Shevardnadze's cadres." (Zurab Adeishvili, 24 Saati, 4 February).

day activities, the implementation of reforms etc. – were a permanent theme in the speeches of proponents of the draft law.³⁴

An even stronger argument for justifying the concentration of power is the overcoming of the post-revolutionary crisis in Georgia. The draft law was markedly aimed at overcoming the difficulties of the transitional period as well as the rapid reforms that the government needed to implement. "We need changes that would enable us to govern the country effectively" (Mikheil Saakashvili, 29 January, Channel 1); "This draft law ... will enable the President to defuse situations. If the Parliament does not approve the budget and issues get blocked deliberately, the President is entitled to disband it" (Gigi Tsereteli, 21 January); "Under the circumstances, when the president and the Prime Minister consider this is the only chance for the country to get on its feet, then it is natural that a model that will function and be effective should be adopted" (Nino Burjanadze, 2 February).

Opponents see signs of dictatorship in such a concentration of power. In their view, these changes have eliminated several levers that Saakashvili and Zhvania themselves used against Shevardnadze and that could be used against them by possible subsequent opposition forces in the future. Because the President did not have the right to disband the Parliament under the 1995 constitution, the Parliament could move to extreme opposition; and, at the same time, by relinquishing its duties, could effectively block the executive branch's actions, creating a government crisis and using the crisis in a fight against the President. By securing the right to dissolve the Parliament, the President effectively averts the risk of such developments. "This team is cutting the branch it used to sit on before it came to power" (Koba Davitashvili, 5 February).

The whole process of debating the draft law, as it had been represented in public space,, can be described as a contest between legitimation and de-legitimation at mismatched levels. The authorities often make appeals to effective governance, the transitional period, extreme conditions, the need for strong government in order to overcome the crisis, the European model, the execution of the people's will and the need to be realistic.

Opponents, in their criticism, highlight such concepts as limiting democracy, creating a road to dictatorship, tyrannical governance, monarchy, the Russian model, "Turkmenization" etc.

The above list illustrates that the levels at which the proponents and opponents of the draft law lead discourse are mismatched. The proponents put a positivist spin on effective governance while the opponents express normative concern over limiting constitutionalism.

This mismatch is preconditioned, to a lesser degree, by the values and ideological positions of proponents and critics alike; rather it is largely linked to the different roles they play in the real political process: to be part of the opposition in Georgia means making references to rights, limitations on power and the rule of law, whereas being in the government means considering the people's interests and being realistic. Such mismatches seem traditional and common for the political system established over the recent years in Georgia. In this system, political issues, as a rule, are not discussed in a horizontal dimension (competition between political parties, the regime of dialogue, one level) but rather in vertical dimensions, which differentiate between legitimation and de-legitimation (the liberal community protects itself from the state's excessive pressure). The authorities' arguments about effective governance and consideration of reality and the opposition's accusations regarding a mover towards dictatorship and attempts to defend liberal and legal values is the dominant discourse which has established itself in Georgia.

However, both sides have attempted to penetrate the other's level and to exchange arguments. Those critics of draft constitution, who are Mikheil Saakashvili's supporters, and thus are not interested in the de-legitimation of Saakashvili's regime, besides defending democracy, speak about the ineffectiveness of the proposed system. In their opinion, the model is doomed to face a crisis that

³⁴ "The style and mechanisms of governance that were employed in the previous period were ineffective. Everything - the country's economy, finances, energy sector, and all of those sectors whose activities were supposedly coordinated by the State Minister - are in quite a grave state." (Gigi Tsereteli, 12 January, Iberia).

will be caused by the presence of two strong personalities within the executive branch. However, such an argument is often weak from the outset, as they link "effectiveness" only with the executive branch and "representation" with the Parliament, which is strictly characteristic of the presidential model: "The philosophy of the executive branch of government does not imply representativeness. It should be effective" (Levan Ramishvili, 24 Hours, 16 January).

The government also tries to defend itself against accusations of dictatorship: "To speak about dictatorship is highly irresponsible. It ensues that literally all European countries have dictatorships" (Zurab Zhvania, Mze, 5 February); "The opposition [forces] that are making a fuss in the parliament now are 'Shevardnadzists' and they should feel uncomfortable speaking about democracy" (Mikheil Saakashvili, 5 February).

Both are counter-arguments and do not play a decisive role in the discourse and the leading arguments remain those of legitimization through effectiveness (the government's argument) and that of de-legitimation through injustice, tyranny and dictatorship (the opposition's argument). *We can recall that this discourse was a dominant political discourse between the authorities and the opposition over the whole post-Soviet period and we can speak about the sustainability of the political system rather than about its radical reform as a result of the November developments. A radical split and polarization still exists between the authorities and their opponents along the same lines as before: abuse of power, usurpation and dictatorship accusations by the opposition; governmental promises of effective governance and securing the country's progress. This does not resemble a political competition between the parties; rather, the leading discourse is largely created by the confrontation between society and the state.*³⁵

6. Legitimation of State, Human Rights, Rule of Law, Redistribution and Development

Effective development and rapid changes versus constitutionalism, coupled with safety from power concentration: is this dichotomy reflected only in the discussions about the constitutional changes or in other political developments as well? The constitution, the supreme law of the state, is being amended at a time when the style of the state's legitimization itself and the ways of its functioning are changing. The state commences setting power-wielding structures into motion in an attempt to establish order and to fight corruption, which almost did not happen before.

The legitimization of the state's post-revolutionary strengthening is expected to be achieved through establishing order, putting the state apparatus into operation and punishing those who violate the law. In the dominant discourse "Shevardnadze and his clan" are blamed for the former weakness of the state, while the current efforts to establish order base themselves on the delineation of the "people" on the one hand and "criminals" and "corrupt individuals" on the other. "All those who created this corrupt system should be held strictly accountable." "Order should be established. Shevardnadze and his accomplices have taken everything home; the treasury has been looted" (Mikheil Saakashvili, Davos, 21 January).

The strengthening of state authority is supported with a robust publicity campaign of symbolic aggression and bullying. The reactivation of the state and the setting of power-wielding structures into motion are reflected, first of all, in Mikheil Saakashvili's statements and in his will, as well as other elements of this publicity campaign, such as many statements by other high officials, exemplary punishments and the demonstration of power.

During this period, the newly appointed minister of interior and the new prosecutor general detained and brought accusations against a number of former or current officials. The latter are generally detained on charges of embezzlement (or abusing their powers) and remanded in custody for three months. After the former president of the Football Federation, who was accused of tax

³⁵ It is no accident that the opposition political parties in Georgia often name the mass media, not the authorities, as their main opponents.

evasion, was released from prison after paying his debt to the state, suspicion became rife (confirmed largely later on) that others will share his fate and that if they pay money to the central budget there will be neither a court hearing nor a verdict.

The leitmotif of the campaign is the fight against corruption and crime. "[The newly appointed prosecutor] ... should bury the dragon of corruption; criminals will resist; this resistance will be both crime-related and political... We hope for public support (Mikheil Saakashvili, 12 January). "I, as the future President, advised my colleague, the justice minister, that if there is any attempt at mutiny in prison – and I want those incarcerated in prisons and criminals at large to listen to this carefully – to use force, and at any attempt to riot to open fire and eliminate, on the spot, all the criminals who are trying to mess up the situation" (Mikheil Saakashvili, 12 January); "Crime lords and the criminal mentality should be eradicated"; "A thief should be in prison" (Gia Baramidze, 2 February); However, threats have not only been directed at those who break the law. At a parliamentary session on 14 January, Vano Merabishvili's answer to opponents of the new, five-cross flag was as follows: "This is a counterrevolutionary attempt and, respectively, the methods that the state will use against them will be those that counterrevolutionaries deserve."

This and other verbal statements have been reinforced by visual material: armed policemen in masks rushing civilians to prison; dissolving sparse rallies; brandishing clubs at people; and conducting operations to seize armed groups (in Zugdidi, members of a militant group were seized in their homes, several were wounded); moving a former minister suffering from heart disease to a detention centre on a stretcher, etc.

At the same time, the population starts to demand the pre-election social promises to be fulfilled. These promises included the doubling of pensions, paying arrears, etc. In different regions rallies have been staged by internally displaced persons (IDPs), teachers and pensioners who had reason to hope that through public rallies they could secure that their just demands would be met and that their pensions and salaries arrears would be paid. The inability of the government to meet these demands can be directly linked ("the budget has been looted") to the detention of representatives of the former authorities by the new government: "These are the people, owing to whom a pensioner cannot receive a pension, and an IDP in Zugdidi could not get those few lari they were supposed to receive" (Zurab Zhvania, Rustavi-2, 22 January).

It is obvious from the above quotes that it is difficult to differentiate between legal crime and political crime in this discourse. This problem is typical of post-revolutionary regimes that try to punish the wrongdoers of the previous regime; as a rule, they find it difficult to differentiate between measures taken in the name of justice and measures taken for political revenge. And when these measures deal with economic crime, especially if such crimes have been committed massively (i. e. if the law cannot be applied universally) there is a threat that property will be redistributed from the old elite to the new ruling elite. This phenomenon is largely prevalent within the lower echelons of the authorities as well as in the regions.

Is all these directed on a protection of public interest either on a strengthening one's own political power? This is the question many journalists seek to answer. Rule of law and human rights are the main issues cited when criticizing the government. Such critiques are commonly heard on opposition TV channels, but government representatives do not respond to such programmes (Elene Tevdoradze may be one exception: "People do ask for order, but unlawfulness cannot be fought with unlawfulness" (Iberia TV, 14 January). Information regarding torture of prisoners has emerged and calls for the protection of the presumption of innocence are voiced along with phrases such as "the reflection of 1937," "the onset of dictatorship," "repression" etc.

Thus, the strengthening of the state is accompanied by hopes and fears – hopes for the restoration of social justice and law and fears over the arbitrariness of the state and the restoration of unlawful and illiberal features. Soviet experience and remnants of Soviet mentality make it so that one can not rule out the convergence of the two: "We call Saakashvili Stalin... he is good, fair and that is why" (a citizen, 19 February, Imedi TV).

The roots of such an understanding of justice should be sought in the legitimization of the Soviet state. The Soviet state, especially during Stalin's rule, fulfilled two global economic and social functions: it guided the Soviet model of modernization and economic growth and carried out the redistribution of economic goods in accordance with the principles of social equality. While a belief that the state and its guide, the Communist Party, fulfilled these two functions successfully did exist, the system maintained its legitimacy. Therefore it was not a mere despotic organization that limited freedom. The state represented a source of social justice, future vision and economic security for its subjects.

The transition to democratic governance and a market economy brought about a situation in which the state could no longer fulfil many of the functions that its population had come to expect from it. In both aspects – development and fair redistribution – a deep crisis emerged in Georgia. The GDP growth rate in the country remained very low for a number of years, while inequality in society soared. A clientalist-corrupt system was established in which any individual's survival was their private business.

It seems that new economic relations have failed to legitimate the inequality in economic conditions and to establish a stratum of affluent people, acceptable to society. The major charge against those who became affluent in recent years proved to be corruption: some accumulated wealth through graft and abuse of power and others through unlawful privatization and tax evasion. Both produced "private ownership" rather than "private property" and capital accumulated on the basis of political, rather than legal, principles. Due to this or other reasons, this capital failed to operate effectively in economic terms or to validate itself through indicators of economic growth.

The change in the government was followed by the seizure of disputably legalized capital, its confiscation by the state and/or its new redistribution (this latter tendency at that period is still in its initial stage). Former public servants are often charged with embezzlement of money that should legally be returned to the people. Along with constitutional changes, a package of legal amendments has been sent to Parliament which legalizes the seizure of undocumented and misappropriated property, including private property which was privatized unlawfully through the payment of bribes.

This context, to some extent, explains why, in the constitutional discourse, the dimension of effective development is linked to the authorities' activities, while in criticism against them only rights and normative features are brought up. Both in terms of economic development and fair redistribution, the state is still considered the major actor, while existing economic relations have failed to become a legitimate source of securing public interest. In other words, calls for limited government and freedom that would be grounded on an argument, that freedom would be, at the same time, source of effective social development, was not represented in public discourse.

7. Party and State: the New Flag

One of the features that democratic constitution should provide for is the securing of fair political competition: "A constitutional model should serve democracy and the development of political competition and political opinion" (David Usupashvili, 30 January, Imedi). Political pluralism is an opposite institution of that of the Soviet party-state model; its legitimizing simultaneously implies the legitimation of multifarious (as opposed to single) political ideologies of the country's development and rules out the establishment of special conditions required for a single, dominant party.

The focal point of transforming the Soviet constitution into a post-Soviet, democratic constitution was the elimination of Article 6. Under this article the constitution established a one-party system and the leading and determining role of the Communist Party within the state. The ruling party, its ideology and its apparatus which dominated in all state structures, created an institutional model of a party-state, which accounts for many inherent flaws of governance in the post-Soviet period.

A distance between parties and the state is preconditioned and secured by distinct rules of legitimation of these institutions in liberal democracies. Parties achieve legitimation (become legitimate governors) through voting, revealing will of majority – this is democratic legitimation; the state embodies not the majority but the general will (the republican principle), which incorporates an individual's rights as well (the liberal dimension). This distinction between the majority will (ruling party) and the general will (the state), is vanished in a system in which the democratic majority justifies the subordination of the state to the ruling party and the blending of the two.

The November developments, in the view of many, were aiming to put an end to the last manifestations of the Soviet style party-state; but as early as January it became obvious that this traditional model would be reincarnated in the new governance. One of the earliest symbolic demonstrations of this was the adoption of the new state flag.³⁶

The National Movement's five-cross flag had been used for several years as a symbol of the symbiosis of Mikheil Saakashvili and Georgian statehood before the November events. This flag, along with the EU flag, accompanied official briefings of the then Justice Minister Mikheil Saakashvili. It also flew over the City Council building when Saakashvili was the head of the Council. As soon as Shevardnadze resigned, this flag was hoisted above the State Chancellery building and was used later on in the fight against Aslan Abashidze's regime.³⁷

The five-cross flag, through its symbolism, epitomizes numerous values held by a majority of Georgians. The flag is religious and this, in turn, reinforces many Georgians' belief that the Orthodox Christian religion has preserved Georgian culture over the centuries. The presence of the cross on the state flag echoes the long-time dream of a portion of the Georgian population that that Orthodox Christianity may be declared the state religion. At the same time, the flag is founded in history – it can be found on old maps and is often interpreted as a symbol of Georgian statehood, thus it meshes well with the values (language, homeland, religion) of a conservative section of the population. On the other hand, it encompasses the values of revolutionary forces - Europe, reform, democracy (especially when it flies beside the flag of the European Union, as it did at the President's inauguration ceremony and, later on, when Saakashvili instructed that the EU's flag be hoisted on all buildings housing state organizations).³⁸

Thus, there are sufficient grounds to say that the new flag's symbolism receives its legitimacy from the majority of the population, with its past and its future. At the same time, the very fact that the flag was changed and the way it was done sparked acute protests from the authorities' opponents.

³⁶ Apart from these symbolic indicators, other indicators confirm signs of a party-state in the subsequent period. These include mass replacements of the national-level and local bureaucracy with new political cadres; a single-party Parliament and a refusal to comply with the request from the Council of Europe to lower the 7-percent electoral barrier; continuation of the tradition of manipulating the elections, including the President's active involvement in electoral propaganda for his party's advantage, and so forth.

³⁷ Similar to Saakashvili, Aslan Abashidze used the dark-blue star-spangled banner in recent years as a symbol of the Revival Union and, at the same time, a symbol of the Ajarian autonomy. A confrontation between these two symbols became a dominant factor in the political struggle in January in Batumi, where rallies held by Aslan Abashidze's and Mikheil Saakashvili's supporters were held simultaneously. Saakashvili supporters were trying, on 12 and 13 January, to hoist the five-cross flag in the autonomous republic, but failed because Aslan Abashidze's supporters would not let them. This wrangling over hoisting the flag has acquired a new aspect on 14 January, when the Georgian Parliament changed the state symbols and adopted the five-crossed flag: On 19 January, the pro-Saakashvili Our Ajaria movement resumed attempts to hoist the flag and raised it, on semi-legal grounds, over some buildings of the Ajarian state government bodies while at the same time staging mass rallies, demanding Aslan Abashidze's resign.

³⁸ "The Christian flag is the expression of our integration into Europe." (Mikheil Saakashvili, 28 January). "European integration is our unswerving course.... We did not hoist the European flag by accident today. This flag is the Georgian flag too because it is a manifestation of the essence of our history, our civilization and our culture, as well as of our future prospects and vision." (25 January, presidential inauguration ceremony).

The latter did not perceive it as an expression of the general will, rather they viewed it as a subordination of the general will to political interests.

The changing of the flag on 14 January was so unexpected that debates about the flag in the media were possible only retrospectively. In these debates many arguments were voiced in support of the flag (the flag is pretty; it is a flag of hope; the flag should express the state's ideology; the basis of this ideology is the flag, religion, belief, culture) as well as against it (this is a crusaders' flag, not a Georgian one; the shape of the crosses should have been different; the flag has more than one interpretation, which is unacceptable; the old flag is also precious to many and should not have been treated irreverently; a change of flag requires public debate etc.). However, perhaps the most important thing is that this flag is, on the one hand, the flag of the victorious people and the symbol of the establishment of a new people's regime and on the other hand this is a party flag which, at the same time, symbolizes violence against the state by a political movement. Proceeding from the situation, the flag is still being politicized. For opponents, the most prominent feature of the flag is that it is a flag of the majority party and not a universal one and, likewise, the National Movement, for them, is a mere political movement rather than a universal popular movement. For supporters of the flag, who believe that it is "the people" who won the revolution, the flag is an expression of common will and unity and they view the flag's politicization as a sad but insignificant detail.

The declaration of the National Movement's flag as the state flag was not followed by the adoption of a new distinct flag by the National Movement. The movement and the flag remain identifiable with each other, like the flag and the state. Later on, in the March parliamentary elections, the National Movement still used the same flag, which is now the state flag. Thus the post-Soviet symbol of political pluralism - - fair and free competition among parties - has lost its symbolic legitimation, while the political course and will of the National Movement moved beyond political competition.

The flag issue reflected continuity in overlap between the party and the state. The National Movement has developed the sense that it expresses the will of the people as a united whole. From the standpoint of authorities legitimation of the flag and the constitution has drawn on the common will, while the opposition maintains the point of view that it has drawn on the majority will and disregarded the minority's rights.

8. Conclusions

Illiberal democracy discussed earlier in this paper lacks the institutionalization of constitutionalism and liberalism and further strives to concentrate all power into the hands of an elected leader.

The goals of the authors of these recent constitutional changes had definitely not been the institutionalization of political pluralism or the placing of the majority will within the frames of constitutionalism. On the contrary, focus was placed on consolidation, overcoming a post-revolution crisis and the implementing the most rapid changes and reforms possible. The temporariness and transience of the new model was linked with the context that emerges repeatedly in the discussions over constitutional changes: the November developments were no mere change of government, but a systemic transformation, a revolution, a radical split from the past and a move to another system. "What was before will never be again," "unprecedented" and other quotes from Mikheil Saakashvili's speeches repeatedly underscore that "the post-Soviet system is breaking down in Georgia" (Mikheil Saakashvili, Davos, 22 January).

The move from one system to another, guided by the will of the country's rulers, the temporary situation leading to universal prosperity and happiness (albeit in the future), accelerated growth led by the political leadership, moving closer to the developed countries (Europe in this case) and the fight against a handful of "criminals" hampering this progress are all conventional and familiar components of the post-Soviet world.

Georgia has seen three regime changes in the past 15 years, none through elections. With all three regimes elections were held retroactively to legitimize the already recognized authorities. In none of these cases did a losing force stay in politics and in fact they were all doomed to eternal marginalization. Except for Zviad Gamsakhurdia and Jaba Ioseliani, all other political leaders moved to the role of new political authorities having first served for the previous ones. Each government had a charismatic leader, one ruling party and vengeful enemies who believed that the government was dictatorial, and its legitimacy was questionable and unstable.

Why does such institutional development, and not something different, take place in Georgia? We can certainly link the institutions with the nature of political discourse without drawing cause-and-effect conclusions.

If the opposition always makes accusations of dictatorship and the government justifies itself by citing positive reforms and consideration of reality (as it has happened during the last three regimes), then the following scenario looks plausible: while the government is popular it can, and will, overstep its powers (on the grounds of governance needs), and when it loses popularity revolutionary demands for the government to step down will be put forward by the people who believe the opposition's claims that the ineffectiveness of the government are a direct result of the regime's dictatorial features.

Against this background, both the Rose Revolution and the successive constitutional changes that followed seem natural, a part of a stable system and not a digression from the system. Understanding this system is possible by identifying unseen alternatives. Georgia is not a liberal democracy, in which governments come to power through elections, act within the framework of constitutionalism and, in the case of losing elections, move (temporarily) to form the opposition, hoping for future victories. Such a system requires the presence of "ethical" political parties, i. e. parties that do not modify the rules of political struggle and political disputes depending on whether they are in power or represent the opposition. Nor is Georgia a dictatorship, in which the people's will means nothing and in which people cannot effect a change in government. Strong and multiple private interests hinder the establishment of a dictatorship in Georgia. This is a system in which people rule, not the law.

The causes of the present situation can be found in many factors, but the link between the institutions and the discourse is obvious. Will there ever be circumstances created in which "effectiveness" and "justice" will be considered on the same level? Will the supporters of the parliamentary system ever manage to validate it through arguments of effectiveness or will the proponents of the presidential system validate it with the arguments of pluralism and constitutionalism? Will the government and the opposition ever be able to compete within one system instead of de-legitimizing each other? Will Georgia ever free itself from the shackles of the "transitional period"?

These are questions that, considering the present circumstances, we must leave unanswered for the time being.

9. Addendum. Communicative Context of Constitutional Changes

This article studies the legitimation of the constitutional changes that were effected in February 2004 as it was seen in the Georgian public space in January-February 2004. In other words, apart from auxiliary data of empirical nature, it mainly describes the virtual space in which the discourse took place. In terms of communication, this space is mainly constructed by TV broadcasting and, to a considerably smaller extent, the printed press and the radio. Television is the main, and perhaps unrivalled, medium of mass political communications in the country. This study is mainly based on information broadcasted by TV channels.

Owing to this specific trait of this research, we should characterize the structure of the space in which the given discourse took place, that is to say, to supply an answer to the question of what

type of broadcasting system had taken shape in Georgia by the time the constitutional changes were discussed.

In the period that preceded the November events, the TV and press were independent of the authorities; this was particularly manifested in the press' unending criticism of the incumbent authorities. The media played a major role in the delegitimation of the previous regime. Against the background of this freedom, journalism failed to go beyond the Soviet propaganda tradition and has been unable to establish a new, more liberal professionalism or ethical standard that would create the norms for and impartial and objective media. The influence of the Soviet tradition is noticeable, first and foremost, in the ideologized and propagandistic nature of the broadcast media and press. Television, which is commercially unprofitable and expensive for its owners, becomes institutionally politicized against this background. In other words, its main goal is the exertion of political pressure and the forming of a specific public opinion, rather than commercial success. A few independent channels function during this period, of which Rustavi-2 is the most notable. This channel is the leader in drawing up the political agenda, criticizing the authorities and supporting Mikheil Saakashvili and Zurab Zhvania. Since the Rose Revolution, the channel has been calling itself the "television of the victorious people."

If before November all channels were more or less in opposition to the authorities, after the November events the broadcasting landscape became much more politically diverse. A state that can be described as "polarized pluralism" established itself for a few months, in which time almost all viewers could find at least some informational niche corresponding to their own views.

The political diversity of broadcasters was clearly seen in how 14 January news bulletins informed viewers about the adoption of the new national flag. If the Rustavi-2 news bulletin hopefully asked: "Will all failures of the recent years become history together with the old flag?", Iberia rushed to comment on the illegitimate nature of declaring the National Movement's flag as the national flag: "The victorious team has once again demonstrated force"; Kavkasia underscored almost the same theme when it announced that "Saakashvili's five-cross flag has become Georgia's state flag."

As television is a much more powerful tool for political mobilization and propaganda than a political party, the fate of discussions over the constitution, as well as the identities of the participants in these discussions, largely depended on broadcasters. At that time, all channels offered wide coverage of the process of the constitutional changes, albeit in different hues. The pro-government Rustavi-2, which proved to be openly critical of the proposed draft of constitutional changes, took an interest exclusively in the views of "revolutionary" critics, whereas other channels usually gave the floor to much broader sections of society; the range of the forces – both "experts" and politicians – that radically opposed the authorities was much broader there.

This discussion over constitutional changes became the precise reason for the first serious post-revolutionary restriction of freedom of the television. Earlier, in the period that followed the November developments, some doubts were voiced that freedom of speech would no longer exist in the post-Shevardnadze era at the same level as before; some signs of this also emerged, but there were hopes that things would change for the better as well. These hopes faded only after popular talk shows were removed from the air of several TV channels in conjunction with the publication of the draft law on constitutional changes. These programmes, which were broadcast live, dedicated a lot of time to criticizing the constitutional changes over the days that preceded the publication. When night shows disappeared on Rustavi-2, Imedi, Mze, and Channel 9, only two remaining channels, Iberia and Kavkasia, broadcasted comprehensive discussions on this issue. These rather small and poor channels were relatively more free compared to other channels, due precisely to their smallness and poverty. In terms of their format and nature, they resembled community broadcasts, not laying claims that attract the attention of the majority of the population, which is why they were better at performing the function of upholding human rights and providing public space for political minorities. During the days of the parliamentary discussions of the constitutional changes, only they had the possibility to properly give the floor to the parliamentary opposition.

The height-of-the-moment, live-broadcast-oriented TV-based public space did not exert significant influence on the discussions of constitutional changes. Every view, speech, or statement that was made in connection with the changes was verbal information, conversation, or dialogue rather than an authored written document. This applies not only to TV speeches, where this style is natural, but also to newspaper articles, where interviews, transcripts of round-table meetings and so on were abundant. The few large newspaper publications being prepared by specialists did not have any major influence on the process.³⁹ Since the majority of the TV speeches were brief, vague statements and estimative epithets prevailed, such as "strong," "weak," "European," and so on, and slogans: "The country should get out of the crisis", "Road to dictatorship," and so forth. Monologue, not a reasoned dialogue, prevailed.

The highly acute emotional tone and content of these speeches is particularly noteworthy. Not only the opponents, but also the authorities stood out for being so emotional, especially Mikheil Saakashvili, who still makes speeches in the vein of the "leader of the victorious people." In those rare, meaningful debates that were still held during this period, critics emotionally outperformed the politicians who defended the draft law.

³⁹ The only written comment that was made during that period was a report by a member of the Venice commission. This report, which emerged at the last moment, was used as an argument by both sides (Saakashvili: "Their assessment is positive"; the opposition: "Their assessment is negative"), although this document had not even been seen by members of Parliament during the examination of the draft law in Parliament.

Research paper

Political Perceptions of Georgia's Population

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1. Introduction

A country's constitution defines how a country's political system is organized. The constitution, if abided by, builds a "skeleton" of politics by setting the rules and laws of political action that in turn prescribe norms of conduct and strategies of action for the participants in political processes. The participants in political processes, for their part, have their own expectations of the political system, know what is the most valued and why a given political system is acceptable or unacceptable for them. The process of such interaction between the constitution and the citizens establishes the genuine essence and significance of the constitution to society, reveals its strong and weak points and outlines the prospects of its further reform.

The present paper studies society as a space where people who have subjective views and opinions interact. While interacting with each other and the institutions of the political system, citizens draw up their own versions of reality that are tinted by their own political views and ideologies. Therefore such notions as democracy, law, constitution, etc. may carry different meanings and may have different values for different people. Thus, apart from being heterogeneous, political society consists of large groups of people whose views are more or less similar and who evaluate political developments in a similar manner. Such a cohesive systems of political views in this study will be referred to as political discourses. The goal of the present study is to identify and study the political discourses largely prevalent in society. The premise of our research is the view, according to which one of the major principles of democracy is that all the views in society have the right to contribute to the formation and functioning of a country's political system.

2. Methodology of the Study

The study draws on combination of two approaches. By its essence it is interpretational. But at the same time a statistical analysis of factual data has been applied. The study is aimed at understanding Georgian society rather than studying it, as the word study implies traditionally in a frames of empirical approach. Readers who are less interested in the methodology can skip this chapter and move to the next one.

In order to identify different political discourses, factor analysis was used, namely, its "reverse" version, the so-called "Q-method" (based on Stephenson's Q-sort method)⁴⁰. The traditional factor analysis ("R-method") is based on identifying relations *across variables*, and allows for the identification of content-related factors⁴¹ defining the identity of an object or a phenomenon. The mathematical processing of a matrix of intercorrelations allows us to identify such major factors. Unlike the ordinary factor analysis, the Q-method allows a correlation to be established not across

⁴⁰ A similar study conducted to reveal political discourses in 13 post-Communist countries was used as the basis for the methodology and theoretical approaches applied in this study. See, John S. Dryzek, Leslie T. Holmes, "Post-Communist Democratization. Political Discourses Across Thirteen Countries". Cambridge University Press, 2002

⁴¹ Let's look at an example to illustrate that. Say, any combination of spectral colours can be described as a linear factor of three main colours (red, green, blue), i.e. these three colours are three main factors determining the essence of the said phenomenon.

variables, but *across respondents*. Processing the matrix of intercorellations drawn up in this way makes it possible to divide individuals into certain groups (and to identify factors on the basis of that), rather than to group variables by factor. In other words, the method enables us to group respondents by their views on the object under study and, accordingly, identify the discourses prevalent in society in this regard (i.e. each identified factor is at the same time a discourse).

The method reveals the attitudes of individuals towards a specific issue. This allows us to compare different groups' systems of views on specific issues through individuals' evaluative reactions to the statements in the pre-prepared set of statements (Q-set). In addition, an individual's stance towards a certain statement in a Q-set becomes valid only when considered in the context of that individual's evaluative reactions to all other statements.

Research based on the Q-methodology is conducted in several stages. At the first stage, statements are prepared for the Q-set, based on the data obtained from focus groups and the media.

Because the study aimed to reflect the views of *ordinary* members of our society, it was largely focus group findings that were used as a source of statements for the Q-set. Therefore, when setting up focus groups, we tried to select groups that would be heterogeneous to the extent possible in terms of social and demographic characteristics. Four focus group meetings were conducted in three areas, namely, two in Tbilisi and one in Kutaisi and Telavi respectively. Eight to ten people participated in each focus group. Each meeting lasted about an hour and a half. Moderators did not use any pre-prepared questionnaires in order to minimize their influence on group members and in order to ensure that the discussions were spontaneous and unrestricted. The complexity of the topic and indefinite nature of the citizens' views on this quite impersonal issue need to be taken into consideration.

After the transcription of focus group materials, separate phrases were singled out of the text. In total, about 400 statements on a wide spectrum of political issues were obtained. As was expected, ordinary citizens proved to be much more concerned about those aspects of constitutional arrangement that could have a direct effect on them than about the organization of central government. Focus groups members raised issues such as the protection of human rights, granting the Orthodox Church the status of state religion, citizenship and national identity, regional self-governance, etc. The respondents' views about these issues were as a rule more distinctly shaped.

At the next stage, each statement was identified and categorized by means of the so-called discourse key. The key is a two-dimensional system (the discourse element and the type of statement) with four parameters/categories in each of the two dimensions. A combination of these categories results in a matrix of 4x4; that is, in the end, the whole sample of statements has been grouped in 16 categories.

Type of statement	Discourse element			
	Ontology	Agency	Motive	Natural and unnatural relations
Definitive	1	2	3	4
Designative	5	6	7	8
Evaluative	9	10	11	12
Advocative	13	14	15	16

The discourse element comprised the following categories:

1. Ontology– a set of entities (institutions, social groups, personalities, etc. existing in reality), i.e. this can be a nation, a political system, politicians, individuals, clans, etc.
2. Agency – capacity to act, that is either attributed or not attributed to the entity

3. Motive – some motives may be regarded as highly important while others may be rejected or neglected.

4. Natural and unnatural political relations (political equality, national and class conflicts, hierarchical divisions based on the degree of welfare or political interests, experience, demographical characteristics etc.)

The second dimension (type of statement) consisted of the following parameters:

1. Definitive – relates to the meaning of the term
2. Designative – refers to facts
3. Evaluative – refers to values that exist or may exist
4. Advocative – refers to what should or should not exist

On the basis of the above criteria, the entire sample of statements was categorized into 16 groups, that is, into 16 cells of the obtained matrix. The statements were classified by three experts independently. The evaluations were then finally adjusted.

From each category of statements, four statements were randomly selected for the Q- set, i.e. a set of 64 statements was developed. It should be noted that the statements were presented in their original form (as they were pronounced by their authors). Copyediting was limited to shortening and grammar mistakes. As the matrix cells were not completely filled in, a few more statements were selected from the media and added to the sample. Also, a number of statements were selected from the media that were essential to our research but were not pronounced by focus group members (e.g. 13³ and 17). The random selection principle was not strictly observed in the process of selection in order to avoid the repetition of identical statements. In the case of similar statements, one of the two was rejected and replaced by a different statement.

At the third stage of the study, individual interviews were held in which respondents were asked to group the 64 statements into 13 groups (in a quasi-normal distribution) by degree of agreement with each view. The evaluation was carried out using a 13-score scale, ranging from 6 (agree most) to –6 (agree least)⁴ including 0. Some 40 respondents took part in this phase. The selection criteria guaranteed the diversity of respondents in terms of social and political characteristics. Social characteristics include age, education, type of activity, degree of material well-being, and housing. Respondents were selected from four regions. Specifically, 25 people were selected in Tbilisi and five in Batumi, Kutaisi and Gori respectively.

Political characteristics were largely linked to political affiliations. The sample comprised people who actively supported or were members of a particular party as well as those who were in opposition or indifferent to all the parties. Because the study was conducted parallel to a poll of 1,000 people, the random selection principle was well observed. The study was conducted in autumn 2004.

The obtained data were processed using the statistical programme PQ Method 2.11⁴², specially designed for the Q-method. Factor analysis was conducted through establishing correlations between Q-sets in the matrix of 40x40, after which the matrix was analysed using a centroid method and varimax rotation.

As was said before, the factors established through processing data by the given statistical programme are discourses that are close to the opinions of certain groups of respondents. The statistical programme can link the respondents to two, three or more (up to seven) factors, even if the factors are not of the same importance or content. Prior to the interpretation of data, the optimal

³ Hereinafter the statements of the Q-set are denoted by figures that correspond to their numbers in Table 1.

⁴ See chart 1

⁴² PQMethod was adapted, revised and is maintained by Peter Schmolck. The Fortran code on which based was originally written for the mainframe by John Atkinson under the guidance of Steven Brown at Kent State University.

number of factors to be selected and analysed needs to be established. A researcher can use two criteria in order to compose an optimal group – the formal criterion (drawing on statistical parameters) and the content criterion (ignoring discourses that are less important in terms of contents). We used both criteria. It was revealed that using two factors (discourses) made it possible to divide respondents only into pro-government and opposition groups, in which case we would not be able to say much about more rooted ideological differences. In addition, too many statements in this case appeared in the consensus field (both discourses reacted on these in a similar way). Using three discourses would bring the same results. Selecting more than five discourses would not add much value in terms of contents as it would include discourses created by single respondents. Eventually, it was decided to choose between four and five discourses. Further, in the case of four factors, all the respondents appeared to be clearly associated with this or that discourse, whereas the five-factor division excluded many respondents on the grounds that they had no firm association.

After discourses are identified, the analysis of their content begins. When interpreting and comparing discourses one needs to bear in mind how the study was conducted and what importance was attached by respondents to this or that statement, or how the statements were ranked by respondents. The study differed from a regular sociological survey in that respondents in this study did not evaluate each statement independently from other statements, but rather they sorted them in relation to each other. Therefore, in order to characterize factors it is not sufficient to look at the statements that have got an extreme scores (-6,-5,+6, +5). One needs also to consider respondents' reactions to other statements as well as differences between the factors, even if they are minor. For instance, the statement (50) which reads "At this stage and in our circumstances dictatorship is the best thing ..." is only slightly positive (+1) for factor 3, but if we consider that other factors rank this statement very low (-5), it emerges that the response carries considerable information about the peculiarities of the third discourse.

It should be also taken into account that almost all the statements that compose our political field carry two and sometimes even three meanings. In other words, ranking a particular phrase from -6 to +6 by a respondent often does not allow us to find out what the respondent is implying. Therefore, and based on the methodology of the study, each individual statement needs to be considered against the background of other responses. Even in this case, the interpretation of objectively identified discourses still implies a certain degree of subjectivity and is largely dependent on what knowledge we have of the situation and developments in Georgia. The very fact that the authors of this research are residents of Georgia and participants in political processes has its advantages and disadvantages. The advantage is that the obtained data were considered in the context formed by our knowledge of Georgia and the processes and confrontations in the country, as well as our knowledge of the context in which specific phrases were pronounced in the course of group discussions. The disadvantage could be the fact that we, the authors, being process participants, naturally are in some discourse already. Any individual views his or her own discourse in a positive light, while making others' discourses the object of criticism and even antagonism. We tried to be objective towards all the discourses, but still do not rule out the possibility that individuals with different political standpoint would make slightly different emphasizes while analysing this data. The phenomenological approach, which has served as the framework for conducting this study, acknowledges certain subjectivity in itself. Moreover, such subjectivity is an integral part of research.

We should also take into consideration that in addition to the discourses identified by the study, there may be other, less widespread, more specific discourses in Georgia that characterize relatively small but clearly distinct groups. Such groups would include, for instance, non-Georgian speaking national minorities who were left beyond the scope of the study. We should point out that the study provides us with information about the vast majority of Georgia's population, but it does not rule out the existence of radically distinct discourses prevalent with small groups. We should also bear in mind that in addition to those individuals who, due to their education, intellect and/or political awareness, were capable of evaluating the proposed statements in accordance with their ideologies,

there is also the politically “lower” social stratum of people who found it practically impossible to express their positions.

3. Summary of Findings and Theoretical Generalization

The study has identified four different discourses amongst the Georgian population, i.e. four different types of political views. Before we move to their description, we should first of all explain what we mean under “difference in political views”.

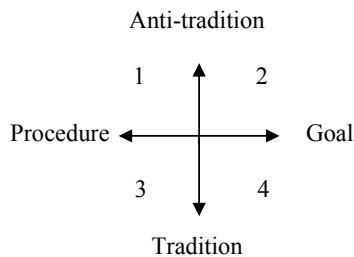
Real people living in Georgia are not complete antipodes who do not have any common aspirations. For instance, any citizen of Georgia wants Georgia to revive, its citizens to live better lives, wants to have a constitutional democracy in the country and Georgia to become a modern, civilized country. If we look at the issue this way, we will not see any considerable difference among the people. The difference becomes apparent only when we ask these people to prioritize the above statements and rank their values, i.e. state what it is that they want to achieve in the first place. In real life, it is the political environment that makes this demand on the people, by creating the need for the people to elect governments and to take stances on the priorities of political decisions and action plans.

In order to create clear picture of the citizens’ real -life views and their variety, we will introduce an abstract model of discourses in which, unlike what happens in real life, all the discourses (and their imaginary carriers) are thoroughly different and confront each other, i.e. we are introducing the Weberian ideal-type model. In real life, such ideal-type discourses do not exist in their pure form. Nevertheless, ideal types help us understand the diverse universe that surrounds us.

The discourses revealed by our study are ideal-type discourses. They are shown in Table 1 (see appendix) as four ideal Q-types that were identified by the four-factor statistical analysis. Across each statement in this table there is a score range of –6 to +6, which reflects the ranking of the statement by an imaginary individual (possibly non-existent in real life) who would be in complete agreement with the given discourse. The number of discourses is indicated in the first cell of the relevant column. The table contains 64 statements listed in decreasing order of consensus (from maximum consensus when all have the same opinion to maximum confrontation when opinions are radically different).

In fact, the table is the last element of the empirical part of our research. The next stage is the analysis and interpretations: labeling of discourses, their narrative characteristics and theoretical considerations. This is largely done in the next chapter, where the discourses identified by the study are described in detail and characterized. Here we summarize briefly the findings and with that purpose in mind we introduce yet another abstract theoretical model of political views. Despite the fact that this model was not originally used as a starting point for the analysis – rather it was developed as a result of the analysis – it still seems expedient to present the model at this stage for the reader to better understand the analysis below.

Let us consider systems of political views that can be placed in relevant quarters of the two-dimensional plane given below. The dimensions of the plane are formed by the given oppositions:



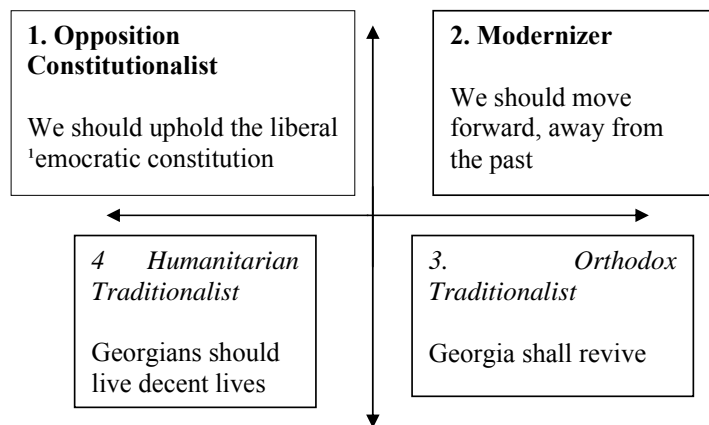
We can provisionally regard the vertical dimension of this plane as an opposition: tradition – anti-tradition. The lower half of the plane exhibits traditionalists to whom the source of political legitimation is, first of all, everything that is local, Georgian - that has roots in the past, is demarcated from the rest of the world and has a distinct identity. Those on the opposite pole of the dimension attach higher importance to the western experience and the future and sometimes even neglect the past.

The horizontal dimension of the plane can be thought of in terms of the general attitudes towards politics. The right side of the plane exhibits those who prioritize goals in politics, while the other side places emphasis on the rules followed by the politicians to achieve their goals. We provisionally call this opposition the opposition of the “procedure” and “the goal”. To illustrate this we give below the Lincolnian definition of democracy: “Democracy is government of the people, by the people, and for the people.” The followers of the “procedure” would attach more importance to the government *by the people*, whereas followers of the goal would maintain that the government be *for the people*.

We should explain here why we have used the term “anti-tradition” as an anti-notion to “tradition” to designate the upper part of the plane, and not “westernism” (“medasavleteoba”) with which Georgian reformers pushing changes identify themselves so often. The point is that the notion of westernism in Georgia has been appropriated by one specific discourse, though other discourses too have claims on it. In our opinion, genuine westernism would be somewhere close to the central zone of the above diagram rather than the absoluteness of any of its extreme edges. All four quarters of the plane are integral elements of what the authors of this study regard as western liberal democracy, and genuine westernist development would only be possible if these elements coexisted and no radicalization and mutual rejection took place.

In accordance with the above divisions, the upper right quarter of the plane is occupied by those for whom it is most important to effect changes as rapidly as possible in Georgia in order to replicate the models functioning in more developed democracies. The lower right quarter too displays those who consider the country’s rapid development a priority, but rely on Georgian traditions and mentality. Georgian traditions are of priority for those in the lower left quarter as well, but these people consider the Georgians the carriers of these values first of all and place the goal of securing decent lives for Georgians above the country’s development. The upper left quarter, alike upper right corner, is inspired by western models, having however a distinct focus on the rules of political life rather than the goals of political changes.

The discourses identified by the study differ from each other like the quarters of the plane, that is, they are in quite good, though not exact, correlation with the quarters of the plane. Using provisional names, we can argue that the first discourse, “Modernizer”, is located in the upper right quarter, “Orthodox traditionalist” – in the lower right quarter, “Humanitarian traditionalist” – in the lower left quarter, and “Opposition constitutionalist” – in the upper left quarter.



We should regard these four attitudes as maxims that convey well the priorities of Georgia's population.

4. Analysis of Political Discourses in Georgia

Can we say that the above-discussed abstract model is suitable for describing real discourses and, if so, what are these discourses after all? Table 1 illustrates four discourses identified by our study.

In general, all these discourses converge on the position that all the articles of the constitution shall be enforced and that violation of the constitution is inadmissible, and that democracy is when there is a diversity of opinions and that the constitution shall facilitate the development of democracy and political competition, that the governors shall be guided by the constitution and shall not change it arbitrarily (49, 64, 14, 53). What is the difference between the discourses then?

A set of statements that became the basis for the questionnaire for the respondents comprises quite complex, often philosophical, statements. For instance, according to some statements, the content of the constitution is purely legalistic (4), according to others – it is political (3), it serves to uphold moral standards (9), ensures the political stability and effectiveness of the governance (11), sets limitations to the majority rule and contributes to the development of political pluralism (64). In respondents' answers, such conceptual statements were to some extent overshadowed by politically more pressing issues. However, it can be said that a constitution based on moral values was more positively assessed overall than a constitution that limited the majority will. The concept of the constitution is prioritized highest by the second discourse, which considers the constitution legalistic (the main law of the country) and ideological (political treaty) at the same time. This discourse assigns the function of state ideology to the constitution to a certain degree. The third discourse too regards the constitution as a political treaty, but links it with the majority of people, rather than with the state. The fourth discourse, in contrast to the others, is highly pragmatic and along with supporting political pluralism in the constitution, prioritizes political stability and the effectiveness of the government. Such pragmatism is rejected by the first discourse, which is most indifferent to the constitution's substance and is more concerned about the procedures for making changes to it.

The set appeared to contain many such statements that allowed a comprehensive analysis of political views within the selected discourses. These statements comprise a wide spectrum of attitudes that manifest themselves in relation to topics such as human rights, democracy, dictatorship, regional organization and self-governance, justice and so on. Hence the opportunity of an in-depth analysis of the discourses.

If we look again at the above two-dimensional classification, we will see that the third and the fourth discourses draw on an obvious traditionalist orientation (58, 63, 33, 61). In this respect, they have a conservative nature, but with one peculiar feature. While conservative discourses in western societies are characterized by religious foundations of legitimation, in the post-Soviet context religion is not equally valuable for all kinds of traditionalists. The third discourse is highly concerned about the status of the Orthodox Church and supports the idea of defining its status in the constitution (34), whereas the fourth discourse is indifferent to the political status of religion, and would better be thought of in a frames of Soviet tradition. Thus, these two discourses – the third and fourth – are exhibited in the lower part of the plane. Contrary to the first two discourses, the third and fourth discourses are more prone to regarding the state flag as a symbol of state ideology (2), less sensitive to the violation of their own rights (41), less apprehensive of a one-party parliament (27) and of the tailoring of legislation to fit one person (16). Both discourses have a positive attitude to the present government, as fresh young energetic rulers appeal to them (38); they believe that the new governors respect the law (42), and those who abuse the law cannot advance more easily than law-abiding citizens (44).

On the horizontal dimension the discourses differ by their orientation towards goals and procedures. However, the difference between the discourses in the upper part of the plane is

manifested over one type of issue, while that in the lower part – over another. The first and the second discourses confront each other with regard to the changes made to the constitution and the new flag adopted in the aftermath of the Rose Revolution, whereas the third and the fourth diverge on the issues of democracy and dictatorship as well as the relationship between the church and state. The third discourse supports the president taking up all the responsibility in the present extraordinary situation (54) and maintains that the Georgian people should have one ruler (18), whereas the fourth discourse categorically disagrees with these statements. The fourth discourse does not share the third discourse's interpretations of democracy and dictatorship. The third discourse maintains that the form of government, whereby power is concentrated in one person who expresses the interest of a part of society, is a democracy and not a dictatorship (8), that is, the concentration of power in one person's hands does not in itself mean dictatorship (1). Despite the fact that both traditionalist discourses somewhat avoid to make judgments on constitutional changes (maybe, they do not feel competent enough on these issues), this does not necessarily mean that they do not have clear, and at the same time disparate, political visions of the principles of constitutionalism. The fourth discourse supports pluralism and the constitutionalist ideas of the separation of powers much more than does the third discourse.

The disagreement between the first and the second discourses is more about the appraisal of current policies. These two discourses stand out for their high politicization. "The flag that flies today" is viewed as the flag of the National Movement by the first discourse, while the second discourse strongly disagrees with the statement (17). The fourth discourse welcomes the staffing of public services with people who contributed to the revolution, while the first discourse does not support this idea (52). The first discourse strongly disagrees with the opinion that there was an urgent need for constitutional changes (35) and that the president's right to disband parliament may facilitate the settlement of political conflicts (5), while the second discourse is quite positive towards both statements. Despite that both discourses converge on the point that the constitution is still not properly respected, the first discourse is far more categorical about this (37).

An effective means to illustrate discourses more clearly is to narrate statements characteristic of the discourses, the method applied by Dryzek and Holmes in their work. As we have noted before, to characterize a discourse we use the most radical statements of that discourse (scored as -6, -5, +5, +6) as well as statements that make discourses distinct from one another.

1. Opposition Constitutionalist

It is very bad that constitutional changes were made in such a short time (35), not much has improved since then anyway (37). The ruler shall be subordinate to the constitution, neither shall the constitution be interpretable in multiple ways – as often happens with the laws – it should be spelled out explicitly and have one single interpretation; it is inadmissible that the ruler change the constitution at his discretion, these changes too were unnecessary (53, 38, 48). I disagree that history is governed by personalities (12). I do not think that the president should assume all the responsibility because of the extraordinary situation, or tailor the legislation to fit himself, or have the right to dissolve parliament (54, 16, 5), neither can I justify dictatorship on the grounds that corrupt officials should be dealt with (50). In general, if the authorities are not pressured from the bottom, they are likely to care less for the people and more likely to protect their own interests (46), even more so where parliament is one-party and full of people who failed to fulfill their potential elsewhere (27, 59). Posing demands to the government is problematic, as we ourselves often fail to protect our rights (41). It is like this because in our country the constitution does not play the role it is supposed to play (19). The government itself has little respect for the law, other factors are at play in governance (42). The intention to fight criminals has been declared, but nobody has been held responsible, not even Shevardnadze (31). On the contrary, those who abuse the law are promoted, and revolutionaries occupy government posts – this is inadmissible (52). Revolution cannot justify constitutional

revision, neither can it bring about democracy, because regrettably, as is apparent, government of the people, i.e. democracy, is not attainable (24, 21).

2. Modernizer

It is high time for people to stop playing politicians and mind their own business (59), as for the laws, they can be better dealt with by lawyers (23), especially as our political and public order and rights have already been defined by the country's main law – the constitution (4). It is very dangerous to have leaders that do not abide by the constitution and change it at their discretion, nobody should establish dictatorship for the good of the people (53, 43, 49). Because the constitution spells out the political vision of our future (3), every single person should respect it and the constitution should set a framework for any individual's life (56). In such a case we will no longer look back into the past, we should live in the present and plan for the future (58). We are not different from other civilized nations, are we (33)? It is natural that the constitution was changed following the Rose Revolution in order to fill the legal vacuum and bring the country back to constitutional rule (24, 35). Further, the changes made were not bad: parliament has acquired a major lever to control the executive – the right to a no-confidence vote, while the president's right to dissolve parliament will make it possible to clear up political conflicts (6, 5). Let us not accuse the new young government of tailoring the changes to fit their needs (38), isn't it natural that those who made the revolution are now occupying posts in the government (52). The new state flag too is good and attractive (17). The country's progress is hampered by strong regions, but we cannot wait until this problem is settled as we need to establish order now.

3. Orthodox Traditionalist

Everything will be settled if the constitution establishes the special status of the Orthodox Church, if the people are employed, pay taxes and contribute to the state budget – the state will revive (34, 32). Times are hard now and the president should assume all the burden of pulling the country out of this hardship (54). This does not mean a dictatorship will take over in Georgia (1), doesn't the president express the majority will, and don't presidents everywhere play a big role, while Georgians are the kind of people who should have one ruler (40, 8, 18). Our mentality is such that anything foreign, even good, may not be applicable in Georgia (33). We can even admit that we need a dictator who will protect the public interest and defeat corruption (50), but he should still act within the limits set by the constitution, even when he protects society from criminals (25), and the constitution should not limit the majority rule (13). The president and parliament elected by the people should have the broadest rights, while the appointed prime minister's rights should be limited as far as possible (60), then a one-party parliament will no longer be a problem, rather it will be a positive feature, as in democracies people have diverse goals and views and from these one particular and correct view should be selected (27, 15, 14).

4. Humanitarian Traditionalist

Constitutioners should obey the constitution and the laws, while ordinary people should live as befits human beings (56); however, ordinary people often violate the laws and get oppressed because of that, therefore the new government's methods of fighting criminals should be more subtle (44, 31). Don't 90% of people still dream about being at least a bit corrupt, this is reality (26). As for my rights, I will take care of them and protect them, it is not a problem these days (55, 41). It is the constitution and not pressure from the people that should ensure the government's stability and effectiveness (11, 46). Besides, it is professionals who in the first place should occupy public offices

(57). I will not agree under any circumstances to a dictatorship justified by the need to combat corruption (50), the state should not be the instrument of violence (7); there is a fundamental difference between dictatorship and democracy, first of all because the constitution should be enforced and it should not be changed by one individual and there should be a diversity of opinions (53, 14). It is good that we are moving towards the western system, but not all that is western can be applied in Georgia (30, 33). It will not be bad at all, if once in a while we look to the past and take good examples from there as well (58). Local issues should be dealt with in the regions and should not be sent to Tbilisi to be tackled here (61); the problem of Georgia's unification is one of the acutest on today's agenda (63).

In order to better understand how characteristic the given assessments are for this or that discourse, it will be useful to compare the four-factor and five-factor distribution of respondents. What will change if we try to break down the spectrum of views further? In the case of breaking down the respondents into five factors (which will not be discussed in detail here, as we will touch upon some of it only), the first and the third discourses identified in the previous case would remain the same. Only the second and the fourth discourses would undergo transformation. The second discourse would become radicalized towards dictatorship and would find it difficult to differentiate between dictatorship and democracy. It would turn positive towards “the good dictator” and would be more categorical in saying that making changes to the constitution has been a necessary exercise. The fourth discourse would acquire religious features, lose its nostalgic sentiments and become rather critical of the present government and the recent developments. It would retain its traditionalist orientation concerning self-government, though. The newly identified fifth discourse would take up a more modernist than traditionalist orientation. At the same time, its views about democracy and the constitution would be such that could be described as “People’s democracy”, like the Soviet-type democracy. Although this discourse would be an explicit supporter of constitutional democracy and be against dictatorship, the constitution and the state in its consciousness would bear many Soviet features. The state flag would express the state ideology; the constitution – future aspirations and moral values. The state itself would be centralized. Such a dominant state is acceptable for “people’s democracy” unless it transforms into dictatorship and violates the privacy of the people (“the realm of lifeworld”) – the area of their autonomy. With this provision, “the popular democrat” would back and welcome the present government which came to power through the revolution. Despite nostalgia towards past times, the popular democrat would hope that the bright future outlined (“democracy” instead of “communism”) by the new government, would bring much good to the people.

The five-factor scheme enables us to make two conclusions: a) piety and a tendency to side with dictatorship are not characteristic of the third discourse only. The second discourse, too, in its radical manifestation has a tendency to approve of dictatorship, while those who advocate making a provision about religion in the constitution are present in almost all the discourses; b) the Sovietesque views about the state and the constitution are widespread and the signs of it are revealed in the aspirations of the modernizer, as well as the attitudes that are most characteristic of the humanitarian traditionalist, confronting modernizer’s intention for state’s excessive penetration into the realm of people’s lives and violation of their autonomy.

Each system of views identified here has a benevolent interpretation – the way it sees itself – as well as a critical view from the outside, a different one, depending on which discourse’s angle it is viewed from. Furthermore, each system of views can tilt to moderation and thus come closer to the accepted democratic discourses, but each of them can also stray into radicalism and jeopardize democracy.

The second discourse believes that the time for political battles has ended and that it is time to enforce the acquired political powers. To this discourse, the continuation of political confrontation is a threat and, therefore, it downgrades the first discourse’s attempts to look at developments from the political point of view – the state flag should not be regarded as the National Movement’s flag, the government in power – as a dictatorship, and the people who came to power through revolution – as

usurpers of public offices. The right way of development has been defined, it is time for the lawyers to just translate that into the laws. The second discourse regards the fourth discourse as a serious threat too, as the latter may not abide by these laws. In no case shall it be allowed that a large segment of society, so-called ordinary people, be left beyond the framework of legal regulations and thus hamper development. This will become yet another source of corruption. Therefore, the past should be abandoned. We cannot afford to postpone the enforcement of the laws until territorial integrity is restored. The second discourse challenges the third discourse too on the latter's focus on Georgian mentality and traditional values. The second discourse does not support making a provision about religion in the constitution either.

The first discourse, unlike the second one, does not view the present situation as the basis for democratic development. It clearly detects the signs of dictatorship in the present circumstances and regards the strengthening of the principle of constitutionalism as a premise for the protection of its own political rights. The second discourse from the standpoint of the first one is more of an advocate of a Bolshevik-type totalitarianism, as it changes the flag and the constitution at its own political discretion and gets hold of public offices. According to the first discourse, second discourse in this regard is supported by the third discourse as well, which believes that today is a special moment and the president should assume full responsibility in order to pull the country out of this situation. The third discourse, according to the first discourse, is on the whole dangerous for democracy, because it downplays the need for the rule of law and tilts to the, strictly majoritarian rule that violates the principles of constitutionalism that almost becomes dictatorship. In the opinion of the first discourse, the fourth discourse has no legal consciousness, is indifferent to the recent manifestation of disrespect to the constitution and does not share the first discourse's determination to act politically and subject the government to the people's scrutiny.

The third discourse, like the second one, is hopeful for the future, as it believes that the president who came to power through revolution embodies the majority will and, therefore, he will realize the people's hopes: for instance, he will grant special status to the Orthodox Church. However, if the president's powers are blocked, then it may become difficult to enforce the majority will. According to the third discourse, both the first and the second discourses place inadequate emphasis on the enforcement of the people's will and by doing so put Georgian individuality and identity at risk. The third discourse does not see much difference between these discourses except that it considers the first dangerous, as it is in opposition to the government, whereas the problem with the second is that it follows a different direction of development, copying western experience too much. As to the fourth discourse, which is fearful of dictatorship and places excessive emphasis on the protection of human rights, it puts at risk the possibility of enforcement of the people's will through the concentration of political power.

The fourth discourse starts with a very interesting statement about constitutioners and ordinary people, which can have multiple interpretations. On the one hand, it resembles the confrontation between the Habermasian system and lifeworld and the call to protect the lifeworld. On the other hand, it not only clearly differentiates between the law and morality (which the Marxist approach, contrary to the liberal one, would not do), but also clearly demarcates the domains for both and regards the people's lives first of all as the home of morality. Finally, it can be interpreted as "amoral familism"⁵ which, according to Putnam,⁶ is characteristic of uncivic consciousness as opposed to republican consciousness, engenders corruption and hampers the working of democracy.

If put in the context of Georgian history, this discourse symbolizes an approach which both in the Soviet period and before, in the times when Georgia toiled under the yoke of multiple foreign conquerors, evolved into a tradition. This tradition shaped mass strategies of self-survival and

⁵ Edward C. Banfield, *The Moral Basis of a Backward Society*, The Free Press, Chicago, Illinois, 1958

⁶ Robert Putnam having studied civic traditions in modern Italy has concluded that the historically shaped difference between civic traditions in southern and northern Italy affects the way the government institutions function. Putnam links the lack of civic traditions in southern Italy to the region having been under the influence of foreign conquerors for a long time. The latter observation seems relevant in the Georgian context as well. R.D. Putnam, *Making Democracy Work: Civic Traditions in Modern Italy*, Princeton University Press, 1993

maintaining identity, the essence of which is to demarcate adverse and alien environments rather than try to influence them.

In this respect, the discourse is most challenged by the second discourse whose main interest is to promote an establishment of a system. The second discourse wants to change all that is the refuge and pillar of the fourth discourse – the past and Georgian mentality. The second discourse threatens the fourth one with the imposition of system, bearing certain totalitarian values, while the third discourse reveals to it the signs of dictatorship. Therefore, the third discourse is no escape either, despite the fact that the two share certain value attitudes. The third discourse is somewhat fraught with religious fanaticism, while its dictatorial tendencies can make the private individual the object of violence from dictators. Despite all these considerations, the fourth discourse has confidence in the government, which is undermined by the first discourse. The intention of the fourth discourse to hide in a shell and hope that the government would take care of things is challenged by the first discourse, which pushes the former towards taking position within the public space - something that the fourth discourse is not used to.

5. Conclusion

The findings of previous studies⁷ conducted in Georgia corroborate the stability of the systems of views identified by this research. Their analogues (at least those of the first three) have been revealed by other studies. This substantiates the view that they should be considered in the process of constitution-building.

If we take into account that the respondents' answers, due to social expectations, are likely to be more positive to constitutionalism and democracy than will be their behavior in less public circumstances, an assumption can be made that the discourses described here, or at least some of their radical manifestations, can put constitutionalism at risk. On the other hand, if we admit that it is possible to avoid the radicalization of discourses and facilitate their convergence, then we will see that they will form a regular, healthy political spectrum that is comparable to any spectrum in any constitutional liberal democracies. Thus, Georgia's task is not to exclude any segment of society from political processes, but rather to ensure that this process facilitates the realization of the finest aspirations of all political views.

Such a convergence is contingent upon the selection of a constitutional model and the right decision on the institutional organization of the country's political system. For instance, one thing that can contribute to that is a more appropriate electoral system. We can presume that the majoritarian system is more appropriate for *traditionalist* political views, while the proportional system would appeal more to those representing *anti-tradition*. If this surmise is correct (to be substantiated by additional research and considerations), then what will the formation of a two-chamber parliament bring about for Georgia, in which the upper chamber will be staffed with majoritarian MPs and the lower chamber with members elected through the proportional system? How should the competencies be divided between the two chambers in order to avoid the majority's political views being disregarded or to prevent conflict between the chambers?

This is just one possible question that outlines possible considerations and application of the findings of this study. In the course of analyzing the findings we should take into account that the methodology of the given study does not allow the question to be answered as to how widespread this or that view is in Georgia. Further research could answer that question.

⁷ See John Dryzek, Leslie T. Holmes, "Post-Communist Democratization: Political Discourses Across Thirteen Countries". Cambridge University Press, 2002, and Hanf T., Nodia G. 2000. Georgia – Lurching to Democracy. From Agnostic Tolerance to Pious Jacobinism: Societal Change and People's Reactions. – Nomos Verlagsgesellschaft, Baden-Baden

6. Appendix 1

Statements in the left column of the table represent a set of expressions evaluated by respondents. Across each statement there are marks from -6 to +6 reflecting the assessment of the statement in four identified discourses. The number of a discourse is specified at the head of a respective column. The given table includes a total of 64 statements arranged from the maximum consensus (all respondents are more or less unanimous) to the maximum opposition (radically different views).

Table 1.

No. of statement

No. of factor (discourse)

No		1	2	3	4
9	When morale norms are defied, the constitution serves to reconcile the move with informal morale principles that existed for the entire history of the mankind.	1	0	2	1
49	All provisions of the constitution should be strictly observed. No future goals can be used as an excuse for violating the constitution.	4	5	4	2
64	A constitutional model should facilitate the democracy building and the development of political competition and political thought in a country.	2	3	3	4
14	Democracy is a diversity of opinions, when everybody has his/her own opinion, and it is necessary to choose the best one from this variety of views.	3	3	3	5
61	Local problems should be solved at a local level, not in Tbilisi.	1	1	3	4
10	The constitution of Georgia is not only for ethnic Georgians. Georgia is a multi-ethnic country. This issue has become urgent in recent times.	0	3	0	0
45	The Armenian and Azeri communities have higher birth rates than ethnic Georgians. If citizenship is more important than ethnic identity, an ethnic Armenian may be soon elected president of Georgia. I think it is a danger.	1	-1	2	0
12	Individuals have a leading role in history.	1	4	4	3
29	Regions of Georgia have never been acting independently, either from historical or any other point of view.	-1	-4	-5	-4
53	Authorities must abide by the constitution. No leader should be given a right to amend the constitution by himself.	6	5	3	6
36	The problem is that those with better knowledge and judicial education know how to breach laws.	-1	1	0	2

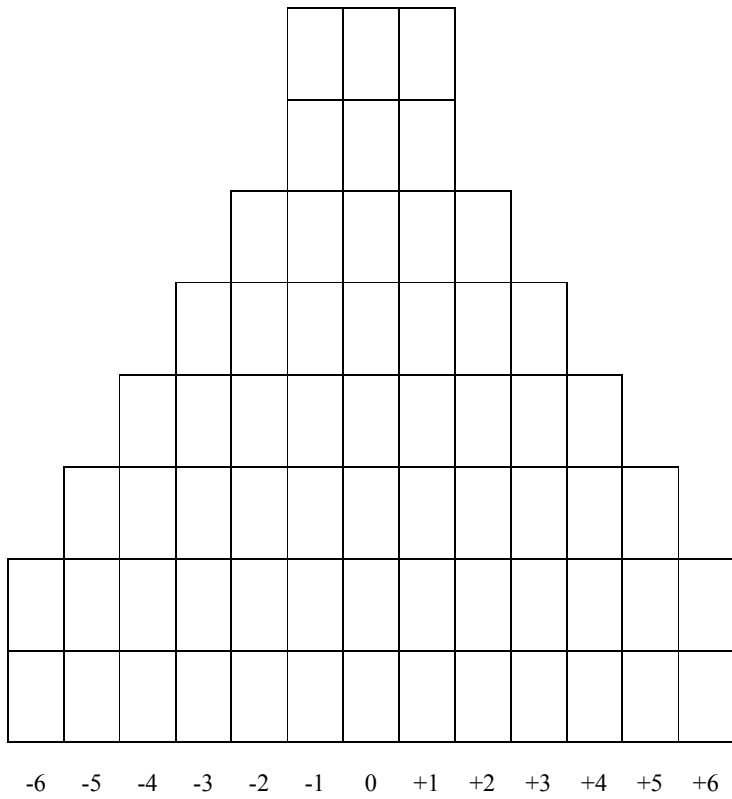
13	Constitutional countries have such kind of democracy, which ensures that a majority does not have full power.	0	-1	-3	1
28	In Communist times citizens enjoyed all possible constitutional rights – holiday, education, employment and entertainment – but they were not implemented in practice and actually remained on paper.	-4	-1	-4	-1
7	Every state is a tool of violence.	0	-2	0	-3
59	It is necessary to ensure that every citizen finds his/her own true role in practical activity, in doing something practical, instead of trying to get in parliament.	5	6	5	2
62	If we want to be a state, let's put aside human rights. This theme was deliberately imported from outside in order to undermine the state and promote a cosmopolitan outlook.	-2	-4	-2	-4
47	Just too powerful regions created the biggest problems for David Agmashenebeli.	-2	2	-1	-1
22	Unlike Communist times every citizen is able to speak out on any matter freely nowadays. Nobody will be killed for this reason, and nothing will happen.	-3	-2	1	0
48	The constitution should not be applied in a lawyer's way, with arbitrary and subjective interpretation. The constitution must be clear and unequivocal.	6	4	0	3
21	Democracy, or people's government, can be never achieved in practice. People and government will always exist separately.	3	1	-1	0
57	The human factor should be given a top priority in personnel policy because if a person is not positive, in our point of view, his/her appointment will change nothing.	0	1	-1	-3
3	Constitution is a political thesis to be used as a basis for future nation-building.	2	5	3	0
60	Elected president and parliament should have as much power as possible, while powers of an appointed prime minister must be limited to the greatest extent.	-3	-2	2	-1
51	As long as we do not have laws, we will have no salaries, foods, or drinks.	-2	-2	2	1
20	Many provisions of the constitution are violated because of the absence of objective judiciary.	3	4	0	-1

26	No less than 90 percent of people would be glad to be at least a bit corrupted . This is a reality.	-3	0	-2	2
25	There are such cases when it is necessary to violate the constitution in order to punish a perpetrator and protect the society from crime.	-1	-2	-4	1
24	Revolutions similar to our Rose Revolution always lead to constitutional amendments.	-3	2	2	1
43	There is nothing wrong with dictatorship, provided a dictator is a good ruler, taking care of the people, and citizens are happy under his/her government.	-3	-6	-2	-2
6	The no-confidence vote is the parliament's major tool to control the government.	-2	3	-2	-3
11	The main objective of a constitutional system is to ensure political stability and efficiency of governance.	-2	0	1	4
15	Democracy is a form of government in which the entire society agrees to common values and a common goal.	1	2	-4	-1
5	The presidential right to dismiss a parliament is a means of settling likely political conflicts.	-4	2	-1	-1
39	As to the position of prime minister, people do not see any difference between a prime minister and a state minister.	1	-4	1	-3
52	Those demonstrating in the street and organising revolutions should not be given official posts.	2	-4	-1	0
23	Sometimes I may understand laws better than lawyers, because they know only what they were taught in universities, while I have greater hands-on experience.	-1	-6	-1	-1
2	The national flag reflects a state's ideology.	-2	-3	1	3
19	Our constitution fails to play a role any constitution should have in general.	4	-1	-1	-2
16	If the legislation is adjusted to one person, he/she may be considered a monarch, not president.	4	2	0	-2
46	Unless grass roots hold the government accountable, authorities will be always able to reach an agreement with each other and continue a happy life.	5	1	1	-3
41	Today we may be well aware of our rights but,	3	1	-2	-4

	unfortunately, their implementation depends on other factors.				
58	The problem of Georgia is that we continue living in the past. One must not live in the past. A man should think about the present day and tomorrow.	-1	3	0	-5
55	I must take care of my problems on my own and ensure that they are not violated. It is up to me to deal with the problem.	1	-1	-3	5
27	We have a one-party parliament and, naturally, it will make only decisions that satisfy the government, even if they contradict public interests.	4	0	-3	-2
63	First Georgia's territorial integrity should be restored and only after we can speak about the constitution.	-1	-3	4	4
50	Dictatorship is the best option for us at present – one leader with exclusive powers capable of disciplining low-ranking bureaucrats, who are bustling and trying to gain as many personal profits as possible.	-5	-5	1	-5
40	Many in European countries do not know their own president because it makes no difference whether Peter or Paul takes the presidency – there will be no serious changes, no matter who is in power.	0	-3	-5	2
18	Generally speaking, the Georgians are a nation that needs only one ruler.	-4	-3	4	-4
44	Those who violate laws are able to achieve a successful career, while those who cannot breach laws are miserable, unpractical, honest and unlucky people.	1	0	-3	-6
32	All problems will be solved, if every citizen gets a job and pays taxes. If so, the budget will get enough revenues and the state will recover.	-1	4	6	1
33	I like everything good, but the Georgian mentality makes it impossible for me to make use of everything, that is American, British or Japanese in Georgia.	2	-1	5	5
4	Constitution is a country's basic law, which determines the country's political and social structure, and every citizen's rights.	2	6	-3	3
8	The only difference between democracy and dictatorship is that a certain segment of the society is able to influence the government.	0	0	5	-5

37	This new period has already seen some changes that really allow living in line with the constitution.	-6	-1	0	1
38	These constitutional amendments were indispensable because young, energetic and skilled people came to power.	-5	-3	2	1
42	The government's directives, influential friends, etc. play a bigger role today. Just authorities defy the law most often and, therefore, there is no rule of law in the country.	5	1	-4	-2
31	All criminals should be brought to justice. This government has never held anybody, including Shevardnadze, accountable.	2	-2	-2	-6
30	It was unclear during Shevardnadze's rule who is a boss and who are his/her subordinates. Since the new government came to power, the country has moved closer to the western system.	-4	1	-5	3
17	The current fluttering flag is one of the National Movement.	3	-5	1	-1
35	Quick constitutional amendments were justifiable. The country was in a constitutional vacuum. A revolution took place and there were no other solutions.	-6	2	-1	0
1	Dictatorship does not mean that rights of a citizen are violated. It means that one man has absolute power.	0	0	-6	2
56	Constitutionaries must respect the constitution and laws, while ordinary people should live in a human way.	0	-5	1	6
34	It makes no difference whether the constitution makes special emphasis on religion. If a citizen is a faithful Orthodox believer, it does not matter whether religion is constitutionally protected or not.	-1	-1	-6	0
54	Under present-day special circumstances, the president must assume full responsibility and should be given extraordinary powers.	-5	0	6	2

7. Appendix 2



Strongly disagree

Fully agree

Graph 1. Scale of Q-set for 64 statements

Political and Constitutional reform in Armenia

Mkrtych (Sos) Gimishyan

1. The public governance of Armenia; the state; separation of power

Oftentimes, under the system of public governance the combination of state governance and local self-government is understood. However, in countries that have well developed civil societies, the evolution of the state and local self-government leads to an expanded and generalized conception of public governance. At the current development stage, in countries where human rights are respected and all important decision-making involves researching and heeding public opinion, public governance includes all key civil society institutes. Public governance thus expands to include civil society stakeholders such as mass media, political parties, NGOs and trade unions as well as central and local governments.

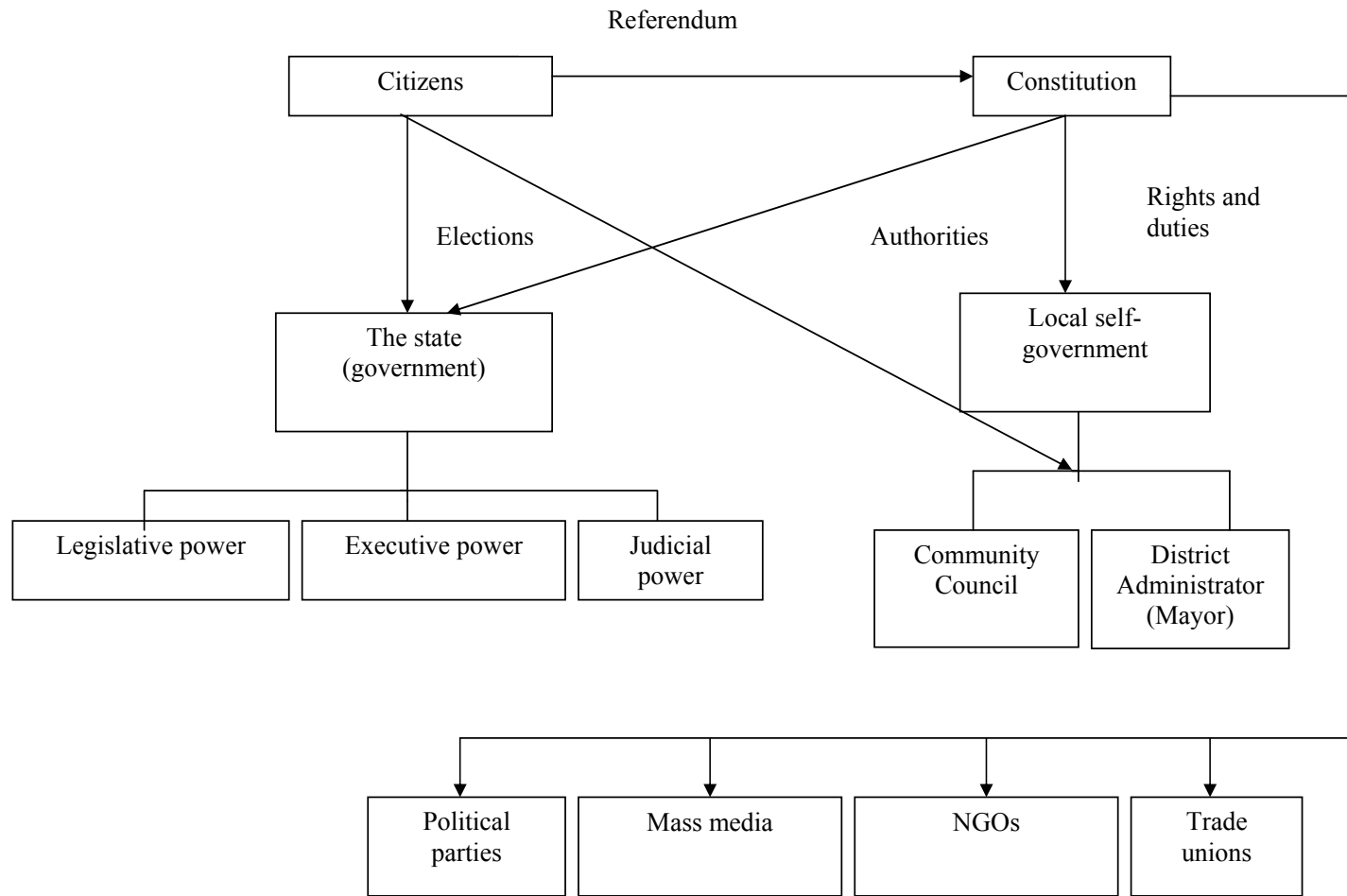
The state is a mechanism of political organization of the society based on public accord, a contract sealed by the citizens by means of a constitutional referendum. It is the Constitution that determines fundamental human rights and duties; it sets down the institutional framework of public governance and the procedures for its creation and development, with the aim to ensure harmonious spiritual, intellectual and physical development of society.

Public governance is the main tool for regulating the way the society and the state implement their main goals. In the presence of a well-developed civil society, public governance institutions are only formed by political forces capable of fulfilling people's needs efficiently, i.e. political power is also the result of public consensus. In its turn, the state as the main institution of public governance is a type of public service supported with taxes paid by citizens.

Every society strives to make its public governance as efficient as possible; civil society is essential for this. To produce a strong civil society, social groups must unite in a systematic way to create organizations (institutions) that serve two main goals: to monitor the conformity of the state's activities to the Constitution and the laws, and to establish a legal framework for pressurizing the state into bringing its actions in line with the law. The activities of the civil society should result in the formation by direct election of state and local self-government bodies with the help of social and political organizations representing various social groups, and control over the activities of the bodies thus formed.

All this means that the main public governance institutions are state and local self-government agencies, NGOs, political parties, mass media, trade unions, etc. (Fig. 1).

Fig. 1. Public Governance Flowchart



The society is the object of governance, provision of public service is its goal, and the bodies of public governance are its subject. Any reform of public governance should be aimed at the improvement of its efficiency to the benefit of as many social groups as possible.

State and local self-government agencies are amongst the most important governance institutions. These agencies are special not only in that they exercise administrative powers, but also by the procedures used to form them.

Having regained independence in 1991, Armenia declared a strategy for democratic change and market economy, and began to reform its governance system. As a Soviet legacy, the new state had a huge system of governance institutions. There were 44 ministries and committees in the central government alone.

The Parliament of independent Armenia was one of the first to pass a law that reduced the number of ministries and committees to 31. Later on, central government structures were further reduced; all these changes were implemented in a new social and economic environment and resulted from radical changes of governance in general. However, it is worth mentioning that there was not consistent policy behind the governance reforms carried out in 1991-95. Any changes made at the level of central government were in fact ad hoc, whereas regional governments and local self-government agencies remained as they were. There were attempts to make the old Soviet system work. This made sense to the extent that the Communist party had been deprived of its political and economic powers; without Communist leadership the Soviet regional governance system did not look so bad any more and time was needed to see if it is in fact workable.

The new Constitution adopted in 1995 laid the foundation of the country's political system and regional governance reform. A number of subsequent laws and decrees made it possible to promptly establish a new system of regional government and local self-government.

Armenia is a semi-presidential republic: the President's power, both legal and practical, is quite strong. The country has two levels of governance: state (central) government and local self-government. The central government is composed of ministers led by the Prime Minister.

In a democratic society, the main functions of government and local self-government agencies are defined in the Constitution. I analyzed the current situation and proposed reform in the sphere of governance in Armenia, in particular, with respect to state governance and local self-governance. For example, a number of articles from the Constitution adopted by the July 5 Referendum play a crucial role for the system of public governance. These articles stipulate the following:

- In the Republic of Armenia power belongs to the people. The people exercise their power through free elections and referenda, as well as through state and local self-governing bodies and public officials as provided by the Constitution (Article 2).
- State power shall be exercised in accordance with the Constitution and the laws based on the principle of the separation of the legislative, executive and judicial powers (Article 5).
- The multiparty system is recognized in the Republic of Armenia. Parties are formed freely and promote the formulation and expression of the political will of the people (Article 7).
- Everyone is entitled to freedom of speech, including the freedom to seek, receive and disseminate information and ideas (Article 24).
- Everyone has the right to form associations with other persons, including the right to form or join trade unions (Article 25).

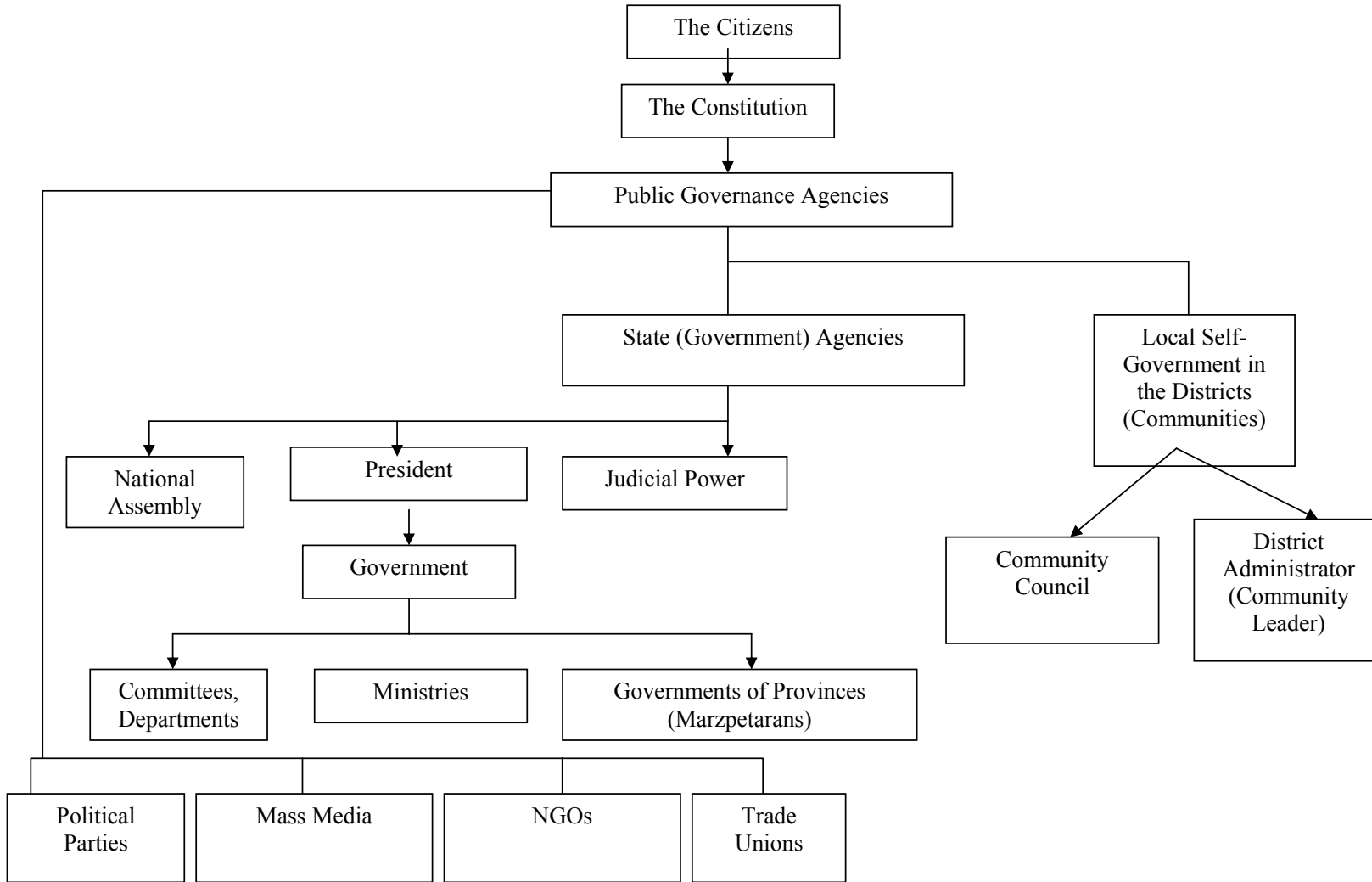
These articles of the Constitution, the laws based on them, and international treaties ratified by Armenia provide an adequate basis for the establishment of basic governance

institutions, in particular, the central Government and local governments, mass media, political parties, NGOs, trade unions, etc.

The system of public governance defined by the Constitution of Armenia is in general adequate for a democratic, rule-of-law, unitary state with market economy.

According to the Constitution of Armenia, state power is exercised in accordance with the law and divided into three branches, namely, the legislative, executive and judicial powers. Legislative power is exercised by the National Assembly (the Parliament), executive power, by the Government, and judicial power, by the Constitutional Court, a three-level system of general jurisdiction courts plus economic and military courts. The Constitution stipulates that the President shall oversee the observance of the Constitution, and ensure the normal functioning of the legislative, executive and judicial powers. A special chapter of the Constitution (Chapter 7, Territorial Administration and Local Self-Government, Articles 104-110) is devoted to regional governments and local self-government. The Constitution thus subdivides governance bodies into three categories: central, regional (at the level of provinces) and local (at the level of districts) (Fig. 2).

Fig. 2. The Structure of Governance in Armenia



The Constitution stipulates that the President of Armenia is elected by the people by universal and direct suffrage for a 5 year term. The President has the power to appoint and dismiss the Prime Minister, members of the Government and the heads of judiciary. Any law passed by the National Assembly must be ratified by the President before it is enacted. The President has the right to dissolve the Parliament, convenes and chairs meetings of the Government. The President determines the organization and rules of operation of the Government upon the recommendation of the Prime Minister. The Constitution also stipulates that the President shall be guarantor of the independence, territorial integrity and security of the Republic and shall represent it in international relations.

The National Assembly has 131 members elected for a 4-year term. It passes laws; adopts the state budget upon its submittal by the Government; determines the administrative and territorial division of the Republic; appoints the Chairman of the Central Bank upon the recommendation of the President of the Republic. Upon the recommendation of its Speaker, the National Assembly appoints the members and the President of the Constitutional Court, and the Chairman of the National Assembly's Oversight Office. The National Assembly supervises the execution of the state budget and the use of loans and credits received from foreign governments and international organizations. The National Assembly has six standing committees; ad hoc committees may be established as necessary.

The Oversight Office upon the decision of the Parliament conducts a financial and economic audit of budget execution and presents its statement to the Parliament on a yearly basis.

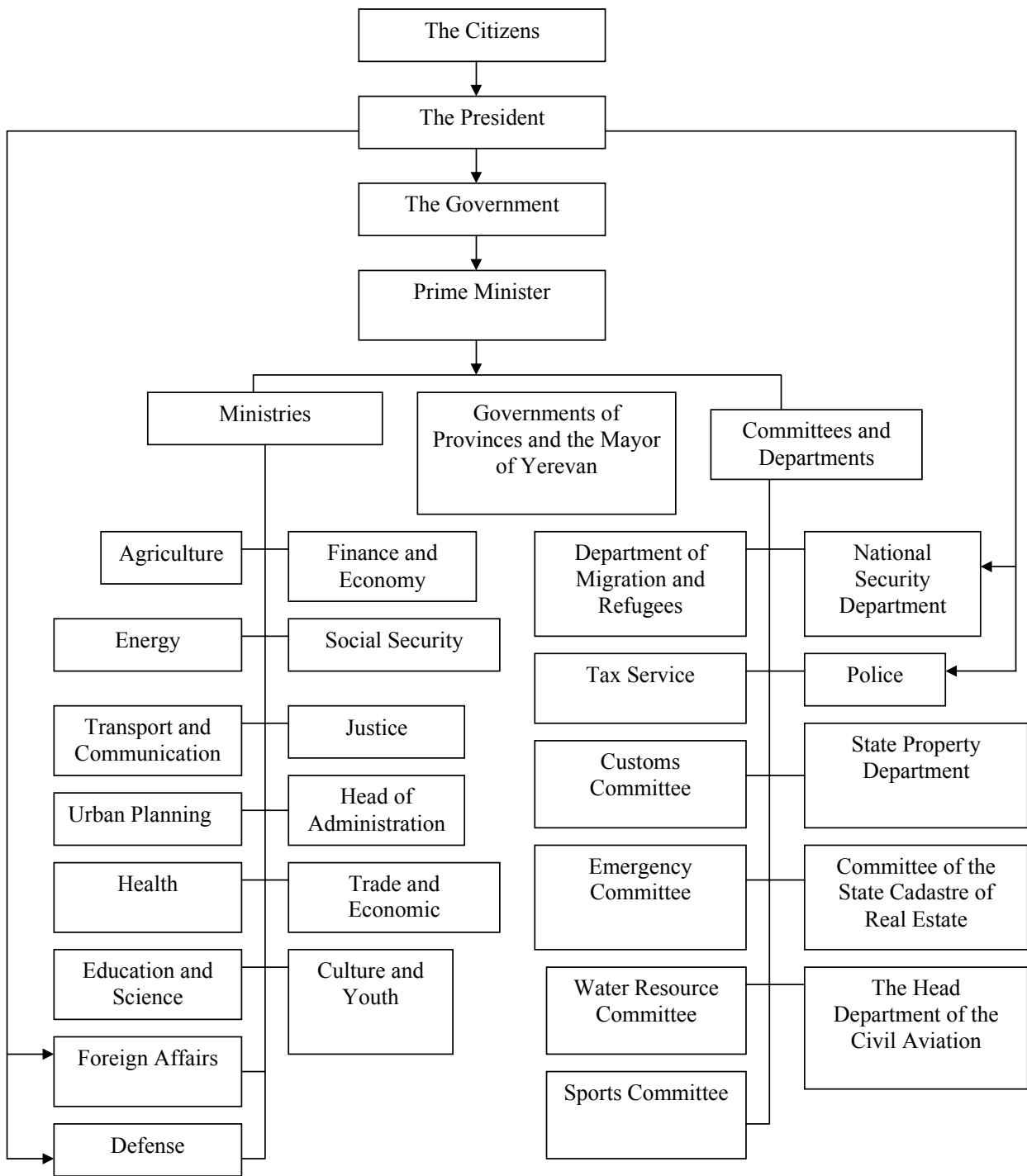
The Government is the main executive body; it submits its program and the draft state budget to the National Assembly for approval, implements the domestic and foreign policy of Armenia, manages government property, and ensures the implementation of state policies in the areas of finances, economy, taxation and customs. The Government has the right to propose laws to the Parliament.

The Government guarantees the implementation of the budget and ensures the implementation of state policies in the areas of science, education, culture, health, social security, environmental protection, etc. The Government is composed of the Prime Minister and the Ministers; its powers are distributed between ministries, committees and services (Fig. 3). The Prime Minister oversees the Government's regular activities, coordinates the work of the Ministers and adopts resolutions.

This governance system has been in place in Armenia since late 1996. The experience of over 8 years shows that the current system has many drawbacks and shortcomings.

First of all, it should be mentioned that a consistent policy of governance reform is still lacking. The state and local self-government are often treated separately. This is probably why we have two separate commissions: one on state reform established by the Government in 1999, and one on local self-government established by the President in 1998. Their activities are visibly lacking in cooperation and coordination. There is no coordinated decentralization policy. Of course, the commissions did achieve certain results, especially the commission on state reform which drafted the *law on Civil Service* passed by the National Assembly in 2001, and a policy paper for the reform of the Government's structure. Yet in the absence of a coordinated policy of state building, the commissions are quite inefficient.

Fig. 3. The Executive Power Structure of Armenia



2. Governance at sub-national level. Regional Government. Local Self-Government. Decentralization of power

In order to boost the efficiency of governance, and in particular to develop local self-government, it is crucial to ensure that province governments function adequately and are in line with the demands of modern life. At present, the governments of provinces largely fail in fulfilling their main function: implementing central government policies in the provinces. Regional programs are vital for the development of communities and the country as a whole, and could serve to improve regional infrastructure and handle other major regional problems. Due to lack of funds in the state budget, the scope of regional programs is minor.

Having inflated administrations and unclear functions, province governments often interfere unlawfully in the authority of local self-government. It would therefore make sense to cut the administrations down to size. Another problem is that the Governor of a province often carries on like a Soviet-time Communist Party boss. It should be mentioned that the conservation of these 'traditions' is to a great extent the fault of local governments that are too weak to oppose unlawful interference.

There is also the need to adopt a law on regional government that would clearly define the functions of province governments, their relationship to local self-government and to agencies representing the central Government and its ministries. One can even try a more radical reform: bearing in mind the progress in communication technology and the fact that Armenia is a small unitary country, we would have little to lose by liquidating the province governments altogether and establishing a second level of self-government, which would doubtless serve to improve the entire governance system.

Armenia is divided into 11 administrative and territorial entities: 10 provinces and the city of Yerevan which has the status of a province. Provinces are divided into self-governed districts, or communities. Provinces have governments that implement the regional policies of the central Government and coordinate the work of regional subdivisions of central executive powers. The province governments do not constitute a separate level of governance because they have no elected bodies or budgets of their own.

According to the Constitution and the laws, province governments pursue four main avenues of activity:

1. elaborating regional development policies,
2. implementing the regional policies of the central Government,
3. coordinating the work of regional subdivisions of central executive powers,
4. supervising the work of local self-government.

By a presidential decree, every province has its own government lead by a Governor (Fig. 4) and financed by the state budget. Under this decree, the Governor coordinates government policies in the area of finance, urban planning, transport, road construction, utilities, agriculture, education, culture, sport, environmental protection, etc. The Governors are appointed by the Government and their work is coordinated by the Ministry of Regional Government.

According to the Constitution, the city of Yerevan has the status of a province; its Mayor is appointed by the President by motion of the Prime Minister. There are 12 self-governed districts (communities) in Yerevan.

The experience of developed democracies shows that their prosperity is partly due to the creation of local governments that are independent from the central government. Based on this experience, transition countries are trying to decentralize governance and establish efficient local self-government as an integral part of state building. The establishment of efficient local self-government depends on a number of factors, such as the political will of the state, the

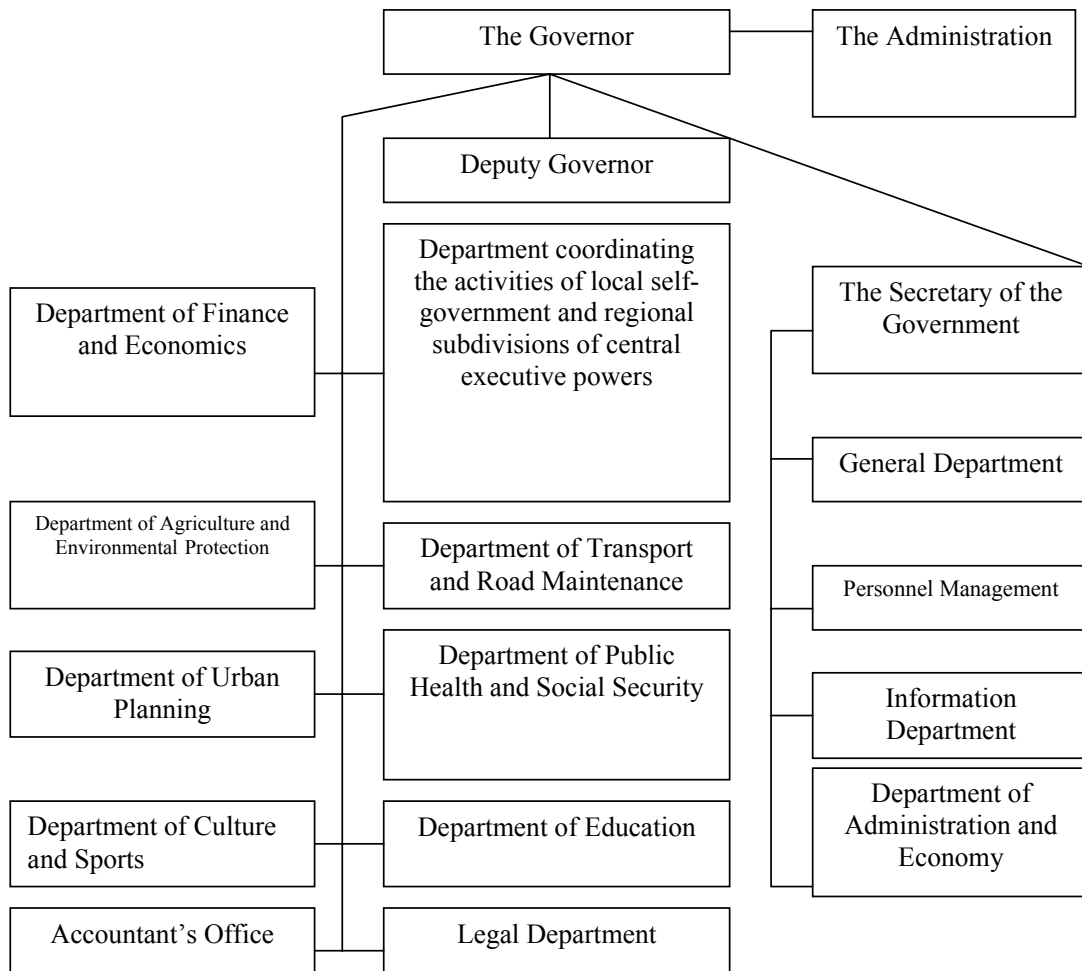
existence of a policy for the development of local self-government, decentralization strategies, action programs, the social and economic situation in the country, etc.

The Constitution establishes local self-government in the 930 districts (communities) of Armenia: 49 city districts including the 12 districts of Yerevan, and 871 rural districts. A district includes one or several populated areas and is a legal entity. Every district has its territory, population, property, administration and budget.

Communities must act independently and are only accountable to the voters and the law.

They are independent from the President, Parliament, Government and regional governments.

Fig. 4. The Structure of Province Governments



The bodies of local self-government are: the Community Council and the district administrator, the City or Village Mayor, elected by universal, equal, direct and secret suffrage for a 3-year term. The Community Council is the representative body of the community. As prescribed by law, the Community Council manages communal property; signs and amends the budget and oversees its implementation and the use of external resources; determines the types and rates of local taxes and duties in accordance with the law; determines the organizational structure of the administration that includes Deputy Mayors, the Secretary, Departments, etc. The administration acts based on its Charter signed by the Mayor. The Community Council makes all political decisions in the community that are not assigned to other government agencies. In communities of less than 3,000 people, the Community Council has 5 members; from 3,000 to 20,000, 10 members, over 20,000, 15 members.

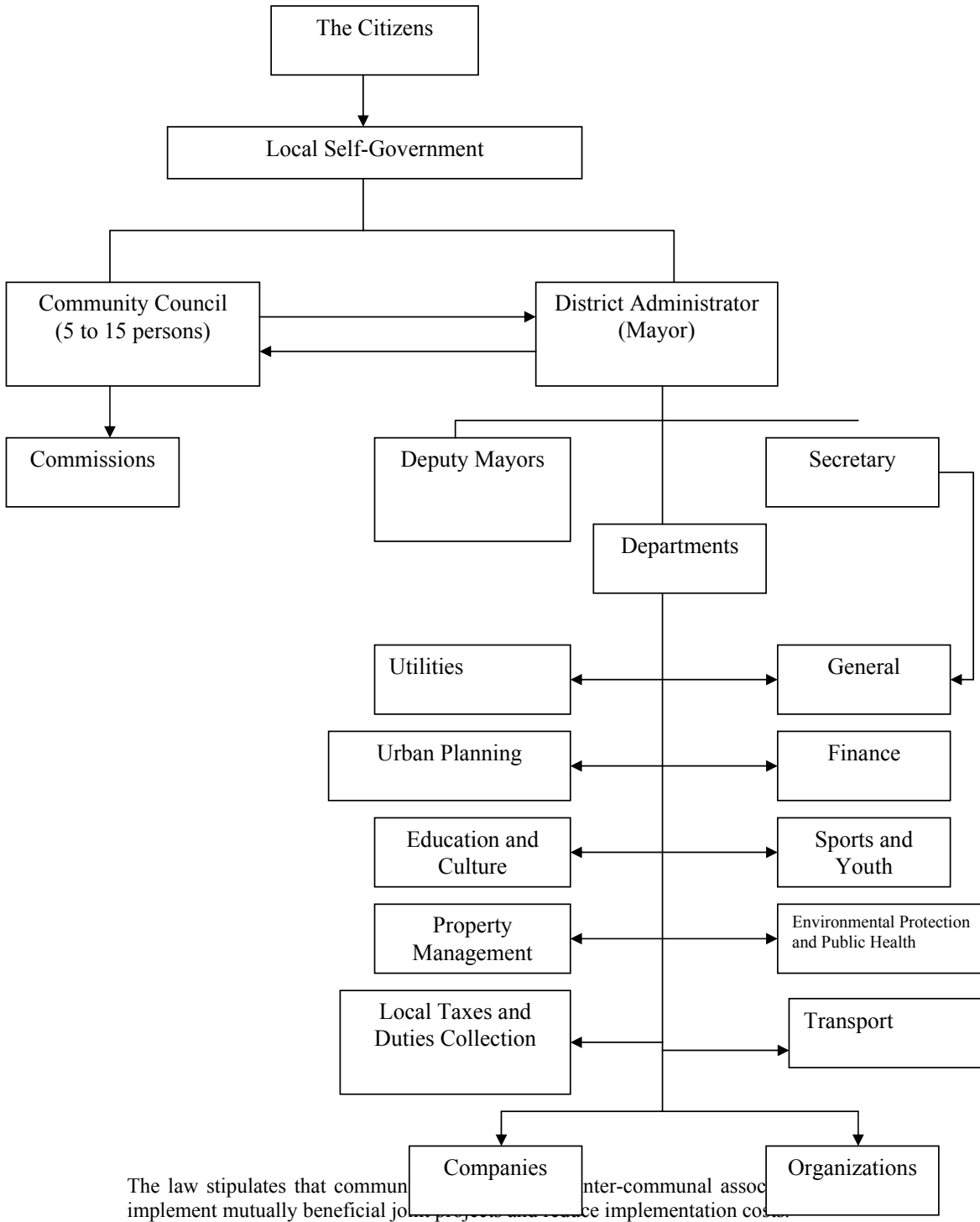
The Mayor heads the community's executive body. Coordinating its activities with the Community Council, and relying on the administration, state-funded organizations and companies, the executive body caters to all the needs of the community unless the law stipulates otherwise. The two bodies – representative (Community Council) and executive (Mayor and administration) – form the local self-government (Fig. 5).

Acting in accordance with the Constitution and the laws, the Mayor:

- Drafts a community development program for three years and a yearly budget, submits these documents to the Community Council for approval and ensures their implementation;
- Based on the community development program, prepares a construction plan and a chart of land use, and submits these documents to the Community Council for approval;
- Chairs meetings of the Community Council in consultative status;
- Drafts regulations for organizing public catering and trade, and submits them to the Community Council for approval;
- Organizes the work of education, culture and sports organizations;
- Manages certain public utilities and services such as water, sewerage, irrigation, heating, urban infrastructure improvement and park maintenance, waste disposal and sanitation, transport, town planning, local road servicing etc.

The community budget is composed of local revenues including 100% of the land and real estate tax, local taxes and duties, subsidies provided from the state budget, and some state duties. The community may also receive part of locally collected profit tax, income tax, environmental duties, etc.

Fig. 5. The Structure of Local Self-Government



By way of decentralization, the law assigns communities with a number of state functions and corresponding financial means. It is essential that the powers of local self-government are exclusively defined by the law. Table 1 shows the distribution of powers between various levels of governance that serves as the main indicator of democracy and decentralization.

Table 1. The Distribution of Powers between Various Levels of Governance in Armenia

<i>Powers</i>	Local self-governments	Central or province governments
Education		
1. Pre-school	x	
2. Primary school		x
3. Secondary school		x
4. Technical school		x
5. Higher school/university		x
6. Professional college	x	
<u><i>Social security</i></u>		
1. Retirement homes		x
2. Welfare services for the elderly and or underprivileged citizens		x
3. Special services (aid to the homeless, refugees, etc.)		x
<u><i>Healthcare</i></u>		
1. First aid	x	
2. Health protection		x
3. Hospitals		x
4. Clinics		x
<u><i>Culture, leisure, sport</i></u>		
1. Clubs	x	
2. Libraries	x	x
3. Culture centers	x	
4. Theatres	x	x
5. Museums	x	x
6. Leisure parks	x	x
7. Sports facilities	x	
<u><i>Public utilities</i></u>		
1. Water	x	
2. Sewerage	x	
3. Electric power		x
4. Gas		x
5. Heating	x	
Sanitation and environmental services		
1. Waste disposal	x	
2. Urban infrastructure and park maintenance	x	
3. Cemeteries	x	
4. Environmental protection	x	x
Communication, transport		
1. Roads	x	x

2. Street lighting	x	
3. Public transport	x	x
Town planning		
1. Drafting the community construction plan	x	x
2. Community economic development	x	x
3. Tourism		x
<u>Governance</u>		
1. Authority (licensing, etc.)	x	x
2. Administrative powers	x	x
3. Police		x
4. Human rights protection	x	x
5. Fire brigades		x
6. Consumer rights protection	x	x

As one can see from the table, local governments in Armenia are not vested with much authority. This is often justified by the fact that the local governments are too weak but in fact this is just an excuse. Once they are provided with new powers and corresponding funds, local governments will get stronger.

In general, one can state that the legal basis of public governance in Armenia on the whole conforms to the standards of a democratic rule-of-law state but needs constant attention and development to correct its faults and oversights. It is crucial to boost legislative discipline, currently so low that it undermines all the successes in the legislative sphere.

In the absence of a general decentralization policy, the local self-government system cannot develop adequately. Its development requires:

- Merging communities to make them larger
- Community capacity building
- New legislation
- Endowing local self-government with more powers
- Providing local self-government with adequate financial resources.

Capacity building is an important prerequisite for the development of communities and local self-government. An important issue on the current agenda is defining the framework of the civil service, what requirements it should meet and what rights and duties should civil servants have, how they are to be trained, protected, etc.

3. The process of constitutional reform

The Constitution is in every sense a political document. Rather than describe the current situation or achievements, it should set the goals for our nation and state for the coming decades. The Constitution is a development policy for the nation and the state. The new Constitution must promote spiritual and intellectual capacity building, enhance national security, and boost the efficiency of government agencies, thus helping our nation to become a full-fledged member of the modern world.

Most importantly, the upcoming constitutional reform in Armenia should serve the separation and decentralization of power. The reform can be evaluated based on the extent to which it addresses Armenia's two major problems, namely:

- The emergence and evolution of judicial power, increased independence and efficiency of justice, and, consequently, the establishment of rule of law,

- Further decentralization of power as the most efficient means of democratic development (based on the assumption that better local self-government will make governance in general more efficient and participatory, and that the state cannot develop unless the Constitution guarantees efficient governance).

In order to give an unbiased and realistic estimate of the Armenian authorities' positions and policies, we need to examine the draft Constitution proposed by the President and rejected at the 2003 national referendum, and the new version proposed by the parliamentary majority that will probably be put forward for referendum in mid-2005. The two versions are almost identical, and any differences between the two are purely cosmetic.

In order to evaluate the draft Constitutions proposed by the Armenian authorities, we must see how they address the three main challenges faced by Armenia: (1) efficient governance and separation of powers; (2) emergence and development of a judicial system as the foundation of a rule-of-law, fair state (justice in Armenia is in poor shape); (3) democratic development through decentralization and stronger local self-government.

In my opinion, the analysis of the new draft Constitution leads to the definite conclusion that with regard to separation of powers and independent judiciary, the proposed changes are insignificant, hence we cannot expect any progress in these areas in the event the new Constitution is approved at the referendum.

With regard to local self-government and decentralization, however, the changes are quite significant. In order to evaluate them, we should start by analyzing the evolution of local self-government in Armenia and the relevant provisions of the present Constitution (whether positive or negative). Then, after looking at the obstacles to decentralization and progress in self-government that exist at community (district) level, we can formulate a grounded appraisal of the new draft Constitution.

Local Self-Government Prior to Independence and the New Constitution

Before independence, Armenia had a local self-government system that lacked independence or property, and was in fact controlled by local communist party organizations. The latter would make lists of members of community councils; the nominees would then be "elected"; the same procedure was used to nominate the administrations of villages, cities and provinces. Local self-government, formally vested with large authority, was in fact a decorative appendage of the state whose decisions were mandatory for the local governments.

In 1991, Armenia declared independence, and up to the adoption of the Constitution in 1995, local self-government, though no longer subordinated to communist party organizations, were controlled by the country's executive powers.

Constitutional foundations of local self-government in Armenia

The Constitution adopted by the national referendum in 1995 laid the foundation for the establishment of genuinely independent and responsible local self-government. The Constitution contains provisions which are essential for the functioning of local self-government and should by all means remain in the new Constitution, in particular:

1. Article 2 of the Constitution stipulates that the people exercise their power through state and local self-governing bodies; this means that the two types of government are distinguished and mutually independent, and makes it possible for these bodies to be formed directly by the people.

2. Article 7 is fully devoted to local self-government and regional government.

Article 105 stipulates clearly that local government (Community Councils and District Administrators) is elected by the community by direct secret ballot for a 3-year term. This article stipulates that local governments act independently and at their own discretion while implementing the goals assigned by the law.

3. The same article determines the fundamental right of communities to possess property and manage it independently. The Constitution protects communal property rights; although it specifies the possibility to confiscate communal property for the needs of the state, it stipulates

that this may only be done in exceptional cases and requires the adoption of a special law in each case and the payment of adequate compensation prescribed by law.

4. Article 105 also determines the right of local self-government to independently manage their staff and organizational structure.

5. An extremely important constitutional provision stipulates that the powers of local governments are determined by the law only. This means that local governments are not bound by the decisions of executive powers and are only accountable to the law and the voters.

6. Article 104 establishes local self-government throughout the country. This important principle is, however, not observed, making it possible for legislators to restrict local self-government. As a result, up to 40% of the territory of Armenia lies outside district boundaries.

7. A positive provision is contained in Article 106, giving communities the right to local taxes and fees.

Yet alongside positive provisions the Constitution contains a number of provisions that constitute a serious obstacle to the development of local self-government in Armenia, and fails to provide certain guarantees, the need for which has become evident over the years of local self-government.

1. The Constitution gives the Government the right to remove the popularly elected district administrator (Mayor) in cases and through a special procedure prescribed by law. The Government uses this right rather freely and has in fact turned it into a tool of illegal domination over local self-government. The fact that the Government has this right interferes with the autonomy and independence of district communities.

The Constitution stipulates that upon the removal of a District Administrator, special elections shall be held within a period of thirty days, and that until such time as the newly elected District Administrator may take office, an Acting District Administrator shall be appointed by the Government. Practice proves that the Acting District Administrator very frequently stands at the next election and wins it. The Government essentially removes the popularly elected Mayor, replaces him or her with its representative and then uses its administrative resource to have the "right" person "elected" as the head of the community. This makes other communities more careful with respect to the wishes of executive powers.

2. The Constitution does not guarantee communities the right to own land. Unless local governments are entitled to own land, they cannot adequately develop or provide for the wellbeing of citizens.

3. As long as the Constitution does not guarantee local self-government a minimum amount of financing or authority, legislators have the possibility to centralize financing and decision-making. Decentralization of power implies decentralization of financing, i.e. the Constitution should guarantee communities the ability as well as the right to local self-government. As a result of the absence of such guarantees, even the limited powers given to local self-government are not backed by adequate financial resources, so that in the majority of communities local self-government is purely decorative.

For example, the overall budget of the communities of Armenia is expected to attain just 8.1% of the state budget. However, local budgets are not fully executed, and this is the fault of government agencies because the main source of income for communities are land and real estate taxes collected by the state Tax Service, which is not concerned about the result and cannot be influenced by communities. As a result, the budgets only attain 5% of the state budget, which explains all the problems faced by communities while trying to provide for citizens' wellbeing.

4. Amongst the drawbacks of the Constitution is the lack of a second level of local self-government, the need for which has become obvious over the years.

5. Yerevan city has the status of a province and is governed by the state, but self-government in its districts is not adequate.

6. Another drawback is that communities do not have the right to go to Constitutional Court to defend their interests.

The legislative basis of local self-government in Armenia

In 1996, the National Assembly drafted and adopted the *Law on local self-government* based on the Constitution. In 2002 this law was amended, and a law on elections to local self-governing bodies was adopted. The first genuinely democratic local governments in Armenia were formed at the first local elections in November 1996.

Armenia was then aspiring to become a member of the Council of Europe, and therefore the law on local self-government fully conformed to the provisions of the European Charter of Local Self-Government. This law is founded on the following principles:

- a) the principle of general competency, which permits local self-government to execute any powers except those that the law assigns to government bodies;
- b) the principle of subsidizing, which lays the foundation for decentralizing power and financial resources by handing them down from the state to local self-government;
- c) the principle of judicial protection of local self-government's interests and property;
- d) the principle of financial support to weak local governments, which demands that a special Self-Government Support Fund be financed by the state budget;
- e) the principle that communities' financial resources should be sufficient for the execution of the powers prescribed by law;
- f) the principle that local self-government should act independently and at their own discretion while executing the powers prescribed by law, etc.

Based on these principles, the law specifies the mandatory, delegated and voluntarily assumed powers of local self-government

Separate chapters of the law specify the powers of the Community Council and of the Mayor, based on the principle that the Community Council makes policy decisions and the Mayor implements them through the district administration, companies and organizations.

The law on local self-government instructs the Government to endow communities with property such as certain public utilities (water, sewerage, heating, and waste disposal companies), nursery schools, specialized schools and sports facilities, clinics, libraries and certain other companies and organizations. Streets, facilities, houses and buildings are also communal property.

To ensure efficient local self-government, several other laws were adopted subsequently in addition to the law on local self-government.

A separate *Law on the budget system* sets the principles for adopting, executing and reporting on budgets. The law allocates 100% of land and real estate tax to communal budgets.

In accordance with the Constitution, a special *Law on local taxes and duties* was adopted. This law lists taxes and duties that can be set by communities; every community determines the rates of local taxes and duties within the tariff limits prescribed by law.

Since communities vary greatly in size and financial assets, a special *Law on financial equalizing* determines the formula that should be used to subsidize communities from the state budget through the Community Support Fund.

The Laws on land and real estate tax specify the relationship between taxpayers and local budgets.

The State Tax Service is responsible for supervising the collection of land and real estate tax. Since the service is neither accountable to local self-government nor concerned with the execution of local budgets, and the population is poor, only 20 to 30 percent of land and real estate taxes are actually collected.

I believe that handing the collection of local taxes down to the stakeholders, i.e. to local self-government, would serve to increase tax collection two or threefold; attempts were made in recent years to organize such a hand-over.

Civilized relations in the sphere of land use are governed by the Land Code, which determines amongst other things the principles of land zoning and compiling the Land Cadastre.

The *Law on Urban Development* and the *Law on Transport* delimit the powers of communities and the government in the sphere of urban development and transport.

It is essential for the development of local self-government to have a good *Law on Administrative and Territorial Division*. Armenia is divided into ten provinces plus Yerevan city,

whose heads are appointed by the Government, and 930 districts (communities) governed by elected authorities. After independence, every village and city was given the right to be self-governed. As a result, the number of communities doubled, causing the dispersion of limited financial resources.

Apart from the Constitution, the legislation stipulates the following types of decentralization:

1. Decentralization of powers: communities are responsible for providing the wellbeing of citizens.
2. Decentralization of financial resources and their independent use by communities: community budgets receive 100 percent of the land and real estate tax; at least 4 percent of the state budget is allocated to communities in the shape of subsidies; its is planned to increase the financing of communities by allocating them a portion of profit and income tax.
3. Decentralization of tax policies: communities have the right to establish the types and rates of local taxes and duties, and to collect land and real estate tax.
4. Decentralization of property: the state hands over to communities all the property needed for the execution of their powers, and 80 percent of the state-owned lands.
5. Decentralization of social policy implementation: the community controls the local social service.

We can state that the present Constitution and the legislation on local self-government have laid the foundation for further development of local self-government in Armenia. However, the shortcomings of the Constitution and the laws, poor legislative discipline, unlawful interference of government agencies in community activities and weak justice present a major obstacle to such development. There is clearly a need to improve constitutional guarantees and the legislation on local self-government, bringing them in line with the provisions of the European Charter of Local Self-Government ratified by Armenia in 2001.

In view of the above, we must analyze the constitutional changes proposed by the President and by the National Assembly. To foster the emergence and healthy development of local self-government, the changes must address three main issues:

1. Establish constitutional guarantees of the autonomy and political independence of local self-government, thus ensuring the right of communities to self-government.
2. To establish a minimum set of financial and economic constitutional guarantees for the self-government of communities, thus providing for the ability as well as the right of communities to local self-government.
3. To provide judicial protection of the rights of local self-government, without which the laws may forever remain on paper.

The proposed Constitution contains Article 2 of the old Constitution that establishes equal rights of the state and local self-government; this is a positive development.

The main shortcoming of the present Constitution is the fact that the Government has the right to dismiss the popularly elected community Mayor; this almost entirely deprives the community of its political independence. This problem became obvious in the years after the adoption of this Constitution. To solve it, the Government must be divested of this right and instead given the right to exercise legal control over the communities and regulate all disputes in court. The proposed new Constitution in fact aggravates this problem rather than solves it, and gives the Government a further right to dismiss local representative bodies, the Community Councils, which is wrong and contrary to the most basic democratic standards. As soon as this change is adopted, local governments will lose all their independence and become purely ornamental.

Moreover, the present Constitution stipulates that a special election must be held no later than a month after the dismissal of a community Mayor, whereas the draft extends this term to 3-6 months. This change is unclear and involves obvious risks; it points out the Government's inappropriate position and its lack of concern about the development of local self-government.

The present Constitution stipulates that the powers of communities are determined by the law only. In the proposed Constitution, they can also be defined by secondary legislation, which means that the state will be able to use secondary legislation to compel communities to perform tasks other than prescribed by law. Such amendment would entirely invalidate the communities' political independence and autonomy, which would lead to obvious consequences.

With regard to a minimum set of financial and economic constitutional guarantees for the self-government of communities, the proposed Constitution contains the provisions of the *Law on local self-government* and offers nothing new. In the years after the adoption of the present Constitution it has become clear that one of the main problems of local self-government lies in the scarce financial resources that the legislators have allocated to communities (around 5 percent of the state budget). There is the obvious need for the Constitution to guarantee communal budgets a certain minimum amount of financing. Such a provision would prevent legislators from reducing communal budgets by changing laws, as it was done in 2000, when communities lost their right to receive 15 percent of income tax. It is crucial that the Constitution should prevent any developments that are contrary to decentralization, thus making decentralization irreversible.

The only major accomplishment of the proposed Constitution lies in the sphere of legal and judicial protection of communities' rights and interests, including the right of communities to go to the Constitutional Court. Regrettably, this right is only given to local representative bodies, the Community Councils, whereas it should also be exercised by the Mayor and by the community as a whole.

Apart from the above mentioned undesirable changes in three fundamental areas, the new Constitution contains other changes which are just as dangerous. The present Constitution grants the community Mayor the right to select and manage the staff of local administrations; this article is removed from the new Constitution, which represents a danger by leaving legislators free to allow executive authorities to interfere in this process. Another article that disappeared is the one that guarantees local self-government throughout the country, a very important pledge of full-fledged local self-government.

It is essential that the reform be used as an opportunity to solve all the problems that have accumulated. In particular, there is the popularly understood and debated need to establish a second level of local self-government, or the establishment of associations between communities that would enable efficient development of communities in the coming decades. Yet the project of the new Constitution fails to address this issue.

As to Yerevan, the capital of Armenia, the proposed "progressive" measure is to make it a community, yet its Mayor is to be appointed, not elected. This unprecedented arrangement has nothing in common with local self-government. Combined with the proposal to annul the district communities of Yerevan that have so far been self-governed, one cannot rule out the possibility that local self-government in the capital may be completely liquidated at the discretion of the legislators. But having no local self-government in Yerevan, where almost half of the Armenian population lives, is just as good as having none at all.

The analysis of the proposed Constitution enables us to conclude that it makes a tiny step forward and many steps backward, and is therefore unacceptable. It should be observed that the authors of the draft are not fully aware of the current situation in the sphere of local self-government or of its main problems. It is clear that the government does not have a consistent policy or strategy for the development of local self-government in Armenia; without such a policy, is impossible to reform the constitutional system.

4. Political reform and European integration

After Armenia proclaimed independence, its authorities declared and began to implement a policy of political and economic integration with European institutions. To enable efficient political and economic integration with Europe, it was decided to make a rapid transition from the Communist system to a democratic state with market economy.

Armenia privatized its land and industry; this had negative as well as positive sides, in particular, it resulted in social injustice. A new system was established in which the government is elected by the people. This was clearly manifest in the drafting and adoption of the first Constitution that laid the foundation for the building of a modern society. However, further efforts to build a fair democratic society of equal opportunities showed that Armenia is

suffering a decline of genuine values, and this process has been aggravating dramatically up to this day.

Armenian society had special hopes in connection with Armenia's membership in the Council of Europe. People hoped that once Armenia would become a member of the Council of Europe, it would not just assume but actually implement obligations to observe fundamental human rights, foster democratic change and build a market economy based on free competition and equal opportunities. Pretending to be modernizing the legislation of Armenia and bringing it in line with the requirements of the Council of Europe, the authorities adopted a number of laws that instead of improving the situation, in fact promoted the destruction of the electoral system, the curtailment of the freedom of speech, mass media and public rallies, a freeze of decentralization and attempts at further centralization of power. This was done with full license from the Council of Europe, despite its commitment to control Armenia's adherence to its voluntary obligations.

As a result, all the branches of power lost their legitimacy; news media was almost entirely monopolized by the authorities, etc. Meanwhile, the promptly adopted laws on sexual minorities and religious sects are not just contrary to the customs of the Armenian nation but destroy its system of spiritual and moral values.

With the help of international organizations, Armenia received huge financial support for the establishment of basic market economy and development of small and medium businesses. Due to the lack of a government formed by democratic procedure, a governance system capable of using these funds for the good of society, or adequate control, the funds are used quite inefficiently, corruption and oligarchy prosper throughout the country, the economy is almost fully monopolized, and the society is strongly polarized.

The above certainly does not mean that Armenia should discontinue its policy of integration with international European institutions. To the contrary, we must make every effort to achieve deeper and more profound integration with all the recognized European institutions. However, Armenia must take a strong stand to the effect that integration should encourage democratic development and market economy and should not jeopardize the nation's spiritual and moral values that are more important than economic and democratic gains.

Analytical paper

EU-Armenia cooperation and the new European neighborhood policy

Sergey Minasian

1. Introduction

Armenia's integration into European structures since the very first days of independence has been and remains a foreign policy priority for this country. This is clearly reflected both in the cooperation with the European Union, Council of Europe, NATO and other European organizations, and in bilateral relations of Armenia with the countries of the region. Owing to many factors, the cooperation with the EU is a major avenue of Armenia's foreign policy. Moreover, Armenia sees its future in full EU membership. During meetings with leaders of EU entities in late 2003 in Brussels, RA President Robert Kocharian once again confirmed the country's intention to reform its public life in line with European principles and standards. This was appreciated by the EU which has been recently expanding its involvement and cooperation with all South Caucasus states.

In 2003, the EU made an important step: Mr. Heike Talvite was appointed EU special representative in the South Caucasus (EUSR). Ambassador Talvite was vested with broad powers that enabled him not only to represent political and economic interests of the EU in the South Caucasus but to be engaged, to some extent, in the problems of regional security and conflict settlement. This step had important significance for the broadening of Euro-Atlantic strategy in the region. In many respects, it was thanks to the activities of Ambassador Talvite and his mission that the cooperation of the regional countries with the EU broadened after the historical decision on EU expansion and advancement of the new borders towards the South Caucasus in May 2004.

On June 14, 2004, the EU Council made a decision to admit the South Caucasus states to the European Neighborhood Policy (ENP). At the same time, the Council approved the ENP Strategy Paper⁴³ proposed in May 2004 by the European Commission. The European Neighborhood Policy approved by the EU Council was the result of productive work on another document, "Wider Europe – Neighbourhood: A new framework for relations with our Eastern and Southern Neighbors"⁴⁴ adopted by the European Commission in March 2003. This document prepared by the Commission prior to the most sizable enlargement in EU history and incorporation of 10 new member states in May 2004, was aimed at the development of a comprehensive, balanced and proportionate approach, with financial mechanisms, that would meet the requirements of international and regional cooperation on the exterior borders of the new expanding European Union. For more detailed familiarization with the situation in the South Caucasus and development of concrete cooperation measures under ENP, the region was visited by Commissioner for Enlargement, Yanesh Paspershih. Lastly, on September 16-19, Baku, Tbilisi and Yerevan were visited by the European Commission President Romano Prodi. These visits resulted in a decision to prepare Country Reports for South Caucasus, starting September 2004, by the European Commission; these Country Reports must later on become the basis for concrete Action Plans between the EU and the regional countries under the European Neighborhood Policy. Next, active contacts on expert level began.

As it was planned, the preparation of Armenia Country Report had been over by early spring 2005, and now it should be submitted for approval by the EU Council in March; thereafter, Armenia and the EU must start working on the preparation of Armenia's ENP Action Plan. At the same time, the EU and Armenia must continue consistent cooperation on various levels under the acting Partnership and Cooperation Agreement (PCA) that has been in force since 1999.

⁴³ COM (2004) 374 final, 12.5.2004.

⁴⁴ COM(2003)104 final, 11.3.2003.

The European Neighborhood Policy of the EU indicates a new approach that goes beyond existing relations and cooperation of the European Union with neighboring countries on the Eastern and Southern perimeter of its borders. The purpose of this policy is sharing the benefits of EU enlargement with all interested neighbors through enhancement of stability, security and wellbeing, as well as avoidance of new dividing lines between the enlarged European Community and its neighbors. The implementation of the ENP will be supported with significant financial and technical assistance from the EU. For partner countries, the prospects of advancement towards the EU will create significant incentives for the promotion of comprehensive economic and political reforms.

The main financial incentive for the implementation of the European Neighborhood Policy will be the creation of a new specialized mechanism, the European Neighborhood and Partnership Instrument (ENPI). It will start functioning in 2007 and give broad opportunities for cooperation between the EU and the countries the ENP is extended to, including new forms of support, enabling the partner states to maximally approximate the European norms and standards in many spheres.

However, at the same time, one should not be overoptimistic when analyzing the new possible level of relations between the EU and the countries covered by the ENP. However, these relations do not guarantee prospective EU membership, moreover, they do not allow these states to count on assistance and support similar to the ones between EU member states. At the same time, the political and economic compliance criteria for ENP countries are not as stringent as the ones for EU candidates, although no less fundamental.

On the whole, the opinions of experts and analysts did not differ much. Although there were opinions that the ENP was an “enlarged Tacis” or even its somewhat curtailed version, in reality the European Neighborhood Policy has no analogy and is an entirely new partnership system between the European Union and the new neighbors.

2. EU-Armenia cooperation dynamics

As it was stated above, one of the first priorities for Armenia is to “integrate into EU models and standards”. At the same time, it should be noted that to-date Armenia’s European and Euro-Atlantic integration has run through three formative phases:

1. The demise of the USSR and the commencement of Armenia’s cooperation with European organizations and structures. The evolution of Tacis programs and development of bilateral relations between Armenia and European countries.
2. Armenia’s accession to various European and Euro-Atlantic cooperation programs. At this point, on the one hand, Armenia entered various European structures and organizations, on the other hand, increasingly cooperated with NATO as the principal mechanism of European security. This phase is still underway, since Armenia as an OSCE and Council of Europe member also actively participates in NATO Partnership for Peace program (PFP). In 2004, the representatives of the RA Ministry of Defense participated in nearly 40 events. In 2005, Armenia plans to participate in 50 PFP events. At Armenia-NATO security conferences, within the framework of Planning and Review Process (PARP), an Assessment Document was drafted and approved, and the main parameters of Armenia’s Partnership purposes were agreed upon. This country expressed its readiness to join the Individual Partnership Action Plan IPAP with NATO. Currently, the IPAP Introduction Document is under development.
3. Lastly, the incorporation of Armenia, along with other South Caucasus states, into the “Enlarged Europe, New Neighbors” initiative that is supposed to stimulate the integration and approximation of the region into the EU, should be considered the third phase of European integration.

For Armenia striving for Europe, EU-Armenia relations are of pivotal significance. Full-fledged involvement of this country into European integration is not an end in itself: it is determined by the traditional value system of the Armenian people that thanks to Indo-European origin has profound genetic ties with and historical orientation to Europe.

The main legal basis of the EU-Armenia cooperation is the Partnership and Cooperation Agreement (PCA) signed in April 1996 and effective since July 1999. The PCA stipulates

comprehensive assistance to Armenia in transition to market economy and sustainable democracy. The 1999 Agreement embraces practically all spheres of cooperation except military. The willingness of the parties to establish closer relations is manifested, first of all, in the efforts to maximally execute this Agreement.

Concrete reforms carried out over the recent years within the framework of political dialog, in the socio-economic, commercial, legislative, education and scientific spheres as well as in high-tech and IT prove that Armenia's policy aimed at European integration has not been declarative.

2.1. Development of political dialog

Under the PCA, the EU-Armenia Cooperation Council was established that has been functioning to-date. The EU is represented by EU Council members, Armenia, by RA Government members. In September 2004, the EU-Armenia Cooperation Council discussed the progress of economic and political reforms undertaken by the RA Government, the ways and means of further consolidation of EU-Armenia relations and cooperation prospects from the ENP. The Council also defined cooperation priorities for 2005.

Both bilateral and multilateral contacts through diplomatic channels have been established between Armenia and the EU, particularly within the framework of the UN, OSCE, Council of Europe and other international and European organizations. The fine-tuning of procedures and mechanisms for the arrangement and preparation of regular political dialog between Armenia and the EU is done through consultation and expert-level meetings.

Within the framework of cooperation on parliamentary level, the EU-Armenia Parliamentary Cooperation Committee (PCC) was established to coordinate the cooperation of the RA National Assembly both with the European Parliament and national parliaments of EU member countries. It is expected, that this parliamentary cooperation will promote new development due to the first election to the European Parliament after the EU enlargement and establishment of a new delegation within the EU-Armenia Parliamentary Cooperation Committee. In many respects, thanks to the interaction of Parliamentary Cooperation Committees of South Caucasus countries with the European Parliament, the latter in February 2004 approved the recommendations to the EU Council to commence the new policy in the South Caucasus. This resolution was based on the report by Member of the European Parliament (MEP) Per Gahrton who emphasized the importance of the region and the need to create conditions encouraging long-term democratic stability in the South Caucasus and to foster economic development. In addition, the report recommended to enhance EU efforts aimed at the establishment of peace and stability in the region, and strengthening EU commitments and readiness to act as a mediator in regional conflicts and an advocate of reforms. In March 2004, in Yerevan, the PCC held a conference where the main emphasis was on cooperation in the sphere of democratization in Armenia, human rights protection, and legislative strengthening, as the most important components of socio-economic reforms.

RA President decreed the establishment of the Interagency Commission for European Integration and Cooperation with European Regional Organizations and the RA. This entity, functioning at the RA Government, under the aegis of the Ministry of trade and economic development, is the body in charge of implementation of the PCA and other relevant agreements by Armenia. Technical support to the Commission is provided by Tacis. The Armenian-European Policy and Legal Advice Centre (AEPLAC), also financed by Tacis, provides information and consulting assistance to this Commission.

EU Special Representative in the South Caucasus, Mr. H. Talvite closely cooperates with the RA Government. His permanent visits to the region help to establish continuous contact, particularly, in the sphere of regional conflict settlement. Broad powers of the EUSR enable him to focus on various regional cooperation problems in the South Caucasus. However, unfortunately, currently full-fledged development of regional cooperation is hindered by Azerbaijan which refuses to participate in joint projects with Armenia. In June 2004, Mr. Talvite paid his first fact-finding visit to the Nagorno Karabakh Republic where he met high-ranking leaders and officials. The visit of the EUSR, as was expected, fostered more profound understanding of the situation and prospects of peace process development in Karabakh conflict.

After the latest EU enlargement, Armenia and the EU in May 2004, signed the Protocol on the Extension of the PCA to the new member-states. On December 4, 2004, RA President R. Kocharian signed the protocol ratified by the RA National Assembly.

Last year, the European Commission also made a very important decision on the raising of the level of its representation in Armenia to the status of full delegation. The agreement to that effect was signed in September 2004 by Director General for External relations, Eneko Landaburu and the Head of Armenia's Mission at the EU, Ambassador Vigen Chitechian.

Also, serious steps have been made to achieve appropriate bilateral military and political cooperation between Armenia and EU countries. Through reciprocal high-level visits, friendly relations have been established with the UK, Italy, Romania, Bulgaria, Germany, Lithuania, Latvia and, especially, Greece, as well as other countries; this cooperation is built on planned basis. In 2004-2005, over 50 events in the sphere of military cooperation have been held between Armenia and European countries.

2.2. Cooperation in the sphere of law approximation

In accordance with PCA Article 43, Armenia and the EU agreed that a major condition for strengthening political and economic ties between Armenia and the EU must be maximum approximation of RA legislation to the existing European norms and standards. The main spheres of cooperation are tax and customs legislation, legal regulation of companies, banking legislation, protection of intellectual property, labor legislation, anti-monopoly legislation, healthcare, environmental protection, consumer protection, nuclear energy (technical instructions, standards and norms), etc. The EU committed to assist the Armenian party in all these issues, including expert exchange, seminar organization, etc.

For example, under PCA Article 14, Armenia and the EU made commitments on anti-dumping and compensation measures. In accordance with these provisions, Armenia commits not to take any anti-dumping and compensation measures that are not registered or approved by the WTO, and to adopt relevant legal acts. In accordance with PCA Article 42, Armenia joined a number of international conventions on protection of intellectual, industrial and commercial property. Also, in accordance with its commitments to the EU and Council of Europe, Armenia adopted significant legal acts and took measures in the sphere of local self-governance improvement.

A similar situation is in other spheres of RA law approximation to the European standards and norms. However, despite significant work done in this sphere, Armenia still needs to make more efforts towards this goal.

2.3. Cooperation in the sphere of trade and economic development

After Armenia's accession to the World Trade Organization on February 5, 2003, the WTO's provisions on trade and commodity exchange became an integral part of Armenia's commitments both to the WTO and PCA, respectively. RA National Assembly in late 2002 adopted a law on amendments to the "Law on the VAT" concerning the annulment of VAT privileges for agricultural producers. This amendment will become effective on January 1, 2009.

In accordance with PCA Article 11, Armenia carries out the adoption of international conventions regulating international transit. Armenia also committed to continue the improvement of tax and customs procedures that first of all concern customs valuation of goods imported to Armenia. Under PCA Article 12 "Import of Armenian goods to the EU and EU manufactured goods to Armenia", this country is improving the measures in this field. The European Chamber of Commerce opened in Yerevan in February 2003 plays an important role in the improvement of EU-Armenia relations, including dissemination of information amongst business circles of Armenia on trade opportunities with European partners.

Measures have been taken to regulate and license textile goods exported to the EU. In the sphere of nuclear materials trade, the parties committed to act in compliance with the agreement to be signed between Armenia and the European Atomic Energy Community. However, Armenia is not trading in any sizable amounts of nuclear materials and so far there is no urgent need to sign a special agreement with the European Atomic Energy Community.

Measures pertaining to business and investment played a very important role. In particular, the ones aimed at the development of the services market in Armenia. The parties realize the special

importance of investor protection and guarantees for new investment, and, hence, the drafting of legislation that would make Armenia attractive for foreign, and first of all, European investors. Armenia signed bilateral trade and economic agreements with over thirty European countries, including, Austria, Belgium, Luxembourg, Germany, Cyprus, Greece, Great Britain, France and Italy. The Law on Foreign Investments adopted by Armenia institutes favorable environment for further economic interaction between Armenia and these states.

Regular meetings and contacts are held on the level of numerous commissions and sub-commissions in charge of various economic issues organized under the PCA provisions. During the visit of RA Minister of trade and economic development, Karen Chshmaritian to Brussels in March 2004, further incentives for trade between Armenia and the EU were discussed. The emphasis was on granting the most favored status to Armenian goods. One of the main purposes of the visit was to sign a free trade agreement and recognize the status of Armenia's market economy. The materials on the development of this sphere of development must be submitted to the EU DG Trade in the first half of 2005.

The definition of legal conditions and legislation with the help of Tacis-supported projects, Armenian European Policy and Legal Advice Center (AEPLAC) and Vocational Education Training (VET), play a significant role for the development of private sector in Armenia. Both projects contribute greatly into the development of private entrepreneurship.

2.4. Development of regional economic cooperation

Armenia continues its participation in EU-sponsored regional programs. In October 2003, in Yerevan, the 10th intergovernmental meeting of TRACECA countries on minister level was held. Under Tacis program, to provide technical assistance to the CIS countries, the European Community allocated 10 million Euro to Armenia. The same assistance was provided to this country under the Food Program. Grants have been extended to Armenia by the European Union under the program of financial support to regional integration, particularly, under INOGATE project.

2.5. Results and evaluation of EU-Armenia cooperation efficiency

EU-Armenia cooperation was also developing in the high-tech, education, and social sphere (particularly, food security). An important role in this interaction was played by sizable financial and technical assistance provided to Armenia over this period. In 1991–2004, the EU under various programs (first of all, ECHO, Tacis and FSP) allocated over 380 million Euro to Armenia, and extended loans worth over 86 million Euro. This helped Armenia to overcome the most severe periods after becoming independent.

The cooperation under PCA implementation also resulted in significant achievements. According to Armenian officials and experts, successes were achieved in the following spheres while cooperating in PCA implementation:

- Political dialog;
- Trade in Goods mainly owing to successful accession of Armenia to the WTO;
- Energy sector (nuclear safety at the Armenian Nuclear Plant);
- Transport;
- Cooperation in the sphere of statistics;
- Approximation of law to European norms;
- Cooperation in democracy development and drafting of laws on human rights protection;
- Cooperation aimed at the prevention of trafficking in human beings and illegal migration;

At the same time, according to the same officials and experts, the least efficient and requiring closer partnership currently are:

- Consumer rights protection;
- Science and technology;
- Education;
- Information and communications;
- Mining industry;
- Social cooperation;
- Culture;
- Customs (first of all, implementation of customs procedures and formalities);

- Energy sector (alternative energy sources after decommission of the Armenian Nuclear Plant);
- Fulfillment of Armenia's obligations after accession to the WTO on standards, intellectual property, agriculture (subsidizing and licensing), etc;
- Environmental protection.

3. EU-Armenia cooperation prospects in context of ENP evolution

3.1. ENP as a new opportunity to strengthen EU-Armenia partnership

For Armenia, the ENP is important not only in terms of economic development, strengthening democracy and democratic institutions, political dialog and regional security problems, and cooperation. The ENP is also important conceptually since it implies the utilization of integration processes for the achievement of stable regional development and establishment of reciprocal confidence in the South Caucasus. One shall not forget that the resolution of main obstacles to the security and further development of Armenia resides in the European dimension. The settlement of the Nagorno Karabakh conflict is done under the auspices of the OSCE, while the settlement of Armenian-Turkish relations, the international demand to lift blockades and the recognition of the Armenian Genocide by Turkey is a prerequisite for the EU membership of Turkey, etc.

The ENP has important practical significance because it can provide a new foundation for Armenia's cooperation with EU states in the sphere of security, foreign and defense policy, and South Caucasus regional security. The EU is also interested in that. The European Security Strategy, in particular, stipulates: "It is not in our interest that enlargement should create new dividing lines in Europe. We need to extend the benefits of economic and political cooperation to our neighbors in the East while tackling political problems there. We should now take a stronger and more active interest in the problems of the South Caucasus, which will in due course also be a neighboring region"⁴⁵.

Naturally, as it was mentioned above, Armenia cooperates on a very high level with the leading European security organization, NATO. However, as the EU military component evolves, the time is probably approaching for possible active cooperation and accession of Armenia to some events under CFSP/ESDP. Since 1999, when Armenia and the EU signed the PCA (that envisaged cooperation in all spheres except the military one) significant changes have taken place in the foreign and defense policy of the EU; the European Security and Defense Policy (ESDP) has been established and evolved. The security policy of Armenia has also been somewhat transformed and contains certain emphasis on the strengthening of military and political cooperation with the European countries. Considering the interest of the EU in the prevention of "new dividing lines in Europe" and new geopolitical realia in the South Caucasus, and in the context of continuous efficient cooperation between Armenia and NATO, and bilateral military and political cooperation with the USA, it is important to define the parameters of serious EU-Armenia cooperation in the CFSP/ESDP.

At the same time, one should take into consideration a peculiar feature of Armenia's foreign policy with respect to Euro-Atlantic and European military and political integration. In contrast with, say, Georgia which is very declarative when making steps towards cooperation with NATO or USA, in Armenia decision making and implementation in this sphere is somewhat different. As foreign ministry representatives quite fairly point out, the distinctive feature of Armenia's Euro-Atlantic integration is that a political decision is made on any relatively small step towards the development of partnership in this sphere. This is determined by the geopolitical reality in and around Armenia, and induced by complementarity which is the conceptual basis of Armenian foreign and defense policy. At the same time, this peculiar feature of decision making in Armenia on military and political cooperation with NATO, EU and the US makes the process specific and focused.

Along with its far-reaching political and regional purposes, the ENP has important economic significance for Armenia. No wonder, the EU is a major trade partner of Armenia that accounts for nearly 40% of commodity export. At the same time, the EU takes serious steps to enhance its standing

⁴⁵ A Secure Europe in a Better World: European Security Strategy. Part II. Strategic Objectives: Building Security in our Neighborhood. Brussels, 12 December 2003.

in the region by means of programs aimed at the development of regional cooperation and advancement of reform programs in line with European standards. Armenia is interested in cooperation in the sphere of culture, science, technology and education since the ENP enables to participate in similar programs within the EU. Armenia has a potential to participate in the internal EU programs and in joint projects on environmental protection, training, youth problems, information and telecommunications. These issues are also considered by the European Commission and, depending on the relevance of proposals made by Armenia, they can be supported by the EU.

3.2 Armenia's fundamental approach to ENP implementation

According to Armenian experts and foreign policy leadership, the actions under the future Action Plan must contain significant changes so that the new document would not replicate the PCA and would not be confined to provisions specified therein. Nevertheless, the PCA will continue to be the legal foundation for EU-Armenia cooperation which naturally will enable to fully use the possibilities it affords. In other words, one of major tasks for the Armenian party when implementing the Action Plan will be to avoid purely formal or decorative changes. In any case, the reference to concrete actions will be a fundamental element of the Action Plan.

Definitely, the main parameters of Action Plan preparation for the states to which the ENP is extended had already been specified in the founding documents concerning this Policy and the South Caucasus Reports prepared by the European Commission by March 2005. At the same time, a major component of Armenia's stance in ENP implementation repeatedly voiced by Foreign Minister Vartan Oskanian in Brussels in December 2004 during his latest visit should be emphasized. For Armenia, cooperation with the EU is not an end in itself and is not confined to the achievement of membership in this structure. For Armenia the process of European integration is no less important than the goal in the sense that it can approximate this country to the standards we want to achieve regardless of membership in European structures and organizations. Not making serious political declarations at this stage about possible EU membership and thus not forcing the European partners to make a choice, Armenia proposes to make an emphasis on the deepening of cooperation in such key areas as approximation of legislation to European norms, development of democracy and democratic institutions, etc. Probably, to some extent this is a major difference in Armenia's policy in and attitude to its relations with EU structures. And according to Armenian officials and experts, this policy is appreciated by European partners. This is what Armenia is interested in: the use of European methodology and standards is important for Armenia not because the EU or any other body requires that, but because this is crucial for the achievement of proper quality in the above spheres. This is also determined by complimentary Armenian foreign policy is based on.

The decision to establish the National Program for Implementation of the Partnership and Cooperation Agreement (Decree No.743-A, 29-04-2004) that has no analogs in the South Caucasus was an important evidence of Armenia's serious intentions to build new and profound relations with the EU. It should be added that this decision was made the RA Government before the formal approval by the European Commission and EU Council of Armenia's admission to the ENP.

Thus we can state that Armenia aims at European integration with ambitious and far reaching goals regardless of ENP implementation but at the same time Armenia will try to use the new opportunities opening before it under the European Neighborhood Policy.

4. Spheres of concrete cooperation under the ENP action plan

4.1 Country Report Analysis and the Outline of the Future Action Plan

On March 2, 2005 the European Commission adopted ENP Country Reports on the South Caucasus, Egypt and Lebanon that must become the foundation for the preparation of individual action plans of these countries for cooperation with the EU under ENP. The appraisal by the European Commission of the general level of cooperation between the EU and Armenia, and Armenia's development level in all considered sphere was on the whole positive. The picture becomes more distinct when the Reports

are compiled by individual South Caucasus countries. It can be seen that according to EU experts, by some parameters, Armenia has achieved more significant successes than Georgia and particularly Azerbaijan (however, it should be admitted that owing to the Rose Revolution the confidence in Georgia has been enhanced and its rating in the eyes of European partners has arisen.)

As expected, the emphasis in Armenia Report was on insufficient efficiency of democratic institutions and the need for further approximation of the legislation to European standards. An important distinction of Armenia Report was the emphasis on the need to continue cooperation in the sphere of energy in the context of EU demands to shut down the Armenian Nuclear Plant. Nevertheless, according to the country Report, in this sphere of EU-Armenia cooperation tangible success has not been achieved: "Armenia has pointed out to the EC that energy capacities must take account of future expected energy needs of Armenia, the need to strengthen energy security and the need to offset the impact of the closure of MNPP on electricity tariffs. The EU has indicated that it will take this position into account in considering Armenia's access to the benefits opened up by its inclusion in ENP"⁴. Another important distinction of Armenia Report was the reference to the National Program for PCA Implementation especially noted by the European Commission experts. The reference to regional conflicts and the need for speedy settlement thereof is a constituent part of this Report as well as Georgia and Azerbaijan Reports.

As a result, in the European Commission in its recommendations to the EU Council concerning the South Caucasus countries especially noted Armenia's success in some key spheres: "Armenia has achieved a good macro-economic performance in recent years with impressive economic growth rates. There are indications that this is starting to have some impact on the high levels of poverty in Armenia. Its accession to the WTO in 2003 indicates that it has made progress towards key market-oriented reforms. There has also been progress in aligning Armenian legislation with that of the EU. The adoption of an anti-corruption strategy and the creation of an anti-corruption council are important steps"⁵. Thus it was noted that Armenia pays special attention to the development of the spheres in which it cooperates with the EU. Also, the spheres which must be taken into account when preparing the future action plan of Armenia under ENP implementation.

The list of concrete cooperation spheres under the Action Plan presented below could promote the broadening of EU-Armenia cooperation and specify new problems that need solution. The materials were collected during consultations with stake-holder government structures, NGOs, independent analytical centers and experts.

4.2 Human rights and fundamental freedoms

The whole list of commitments in human rights protection and fundamental freedoms is in strict compliance with Copenhagen political criteria, i.e., stability of institutions ensuring democracy, legal norms, internationally accepted norms and documents in this sphere, etc. At the same time, the following goals must be particularly emphasized:

- Assurance of commitments and guarantees in the implementation of fundamental UN and Council of Europe conventions, as well as additional protocols in suggested spheres;
- Freedom of speech and mass media;
- Guarantees of freedom of consciousness and protection of religious organizations;
- Respect and protection of national minorities rights;
- Unconditional prohibition of torture and inhuman treatment or punishment humiliating human dignity, creation of acceptable conditions in prisons and detention places;
- Further development of civil society structures.

4.3 Development of democracy institutions, rule of law and judicial reform

⁴ European Neighborhood Policy Country Report, Armenia. COM (2005) xxxxxx. P.4.

⁵ European Neighbourhood Policy Recommendations for Armenia, Azerbaijan, Georgia and for Egypt and Lebanon // Communication From the Commission to the Council. COM (2005) xxx, xx February 2005.

The ratification and implementation of fundamental international treaties and conventions in this sphere and the development of fundamental democracy institutions and norms and judicial reform and harmonization of its mechanisms with European standards is necessary in accordance with Copenhagen political criteria. In this connection, the implementation of the following measures is meaningful:

- Development and reform of the electoral system and its institutional structure;
- Judicial reform and development of the judiciary;
- Training of judges and court personnel, improvement of the physical conditions of courts, development of court IT;
- Efficient cooperation between judiciary bodies of the EU and Armenia.

4.4 Political dialog, reforms of public administration and local self-government, combating corruption

First of all, this sphere of EU-Armenia cooperation must be in line with the processes that are underway in the political and constitution reform in Armenia. Its main elements must be Constitutional amendments, development of local self-government (with increased self-government), public administration reforms and anti-corruption measures. To sum up, the following actions can be specified:

- To conduct a repeated referendum on Constitutional amendments;
- Development of local self-government system. New draft constitution provides significant measures for the development of local self-government system and increased decentralization;
- Public administration reform. The improvement of relevant commissions in the Government must become an important component of reform: local self-government commission and state governance commission. At the same time, owing to Tacis and other European bodies and donors, these commissions managed to adopt the 2001 Law on Civil Service and the concept of management system reform.
- Anti-corruption measures suggest cooperation in the implementation of the provisions of GRECO (Council of Europe Group of States Against Corruption). It is also necessary to implement the provisions of Armenia's Anti-corruption Strategy (including main provisions of the available European anti-corruption basis and adoption of international treaties pertaining to anti-corruption). Continued EU-Armenia cooperation in the anti-corruption sphere within the framework of international organizations and civil society.

4.5 Synchronization and approximation of RA legislation in trade, market mechanisms, standardization, etc.

- Development and implementation of European standards and mechanisms in taxation. Legal regulation of VAT and excise taxes in compliance with PCA and WTO.
- Possible creation of Free economic zones in compliance with WTO norms; commencement of the process for stipulation of provisions of Free economic zones in RA legislation in line with EY legislation.
- Application of legislative measures for Consumer Protection.
- Within the framework of Monetary Policy development, to adopt measures for creation of conditions for better currency convertibility, financial market development, etc.
- Improvement of antimonopoly legislation, structural reforms in antimonopoly structures.
- Copyright protection, protection of intellectual and technological property, development and cooperation of statistical and regulating services.

4.6 Socio-economic development and trade

- Improvement of investment climate, including transparency, predictability and facilitation of regulation. Under complete implementation of PCA Section V, to guarantee protection of foreign investment, consultation in order to liberalize other capital flows.

- Closer approximation to European standards and practices in the sphere of employment and social policy. Coordination of social protection system development.
- Maximum EU support to Armenia in the implementation of the Poverty Reduction Strategy Paper.
- Deepening of cooperation in energy sphere, including the creation of alternative sources of electric power (or assistance in the construction of a new nuclear plant) after expiration of service life and decommission of the Armenian Nuclear Plant.
- For Armenia, a major goal when implementing the ENP is the possibility to achieve qualitatively new level of integration into socio-economic and trade spheres of the EU through access to the domestic market of the EU as provided by the main conceptual documents of the ENP.

4.7 Prevention and settlement of regional conflicts

It should be assumed that this cooperation sphere will have special significance since without Karabakh conflict settlement one can not expect serious results in the goals declared in the ENP with respect to regional stability and economic development in the South Caucasus.

- Taking into account distinctive features of Karabakh conflict, certain synchronization in measures for its settlement might be stipulated in ENP Action Plans for Armenia and Azerbaijan.
- Under OSCE Minsk Group negotiation format, special EU representative Talvite can be granted new authorities in the process of Karabakh conflict settlement to help the conflict parties involved in armed conflicts in the South Caucasus.
- Post-conflict rehabilitation measures for affected regions, e.g., mine clearing, reconstruction of border-line villages, social assistance to conflict victims, refugees, etc.

4.8 Cooperation in foreign and defense policy

As the experience of some countries that submitted their ENP Action Plans has shown (Israel, Ukraine, Moldova), these documents specify some parameters of prospective cooperation under the CSDP/ESDP. Hence, it is quite realistic to specify similar measures in Armenia's Action Plan. However, one shall bear in mind that the EU itself has not defined its priorities in security cooperation with the countries to which the new neighborhood policy is extended. That is why, in the beginning, the cooperation in priority international security issues (nonproliferation of WMD, anti-terrorism) and civil-military activities of the European CSDP (political planning and joint research, civil-military relations, development of military legislation, enhancement of parliamentary control over armed forces) seem most realistic.

- Crisis management, political planning, joint threat and risk assessment, cooperation of analytical and research bodies in strategic research and regional security problems;
- Nonproliferation of weapons of mass destruction and development of export control system in Armenia. Although Armenia joined all international documents in this sphere, and actively cooperates in export control and nonproliferation, it is still necessary to reequip the relevant agencies in this country. Cooperation within the framework of EU WMD Strategy and other joint efforts.
 - Cooperation in anti-terrorism struggle, including through UNSC Resolutions 1373/01 and 1269/99, including the 1992 UN Convention for the Suppression of the Financing of Terrorism opened for financing on January 10, 2000. Joint measures against SALW proliferation and man-portable SAM under the implementation of UN Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (UNPoA);
- Military-civil relations and cooperation in the improvement of civil and parliamentary control in the military sphere and development of military legislation.

4.9 Regional and trans-boundary cooperation

As stipulated in main conceptual ENP documents, an important role in the successful implementation of this policy will be played by cooperation under the EU auspices between border-line regions of adjacent countries, in accordance with Convention on border-line trade and other relevant international and European documents within the framework of EU and Council of Europe. There have already been successful precedents of such cooperation between non-EU member states, e.g., Romania and Moldova, which is financed from a special fund.

- Taking into account the possible EU membership of Turkey, the development of cooperation between Armenia and Turkey might promote not only revival of trade relations between the two countries. In terms of European integration process, this factor may play an important role for Brussels also in other aspects: the opening of Armenian-Turkish border can promote the development of eastern regions of Turkey and improvement of social status of significant numbers of Turkish population, to some extent is also important for development rates and reform of the EU. Otherwise, in case of Turkey's accession to the EU, Brussels will have to allocate significant amounts from its structural funds to improve the living standards in the eastern regions of Turkey and approximation to mean European norms.
- Another successful example can be similar cooperation between north-eastern border-line regions of Armenia (Lori and Shirak) and southern administrative entities of Georgia (Kvemo-Kartli and Samtskhe-Javakheti). This element might be synchronized with Georgia when preparing the ENP Action Plan.
- Further development within the framework of transport and communication projects TRACECA and INOGATE.

4.10 Cooperation in the sphere of migration, employment, human contacts, science and technology, culture and education, environmental protection

In contrast with other spheres, to these ones less attention was paid; as a result, relatively little funding was allocated for their implementation. Nevertheless, these sphere cover rather essential issues without which EU-Armenia cooperation would be incomplete.

Thus the implementation of the following measures is important:

- Full implementation of PCA Article 24 (working conditions) providing creation of equal conditions for migrant workers, guaranteed abolition of all discriminatory conditions based on national, race and sex distinctions;
- Prevention of illegal migration and trafficking.
- Creation of maximum possible conditions for contacts between people, alleviation of visa regime to the point of liberalization of access to Schengen zone. These measures seem possible even in the mid-term.
- Participation in joint projects, including the ones implemented between EU members, aimed at science, culture, education, technology, etc.
- Also, implementation of joint projects in postage and telecommunications, development of information society and environmental protection.

5. Conclusion

The ENP is a long-term program. For full-fledged cooperation with the United Europe, Armenia has to traverse a hard path. At the same time, one shall not expect immediate financial support from the EU. In the short-term, mainly political cooperation can be expected, while financing of concrete projects will start in 2007.

Ultimately, none of the South Caucasus countries has a serious lobbyist in Brussels similar to Finland that once lobbied the EU Northern Dimension or Spain that played a similar role under the Barcelona Process. By the way, probably for that very reason the South Caucasus was not included into the Enlarged Europe in 2003 and only last year the ENP was extended to the South Caucasus. It was the Rose Revolution in Georgia that somewhat accelerated this process.

To present the work done, Armenia suggests in the autumn of 2005 (probably, in October, prior to EU Council session) to submit to donor states the results achieved in all spheres of cooperation with the EU. The preparation of the draft National Program for PCA Implementation will be also dedicated to this event; it will be submitted to RA Government on October 1, 2005. It is believed that this will enable us to receive not only EU support in the development of structural reforms but also to continue the work in the sphere of political dialog.

According to Armenian experts and leadership, Armenia, in principle has been and will be taking voluntary commitments not only corresponding to Copenhagen criteria but maximally approximated to the requirements imposed on EU candidates. At the same time, as it was pointed out, Armenia aims at realistic goals whose implementation directly depends on the success of the ENP. For example, the granting of EU associated country status to Armenia is in sight. This fact, in addition to political dividend, will have special significance for maximal free access to the European Market, thus becoming a powerful incentive for the development of national economy.

The process of institutional integration of the South Caucasus into the European Community requires much effort and time. On the one hand, the regional countries during integration must try to comply with European criteria as much as possible to have fewer problems in relations with the European Club when entering it. On the other hand, the EU must get rid of legitimate concerns and fears about undesirable complications during this process, when and if it lastly happens. At the same time, for maximum facilitation of this process, the South Caucasus states must familiarize themselves with the recent experience of successful relations between new EU members (former candidates).

Armenia considers European integration not only as a process of institutional integration into European economy and politics, but as an opportunity to return to the spiritual values and world outlook that tied this country with Europe historically.

Analytical paper

The political institutions of Azerbaijan: a dichotomy between text and reality

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Niyazi Mehdi

1. Introduction

Many experts now admit that the linear and vectorial conception of democratic development in post-Soviet countries proved somewhat premature. The very concept of “transition” is challenged more and more often, because many post-Soviet countries are not in fact undergoing any “transition” but merely establishing new types of political regimes that are consolidated but undemocratic. There is sad irony in the new definitions of “democratic transition countries” as the Wide Grey Zone, “defective democracies”, “hybrid democracies”, “mutant democracies”, etc. Just ten to fifteen years ago, most of these countries were living through an unprecedented outburst of political activity: for the first time, societies were inspired, breaking free from communist ideology, people were interested in political news and learned to participate in political life. Just five-seven years later, the society became lethargic and fatigued, or, as many see it, simply sobered up and disillusioned. Whatever protest energy is left comes from the rejection of “unfair government”, not from the faith in democratic reform.

What can be done now? One can hardly hope to “improve” the political institutions of the present-day regimes by “fixing” particular aspects of these institutions, or by pressurizing the authorities once in a while with reference to ratified international treaties. The authorities are used to all these “challenges” and have developed defensive reactions that enable them to “change but stay the same”.

Another option that we believe is more productive is to admit that post-Communist transformations have in many cases not led to democratic transitions. What we got instead are autocratic regimes that focus their efforts on reinforcing their authoritarian grip on the country, and, consequently, on preventing society from participating in governance. This is the case in Azerbaijan, a country that had started a “democratic transition”, where autocratic governance has prevailed and now a lot depends on the control over financial revenues from oil and carbohydrates in general.

Azerbaijan was one of the first Soviet republics to denounce its communist legacy, to liquidate Soviet army bases in its territory, and to declare its intention to demolish the Soviet political system. Over the years of independence, Azerbaijan has made serious progress in social and economic development, and in defending its national and international interests by means of its foreign policy. It has signed many international treaties, thus beginning to integrate into the civilized international community. Regrettably, almost 15 years from the beginning of these positive developments, the President of Azerbaijan declared in public that Azerbaijan no longer has a political opposition as such. The present-day political discourse and personal likes and dislikes aside, we have to admit that this declaration is just a blunt statement of the fact that, after the last presidential election in October 2003, Azerbaijan’s political regime feels that its power monopoly is now quite safe.¹

In this study we shall examine certain aspects of the political system of contemporary Azerbaijan. We shall focus on the analysis of what the official authorities say about Azerbaijani democracy. One has to bear in mind, though, that the “democratic transition” in Azerbaijan yields a good deal of rather unusual empirical data and complicated puzzles that may take time to solve.

Despite the present-day disillusionment in the likelihood of democracy in Azerbaijan, we are convinced that there are many “windows of opportunity” (as researchers like to call them) for genuine transition to democracy. It is quite another matter, though, that we are entering a time of “long-term siege”, which means that events in Azerbaijan must be understood in a new conceptual framework.

2. The philosophy of political reform in Azerbaijan

Reforms usually create new problems and stimulate new political debates that involve new political forces. As a result, new political resources are created.

In the late 1980s, a French intellectual said that twenty years earlier, he would speak to his students about politics when he wanted to interest them, and about religion to make them laugh. Twenty years later, he had to speak about religion in order to interest his students, and about politics, to make them laugh. Ten years ago in Azerbaijan, we would lecture our students on politics to keep them interested, and it was hard to imagine something that would make them laugh in those days. Ten years later, it is still difficult to make them laugh, and interest in politics is much smaller than interest in show business. Besides, politics is no longer a safe occupation, because, like in the communist past, loyalty to the authorities is valued higher than professional ability.

The indifference of Azerbaijani students towards political reforms is an indicator of the general indifference of society on the whole. After more than ten years of independence, we find ourselves psychologically back in the Soviet past, when political passivity was the norm (“citizen” was an ironic word), and the gap between political rhetoric and reality seemed ordinary and final. This is clear from the dichotomy of language, text and reality of the political “reform” in Azerbaijan.

The official discourse in Azerbaijan relies on democratic references and phraseology. However, their democratic idiom is so colorless, empty and has such a small vocabulary that one cannot but notice that the discourse and reality are separated, and have failed to become parts of a whole. Reality fails to enrich the language and the text, and the language and text are unable to stimulate political reform. Academic research, and the analytical centers pretending to be independent, are too estranged from reality to be able to influence the course of reforms significantly. Political publications seem closer to real life but are so polarized that they mostly focus on mutual accusations. It is hard to imagine anything in common, and consequently any dialogue between the glorification of reforms (a method of eulogizing the President dating back to Heidar Aliyev’s times) and anti-reform eschatology (which is in fact surrogate eschatology). Apparently, a discourse about political reform should exist in the articles and speeches by the ruling party ideologists, Yeni Azerbaijan (New Azerbaijan). Yet most of the time they stick to one simple idea: democratic reforms in Azerbaijan are implemented in a consistent and well-planned fashion, and the political opposition is the sole impediment to reforms. Against the background of the philosophic deficiency of ruling party ideologists where reforms are concerned, an article published by the Head of the Presidential Administration Professor Mekhtiev is a rare exception.ⁱⁱ Yet even this article contains an obvious gap between theoretical views on globalization, and the ideological program that resorts to repressive phraseology when it mentions the opposition, and oblique hints when the author mentions anonymous opponents within the ruling elite.

The dichotomy of language, text and reality is only one of the symptoms of the fact that Azerbaijan belongs to the majority of post-Soviet countries that “are neither overt dictatorships, nor unquestionably moving toward democracy – they have entered the grey zone”. Questionable legitimacy of the elections, frequent violations of the law by public officials, public distrust in state institutions, limited political space for the existence of opposition parties, weak civil society, poor institutional efficiency of the state – all these characteristics of the Grey Zone are true for Azerbaijan.ⁱⁱⁱ We can comfort ourselves with the fact that Azerbaijan has not become a complete dictatorship and, within the grey zone, we fall in the category of “partial democracies” (Michael MacFall). We believe that only statistics, monitoring, public and parliamentary hearings, and free news media can prevent this dichotomy from getting deeper and wider.

How can we leave the Grey Zone and start a real transition? How can we get rid of the political myth about stability, and make steps towards transition/consolidation? How can we induce slow but steady erosion in authoritarian power structures (and hence, in the mentality of the people)? How do we make people respect the law, which is a prerequisite for any democratic change? How do we create a set of “attractors” that will focus democratic rhetoric (in its original positive sense) on promoting societal change that leaves no room for secession? How do we make the society believe in the feasibility of democracy that enjoys popular legitimacy?^{iv}

In any case, the Azerbaijani democracy should begin by taking a good, critical look at itself, and by becoming aware of the open or concealed stumbling blocks in our institutions and our mentality that made us slow down (or suspend) the transition and get stuck in the Grey Zone.

3. Political institutions in Azerbaijan: transition or authoritarian stabilization

The political institutions of Azerbaijan certainly underwent significant change in the post-Soviet period and continue to change. Can we identify the direction of such change, and does it allow us to speak of a democratic transition?

Obviously, the political institutions of Azerbaijan had to change in response to challenges coming from within and without. The external challenges did not necessarily lead to democratic changes. As to challenges from within society, the poorly organized protest forces could not always act as a factor of democratic reform in Azerbaijan. Therefore, it is premature to describe the democratic transition in Azerbaijan as a progressive movement towards transition/consolidation as a result of which political institutes were transformed (or are gradually transforming) into democratic ones. Democratic or non-democratic challenges, whether external or internal, have led to a complex political arrangement, in many respects totalitarian, in which “partial democracy” is not institutionalized and, regrettably, not irreversible.

In Azerbaijan, especially recently, the adoption of certain laws is accompanied with struggle. Yet these are not open public debates in a society where people care which law is adopted, the laws are lobbied in public, and interest groups initiate legislation and are interested in the adoption of particular laws. The struggle in Azerbaijan takes the form of behind-the-scenes maneuvering: lawyers (local or foreign) are asked to phrase the laws in a way to leave gaps and ambiguities that will allow the ruling elite to interpret the laws in its favor. Does this imply that once a law is passed it is observed? Well, if the Ancient Greeks used to say “better a bad law that is observed than a good one that is not”, the authorities of Azerbaijan have their own ideas: “we are not going to observe the law anyway but we must look presentable in the eyes of the world community”. The struggle for gaps and ambiguities is just a sign that authorities realize that times may change and one day they might have to abide by the laws.

Let us now examine the legislative, executive and judicial branches of power from the perspective of separation of powers which is a must for political institutions to be democratic.

4. Legislative power

Let us begin with a brief historical background. In the second half of the 19th century, democratic ideas first appeared in Azerbaijan, if only in a “curtailed” form, within the limits of the absolutism of the Russian Empire. At that time, in Baku Duma (parliament), only 1/5 of parliamentarians were Muslim (the latter denoted the autochthonous population) despite the fact that they represented 75 per cent of the population of the city. Later the quota was increased to 1/3 of seats, and did not change until the establishment of the Democratic Republic of Azerbaijan (DRA) that existed in 1918-1920.

Figures aside, amongst the “Muslim parliamentarians” of those days there were prominent liberal democrats, Hassan bek Zardabi, Ahmed Agaogly, Mammed Emin Ryasulzadeh, Alimandarbek Topchibashev, Hassan bek Agaev, Fatali Khan Khoyski, the future founders of Azerbaijani democracy. Thanks to these men, Azerbaijanis were learning the basics of parliamentary activity: parliamentary speech, procedures, etc.

The climax of parliamentary democracy in the early 20th century Azerbaijan (and probably in the entire Near and Middle East) was reached by the Parliament of the first independent state ever established in Azerbaijan, the DRA. The parliament had 91 members and 11 factions and groups, including an Armenian faction and Dashnaktsutyun, despite the fact that relations with Armenia were quite tense.

In terms of subsequent Soviet political history, that Parliament was quite unusual in the sense that it did not serve as a tool to a particular political force. In 1919, the Parliament voted no confidence to the government, and the government had to resign.

Alas, the natural course of the political history of Azerbaijan was interrupted by the invasion of the 11th Red Army and consequent undemocratic developments. Soviet historians condemned the

DRA as “bourgeois” and “backward”, and these labels eventually had a negative effect on Azerbaijanis’ political and civil identity.

In the Soviet times, Azerbaijanis witnessed another “method” of separation of state powers: the Soviets (Councils) of various levels, supposed to exercise local self-government, became obedient agencies under full control of the Communist party. In the years of post-Soviet independence, that experience bedeviled many countries of the former USSR. Even now, former Soviet citizens prefer all kinds of paternalistic myths and cannot accept the idea of separation of powers.

The national independence movement that began in Azerbaijan in 1988 first of all tried to overcome the resistance of the Supreme Council, the stronghold of the Communist party of the USSR and Communist Party of Soviet Azerbaijan. In 1990, 43 out of 450 seats in the newly elected Supreme Soviet were won by democratic forces. Though in a minority, they were active enough to turn the parliament into an arena of acute political debates, closely watched by the entire population. On October 18, 1991 President Ayaz Mutalibov signed the Constitutional Act of the Independence of the Republic of Azerbaijan; there is no doubt that this act came as a result of the young democrats’ activities, both within and beyond the walls of the Supreme Council.

As the presidential election approached, executive authorities grew weaker, and National Front members held a round of successful negotiations with nomenclature leaders. Most of the Supreme Council members kept their seats but were excluded from active political life in the parliament. It was agreed to establish a Milli Majlis as part of the Supreme Council that would have 25 members nominated by the opposition and 25, by the ruling nomenclature.

That Milli Majlis existed up to 1995 but various pretexts were used to make some of the democratic activists leave.

The Milli Majlis elected in 1995 gradually lost its vigor and independence; members of the opposition had a minority and could not significantly influence the executive authorities. The new government was trying to turn the Milli Majlis into a decorative appendage of the presidential administration and curtail even the limited independence it had.

The Constitutional Act of Independence deserves to be called a unique document of its time, because its preamble justifies the continuity of independent Azerbaijan from the DRA. Article 13 of the Act refers to the principle of separation of powers. It is remarkable that the Constitutional Court was defined as one of the supreme judicial authorities alongside the Supreme Court and the Supreme Arbitration Court. The first Law on the Constitutional Court was adopted on October 21, 1997, but it was only next year that the Constitutional Court was really established.

Separation of powers was later stipulated by the Constitution adopted on November 12, 1995. Part three of the new Constitution describes the political competencies and legal status of each branch of power. Moreover, Article 135 describes the separation of powers in the Autonomous Republic of Nakhijevan (ARN).

All the powers of the legislative body are described in Articles 94 and 95; however, these do not include the right to intervene into the activities of other agencies, otherwise separation of powers cannot work. Article 95 lists the issues that link the legislative authorities to other types of authority. This article is the main instrument contained in the Constitution that enables separation of powers; at least, nowhere else does the Constitution mention the interaction between different branches of power.

Head Expert of the Constitutional Court Akshin Jafarov, proceeding from such parameters of separation of powers, as immunity, indemnity, competency and basis for interruption of activity, points out that the Constitution “clearly defines the separation of powers with respect to one branch only”, meaning the legislative power. Items 9-15 of Article 95 of the Constitution assigns the Milli Majlis the right to influence the appointment of officials by the executive authorities^v. However, practice shows that this right has so far remained merely formal. Suffice it to say that the parliament has yet to conduct serious debates in connection with any nomination to a public office. Moreover, it has never happened, either in the parliament or in public politics, that executive authorities should bring any serious arguments to justify a nomination.

Doubtless, as a country that has declared its transition to market economy and democratic reform, Azerbaijan needs sophisticated and clearly formulated legislation. To meet this need, the Milli Majlis created numerous commissions, such as the Commission on Defense and Security, the Commission on Legal Policy and State Building, etc. The bottom line is whether these commissions

have adequate competencies when it comes to carrying out reforms, implementing laws, ensuring gender equality, etc.

The procedure for drafting laws is ambiguous. There are reasons to believe that in most cases, the Presidential Commission on Legal Reform drafts a law and then hands it over to the respective parliamentary commission. In any case the text of the law is kept secret. At best, a handful of opposition parliamentarians may show the draft law to journalists, otherwise the law is never made public until it is adopted^{vi}. Laws do not undergo any evaluation by a number of important parameters; thus it is not clear:

- what public needs the law is expected to meet, and how it will work in practice;
- whether the public will be aware of the new law and understand how it works;
- how the law can be defended in court and what conflicts may arise in the process;
- to what extent will the law serve to combat corruption or maybe encourage it;
- whether the wording of the law is understandable to citizens;
- whether the law has been assessed from gender perspective.

Since the presidential administration has monopolized legislative initiative, there is every reason to doubt the independence of legislative authorities in Azerbaijan. The only exception was the preparation of draft laws on mass media and public television. Many experts were involved in debates over those two laws; it is, however, no secret that these two laws were closely observed by the Council of Europe, IMF and World Bank. Experts from these organizations pointed out the flaws in the drafts, and only then debates expanded to include a wider public.

The main power exercised by the executive authorities that can directly influence the function of legislative bodies is promulgation: the President's right to sign and publish laws. Furthermore, Article 113 provides that the President has the right to publish decrees which are in many ways similar to laws (cf. Article 149, paragraph 4).

One of the key powers of the Milli Majlis is the right to approve the state budget; by doing this, the Milli Majlis can influence and control the executive authorities. Yet in present-day Azerbaijan, the Milli Majlis is wonderfully compliant when it comes to approving a budget submitted by executive authorities, to say nothing of controlling its execution.

As it was mentioned above, it is hard to judge whether the Parliament of Azerbaijan cooperates with local lawyers, whether affiliated with academic institutes or independent law firms. These institutions should monitor the need of relevant branches for new laws, review draft laws, etc. In reality, laws are often simply copied word for word from the statutes of other countries, especially Russia. Sometimes, legislators take heed of the opinion of the Venice Commission or other CoE institutions. Creative approaches to copying foreign laws, or public debates around these laws are, of course, out of the question. Just how nominal the debates are can be seen from the fact that there is no lobbying of laws. This illustrates the fact that the Parliament is not independent but controlled by the executive authorities. Had there been any interest groups in the society able to stand up for their rights, they would have lobbied for or against particular laws.

References to "country-specific features" are popular in Azerbaijan just like in many other non-European countries. Most of the time, though, the fact that Azerbaijan is "special" is used to make sure, in an surreptitious fashion, that the laws give full license to the executive authorities. Of the many examples available, let us just quote two.

Article 49 of the Constitution provides for the citizens' right to free assembly, stipulating that relevant state agencies must be informed beforehand of any such events. Meanwhile, Article 2 of the Law on Freedom of Assembly prescribes that citizens apply to relevant executive agencies for permission to hold assemblies, although it seems obvious that "permission" and "information" are two different things^{vii}. One can only wonder why opposition parties that have applied to the City Council of Baku many times since October 2003 and never got the permission to conduct rallies, have not so far filed a complaint to the Constitutional court against Article 2 of the Law on Freedom of Assembly.

Another example is the Law on State Registration and the State Register of Legal Entities. Civil activists were at first optimistic about this law because they hoped that it would simplify the procedure for registering NGOs. It later proved that the State Registration Department continued to procrastinate the registration of many NGOs just as before. It now relies on Article 11.3.1, which qualifies minor mistakes in the documents submitted for registration as a valid reason to reject the application. To correct the mistakes, it is often enough to make minor changes in the Rules of the

organization, but the State Registration Department, acting in accordance with the statute, simply refuses to register the NGO^{viii}.

Let us now bring a positive example of how one can make a law work while allowing for the country-specific features. Article 38 of the Family Code, entitled *The Procedure for Signing a Marriage Contract*, prescribes that “a contract may be signed prior to the registration of marriage, and at any time during the marriage”. In Azerbaijan, family traditions are very conservative; any legal regulations of matrimonial relations are interpreted as a sign of mistrust between spouses, therefore, marriage contracts are resented by all the parties involved, including the in-laws. This is why it would probably make sense to make a new provision, by which a marriage may only be registered after a marriage contract (premarital agreement) is signed, and that the contract is in force as soon as the marriage is registered. The contract may be seen as a formality at first but with time it can become an efficient tool, especially when ideas about gender equality become more popular.

Summing up the above, we can conclude that the laws of independent Azerbaijan are in many important aspects different from those of Soviet Azerbaijan, and are to some extent intended to pave the way for democratic reform. They ensure human rights and provide for the accountability of all branches of power and social protection of the citizens. They lay the legal foundation for market economy, foster civilized settlement of the Karabagh conflict, endorse European values, etc. Yet these laws contain quite a few loopholes that executive authorities can use to their benefit. The loopholes are in themselves an illustration of the fact that executive authorities do not regard the law as a standard for regulating social relations but rather as a toll for manipulating society. One gets the impression that Azerbaijani authorities have learnt their logic from the Ancient Greek Sophist Anacharsis, who used to make fun of Solon’s reforms, and “laughed at him for imagining that written laws could prevent the citizens from crime and covetousness, while the laws were like spiders’ webs, and would catch, it is true, the weak and poor, but easily be broken by the mighty and rich” (Plutarch, *Life of Solon*). In all probability, Azerbaijani authorities do not directly rely on Anacharsis, being sure never to get caught in the “webs of the law”. The loopholes are just a redundancy to be used in case of emergency, because the executive authorities (in Azerbaijan this word is a euphemism for the President and his team who hold absolute power) will walk over any law, and resort to repressions if they have to. As a result, on the one hand, the laws – for example, electoral laws – seem to improve under the pressure of Western organizations. On the other hand, these laws do not in any way prevent the Central Electoral Committee from cheating, and it still publishes voter turnout figures as “ordered”^{ix}.

The dichotomy between law and reality is still indefinite, and the development vectors are not obviously pointed in the direction of transition/consolidation. As a result, almost like in the Soviet times, the Azerbaijanis now believe that laws are one thing and reality is another; that democracy was an illusion that they had been naïve enough to trust in, and now the time has come for disillusionment. No wonder that many citizens of Azerbaijan do not attach much importance to elections at all levels, including elections to the Milli Majlis.

Formally the Parliament is independent from executive authorities: it has the right to approve nominations of public officials and even to impeach the President. However, the reality proves the truth of what Western observers say about the Milli Majlis: “The Parliament’s independence from the executive branch is marginal at best”^x. A good illustration of the point was given by the Chairman of the Parliament, Murtuz Aleskerov, when he “informed the delegation [of the Venice Commission] that the powers of the Parliament are strictly confined to the legislative function, however, the Parliament is open to proposals of the Venice Commission aimed at the enhancement of the Parliament’s authority”^{xi}.

High-ranking officials from all branches of power in Azerbaijan now face a dilemma: whether to conduct democratic reforms, or keep all the power in their hands at the cost of violating all democratic standards. Almost all political forces, to a greater or lesser extent, are hostage to this dilemma, and really view the two options as mutually exclusive. Such a rigid dogmatic vision of democratic reform, being part of reality and mentality too, makes people erect “democratic façades”, although it is very difficult to conceal the facts behind the façades.

In the present situation, we believe it necessary to do two things. First, we need to analyze the political landscape that emerged as a result of post-Communist transformations in Azerbaijan.

Second, we must try to suggest recommendations for reducing the dichotomy of legislative reform and reality. To this end, we can propose the following:

1. It is necessary to create the right conditions for conducting a series of valid opinion polls, monitoring, and statistical survey, the results of which could be used to reveal the dichotomy of reformist rhetoric and reality. This would make it possible to evaluate how a particular law works, and whether it fosters or hinders reforms. Of course, this work should be done jointly by leading Western and local organizations, so that the results cannot be easily challenged by those who would like the dichotomy to prevail^{xii}. The Milli Majlis should then conduct hearings on the results of these studies. The audience of such hearings should not be limited to public officials, but should also include members of political parties and NGOs, especially those that took part in the study.

2. Parliamentary commissions should regularly review laws to see if they foster or prevent corruption. To do this, a commission reviewing a particular law should summon experts from the field to which that law belongs. The parties could then assume the parts of plaintiff and defendant, and role-play the application of specific articles of the law to the concrete circumstances of that field.

3. One year after adoption of a law, commissions should hold consultations with experts from relevant fields to see how the law works, what faults and/or positive effects it has in practice.

4. Many distortions of the law that enable human rights abuse and/or create opportunities for corruption of public officials, are the result of regulations and legal acts adopted by executive agencies. Parliamentary commissions should check the compliance of such legal acts with the statute, and, in the event of non-compliance, file complaints to the Constitutional Court.

5. Legislative activities of the Milli Majlis need better social engineering and technologies. The Parliament does not conduct research in order to propose needed structural changes in executive agencies to make laws work and foster reform.

5. Executive power

This chapter will also start with a historical background.

Azerbaijan became a presidential republic in 1991; this option was first discussed in the DRA in early 20th century. At that time, however, the most probable candidate for presidency, Mamed Emin Rasulzadeh, objected to the establishment of a presidential republic on the grounds that Azerbaijanis, being an oriental nation, are inclined to idolize popular leaders, and this could have negative effects on the democratic future of Azerbaijan.

By the late 1980s, a “parade of presidents” unfolded throughout the former USSR. The drive for independence was just gaining momentum, and the title of President sounded attractive to many leaders. In those circumstances, the last First Secretary (we apologize for the pun) of the Central Committee of the Communist Party of Azerbaijan, Ayaz Mutalobov, became the first President of Azerbaijan in 1991. There was no sign of any upheavals ahead for the first President who controlled the fully compliant system of executive power inherited from Soviet Azerbaijan. However, democratic forces played the leading role in political developments, and Mutalibov had to resign under pressure from daring young National Front activists. In the new historical context, presidential power in Azerbaijan proved absolutely ephemeral.

In June 1992, Mutalibov’s post was filled by the leader of the National Front Abulfaz Elchibey. However, neither Elchibey, who had been an academic scholar and dissident in the Soviet times, nor the majority of his team who had the same academic background, had any experience of state building or, indeed, the essential ambience of authority. This is why the new democratic authorities showed their weakness as soon as they were put to their first serious test when Colonel Suret Huseinov started his mock insurgence that was in many ways a stunt act. Moreover, the new authorities did not get the popular moral support they needed, because people were skeptical about the “democrats”’ true potential (of course, there were economic, social, military and other reasons as well, but we shall not dwell upon them here). In the absence of adequate political institutions, presidential power once again proved short-lived.

The weak power of the first two presidents of Azerbaijan gave political ideologists from the new ruling elite a strong motive to present the third president Heidar Aliyev as the architect of a stable state based on strong presidential power. Technically they were right. The third president managed to get a good grip on power, concentrating it in his hands, which enabled him to rule the country for two

successive terms of office. Probably death alone stopped him from remaining in the presidential chair. The country was indeed politically stable, and this stability was advertised as an outstanding achievement of the Leader that qualified him as a political genius. Authorities skillfully suppressed any dissent (labeling it “rebellion” and thus further emphasizing the image of the strong President); meanwhile, the country joined the CoE, was recognized internationally, etc. What price was paid for this skillfulness and this stability? The rigid hierarchical rule led to abuse of office by public servants and such huge corruption that, partly due to pressure from international agencies, Azerbaijan had to adopt a special law against corruption.

According to Ali Hasnov, Head of the Public Policy Department of the Presidential Administration, besides adopting the law, the state launched a special program to combat corruption. Since this job cannot be done by the state alone, it is planned to hold events in which mass media will take part to increase transparency, and all public stakeholders will be involved in the anti-corruption activities^{xiii}.

One can agree with the Head of the Public Policy Department of the Presidential Administration that combating corruption is not something the state can handle on its own, especially since it, too, is corrupt. It is crucial that society as a whole should oppose corrupt actions of the supreme authorities. The problem is that, as opinion polls show, the society is either indifferent to these activities, or convinced that it has no chance to win.

In order to join in the anti-corruption activities, society needs to be free. Yet Freedom House now rates Azerbaijan as “not free”, although only recently it was rated “partly free”^{xiv}.

The way ruling party members react to international reports on Azerbaijan is rather symptomatic. According to parliamentarian Bakhara Muradova who is the Deputy Executive Secretary of the ruling party, Yeni Azerbaijan, “this is not the first case when Freedom House shows bias against Azerbaijan. As to the result of the presidential election in Azerbaijan, I am positive that it reflected the will of the people. The majority voted for Ilham Aliyev. Whether Freedom House or NGOs like it or not, this is the will of the people and they have to reckon with it^{xv}”. Yet if we recall the number of prisoners of conscience, widespread human rights abuse, and many other things, the picture may appear different from the way the ruling party sees it. There is a reason why the authorities of Azerbaijan regularly have to present plausible excuses for their actions to the international community. Therefore, the rule of the third president proves that the concerns M E Rasulzadeh expressed in the early 20th century are still topical.

In our opinion, history proves the need to abandon illusions that the only remedy to social chaos is amalgamation of the branches of power, a strong ruler, and a strong vertical hierarchy from the President downwards. The illusion is persistent, it is reproduced every time democratic change falters, and rather than attribute this to the lack of essential political institutions, people blame everything on external or internal enemies (such as the “radical opposition” that does not look after the interests of the state). Such a transformation from democratic transition to autocracy is manifest in many post-Soviet countries, and this general tendency calls for imposing constitutional limitations on presidential powers. In this respect, the experience of Ukraine, a country that managed to defend the result of elections and at the same time limit the powers of its president, can be very useful for all the post-Soviet countries.

The powers of the president are defined in Article 4 of the 1995 Constitution of Azerbaijan. Unlike the legislative branch, the presidential power has a countrywide network. According to Article 109 of the Constitution, the presidential power has full control over executive bodies. The article enumerates the powers of the president, which are enormous, almost unlimited, in terms of governance and influence on other branches of power. The President submits the budget for approval to the Milli Majlis; approves economic and social programs to be implemented by the government; appoints and discharges the Prime Minister upon the “consent” of the Milli Majlis; appoints members of the Cabinet without consultations with the parliament; “proposes the candidacies” of members of the Constitutional, Supreme, Economic and other courts, the Prosecutor General, members of the Board of the Central Bank; establishes central and local executive bodies; appoints and discharges superior Army commanders. The only constitutional limitation of the excessive powers of the President concerns the expenditure of state budgetary funds by executive bodies. Even this limitation, though, is purely nominal.

Article 109 (item 28) entitles the President to solicit the consent of the Milli Majlis to employ the Armed Forces for activities outside the scope of their duties. Moreover, the President has the right to impose a state of emergency or martial law (item 29); this emphasizes the scope of his resources to resort to law enforcement or repression.

Experts on the Constitution of Azerbaijan point out that the President has other powers with respect to laws: he promulgates laws by publishing decrees on matters ensuing from the laws. For example, the Law on Fire Safety contains Article 6.94 that assigns responsibility to implement this law to an unnamed «relevant executive body». In item 2 of the corresponding Presidential Decree, this body is identified as the Main State Department of Fire Safety. It is in such decrees that the President can vest himself with powers that are not foreseen by the Constitution. For instance, depending on the population of a region, the President can determine the number of judges that he appoints there.

It is of course unlikely that a conflict between legislative and executive branches will break out in Azerbaijan. Nevertheless, Article 110 of the Constitution gives the President ample space for maneuver in the event that he should for some reason need to reject a law adopted by the Milli Majlis. This happened in the case of the Law on Public Television. After its adoption by the Milli Majlis, EU experts criticized the law, after which President Ilham Aliyev did not sign the law but sent it back to the Milli Majlis. Ironically, the President vetoed a law drafted by himself (i.e. by his administration).

By the Constitution, judicial powers in Azerbaijan are formally independent from the President but, as mentioned above, all the judges and the Prosecutor General are appointed by the President. And although the Constitution does not grant him the right to discharge judges from office (he can only discharge the Prosecutor General), in the Azerbaijanis' paternalistic mentality the judges feel not only administrative and financial dependence on the President, enhanced by a moral debt.

We have another important point to make. Talking about executive authorities, we mean the President and his team, whereas the Cabinet somehow remains in the shade. This redundancy, first of all, strips the Prime Minister of any authority, so that the public does not seem to regard him as a being in charge of anything. Second, almost all ministers are aware of being dependent on the President and his administration, and, instead of doing their jobs, they have to be responsive to nomenclature games, intrigues and the like.

To sum up the above, let us just mention that the Constitution has 32 items listing the powers of the President, and only 19 items listing the powers of the Milli Majlis. We have to admit that the executive branch has incomparably more powers, leaving the other branches totally dependent on it.

Let us do a case study. With economic reform, private businesses began to grow in Azerbaijan, and by now the private sector is quite strong in terms of employment and economic efficiency. 68% of the workforce is employed in private businesses, and only 32%, in state-owned companies and public service. Yet, despite the relative strength and fully legal status of private business, private capital is poorly protected against abuse by the executive authorities, especially if its owners do not belong to the "state nomenclature". Bearing in mind that recent years have left no illusions as to the immunity of Russian capitalists to presidential powers (the UKOS case being one bit of evidence), it is not hard to imagine the situation in Azerbaijan where market economy is less developed and judicial bodies more dependent than in Russia.

In Azerbaijan, the head of the executive authorities and his administration have huge resources for disciplining disobedient business people using the Tax Ministry. Even when this tool is not used, it intimidates business people just by being there. Independent courts and judges could have served to cure these fears but, as we shall see, the courts and judges of Azerbaijan are also dependent on the executive authorities. As a result, business people find themselves in a vicious circle. If qualified as "dangerous" or "unwanted", they are victimized by the tax inspection, and the docile courts are sure to sanction the punishment. Naturally, this practice undermines public trust in the law.

Given the Azerbaijani *etatism* and the misbalance of power in favor of the executive branch, it is not hard to understand the social reasons for the dependence of judges and barristers. We must realize that public officials do not live in a social vacuum: together with their families, friends and associates, they are integrated in a network of social and personal ties. Therefore, public officials, owners of businesses, and even influential NGO leaders all have countless Achilles' heels that make them dependent on the whims as well as the pragmatic interests of executive bodies. It does not really matter where they work: an arrow shot by Paris easily hits the weaknesses of public servants, private

businessmen and NGO activists alike. Of course, this state of affairs serves to weaken the society and gives rise to despair and apathy.

One cannot say that executive authorities resort to their unlimited powers all the time. There is no need to do so. Quite a few things happen in the society without interference from the administration, and authorities cannot control every aspect of public life, to say nothing of private life, which already follows a post-Soviet pattern and is no longer subject to state control. However, as many instances have shown, in the event the authorities decide to pressurize someone, an individual is still unprotected (probably with the exception of cases where the international community can interfere).

Apparently, the Constitution imposes limitations on arbitrary actions of the President. The President does not have the right to disband the Milli Majlis; Article 95.12 prescribes that the Milli Majlis can discharge the President from office based on a motion from the Constitutional Court (Article 107). Yet, for these provisions to become real checks, the parliamentary elections must be free and fair, and/or the majority of the deputies, the Speaker in the first place, must be able to afford confronting the President on controversial issues.

Meanwhile, almost every election in the last decade left the authorities free to “elect” a Milli Majlis composed of ruling party members and non-aligned deputies who are fully controlled by the ruling elite, and it is hard even to imagine the parliamentarians openly confronting the President.

As to Constitutional Court members, they are as dependent on the executive authorities as the majority of parliamentarians. Perhaps such a system can operate efficiently when the country faces political or financial destabilization. But, whatever huge their powers may be, authorities should operate within the limits of the law, refrain from arbitrary decisions, combat corruption, stand up for national interests and enjoy the trust of the population (as was the case with autocratic regimes in Singapore and Malasia). Unfortunately, in many post-Soviet countries including Azerbaijan, governments do not have sufficient legitimacy, and even if they do, they waste it on making their own fortunes using rhetoric about national and state interests as a cover-up. Worse still, there is no opposition to the executive monopoly, either from political institutions, or civil society, or businesses, or society as a whole. Therefore, if we accept Lord Acton’s thesis that absolute power corrupts absolutely, we can hardly hope that executive authorities will give up their unrestricted powers of their own accord, and will promote democratic reform and combat corruption.

We would like to make one further point. There are two methods of governance. One type of governance is based on a simplistic approach to real and prospective situations, and implies being reactive and making quick palliative decisions; failing that, it resorts to repressions. Fear and punishment serve to emasculate political and economic life, so that the number of real political actors dwindles. The Soviet regime was inclined to simplify things, using repressions when necessary.

Another type of governance relies on tactics and strategies for resolving complex situations involving many political actors. This method is typical for democratic regimes and democratic transition countries.

Apparently, in Azerbaijan the two types of governance coexist. Democratic reforms launched in the first years of independence have left their imprint. Political institutions have changed to some degree; there are some independent news media; some public organizations still operate; the country still receives foreign aid, though less than before; despite all this, political life seems to be in a kind of standstill. The change is especially obvious compared to the first years of independence. Nowadays at least some of the people still embrace democratic ideas; those ideas get published in newspapers and even aired in public, at meetings and trainings, but have less and less impact in terms of reforming political institutions. What we have now is a symbiosis of democracy and authoritarian rule, freedom of expression and total impunity of forces that consider themselves above the Constitution and are integrated in a network of corruption. The irony of political life in Azerbaijan is that pluralism is endorsed by the Constitution yet doomed to marginality. Once in a while electronic media have to give air to opposition activists; however, their words can be tampered to distort their meaning. Opposition print press has to face open or masked threats. Human rights organizations force the authorities to reckon with their activities but can hardly make any impact on the society.

The authorities of Azerbaijan have thus failed to simplify the situation enough to make it fully manageable. The new strategy consists in “outnumbering” the opposition. Democratization required having many pluralistic print media. Then the government began to produce so many printed editions

that opposition publications drown in the sea of pro-government press, despite having larger print runs. Democratization required building a civil society, and gradually the NGO sector became an important social force that produced independent activists. Then the government created numerous NGOs that got instantly registered, whereas truly independent NGOs are still denied official registration^{xvi}. Suffice it to mention that the number of unregistered NGOs is now estimated at 40 000; had there been equal treatment and free competition, many of these NGOs could have been actively involved in promoting democratic changes in Azerbaijan. Democratization required the creation of pluralistic political parties. Numerous parties began to spring in Azerbaijan, with amazingly large, if fake, memberships. By 1995, some 45-odd parties applied for registration but only 32 got it. More than 30 parties ran for the 2000 parliamentary election^{xvii}. In this case, just like in many others, many more pro-government than opposition parties got registered. Democratization required that many candidates run for presidency in the 2003 election. Many candidates did show up. Some of them made no secret of their affiliation with the government coalition, and, in fact, campaigned for the leader of the ruling party, not for themselves.

An adequate response was thus found to democratic challenges. It consisted in erecting a democratic façade and creating mock plurality; behind the façade, authorities could conduct political reforms that did not affect the regime.

6. JUDICIARY

Judiciary was indirectly mentioned above, in the sections devoted to legislative and executive powers. No doubt, an independent judicial branch is one of the main prerequisites of true democratic change, probably just as important as free elections. All attempts to make the judicial branch independent, by attestation of judges or raising their pay, are doomed to failure. The independence of the judiciary in Azerbaijan certainly depends on real separation of powers, and, in a wider sense, on limiting the power of the executive branch. Bearing this in mind, let us examine the situation of the judiciary in Azerbaijan.

Chapter 7 of the Constitution deals with the judiciary. Chapter 2 mentions it as a separate branch of power. Article 125 names the main judiciary bodies: the Constitutional Court, Supreme Court, the Economic Court, general and specialized courts. In 2002, the Constitution was amended to add Courts of Appeal to this list.

The establishment of the Constitutional Court and Courts of Appeal spelled a significant change of the judicial system. We must mention, though, that the Constitutional Court was to operate starting 1997 but was in fact established as late as 1998. This delay, just like the delay in creating local authorities, was left unpunished, which is one more illustration of the way the government disregards the Constitution.

Courts of Appeal, positioned between first instance courts and the Supreme Court, served to relieve the Supreme Court of a large burden of cassation appeals. Moreover, Articles 381 of the Criminal Procedure Code and 418 of the Civil Procedure Code provide the basis for the reversal of the rulings made by Courts of Appeal.

The legislative and executive branches have unequal capabilities of influencing the judiciary. The problem is that the Milli Majlis approves only the appointment of judges to the Constitutional, Supreme and Economic Courts, whereas, according to item 9 of Article 109, the President appoints judges to all lower-level courts without consulting the Milli Majlis or approval thereof.

The Parliament only controls high-level courts, and all other judicial bodies are controlled by the President. Moreover, executive powers are further broadened under item 32 of Article 109 which stipulates that the President exercises executive powers with regard to other matters which are not assigned to judicial bodies by the Constitution.

One could qualify the creation of the Constitutional Court in 1998 as an indicator of judicial reform. However, neither citizens, nor public organizations had the right to file complaints to the Constitutional Court. As a result, it became part of the power monolith.

The fact that this situation changed in 2002 can be attributed to constitutional reform. Amendments to Article 130 allowed citizens and public organizations to file complaints to the Constitutional Court against regulations made by legislative or executive bodies, and municipal

authorities, and against court rulings. It is symptomatic, though, that only 16 complaints have been filed to the Constitutional Court since the adoption of this amendment, and all the complaints had to do with strategic litigation. As far as we are informed, complaints against laws or important legal regulations are rejected under various pretexts.

Let us add that, even after these changes were enacted, an important gap remains in the legislation. The list of entities allowed to file complaints to the Constitutional Court does not include local authorities, despite the fact that the operation of local self-government is the practical test for any law.

Up to 2000, Azerbaijan still used the 1960 Criminal Code. In 1992, the Elchibey administration made some liberal changes, abolishing articles that concerned political activities and broadening the defendant's right to appeal. To the contrary, in the early years of Aliyev's rule, the use of capital punishment was extended to include crimes against national security, although no one was really executed. In March 1998, the Parliament reduced the use of capital punishment, and on the eve of accession to the CoE, abolished it altogether.

How can judicial authorities control the activity of other branches? First of all, let us note that these competencies are assigned to the Constitutional Court and partly to the Supreme Court. The Constitutional Court is responsible for constitutional supervision, and arbitrates disputes concerning the separation of legislative, executive and judicial powers.

The Constitution does not limit the judges' term of office, but Article 96 of the Law on Judges and Courts stipulates that judges serve on superior-level courts for 10 years, and in all other courts, for 5 years, and cannot be discharged during their term of office. In the event that a judge commits a crime, only the President, upon a ruling of the Supreme Court, may propose to the Milli Majlis to discharge the judge from office. According to item 4 of Article 128 of the Constitution, a majority of 83 votes of the Milli Majlis is needed to discharge judges from superior-level courts, and from all other courts, by a majority of 63 votes, according to item 5 of Article 128. Within the system of separation of powers, no other branch has control over the judiciary, which means that judicial authorities are independent. The fact that the judges' salaries have been significantly increased and now amount to 500-700 US dollars a month, can also be regarded as a method of securing the judges' independence, although financial independence can hardly be efficient unless combined with other measures.

Article 151 of the Constitution establishes the primacy of international treaties over domestic laws and regulations, and gives judges the formal right to appeal to international law. In practice, however, it is hard to imagine Azerbaijani judges confronting other government bodies based on the provisions of international treaties.

It is not quite clear where prosecutor's offices are placed in terms of separation of power. Up to 1999, they had the right to supervise courts, and only lost this power under the 1999 Law on Prosecutor's Offices. The Prosecutor's Offices in Azerbaijan are an independent centralized authority vested with supervisory powers. Many experts believe that these powers should be restricted.

Juries are crucial for the proper administration of justice. The Criminal Procedure Code adopted in 2000 has a chapter dealing with juries. The Presidential Decree that adopted the new Criminal Procedure Code prescribed the adoption of the Law on Juries, but this has not been done. According to the legislation, a jury must be composed of 12 persons, plus 2 "spares". The members of a jury "should not have any legal background. They can be different in terms of personality, occupation, income, etc." The use of juries is regarded as part of the reforms aimed at creating new types of courts and new methods of administering justice, and, in a wider sense, as part of anti-corruption programs. Let us mention that the League of Independent Lawyers is working jointly with the government on the project of introducing juries.

Another prerequisite for proper administration of justice is an advanced institution of barristers.

Azerbaijan was obliged to set up a new Bar Council after it came under the jurisdiction of the European Court of Human Rights on April 15, 2002. The inaugural conference of the country's Bar Council in November 2004 in Baku gave the right to appear in court to just 36 licensed lawyers. According to Azerbaijani law, only members of the Bar are able to represent clients' interests in court. All other lawyers - of whom there are around 400 - must, regardless of experience and competence, limit themselves to consultations. The Council of Europe had recommended that along with members of the old Bar, more than 200 licensed lawyers also be admitted to the new association, but this advice

was not heeded at the conference. “There were around 260 licensed lawyers, but for some reason, those who received their license before 2001 were not permitted to take part in the conference,” said prominent lawyer Adil Ismailov. - “This left 62 people on the list, which for various reasons was then further reduced to 36 people – so around 220 licensed lawyers have lost the right to practice as barristers.”^{xviii}

The inaugural conference aggravated tensions in connection with the recently adopted Law on Barristers and Their Activities. The leaders of the new Bar Council argue that the law was approved by CoE experts, and that the representatives of the OSCE in Baku and the United States Lawyers’ Union attended the inaugural conference. In their turn, many prominent lawyers ask: “How could experts from the Council of Europe have approved a bill that was completely wanting?” The head of the OSCE’s Baku office, ambassador Maurizio Pavezi, told Turan news agency that the elections for the leading posts of the Bar Council were badly organized. “We urge the Bar Council and the government of Azerbaijan to arrange for transparent, fair and non-bureaucratic entry to the Bar,” Pavezi said.

The mainly behind-the-scenes struggle around this law is another evidence of the arbitrary practices of the government and its ability to maneuver in response to the challenges of the international community without really changing anything.

Let us add that there is currently one lawyer per 20,000 citizens in Azerbaijan, whereas by international standards there should be one to 1000-1500. Hence, even if the institution of barristers is reformed under the new law, the deficit of lawyers will not diminish.

The legal profession is not especially well-paid in Azerbaijan. A barrister appointed by the state gets 2250 manats (the equivalent of 46 cents) an hour. If contracted privately, a lawyer is paid an average of 300-600,000 manats (\$61 to 122) for handling one case. In the conditions that prevail in the courts of Azerbaijan, an influential lawyer is the one who is skilled in behind-the-scenes intrigues and extrajudicial arrangements. Everyone is aware that a barrister has little chance to defend a client using legal arguments, and this determines low confidence of the society toward the judiciary.

One of the methods by which the legislative and judicial authorities can control the executive branch is the impeachment procedure, described in Article 107 of the Constitution. The article stipulates that the Constitutional Court and the Milli Majlis must both be party to the impeachment. In the event that the President should commit a grave offense, only the Constitutional Court may raise the question of impeachment in the Milli Majlis. The procedure of impeachment has its loopholes. All bodies involved in the impeachment must act independently and at their own discretion. Doubtless, impeachment is an exceptional act, and it must involve complicated legal procedures in order to prevent abuse. On the other hand, none of the agencies involved should have the power to interrupt the procedure at any stage. As a result, the procedure is so complex that it makes impeachment impossible.

Anti-corruption programs cannot operate unless the judiciary is independent. Azerbaijan has a law and a program on combating corruption, both of which must become effective on January 1, 2005. In connection with this program, a team of sociologists was contracted by Transparency Azerbaijan to poll public opinion concerning corruption rates. It was concluded from the results of the poll that the entire society suffers from systemic corruption. Measures to combat it will require profound reforms of the entire governance system, and public opinion and institutions must be mobilized for this purpose. Many respondents believe that corruption is produced by the *flaws of the legal system*, while every fifth respondent is confident that contradictory provisions that enable officials to extort bribes were incorporated into the legislative acts on purpose. As to anti-corruption measures, the vast majority of respondents named judicial reform and independent courts.

It is hard to say where the reform should start from in terms of transition/consolidation. Cosmetic changes will hardly help. However, at least a precedent is needed, so that the courts and judges feel that they no longer enjoy impunity, at least in cases that have a political relevance. Furthermore, as the judicial reform progresses, we must ensure that court rulings are specific, and the justification of a case and the court ruling are worded to be understandable to ordinary people. This would be an important step towards overcoming the dichotomy of justice and reality to which the citizens of Azerbaijan have become accustomed, and regard their estrangement from governance as something unavoidable.

In any case, nothing short of the triangle “free and fair elections – free independent media – free independent judiciary oriented towards the citizen and the civil society” can give us grounds to speak of the beginning of transition/consolidation in Azerbaijan.

7. Decentralization of power: Local Self Government – Municipal Authorities

On December 17, 2004, elections to local self-government bodies – municipal authorities – were held in Azerbaijan. The country is divided into 2732 municipalities; 21,622 persons were elected to the local authorities. 4,571,635 voters took part in the elections; the ballots contained the names of 38,041 candidates, among them, 1901 women. The ruling Yeni Azerbaijan had nominated the greatest number of candidates, 21,627. It is too early to judge the election, because it is typical for Azerbaijan that opinions expressed right after an election are radically different. Let us just mention that the elections were boycotted by major opposition parties, Musavat and the National Front Party, whereas the National Independence Party that did take part in the elections made a statement immediately after voting day, condemning mass fraud and declaring that the elections dealt yet another blow to the international image of Azerbaijan.

The history of municipal authorities in Azerbaijan practically began with an offense that served as a prelude to their future operation. They are often compared to optical illusions (the press likes to joke that no one really knows whether they exist at all). Article 85.7 of the Transitional Provisions of the Constitution stipulates that “A law on local self-government must be adopted and local elections held within two years from the moment the present Constitution comes into force.” The law on municipal authorities was only adopted in 1999, and the first local elections were held the same year, two years later than prescribed by the Constitution.

Azerbaijani news media reported that the Milli Majlis drafted a special municipal development program to be implemented by 2015. However, the municipal reform faced many challenges, some of which will be mentioned below.

There is a good reason to suspect that at the 1999 municipal election, executive authorities imposed quotas on candidates from political and non-political forces, whether pro-governmental or pro-opposition. Yet the scope of local self-government permitted many representatives of various parties to be elected to municipal bodies in spite of the quotas. This event was unprecedented in Azerbaijan. Over 20,000 candidates ran for the elections; up to 1500 members of Musavat (up to 2000 by some estimates), and 1000 members of the National Front Party were elected. Of course, an incomparably larger number of the ruling Yeni Musavat won the election.

After the election it turned out that the new authorities face numerous problems, some of which were mentioned in the UN report. Although the report is in general quite positive, it mentions the fact that relations between central and local authorities are not properly structured. There are constant tensions in connection with the distribution of competencies between local executive bodies and municipal authorities, and the division of state and municipal property. The problems are often caused by the unwillingness of local executive bodies to give up their privileges.^{xix}

The Constitution defines municipal property as one of the forms of property (Article 13 item 2). Item 2 of Article 144 stipulates that as additional competencies are assigned to municipal authorities, the state must provide adequate financial resources for the implementation of their activities. In this case, the exercise of such competencies is controlled by the legislative or executive authorities, respectively.

The Constitution prescribes that local self-government bodies should be independent (Article 146) and have the right to recourse to a judicial remedy. However, this guarantee can only become real provided the judicial branch is independent. For five years after 1999, the press was full of reports about purposeful limitations imposed on municipal bodies when it came to collecting taxes, managing property, etc. It would seem that these offenses should have resulted in many court cases. Yet, although we regularly read Azerbaijani press, we have not come across a single reference to such a suit, which proves that municipal authorities do not have faith in independent justice and/or are themselves dependent on executive bodies.

The Constitution endows municipal authorities with power to adopt acts, and this power could have made municipalities capable of independent initiative. But, unlike decrees, acts and provisions

adopted by executive authorities, the acts adopted by municipalities are not qualified as legal regulations. However, the Constitution stipulates that acts adopted by a municipality are obligatory for the citizens residing in the municipality and legal entities situated there (item 2 Article 150). Article 146 of the Constitution guarantees the independence of municipalities; nine items of Article 144 list the powers of local self-government bodies; item 2 of Article 146 even mentions that executive authorities may delegate additional powers to municipal authorities. In reality, though, all these articles remain on paper.

In terms of Azerbaijani reality rather than the available legal instruments, the support given to municipalities by the state does not serve the aims of the reform. Either the state pretends to finance local authorities, in response to pressure from the international community, or the funds are kicked back to the government. For example, the fact that in 2003 local authorities only spent \$1,000,000 of the approximately 5.8 million US dollars allocated them by the state^{xx} only corroborates the doubts that circulate in the press. One of the doubtful issues concerns fraud that marred the previous municipal elections and led to the election of a large number of persons chosen on the grounds of political loyalty. Of course, in the present historical circumstances, when municipal authorities have not yet to become an integral part of public life and mentality, even a free and fair electoral process could hardly have prevented the election of all sorts of populists who only saw participation in local self-government as a career opportunity or a chance to enter the corrupt distribution system of benefits. Nevertheless, a truly democratic election will in any case give more chances to local activists whose popularity in the municipality is earned by enterprising unselfish activities. During our travels to various parts of Azerbaijan, we met many such activists, trustworthy and willing to engage in activities of this kind; regrettably, they did not, for various reasons, become members of municipal councils.

Another doubtful issue is the low accountability of municipal councils. Although Article 15.4 of the Law on the Status of Municipal Councils prescribes that each member of the council should report to voters at least every six months, this is just wishful thinking as far as most municipal officials are concerned. Besides, they have precious little to report: for the most part, they complain that they have no resources to do anything useful. Meanwhile, the Law on the status of municipal council members does not prescribe a procedure for voters to discharge a council member who does not deliver. As a result, thousands of council members, under no pressure from either voters or any public organizations, are only formally engaged in local activities.

Experts believe that one of the flaws of the present system of local self-government in Azerbaijan is that municipalities are too small. It is only in larger administrative entities, provided all other problems (status, resources, fair elections) are efficiently resolved, that municipal councils can become real self-government bodies.

Going back to the fact that municipal councils do not spend the funds allocated by the state, we must pay special attention to Article 18 of the Law on the State Budget. This article allows an executive body to reallocate unspent funds, as practicable, to other budget lines, for example, construction. This obviously creates brilliant opportunities for misuse and stealing. It is not hard to imagine that, if a municipal council disagrees with executive bodies, the latter can always find a better partner, not necessarily on municipal level.

These individual cases show that the creation of the municipal system in Azerbaijan did not result in decentralization of power. It is the government, using more or less sophisticated methods, had to adapt, restrain and eventually dissolve local self-government in the power hierarchy. Consequently, the only thing that can be said about the municipal reform in Azerbaijan is that the councils have been established, and potentially, when profound democratic reform is implemented, they will be able to operate properly.

8. Assimilation of political/constitutional reforms

The opening lines of the Constitutional Act on Independence of Azerbaijan adopted on October 18, 1991, refer to its continuity from the Declaration of Independence adopted by the National Assembly of Azerbaijan on May 28, 1918. Thus the Constitutional Act is different from the Constitution of the Soviet Socialist Republic of Azerbaijan which began with the declaration of the leading role of the Communist Party. In its turn, the 1995 Constitution is based on the Constitutional

Act on Independence of Azerbaijan, and proclaims the Republic of Azerbaijan a democratic secular state committed to rule-of-law. Chapter 1 of the Constitution stipulates that the power belongs to the people of Azerbaijan, and that the people exercise their power through free elections. All this is consistent with democratic reform of the society and the state. Below we shall name some other innovations incorporated in the Constitution; before we do, we must make a reservation that explains why the constitutional reforms, contained in texts and implemented in the form of “façade democracy”, have formed a dichotomy with real life and hence failed to reform it.

The problem is that any democratic values, including human rights, separation of power, a multi-party system, municipal self-government, etc., make sense only if they serve the citizens. The innovations listed here are intended to guarantee that the power does lie with the people; we must remember that democracy is fragile and easy to corrupt, as it happened in many “republican regimes” in the history of the East and West alike. The power only lies with the people if the people have the right to life (Article 27), freedom (Art. 28), property (Article 29), personal immunity (Article 32), dignity (Article 46), freedom of thought and speech (Article 47), free assembly, etc. Indeed, unless people have all these rights, how can they be a source of power? How can people impose their will to choose who and how should rule the nation as long as they are subjected to humiliation, reduced to slavery, forbidden to assemble or go on strike, and so on?

The people can indeed rule the country as long as no single party can usurp power and speak for the people. The power can indeed lie with the people as long as they have the right to vote and to be elected, and no political group can tamper with the result of elections. Using this logic, one can justify and explain all democratic institutions by showing that they are mechanisms that serve to prevent perversions of the concept of power by the people.

The Constitution of Azerbaijan lists and clearly defines democratic values and almost all democratic institutions. Hence, this document is in general consistent with the criteria of democratic constitutional reform. Meanwhile, the main flaw of constitutional reforms in Azerbaijan is that neither the structures incorporated in the texts, nor the way they were integrated in public governance have led to the creation of any mechanisms that prevent perversion of the concept of power by the people.

Apparently, constitutional reforms have resulted in the creation of structures which are more or less prepared to hand power over to the people but remain passive. In Georgia and Ukraine in 2004, we witnessed such structures, until then complementary to reality; they suddenly came to life and started operating as mechanisms of democratic rule. One of these structures was the Constitutional Court of Ukraine that had the nerve to annul the results of the run-off of the presidential election.

It took an “impetus” from the non-violent revolutions that happened in these two countries for the formal democratic structures established during reforms to become real democratic mechanisms. The names “Velvet”, “Rose” and “Orange” are used to justify these revolutions, in the sense that they did not involve bloodshed and relied on structures created in the course of democratic reforms but dichotomous to power by the people. It proved that under particular conditions in particular countries, peaceful forms of pressure were enough to transform the passive formal structures into real democratic mechanisms. Non-violent attractors were thus needed to trigger the operation of those structures.

Constitutional reforms in Azerbaijan served to establish legislative authorities, and hold elections to the Milli Majlis using a mixed majority-proportional system. However, the reforms did not lead to free and fair elections. Later on, in 2002, proportional seats in the parliament were abolished by means of another referendum in which 97% of the electorate supposedly took part. Was this one more step in the direction of democratic reform, or a retreat?

The society and the experts never got a coherent explanation of how the abolition of the proportional system was expected to encourage democratic progress. To the contrary, there were clear signs that this was an attempt to hinder the development of a multi-party system.

As a result of constitutional reforms, the executive authorities of Azerbaijan became branched. The Constitution provided for the independence of legislative and executive authorities from each other. Yet, though the Parliament has the right to impeach the President (Article 95 item 12), and the President does not have the right to disband the Parliament, the President possesses powerful tools for punishing or rewarding any member of the society. Thereby the independence of legislative bodies is reduced to naught. As to judicial powers, they are unable, for example, to protect the family of a

parliamentarian from harassment by the executive authorities. The judiciary, too, is helpless when it has to deal with executive bodies.

Although the Constitution proclaims the presumption of innocence as one of its principles (Article 63), and although it delegates to courts the responsibility to protect human rights and freedoms (Article 71), yet whenever political parties go to court to secure free exercise of their right to assemble, the court invariably rules in favor of executive bodies. And whenever civil activists sue the Ministry of Justice for refusing to register their NGO, once again the court almost always passes a verdict in favor of the executive body, in this case the Ministry of Justice.

The 1995 constitutional reform led to the establishment of the Constitutional Court. The 2002 constitutional reform opened the door to this court to citizens. However, municipal councils are still not allowed to complain to the Constitutional Court, and the citizens' complaints against major flaws in the legislation are usually rejected under various pretexts.

Although Courts of Appeal were instituted in Azerbaijan as a result of the 2002 constitutional reform, the events of 2003-2004 proved that these courts do not interfere in the harassment of individuals by the government. Although Chapter 3 of the Constitution lists all the fundamental human rights and freedoms and declares that ensuring those rights and freedoms constitutes the main goal of the state (Article 12), the citizens of Azerbaijan are defenseless against abuse by law enforcement agencies and unprotected against torture in the event of detention.

The recent remarkable cases of Georgia and Ukraine have shown how democratic reform can create a kind of trigger that can be activated by the "attractors" of a non-violent revolution and serve to implement the will of the people. Perhaps countries like Azerbaijan will also choose the road of "velvet revolutions", and democracy will become real. But, perhaps, there is another non-violent way of leaving the Wide Grey Zone? Perhaps external challenges will help these countries to overcome the dichotomy between text and reality and begin to move in the direction of transition/consolidation.

"Wider Europe: New Neighborhood" is a project that may stimulate new attractors of such a scenario.

9. Political reform in Azerbaijan and integration into Europe

Azerbaijan is, first of all, a post-Soviet country; second, the majority of its population is Muslim; third, it is situated on the boundary between Europe and Asia. These three characteristics now determine the history and geography of Azerbaijan, its development tendencies, and the domestic barriers that it encounters (and will continue to encounter) every time it chooses the road of modernization and integration into Europe.

Azerbaijan is usually regarded as a borderland of the East and the West, with a propensity towards the East and the South. The dramatic collisions of Azerbaijani history and culture were to a large extent due the fact that the nation had to change its political and ideological identity several times in 150 years within the same set of coordinates. Briefly, this period included the Russian expansion; the industrial and oil boom (for the most part in Baku); a national renaissance that brought about rapid development of culture and national identity (the Democratic Republic of Azerbaijan and its Parliament that we discussed above were the political outcomes of this renaissance); the invasion of Azerbaijan by the Red Army; the Soviet era in the development of Baku and Azerbaijan; the years of independence and the new quest for national and cultural identity. These historical and cultural events set the framework for a complicated intercourse between intrinsic national traditions (chiefly Turkic and Muslim) and the European cultural experience.

The interaction began in the second half of the 19th century; it first took the shape of struggle against being "aborigines" in their own country, and later led to the assertion of an identity that distinguished the nation from other Muslims, and eventually from other Turkic speaking nations. The task was by no means an easy one, because it did not make sense to most Azerbaijanis (as they later began to call themselves) who identified themselves as Muslims in a country ruled by Christians. Therefore, the first champions of national enlightenment were for a quite a while treated like strangers, in a way, like government officials. Besides explaining what they meant by European orientation and how it would transform Azerbaijani society, they had to deal with the popular dread of integration with Europe and mistrust toward foreign political and social experience. However, without

such educational efforts, modernization is doomed to be superficial and proves unable to survive any major challenges. The national enlighteners of Azerbaijan managed to mount the steed of historical time, amalgamate tradition with innovation, and eventually stimulate a genuine cultural outbreak (referred to above as the renaissance) at a time when the historical clock seemed to have stopped.

In the course of this swift transition from the “aboriginal state” to social and political progress, three main principles emerged. They were *Turcism*, *Islam* and *Modernism* (it is symptomatic that “Europeanism” was sometimes used instead of “modernism”). Can we state that the national renaissance had been over by the time the Red Army invaded the country and Azerbaijan passed under Soviet rule? This was hardly the case, in fact, the process had just begun: the “aborigines” had yet to acquire an identity, and then learn to live with this identity and constant exposure to European experience. The Soviet invasion did not just impose a change of political orientation; it interrupted the logic of the natural *process*. It was inevitable that many years later, this interruption would affect the course of *modernization* in the newly independent Azerbaijan. .

One can thus state that history never allowed Azerbaijan enough time for integration with Europe to work its way into political and cultural institutions. It was this country, with such a culture and mentality, that acceded the Council of Europe at the turn of the 21st century, declared its commitment to European values and its intention to respect European standards in its domestic development and relations with other European countries. Needless to say, in this historical context there was no way that profound integration with Europe could be painless for Azerbaijan. On the other hand, there is no doubt that truly successful integration with Europe could represent a major challenge to all Muslim countries, and first of all, to adjacent Iran.

In our opinion, the bottom line is that integration into Europe is the only way to avoid stagnation in the Wide Grey Zone, and create such a political and social climate in the country that corrupt officials and anti-democratic actors of all kinds will be regarded as an atavism of the non-civilized past (or, using Aristotle’s phrase, of the pre-political past).

Decisions made by the European Union on June 16, 2003, and January 26, 2004, corroborated its willingness to support stability, democracy and prosperity in the South Caucasus. The EU Foreign Affairs Ministers, taking into account recommendations made by the European Parliament, the European Commission, EU Secretary General Xavier Solana and EU Special Representative in the South Caucasus Heikki Talivitie, included Azerbaijan, Armenia and Georgia, and in the “Wider Europe: New Neighborhood” project. The aim of this initiative is to give the countries of the South Caucasus a real opportunity to integrate with Europe. At present, the European Commission is preparing country reports that will evaluate the progress of political and economic reforms in each of the three countries. Based on the country reports, the EU will prepare Action Programs that will cater to the specific needs of each country. The timeframe and conditions for the inclusion of Azerbaijan, Armenia and Georgia into the New Neighborhood project will be determined later but “a negative answer is unlikely”^{xxi}.

According to former European Commission President Romano Prodi, the New Neighborhood project is aimed at opening the markets of the European Union with its 500 million population to the countries of the South Caucasus, to attract European investments to the South Caucasus and promote social and cultural integration of these countries with Europe”^{xxii}.

There is no doubt that all these initiatives are positive and open important prospects to the nation of Azerbaijan. But how can we avoid turning hopes into illusions? How a country full of corruption and “not free” can reform its political institutions and realize that integration with Europe lies through legitimate democracy? This is a challenge to both parties: the country that has made a commitment, even though a declaratory one so far, to evolve in the direction of European values, and to the community that opens its doors to a country which is different (Muslim, post-Soviet, etc.), warning it that it must first prove that it has implemented the political, social, cultural, and civil standards of this community in a systemic fashion.

Unlike many Azerbaijani political actors, we shall not be hypocritical and say that this is the domestic affair of the independent Azerbaijan, that the nation can handle its domestic problems on its own, etc. First, in a limited historical perspective, without an external force (i.e. political pressure, expert assessment of laws, training on legal issues, human rights, public debates, gender, etc.,) Azerbaijan is unable to combat systemic corruption, or the authoritarian regime that is prone to mimicry but remains the same inside. Second, the constitutionalization of the new world order (Jurgen

Habermath), the ratification of international treaties, the commitment to human rights, etc. have to some extent legitimized (and continue to do so) the control over democratic changes in many countries worldwide. This does not imply that Azerbaijani society should forfeit responsibility for its own future: the country and the nation must make an effort to implement transit/consolidation and make people believe in the feasibility of democratic change. However, truly democratic actors, both domestic and external, must begin a *joint* quest for country-special approaches aimed at creating efficient mechanisms for uncovering and preventing fake reforms. Prominent Azerbaijani political scientist Zardusht Alizadeh once made the following sarcastic remark: “They’ll criticize us, and then give us time to reform. In the long run, nothing will change. Azerbaijani authorities have been working with the PACE like that for years.” This should make us reflect on the efficiency of our efforts. We have to realize that unless, due to political reforms in Azerbaijan, its executive authorities become accountable, legislative authorities begin making laws, and judicial authorities ensure the rule of law, the European financial aid and international grants will be pocketed by corrupt officials, and EU officials will be to some extent accomplice to this practice.

Of course, the criticism of international organizations does matter. In January 2004, the PACE adopted resolution # 1358 that urged the government of Azerbaijan to take practical steps to democratize the country and implement its obligations to the CoE. PACE experts insist that Azerbaijan should officially recognize violations that took place during the 2003 election, and punish law enforcement agents guilty of inhuman treatment of opposition activists, journalists and human rights activists. Azerbaijan still fails to guarantee its citizens such fundamental human right as freedom of speech and assembly. Therefore, it is necessary to subject the authorities to heavy criticism and, where practicable, sanctions, but it is not enough.

In the new historical situation, we face the same challenge that Azerbaijani enlighteners faced in the second half of the 19th century: to prove that the European political, social and civil experience is meaningful and essential for Azerbaijan. The difference is that in those days the European lifestyle, behavior patterns and human relations were perceived as foreign and objectionable, and one still had to prove that they would not be destructive for the Azerbaijanis. Nowadays this gap is bridged. The new challenge is that people are disoriented, apathetic and do not believe that democratic actors in Azerbaijan and the Western democratic community are able to bring about transition/consolidation in the Wide Grey Zone. If they show that they are, it may prove that the post-communist euphoria around potential democratic reform in Azerbaijan has not yet faded away.

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ⁱ Based on the reports of several international organizations on the 2003 presidential election, the International Crisis Group stated that this election “fell short of international standards”. There was no full-fledged election campaign; opposition parties were repressed and intimidated; mass media were biased and did not allow alternative opinions to be heard (See: Azerbaijan: Turning over a new Leaf? International Crisis Group Europe Report No. 106.. Baku/Brussels. 13 May 2004. p. D). Harassments that followed the October election have affected the political activity of opposition groups.

ⁱⁱ See: Ramiz Mekhtiev. Azerbaijan in the Globalization Era. – *Bakinski Rabochi Daily*. May 20, 2004.

ⁱⁱⁱ See Thomas Carrothers. The End of the Transition Paradigm. – *Journal of Democracy*, Volume 13, # 1, 2002.

^{iv} Ariel Cohen, in an article published on the eve of the presidential election in Azerbaijan, gave recommendations for the next steps of the US administration in Azerbaijan: “Because the United States has been involved in Azerbaijan since the collapse of the Soviet Union and has much at stake in the leadership transition, it should protect its interests and encourage a democratic succession in Azerbaijan... A democratic transition, if successful and bloodless, would serve as an important example to South Caucasus and Central Asian states, which suffer from a democracy deficit... A secular Azerbaijan, with a more democratic multiparty system and a free press and that is being increasingly integrated into Euro-Atlantic structures, could play a part in deterring radical Islamist takeovers in the Russian-controlled Dagestan and other Muslim areas in the North Caucasus... The country’s next leader should enjoy democratic legitimacy based on a transparent and constitutional transition.” (Ariel Cohen, *Aliyev Dynasty or Azerbaijani Democracy? Securing A Democratic Transition*, WebMemo #324, <http://www.heritage.org/Research/RussiaandEurasia/wm324.cfm>). The US administration chose a different approach, having probably decided that Azerbaijan should serve as an “important example” in other respects.

^v Akshin Jafarov. The Separation of Power as Defined by the Constitution of the Republic of Azerbaijan. <http://stracker.bos.ru/articles/> (in Russian and Azerbaijani)

^{vi} Do the executive and legislative bodies operate openly and with transparency? Freedom House gives the following answer to this question: “Executive and legislative bodies operate with limited transparency. The opposition media have access to draft legislation through a handful of opposition deputies, but, with Yeni Azerbaijan dominating parliamentary commissions and the government, some draft legislation and decrees are not readily available unless the government chooses to release

them through the government-controlled media”. See: Nations in Transit 1998: Azerbaijan <http://www.freedomhouse.org/nit98/azer.html>

^{vii} On the non-constitutional character of this law, see “*The Symbolic Constitutional Court Makes Its Verdict...*”, Baku, 2001, p. 68-69 (in Azerbaijani).

^{viii} On the non-constitutional character of this article, see: Laws. Rights. Protocols. - Baku, 2004, p. 26-32 (in Azerbaijani).

^{ix} Some doubtful electoral statistics: according to official figures, 86 percent of the electorate took part in the 1995 referendum, and 91.9 percent voted for the new constitution. The CEC announced a 75.5% voter turnout at the parliamentary election (See: Michael Ochs. Azerbaijan's Parliamentary Elections. Caspian Crossroads Magazine Web Site: <http://ourworld.compuserve.com/homepages/usazerb/casp.htm>).

^x Cm.: Polity IV Country Reports 2000. <http://www.cidcm.umd.edu/inscr/polity/Aze1.htm>

^{xi} Cm.: European Commission for Democracy Through Law (Venice Commission). Mission of a delegation of the Venice Commission to Baku. 30 November – 1 December 2000. [http://www.venice.coe.int/docs/2000/CDL\(2000\)105-e.asp](http://www.venice.coe.int/docs/2000/CDL(2000)105-e.asp).

^{xii} The International Crisis Group gave similar recommendations before we did. To promote democratic reform in Azerbaijan, it recommended that the international community “support independent media in Azerbaijan more actively by funding an independent television channel and an independent printing house in Baku and by supporting regular opinion polls on important national political and economic topics” (See: Azerbaijan: Turning over a new Leaf? International Crisis Group Europe Report No. 106. - Baku/Brussels. 3 May 2004, c II).

^{xiii} See *Nedelya Daily*, December 17-23, 2004, # 50.

^{xiv} See *Echo Daily*, December 19, 2003.

^{xv} Ibid.

^{xvi} In 2000, their number was reported to attain 1 500 (cm.: HUMAN RIGHTS REPORTS FOR 2000: AZERBAIJAN <http://www.humanrights-usa.net/reports/azerbaijan.html>). A slightly larger number, 1600, is quoted now.

^{xvii} See: Nations in Transit 1998: Azerbaijan <http://www.freedomhouse.org/nit98/azer.html>

^{xviii} See: *Azerbaijan Lawyers up in Arms*, IWPR Caucasus Reporting Service, No. 264, 01-Dec-04, http://www.iwpr.net/index.pl?archive/cau/cau_200412_264_4_eng.txt. The article also quotes Saida Gojamanli, head of the Office of Democracy and Human Rights organization, as saying “You could say that after this conference, the barrister profession is finished in Azerbaijan. If a celebrated lawyer, someone with authority in society who played an active part in liberating political prisoners, is unable to fight against injustice and illegality and as a result is simply forced to withdraw his nomination; if barristers who have been involved in some of the most high-profile court cases are not able to take part in the establishment of the Bar Council; and if the authorities’ man, Azer Tagiev, remains in his post, then this means that we will not have an independent Bar Council. What has been established will be nothing but an office of the state.”

^{xix} Cm: Azerbaijan Human Development Report 2002 <http://www.un-az.org/undp/nhdr/ch3/31.php>.

^{xx} Cm.: Laws. Rights. Protocols. - Baku, 2004, p. 82.

^{xxi} The press reported a conference held in the Hayat Hotel in Baku that discussed the implementation of the EU-Azerbaijan Partnership and Cooperation Program. Starting 2006, cooperation between Azerbaijan and EU will reach a new stage in the framework of the New Neighborhood Project. – *Obozrevatel*, December 3-9, 2004, # 48.

^{xxii} Wider Europe: New Neighborhood Project includes the South Caucasus with the exception of Abkhazia, Nagorno-Karabagh and South Ossetia (see <http://www.memo.ru/hr/hotpoints/caucas1/msg/2004/03/m20180.htm>)

Analytical paper

Political reforms in Azerbaijan (1989-2004)

Mayis Gulaliyev

1. Introduction

Situated in Western Asia on the coast of the Caspian Sea, Azerbaijan borders on the Russian Federation, Georgia, Armenia, Turkey and Iran. It is a former Soviet republic. Up to the early 19th century, the territory of present-day Azerbaijan was part of the Iranian state; it became part of the Russian Empire as a result of the wars between Iran and Russia. After the disintegration of the Russian Empire in 1917, the Democratic Republic of Azerbaijan was established in 1918-1920. It ceased to exist in 1920 when the Red Army occupied the Caucasus. Until 1991, Azerbaijan developed within the Soviet Union as the Soviet Socialist Republic of Azerbaijan.

Mikhail Gorbachev's accession to power in 1985 created preconditions for the emergence of a new democratic mentality in the Soviet society. However, the public awakening, openness and pluralism meant by the so-called "perestroika" did not just open new windows of opportunity for democratic change in the Soviet society but also triggered the emergence of nationalistic trends. The aggravation of interethnic tensions was primarily the result of unresolved social and economic problems that dated back to the previous era. Secession from Azerbaijan proclaimed by the Armenian community of the Nagorno-Karabagh Autonomous Oblast was one of the main causes for subsequent political developments in Azerbaijan. The banishment of ethnic Azeris from Armenia in late 1988 and the events that took place in the city of Sumgait in February 1988 led to an acute confrontation between the Azeri and Armenian nations that had been good neighbors for years. Of course, organizations of all kinds tried to take advantage of this conflict, and its resolution was not exactly in the interests of Heydar Aliev who had lost power shortly before. The Karabagh problem became a key factor of political revenge. In those years, as harsh Soviet-time restrictions weakened, when freedom of speech, free mass media and public rallies became a reality, the National Front of Azerbaijan had much greater opportunity to influence the authorities. It was under the pressure from the radical wing of the National Front that the Supreme Council of the Soviet Republic of Azerbaijan made the decision to abolish the autonomy of Nagorno-Karabagh. This decision made the conflict over Nagorno-Karabagh even more difficult to settle.

In January 1990, many civilian lives were lost as a result of the massacres of Armenians in Baku by National Front radical nationalists and the invasion of the Soviet Army into Baku. Although Baku was relatively calm after martial law, and despite the fact that the majority of voters at the 1991 referendum voted in favor of preserving the USSR, more trouble lay ahead. Refugees from Armenia and Karabagh who were placed in Baku and were in a desperate situation; forces wishing to benefit from this situation were becoming more active; Heydar Aliev was based in Nakhichevan, defying the control of central powers and offering ideological support to National Front radicals.

After the failed Moscow coup in August 19, 1991, all these forces became even more active. On August 30, 1991, the Parliament adopted the *Declaration on the Restoration of the Independence of the Republic of Azerbaijan*. The *Constitutional Act on the Independence of the Republic of Azerbaijan* was passed on October 18, opening new opportunities for establishing national statehood, improving the socioeconomic situation, managing regional conflicts, building democracy, and accepting European values in order to build a civilized society. However, the society of Azerbaijan proved unable to use these opportunities, and had to face wars, socioeconomic degradation, an upset demographic balance, general decline, and insecure future. It was at that point that the society of Azerbaijan should have chosen its own avenue of development, taking into account its national mentality, economic tradition and geopolitical situation.

One can divide the social and political developments and reforms that have taken place since 1988 into two phases: before and after 1993. During the first phase, the grassroots were active, compelling the government to make changes, while the changes made during the second phase were no longer the result of a dialogue with the people and in fact gave rise to grassroots protests.

Changes made during the first phase were mostly aimed at the resolution of the Karabagh problem, and served to depose the ruling authorities, whereas in the second phase change was aimed at strengthening power and weakening civil society and opposition. Yet these two phases were not isolated but complementary, and one logically followed from the other: H. Aliev came to power in the first phase and reinforced his position in the second one. The following events took place during these two phases:

- Protests against the authorities started in 1988;
- Tragic events happened in the city of Sumgait, refugees were placed to Baku and adjacent regions;
- The Karabagh conflict aggravated;
- The efforts of the nationalist wing of the National Front served to transform the Karabagh problem into an ethnic conflict;
- The Supreme Council made a ruling that abolished the autonomy of Nagorno-Karabagh;
- Anti-Armenian pogroms in Baku, the provoked invasion of Soviet troops into Baku, and other events caused the weakening and eventual dismissal of anti-Aliev leader A. Vezirov and seriously damaged the international image of Azerbaijan; only the firm stance of the people against Soviet power was the response to the staunch anti-Aliev position of the Kremlin;
- Public protests against the USSR intensified as a result of the blunders made by Soviet authorities during the violent events of January 20, 1990;
- Public distrust of the new authorities intensified; organized protests provoked by the Karabagh problem were directed against democratic reforms started by the new government; attempts were made to escalate the conflict;
- The autonomy of Nagorno-Karabagh was abolished;
- President Mutallibov took a vague stand with regard to the Moscow coup d'état;
- The socioeconomic situation continued to aggravate;
- Nationalist groups found their way into the Government and the Parliament;
- The National Front found its way into the government of the Nakhichevan autonomy with support from H. Aliev.

As a result of these and other events, Mutallibov was pressurized by the masses into taking certain serious steps, such as conducting political reform and adopting the Declaration of Independence and the Constitutional Act on Independence. These events that at first glance seem to happen due to public efforts were in fact the consequence of the disintegration of the USSR; yet the pressure exerted on Mutallibov by the National Front had played its part. It was the strong opposition of the National Front that prevented Mutallibov from handling the Karabagh problem and the socioeconomic issues of the new independent state while there was still peace.

2. Governance at national level: a balance between the legislative and executive powers

2.1. Reforms of the legislative authorities of Azerbaijan

A reform is a change or restructuring of a certain aspect of public life (procedures, institutions, establishments) that does not upset the foundations of the existing social system. In contrast, the Constitutional Act on the Independence of the Republic of Azerbaijan adopted in October 1991 aimed to change the social structure; therefore, those were not merely reforms but revolutionary changes. Reforms do not address the problems of a particular group, but are aimed at the progress of the entire society. In this sense it is very interesting to analyze the political, economic and legal reforms carried out in Azerbaijan in 1991-2004. Since every reform targeted a particular issue, it should by all means be examined in its historical setting. Most political reforms conducted in Azerbaijan over the period in question were based on the following documents:

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- The Constitutional Act on the Independence of the Republic of Azerbaijan;
 - Some amendments to the 1978 Constitution of the Soviet Socialist Republic of Azerbaijan adopted before 1995;
 - Many laws adopted in 1991-1995 (the laws on political parties, public organizations, etc.);
 - The new Constitution adopted in 1995;
 - Amendments to the Constitution adopted at the 2002 referendum;
 - Constitutional laws adopted since 2002.

The Constitution and the chronology of political reforms can be again subdivided into two phases, before and after 1993. Laws adopted during the first phase were sometimes democratic, and sometimes manifested nationalistic selfishness. In the second phase, democratic change merely camouflaged the steps aimed exclusively at consolidating power and weakening its opponents. To reveal the regressive nature of those changes, one must conduct a comparative analysis. According to the Constitution adopted in 1995 and amended at the 2002 referendum, legislative power in Azerbaijan is vested in the Parliament which has 125 seats and is elected by a majority vote for a 5 year term. The legislative authority that seems at first glance a separate branch of power is in fact fully controlled by the President who has vast powers. The President gives formal approval to laws drafted by his administration. The Parliament with its 124 members (one seat is reserved for a representative of the Armenian community of Nagorno-Karabagh) is by no means independent, and every single member is dependent on the executive authority.

The abolition of the proportional system at the 2002 referendum, opened a legal opportunity to altogether bar most political parties from the parliament, where they only had a few seats anyway because of electoral fraud. Executive authorities appoint their candidates to every seat in the Parliament, and as a result the government has full control over all matters lying within the powers of the Parliament. In 1992, the oppositional National Front had 50% of all seats in the Parliament, whereas in the 2000 election, opposition parties won just 5 to 6 percent of the seats in the government-controlled Parliament. The constitutional amendments that rescinded the proportional elections almost entirely prevented opposition leaders from winning seats in the parliament, and the new Electoral Code gave executive authorities full control over elections.

2.2. Reforms of the executive authorities of Azerbaijan

The amended 1978 Constitution granted the President, as head of the republic, full control over executive authorities. Unlike the 1978 Constitution, the 1995 Constitution contained formal provisions that stipulated the separation of power. However, by the 1995 Constitution the executive authorities, and especially the President, have large powers and little accountability. Because the government is not accountable to the parliament, and especially because the parliament does not control the execution of the state budget, many laws passed by the parliament do not work, and the current regime uses its unlimited powers to strengthen its grip on the country.

In 1993, President Abulfaz Elchibey went on a brief visit to Nakhichevan. H. Aliev used this opportunity to make a public address, announcing that Elchibey was unable to fulfill his duties as President, and proclaimed himself acting President in accordance with the Constitution. The constitutional stipulation that the Speaker of the parliament becomes acting President in the event that the President is unable to fulfill his duties did not pose any danger to the present regime but still did not grant it full license, and that is why the provision was reviewed at the 2002 referendum. The new provision stipulated that in the event that the President leaves his office, extraordinary presidential election shall be held within three months. Until a newly elected President assumes office, the presidential duties shall be executed by the Prime Minister. It was this provision that enabled Heydar Aliev to hand the power over to Ilham Aliev in 2003.

Striving to strengthen its grip on the country, the new regime made some further changes in the 1995 Constitution. For instance, the Constitution that was in force until 1993 stipulated that any citizen of the Republic of Azerbaijan aged between 35 and 65 is eligible for Presidency. H. Aliev was not eligible because of the upper age limit. The respective provision in the 1995 Constitution read as

follows: any citizen of the Republic of Azerbaijan having attained the age of thirty five, having resided in the Republic of Azerbaijan for the preceding ten years... is eligible for Presidency. There is no doubt that the latter limitation was added by H. Aliev in order to prevent his main opponents, Ayaz Mutallibov and Rasul Guliev, from running for presidency. With the new limitations embodied in the Constitution at the 2002 referendum, the masses were left without any tools for influencing the authorities.

The decision to abolish the quorum at presidential elections may look democratic at first glance but, in the Azerbaijani reality, it had the opposite effect: it limited the potential of opposition candidates, decreased electoral activity and gave the authorities more control over the results of elections.

The Soviet Constitution of 1978 was amended to divest the Communist party of its powers, establish Presidency and election management bodies. Communist party committees in the districts were substituted with executive authorities that were nominated by the center; this could by no means improve governance.

Since the Communist party could no longer interfere into public governance, it was now possible to separate powers between the executive, legislative and judicial branches. However, this opportunity was missed, and the newly created institutions were even less democratic. In the first years of independence, up to 1993, measures were taken to weaken the control of local Councils of People's Deputies. After 1993, the Councils were abolished, and the municipal authorities established many years later had very limited powers, and the population found itself isolated from power and local governance.

Theoretically, the replacement of more democratic institutions, the local Councils, with the heads of executive power who were appointed and dismissed by the president, and after 1993, granting them more authorities, was in the interests of the present-day regime.

2.3. Judicial Reform in Azerbaijan

Reforms of the judicial system were closely interlinked with reforms in the other two branches of power: the executive and legislative authorities. In-depth analysis proves that the changes implemented up to 1993 were more democratic and allowed public at large to participate in governance. Since 1993, the judicial system has fallen under the control of executive authorities, lost its independence and could no longer fulfill the functions provided by the Constitution.

The 1978 Constitution of Soviet Azerbaijan stipulated that justice shall be administered solely by the courts. The courts were composed of judges and elected court members. The judges of City and District Courts were elected by respective Councils of People's Deputies; the judges of the Supreme Court of Azerbaijan, the Supreme Court of Nakhichevan and Regional Court of Nagorno-Karabagh, by the respective Supreme or Regional Council.

City and District Court members were elected at community meetings, and Supreme Court members, at meetings of the respective Councils. Judges were elected for a 10 year term, court members, for a 5 year term; both were accountable to the councils that elected them and to the voters.

Soviet-time courts do not seem very democratic. Yet, though dependent to a great extent on Communist party committees, they had strong mechanisms for investigation and administration of justice. During the decline of the Soviet regime, especially in the 1990s, courts failed to become independent, but became too weak to perform their functions. This impotence of justice caused chaos in the society, widespread flagrant violations of the law and human rights abuse. "Democratic change" in other branches of governance – i.e. total confusion in the executive and legislative authorities – led to similar changes in judicial authorities.

The 1995 Constitution replaced the country's undemocratic judicial system with even less democratic one. The new judicial system was de facto fully dependent on the executive authorities and vested with repressive powers. It was the new Constitution that turned the courts into a powerful tool of repression, used to protect the foundations and unlawful activities of the present political regime, and to punish anyone who disobeys.

By the new Constitution, justice in Azerbaijan is administered by the Constitutional Court, the Supreme Court, the Economic Court, general and specialized courts. The procedure of election and

nomination of constitutionally independent judges is further proof of their dependence. That is why, up to 2000, District Court judges were nominated by district executive authorities. Since 2000, judges must take a special exam, which is a positive measure, but the fact that the exam is followed by an interview at the superior authority causes further corruption and undermines the independence of judges. Rather than enjoy popular trust, the new judicial system, not accountable to the public and dependent on executive authorities, has a reputation of abusing law and justice more than any other institution.

By the Constitution adopted in 1995 and amended in 2002, every citizen of Azerbaijan has the right, by procedure provided by law, to bring a claim to the Constitutional Court against rulings made by legislative bodies, executive authorities, courts or municipal authorities, that violate his or her rights or freedoms, and to secure the free exercise of such rights and freedoms. Although the procedure for exercising this right is still vague, the provision itself is commendable, and steps should be made to ensure its implementation.

2.4. Analysis of Separation of power in Azerbaijan

As mentioned above, the present Constitution provides separation of power in Azerbaijan. The Constitution of Soviet Azerbaijan did not contain provisions to this effect, but significant amendments were made before 1993 that concerned separation of power. Although at that time separation of power was not fully implemented, the changes made after 1993, and especially in 2002, gradually improved the situation.

Positive historical changes came with the establishment of presidency in 1990. The Communist party was losing its control over legislative and executive authorities and was eventually ousted from the political scene in 1991.

Popularly elected councils, accountability of executive and judicial authorities to legislative bodies, and other democratic innovations were established throughout the former USSR, including Azerbaijan.

Regrettably, since public activity was focused on the issue of Nagorno-Karabagh, the importance of democratic change was underestimated. The upset balance between different branches of government weakened Azerbaijan and only caused escalation of regional conflicts.

Due to the fact that executive authorities in Azerbaijan had very large powers, control over law enforcement agencies and many instruments for intervention into the composition of legislative bodies, all other branches of power became de facto dependent on the executive authorities.

Since the Constitution did not provide any tools for implementing the separation of power, judicial and legislative authorities are unable to perform their functions or exercise their powers provided by the law. Rather than limit the unrestricted unlawful activities of the executive authorities, these two branches often create favorable conditions for such activities.

Neither the Constitution, that proclaims consolidation of power and its ownership by the people, nor other laws provide concrete democratic procedures for the public authorities to be established by and accountable to the people.

The failure to ensure active and passive rights of the people to elect legislative bodies and local authorities, combined with blatant electoral fraud, have isolated the nation from state governance. Although the Constitution has a provision on separation of power in the Autonomous Republic of Nakhichevan, it fails to establish procedures for the implementation of this provision.

The previous Constitution had clearer provisions on separation of power in the Autonomous Republic of Nakhichevan. It was the amendment to the 1978 Constitution provided separation of power, relative independence between branches of power in 1991-1993, and the first democratic changes made against the background of weak governance, that enabled H. Aliev to strengthen his power in the Autonomous Republic of Nakhichevan.

3. The Distribution of Power between Central and Local Authorities

3.1. Local executive authorities and their competencies

The horizontal and vertical separation of power provided by the Constitution of Azerbaijan was based on the historical undemocratic practices that existed in a more centralized country, the Soviet Union.

According to the 1978 Constitution, in the districts, cities, city districts, towns and villages of Nagorno-Karabagh Autonomous Region, the Councils of People's Deputies were the bodies of state governance. These local Councils of People's Deputies managed local affairs, implemented the decisions of superior authorities, managed the activities of lower-level Councils of People's Deputies, and took part in the discussion of any matters of regional or national importance with the right to propose solutions. Local Councils of People's Deputies supervised the execution of law by the local companies, departments or organizations controlled by upper-level authorities. The Councils in their territory coordinated land use, environmental protection, construction, use of labor resources, social, cultural and other services. Local Councils of People's Deputies had the right to make decisions on matters within the scope of their responsibility provided by the laws of Azerbaijan, Nakhichevan and, in the Soviet times, of the USSR.

The fact that Councils of People's Deputies possessed such competencies and structures for exercising them enabled many members of the nationalist National Front to be elected to the Councils of People's Deputies and eventually to overthrow the central authorities. AliievH. Aliev was elected Chairman of the Supreme Council of the Autonomous Republic of Nakhichevan in 1991; he used the Constitution, electoral laws, and the relatively democratic separation of power between central and local authorities to put his men in the main public offices in Nakhichevan, and de facto separated this republic from Azerbaijan. The National Front, interested in weakening the state, used the national selfishness of the grassroots, and abolished the Nagorno-Karabagh Autonomous Region, thus encouraging its secession from Azerbaijan.

Developments that took place after the 1993 coup d'état, and the new Constitution adopted in 1995 with all subsequent amendments, served to increase the dependence of local authorities on the central government and eventually deprived them of all the independence local authorities used to have. Local Councils of People's Deputies were abolished and substituted with local executive authorities whose heads are appointed and dismissed by the President; the new authorities have broad competencies and are only accountable to the presidential administration. This was a step from democracy to dictatorship in Azerbaijan. The local Councils of People's Deputies were dissolved based on a transitional provision of the 1995 Constitution, and their responsibilities were handed over to local executive authorities. This handover proves that the changes disguised as democratization are in fact aimed at the reinforcement of the ruling regime.

The responsibilities of local executive authorities were determined by Decree # 138 adopted by the President of Azerbaijan on June 16, 1999, and are regulated by the Statute on Local Executive Authorities. The heads of local executive authorities are especially prone to corruption, which is especially grave since these authorities are the most powerful and the least accountable. The financial resources of local executive authorities are allocations from the state budget, non-governmental budgetary funds and credits.

3.2. Local self-government in Azerbaijan

The 1995 Constitution stipulated the establishment of elected local self-government bodies, parallel to the local executive authorities appointed and dismissed by the president.

Regional entities (territories, the autonomous republic, cities, rural districts, city districts, boroughs and villages) are governed by local executive authorities. As a result of democratization of governance in the 1990s, Councils of People's Deputies were abolished and local executive authorities and municipalities were established in their stead. The 1995 Constitution for the first time introduced the concepts of "local self-government", "municipality", municipal property".

Despite the fact that transitional provisions of the Constitution stipulated that local self-government should be put in place within two years after the Constitution takes force, the first municipal elections were only held in 1999. There was a reason why the municipal elections were held so late and were marred by such blatant violations of the transitional provisions of the Constitution. Using privatization as a cover-up, most of the property of collective farms was misappropriated. As a result, municipal authorities, established after the illegal privatization of collective farm property, have almost no property, and are therefore unable to fulfill their responsibilities. Constitutional amendments adopted in 2002 further limited the vague status of municipal bodies, and undermined public confidence both in local self-government, and in democratic values in general and European values in particular. As a result, local initiative was restricted and the regime reinforced. Such treatment of local self-government contradicts the constitutional provision by which power in Azerbaijan belongs to the people. Regional policy is an essential component of the national concept of socioeconomic development, and must form the basis of the action program implemented by governance bodies. We can now state that those macroeconomic programs which ignored the needs of particular regions have largely failed.

The regional policy of the state can pursue the following goals:

- Ensuring territorial integrity;
- To take into account regional peculiarities, interests and capacities in the regulation of socioeconomic development of Azerbaijan;
- Optimal division of regional and national property;
- Optimal separation of administrative powers between regional and central authorities;
- Establishing local self-government.

In reality, none of this has been implemented, neither in theory in the form of constitutional provisions, nor in practice – in the policy of public authorities.

Article 142 of the Constitution stipulates that local self-government in Azerbaijan is exercised by municipal authorities.

The inclusion of this provision in the Constitution, and the signing of the European Charter of Local Self-Government played a key role in Azerbaijan's accession to the CoE. In 1995-1996, the country was committed to reform local governance by establishing municipal authorities and delegating them administrative powers and local property. Yet steps to organize local self-government were only taken four years later. These years were enough to privatize all valuable state property (i.e. local companies engaged in trade, services, etc.) that should have been assigned to municipal authorities. If in most countries municipal authorities exercise local self-government; in Azerbaijan, they do not, because all relevant competencies belong to local executive bodies. Municipalities still do not possess the rights, competencies and property (such as utilities, educational, cultural and sports facilities, roads and lands, except those belonging to the state or privately owned) to which they are entitled under the July 2, 1999 Law on the status of municipalities and the December 7, 1999 Law on the transfer of assets to municipal property. The Provision on local executive authorities signed by the President on June 16, 1999 assigned local administrative powers to local executive authorities.

If we compare the competencies of local executive authorities to the provisions of the Law on the status of municipalities, we can conclude that there are two parallel governance structures in the administrative units of Azerbaijan. The distribution of local powers between municipal and executive authorities implies that finances, too, are distributed between these two types of bodies. Two budgets instead of one are executed in a single locality.

The reforms of local governance launched in Azerbaijan in the 1990s thus resulted in the establishment of two parallel governance structures in the administrative system based on diarchy; consequently, administrative expenditure increased out of proportion.

It is crucial that municipal legislation should embrace the fundamental principles of local self-government reflecting the tendencies of the reform, including: a) citizens' rights to manage local affairs independently; b) legal independence and organization of local self-government; c) the democratic character of local self-government; d) financial and material resources commensurate to the competencies of local authorities; e) accountability of local self-government officials and agencies to the population; f) respecting human rights and freedoms; g) proper and lawful organization of local

self-government; h) transparency of local self-government; i) collegiality of local self-government; j) state support to local self-government.

The main avenues of municipal bodies' activities should be: a) ensuring public participation in managing local affairs; b) managing local property and finance; c) ensuring social and economic development of the locality; d) catering to basic needs of the local population; e) protecting public calm and security; f) protecting the rights and interests of local self-government.

Local authorities form part of public governance and must be recognized as an independent type of public authority. That is why all the decisions made by local authorities within the limits of their competencies should be mandatory for all institutions, agencies, organizations, officials, citizens and NGOs. Local self-government is exercised by popularly elected local councils and executive bodies. The competencies and rights of the councils and executive bodies must be clearly defined. The management of these two bodies by a single person must be legally justified.

The main challenges faced by municipal authorities in Azerbaijan can be tentatively categorized as follows:

1. *Issues arising from the constitutional and legal status of local self-government*
 - to determine the degree of independence of municipal bodies as provided for by the European charter of Local Self-Government;
 - The inadequate structure of municipal bodies and their isolation from state governance;
 - description of municipal bodies as non-governmental agencies.
2. *Laws regulating the competencies of municipal bodies have not been adopted or are unrealistic.*
 - The need to define principles for assigning administrative powers to municipal bodies;
 - The need to separate competencies between executive authorities and municipal authorities;
 - The need to elaborate rules for compensation of any extra expenses made by municipal authorities;
 - The need to refine the procedure for supervision of the activities of municipal authorities and the accountability of these authorities;
 - *The one-tier structure of municipal authorities, the non-existence of a procedure for interaction and coordination between of city and district municipalities.*
3. *Issues arising from failure to implement laws on municipal authorities*
 - The absence of a mechanism for the implementation of laws that at first sight seem capable to ensure the development of local self-government, or failure to implement such laws;
 - The indifference of other state bodies (especially executive bodies and even courts) to the failure to implement laws on municipal authorities.
4. *Problems with municipal financing*
 - Flawed legal framework for the financing of local authorities;
 - Weak national economy;
 - Poor financing of local authorities;
 - Problems with formation of local budgets;
 - Problems with collecting and using local taxes;
 - Problems with defining the types of taxes;
 - Problems with rational spending of budget funds;
 - Problems with making inter-budgetary transfers;
 - The need to implement a healthy and efficient balancing system, etc.
5. *Problems with recruitment and democratic team-building in municipalities*
 - The flawed and undemocratic legislation;
 - The interference of local executive authorities, the creation of conditions for electoral fraud;
 - The non-existence of a strong and healthy political opposition crucial for democratic society;
 - grassroots indifference to elections and low voter turnout;
 - Insufficient number of skilled staff in the spheres of management, public outreach, international relations and finance;

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- Poor control over implementation of decisions made by municipal councils, poorly organized accountability to the population;
 - Poor motivation of municipal authorities to report to the population;
 - Poorly organized information support of municipal authorities and respective localities.
6. *Problems with public participation in local self-government*
- municipal authorities lack the necessary skills for public outreach;
 - municipal authorities are indifferent to public outreach;
 - the population is not motivated to participate in municipal bodies;
 - The lack of skills, traditions and practices in the establishment of such relations.

Listed above are only a few of what I believe to be the key problems of municipal structures in Azerbaijan. These and other problems clearly indicate that the existing system of local self-government in Azerbaijan is ineffective, and that preserving it would mean increasing administrative expenditure and at the same time undermining public confidence in democratic values. Therefore, there is an imminent need to reform local self-government and reorganize local authorities, and this work should begin right away.

4. The procedure for enacting political and constitutional reforms

4.1. The legislative system of the Azerbaijan Republic

The historical conditions and goals of political and constitutional reforms in Azerbaijan in 1991-2004 required a legislative framework for the reforms to be legitimate. From this perspective, the legislative system stipulated in the 1978 Constitution with amendments made after 1990, and the procedure of political and legislative reforms drastically differs from the amended 1995 Constitution. In the first Constitution, the procedures for enactment of reforms by the Soviet Supreme Council and later by the Milli Majlis were much simpler and more flexible. In the second Constitution, many more obstacles were created. As mentioned above, by looking at the political and constitutional changes we clearly see that the reforms implemented by 1993 had, on the one hand, enabled formal democratic measures, on the other hand, weakened the central authorities and increased internal tensions, escalation of regional conflicts, the ongoing war between Azerbaijan and Armenia, deteriorating ties with neighboring countries, especially Russia and Iran, serious human rights abuse, a crumbling economic system and discrimination of ethnic minorities.

The legislative, political and economic systems put in place after 1993, combined with political and constitutional changes disguised by apparent stability and democracy, were used to restore dictatorship. The new system does not just serve to conserve and reinforce the regime but creates the conditions for international financial institutions and transnational corporations to expand their activities in Azerbaijan with the support of its ruling powers. Moreover, the undemocratic but relatively stable regime is acceptable to the ordinary citizens who are weary of wars and domestic chaos in 1988-1993.

According to the Constitution of Azerbaijan, the legislative system consists of the Constitution, acts adopted by means of referenda, decrees and laws made by the Cabinet, and normative acts adopted by central executive authorities. International treaties to which the Republic of Azerbaijan is party, constitute an integral part of the legislation. The decision to include international treaties in the legislative system was a positive measure. It also includes international documents signed for the Azerbaijan Republic by authorized agencies and not subject to ratification.

The 1995 Constitution and its amendments place both types of legislative activities – direct lawmaking and state lawmaking – under the total control of executive authorities. After 1995, and especially after the 2002 referendum, the people can no longer initiate a referendum to amend the Constitution and important laws or to adopt important laws. The legislative activities of the state are now fully controlled by the executive authorities and serve their interests. It is inconceivable that, being under the president's control, the bodies entitled to legislative initiative, including the Milli Majlis, will promote democracy or protect human rights and freedoms through legislative activities. .

4.2. The constitutional procedure of implementing reform and change

Under the 1978 Constitution, amendment of the Constitution required a two-thirds vote of the Supreme Council. A decision to make changes only in the territory of Azerbaijan and to secede from the USSR required the Supreme Council ruling based on the results of a national referendum. Even the procedures for referenda foreseen by the 1978 Constitution with amendments adopted by 1993 were much more democratic and flexible than the ones envisaged by the 1995 Constitution with the 2002 amendments. From 1989 to late 1991, basic changes were made in the Constitution at the sessions of the Supreme Council, represented by 320 deputies out of 360 (the Constitution reserved the rest of the seats for deputies from the autonomous oblast of Nagorno-Karabagh). Starting from late 1991, the Constitution was amended by the Milli Majlis established under the Constitution and had 51 members.

When the Milli Majlis, with 25 seats reserved for the representatives of the National Front opposed to the authorities, was established and assumed the responsibilities of the Supreme Council, this paved the way for future legislative steps that would eventually enable H. Aliev to seize power. It was the Milli Majlis that orchestrated the return to power of H. Aliev in the capacity of the Chairman of the Supreme Council in June 1993. The democratic principles used to form the Milli Majlis, and the practice of discharging them from business and government offices, left the Milli Majlis with fewer and fewer supporters of President A. Mutallibov and placed it under full control of the National Front. During the rule of the National Front in 1992-1993, the Milli Majlis had sufficient competencies to implement constitutional and political reform, but its flexibility in the long run enabled H. Aliev to regain power and restore a regime based on corruption, regionalism and fear.

Under the 1995 Constitution, amendments to the Constitution can only be made by means of a referendum (Article 152). Moreover, the article stipulates that any amendments to the Constitution adopted at the referendum have the same legal force as other articles of the Constitution. In fact, there were other reasons for complicating the procedure of amending the Constitution in a society that did not achieve political and economic stability, where democratic institutes did not completely function and separation of powers was not implemented. If under the amended 1978 Constitution, a decision to hold a referendum could be initiated either by the Milli Majlis or by a petition signed by one tenth of the population of the country eligible to vote, under the 1995 Constitution such initiative is reserved to the Milli Majlis and the President. Moreover, the Constitutional Court must review the proposed changes before the referendum is held (Article 153). This limitation served to strengthen presidential powers, restrain the political activity of the population and curtail the participation of opposition parties in the government. Indirectly it made democratic reforms more difficult to implement, hindered constitutional and political changes, hampered social development and prolonged the life of the present regime.

Amendments to the Constitution are adopted in the form of Constitutional laws by a majority of 95 votes in the Milli Majlis. Constitutional laws must be signed by the President after the first round of voting, and again after the second round held 6 months later. The constitutional law is not enacted unless signed by the President. The constitutional law is enacted after it was signed by the President in the second round. The President can refuse to sign a constitutional law at any stage of its adoption. Amendments to the Constitution may be proposed by the President or at least 63 deputies of the Milli Majlis.

The limitations imposed on proposed amendments to the Constitution may be at first glance regarded as a legal safeguard for the foundations of the state and the structure of the Constitution, as a pledge of power by the people, irrevocable democracy, and consistent development of the political system. In fact, this historical step was taken by the H. Aliev administration in order to prevent the Milli Majlis from restricting the enormous powers of the President.

This document, based on the Declaration on the Restoration of Independence of the Republic of Azerbaijan adopted by the Supreme Council of Azerbaijan on August 30, 1991, actually, laid the foundations of the state system, political and economic structure of the independent Azerbaijan Republic. Although prior to the adoption of this Constitutional Act, there were legal grounds for political pluralism in Azerbaijan, the Communist Party was still the leading political party. The

adoption of this Constitutional Act led to the establishment of other political structures and non-governmental organizations and expanded the possibility to determine the policy of the Azerbaijan Republic democratically. Granting the right to the citizens of the whole country to freely establish political parties and public associations was a very serious historical political decision.

The internal tensions owing to the Nagorno Karabagh problem, frequent clashes between the Azerbaijani and Armenian communities in provinces, and the economic decline created great difficulties for the adaptation of the populace to the new political reality. The tragic death of statesmen from A. Mutallibov's team in a helicopter crash in late 1991 marked not only the beginning of the ending of his rule, but, in fact, the commencement of the Azerbaijani-Armenian war. The National Front after this event seriously intensified its activities and started to demand certain political changes to speed up the weakening of the president's authority and his resignation. The main political change was the Constitutional law On the National Council of Azerbaijan Republic adopted by the Supreme Council of Azerbaijan Republic. The National Council composed by half of National Front representatives and endowed with all legislative powers adopted resolutions on the repeal of the Nagorno Karabagh Autonomy, on the extermination of the Azeri civilian population of Khojaly by Nagorno Karabagh separatists thus undermining the domestic support of the Azerbaijani authorities, while the concessions denied by the authorities during the distribution of Azerbaijani oil between foreign companies, stripped them of external support.

The reforms implemented by the first president of Azerbaijan A. Mutallibov, although democratic in essence, failed to positively impact the development of the society. The capture by Armenian forces of the Azerbaijani populated Shushi in Nagorno Karabagh prevented the return of the president who had resigned shortly before. The Popular Front used this as a pretext and seized power. The leader of the Popular Front A. Elchibey was declared president as a result of the presidential elections held haphazardly in June 1992.

The adoption of the Law on Political Parties can be regarded as a positive event amongst the reforms implemented during the rule of the National Front. It should be noted that although the provisions of this law are not broadly applied, the law is still in force. According to Article 8 of this law, while in office, the President, court chairmen and deputy court chairmen and judges of all courts of the Azerbaijan Republic, prosecutors (except technical and support staff), officers of the ministry of justice, internal affairs, national security, border patrol, customs, tax inspection, state media, management and creative staff of State TV and Radio company, and the clergy shall not be affiliated with any political party.

However, the former President of Azerbaijan, H. Aliev, both when he was the Speaker of the Parliament and when he became President remained the chairman of the Yeni Azerbaijan Party. The current President of Azerbaijan Ilham Aliev in the capacity of the chairman of the Yeni Azerbaijan Party also maintains his party affiliation. According to this law, the affiliation or non-affiliation of citizens with political parties shall not restrict their rights and freedoms. In reality, though, since 1993, the members of other parties, particularly, opposition parties, have been dismissed from budget agencies; it was prohibited to employ them in the bodies of state governance. Many citizens had to leave Azerbaijan because owing to their opposition convictions and membership in opposition parties they were physically persecuted.

Under the Law on Political Parties, the state must protect the legitimate interests and rights of political parties, create conditions for the execution of their charters in accordance with the Constitution and laws of Azerbaijan, ensure equal conditions for the dissemination of their documents through state mass media, secure the party leadership structures, establish and maintain security bodies for this purpose. But since 1993, Aliev's regime, has been violating the provisions of this law and under various pretexts confiscated the offices of the parties and denied them minimal conditions for decent operation. To date, the regime closes its eyes on the intervention of state agencies and officials into the activities of political parties.

After the amendments to the 1995 Constitution in 2002, the procedure for the liquidation of political parties has been facilitated. If before constitutional amendments, the liquidation of political parties was done by resolution of the Constitutional Court, thereafter, the liquidation of political parties is executed by district courts by motion of the Ministry of Justice. If we take into account that in

Azerbaijan the courts are not independent and depend on executive authorities, one can easily see how simple the liquidation procedure is when dictated by the executive authorities.

During the rule of the National Front in 1993-1992 the war between Azerbaijan and Armenia further intensified and the losses of Azerbaijan increased. It was in these years that the political relations between Azerbaijan and neighboring countries, especially, Russia and Iran, were on decline. But it should be admitted that the Nakhichevan regime, after accession to power of the National Front, ignored the latter and improved relations with the neighbors, particularly, Turkey and Iran. The agreement on suspension of military actions between Nakhichevan and Armenia prevented the opening of the second front and enabled Armenia to amass forces in Nagorno Karabagh and adjacent regions and put the Azerbaijani army in a difficult situation. During the rule of the National Front, Azerbaijan sustained both military defeats and political instability, suffered from the shortage of food supplies, economic decline, and Bolshevik-style personnel policy, the dismissal of professionals from state governance bodies and replacement thereof by unprofessional National Front members. For this very reason, the unprofessional governance of the National Front caused the discontent of the population and crisis of power. Having eliminated all obstacles for the restoration of H. Aliev's regime, the National Front performed its historical role. Not a single political decision of the National Front promoted the resolution of the critical situation.

In 1992-1993, the seizure by Armenian forces of Lachin and adjacent villages in the corridor between Armenia and Nagorno Karabagh and the alpine region of Kelbajar caused open protest against the National Front all over Azerbaijan and particularly in Nakhichevan Autonomous Republic and in its Supreme Council. This resulted in the disregard of the decisions of central authorities and de facto independent actions of Nakhichevan Republic, persecution of National Front representatives in its territory, and the expansion of H. Aliev's influence. H. Aliev's meeting with the representatives of British Petroleum in Istanbul in March 1993 was an explicit evidence that the Western powers started to trust in him. Continuous military defeats of the Azerbaijani army caused protests in the army and ethnic discord in the territory of Azerbaijan, causing insubordination of military units in Gyanja commanded by Suret Husseinov and in Lenkoran, commanded by Alikram Gumbatov. Armed clashes between the military units of central authorities and the ones of Suret Husseinov claimed numerous lives on June 4, 1993 while the march of S. Husseinov's units towards Baku and the demand of President Elchibey's resignation and deposition of the National Front caused the resignation of two influential representatives of the National Front, Prime Minister Panah Husseinov and the Speaker of the Parliament Isa Gambar. These resignations heralded the close demise of the National Front. In early June 1993, H. Aliev's arrival in Baku in order to settle the conflict between the authorities and S. Husseinov, and H. Aliev's indirect demand to be vested with vast powers, including the post of the Speaker, created conditions for complete appropriation of power in the near future. In a few days, President Elchibey was mysteriously resettled to a remote alpine village in Nakhichevan, and H. Aliev appeared on TV and said that he would undertake the president's functions. Few people doubted that this was a coup. The Constitution of Azerbaijan was breached once again and power was seized. This seizure and vesting H. Aliev with authorities by the Parliament was answered with silence, as the only way out. Continuous enhancement of the new regime started with resignation of National Front representatives. The society did not resist the arrests and persecutions of National Front representatives who had been previously staunchly opposed to H. Aliev. Further hardships caused by the Azerbaijani-Armenian war, the loss of trust in democratic values in the society, lack of elementary living conditions for numerous refugees and IDPs and the capture of five regions adjacent to Nagorno Karabagh terrified and despaired the populace.

The society that used to live under the Soviet system, more than any democratic reforms desired serious order and immediate cessation of the war. This was the appropriate time for the cease-fire, for the decisive struggle against opponents and elimination thereof, for the institution of a specific form of power, Oriental tyranny, and lastly, for the privatization of Socialist property and division of subterranean and surface riches. Thus, the first political steps started in May 1994 with the cease-fire between Azerbaijan and Armenia. During the cease-fire, the signing of the great oil contract on September 20, 1994, so called Contract of the Century, between the Consortium and Azerbaijan on oil production and export on the European market played the role of the international guarantor for the longevity and stability of H. Aliev's regime. It was these guarantees that since October 1994 had

enabled H. Aliev's regime to settle old scores with his political rivals and enemies. The demotion of Prime Minister Suret Husseinov who contributed greatly into Aliev's advent to power, who later on disagreed with Aliev on the division of authorities, the cruel suppression of the mutiny of the special police force, numerous victims and arrests insured his complete and absolute rule. Reinforcement of the regime by violence and improvement of the physical security of the population by restriction of democratic freedoms, at first, was welcomed by the populace as restoration of stability and order. But the regime realized that such measures usually require continuous poverty of the population and complete control over the economy by pro-government forces. This required certain political and economic reforms. As a result of such reforms, e.g., the agrarian reform, state and collective farms were liquidated and their property was illegally privatized. It was after this reform that most people living in rural areas and working in agriculture faced unemployment and were forced to leave their houses.

The adoption of the Constitution of Azerbaijan in 1995 was an important political event. The enhancement of the presidential power in the Constitution, especially, the introduction of the appointed local authorities vested with complete and unaccountable power, paved the way for antidemocratic laws adopted later, particularly, the ones on the privatization of public property. Appropriation of public property through privatization by a group of high-ranking officials, the disintegration of industrial capacities over the years, and failure to create new ones was not only a violation of public justice, but meant disillusionment with democratic reforms, mass unemployment and poverty.

As a result of absolute control by the executive authorities over the parliamentary election in 1995, the principle of separation of powers was completely undermined. In the 125 member Parliament, stipulated by the Constitution, the opposition was represented by just a handful of deputies and had no say in the decisions made by the Parliament. After that, one can state that all branches of power were completely controlled by H. Aliev. Control over mass media was established after increased persecution. Thereafter, not only oil, trading and industrial companies started to report about stability in Azerbaijan, but also the European countries and the USA. Signing in 1996 of the Cooperation Agreement with the European Union opened new financial and technical possibilities for the state to reinforce its structure and to expand its social basis. The banishment of the owners associated with the opposition from business, placement of specialists associated with the authorities in the government and in projects implemented in Azerbaijan by the EU, created financial problems for the opposition and drove some groups towards the authorities. In this social, political and economic situation, it was not hard for the authorities to falsify the results of the 1998 presidential election. The authorities that ignore the new Constitution have not published the results of these elections to-date, which is evidence of their self-confidence and international support. However, the results of the 1998 presidential elections suggested that there would be potential difficulties in the future. Hence, to rule out such difficulties, the authorities decided to launch a more serious struggle against their opponents. The Law on the Freedom of Assembly adopted in November 1998 was an attempt to restrict the participation of the opposition in the parliamentary election and force it out of political struggle. The representatives of the authorities, using the Law on the Freedom of Assembly dealt a serious blow to the unity and consolidation of the opposition. The authorities, based on the provision of the law requiring notification of the local executive powers about the rallies, constantly restricted peaceful rallies by force, trying to undermine the will of the population.

The parliamentary elections of 2000 accompanied with large-scale fraud and serious violations of law enabled the executive power to establish full control over the Parliament, which resulted in the creation of a legal framework for the enhancement of the president's power. But the constitutional provision about the proportional and majority election that allowed electing 100 deputies out of 125 by the proportional system, potentially enabled the opposition to remain the power center of the society. The present authorities that had grown stronger through complete control over the government structure in the country and through the favorable resolution of energy problems of the leading countries outside the country, liquidated the proportional system. This step was the imperative of time to prevent the potential representation of opposition parties and thus to safeguard the present regime in the Parliament, and for complete control of the election process by the members of the Parliament.

The disease of the President and the prospects of losing the ability to perform one's duties at any time could enable the transfer of power to other political forces. Even the 1995 Constitution, in the event of premature termination of duties by the President envisaged extraordinary presidential election within three months. In such cases, the Speaker of the Parliament was supposed to perform the duties of the President. The transfer of the authority to the Prime Minister that became possible after the amendment of the Constitution and did not seem undemocratic and significant politically, in 2003 allowed to easily transfer power to Ilham Aliev and showed what the real purpose of this arrangement was.

The accession of Azerbaijan to the Council of Europe in 2001 was a major political and historical event in the history of Azerbaijan. All political and non-governmental organizations of Azerbaijan recognize that integration into the European family, and acquisition of European values does not mean only economic development for this country, but also security. On the other hand, the society is sure that after accession to the Council of Europe, it will be easier to combat election fraud, endemic bribery and corruption. But very few people believe that after the signing of the main oil contract and commencement of Baku-Tbilisi-Ceyhan pipeline construction the reaction of the Council of Europe to the reforms that suppress political parties will not be unbending; nothing will be done to protect the political figures persecuted and arrested by the regime under various pretexts. Financial support of the regime and pro-government business structures provided by various international financial bodies, including the EBRD, IFC, and the World Bank dealt a serious blow to the normal functioning of democratic institutions in the society.

The essence of the 1995 Constitution and the amendments made in 2002 suggest that H. Aliev's regime is not going to weaken in the near future; vice versa, it will become stronger, the activities of democratic institutions will be formal, the political parties will become weaker, human rights and freedoms will be suppressed, the living standards will plummet, and most importantly, the problem of Nagorno Karabagh will not be resolved. The adoption by the Parliament of the Electoral Code in 2003 further exacerbated these pessimistic predictions. In contrast with the Law On the Election of the President of Azerbaijan Republic adopted in 1998, the absence of the provision enabling the candidates or political parties, registered as election blocs, to appoint their own members to electoral commissions with the deciding vote, and the restrictions imposed on the observation of elections by non-governmental organizations and political parties, was an undemocratic measure. The new Electoral Code clearly demonstrates that the commitment of Azerbaijan to the Council of Europe to improve the electoral legislation was violated; moreover, there was a retreat from the previous level of democracy. The principle of composition for electoral commissions stipulated in the Electoral Code (1/3 from the parliamentary majority party, 1/3 from the parliamentary minority, 1/3 non-partisan) in reality suggests that the electoral commissions are entirely controlled by the authorities, i.e., the decision making majority. For all real political forces, including the political figures who for political reasons are not present in Azerbaijan, participation in the elections was completely restricted in the Electoral Code. Complicated observation and restricted access to observation for NGOs in the Electoral Code became a serious impediment for public oversight over the electoral process. The appointment of Ilham Aliev as Prime Minister in August 2003 (two and half months prior to the presidential election) in order to retain power in case the President will be unable to perform his functions and to control the executive power, intervening into elections and capable of any violations, opened the eyes of the society as to what the election outcome would be.

Violations of law and gross electoral fraud that took place in October 2003, rampant breaches of the Electoral Code obstructing democratic elections in the first place, the violent reaction to the opposition's protests immediately after the election, arrests of opposition leaders and numerous citizens who took to the streets, and tortures, undermined the trust of the Azerbaijani society in the democratic reforms.

Unfortunately, the Azerbaijani society that protests against the Soviet election system, struggles for the civil society, democratic structures, enhancement of democracy and human rights, and believes Western countries, and particularly, the USA, will have to live long with the negative impression left by the congratulations of Ilham Aliev by First Deputy Secretary of State, Richard Armitage, after such countries as Iran, Russia, Belarus and Georgia, and thus legitimizing the election results. These

congratulations made two days after the election, during mass arrests of rally participants and violence, created favorable conditions for subjecting the opposition to even harsher reprisals. Although the OSCE/ODIHR representative Peter Eicher stated that the election did not meet the international standards and Azerbaijan lost yet another chance to hold democratic election, and 188 representatives of the East European Democracy Institute noted that the October 15 election did not comply with the internationally recognized term “elections”, the leading nations shortly after the election recognized the results and started to cooperate with the President. It was after the election that the arrested political leaders were tortured, their families persecuted and the children expelled from schools with the label of the “children of the nation’s enemy”. This reminded of Azerbaijan under Stalin. The post-election period in the life of political parties in Azerbaijan can be described as decline. H. Aliev’s death did not lead to any changes in the public life, because the populace believed he had died five months before the election, and got used to live without him. After the election, and especially, after H. Aliev’s death, the authorities and the subservient mass media, most newspapers and magazines through continuous propaganda of the personality cult undermined the people’s initiative and trust in democracy. This resulted in formal municipal election held in December 2004. Participation of only 5-7% of eligible voters and their conviction in the futility of the election, serious violations and nomination of municipal members by corrupt executive authorities was the result of political reforms underway since 1993. Since the Constitution, the Electoral Code and other laws enable the president’s administration to indirectly determine the members of the Parliament at the 2005 parliamentary election, and because the representation of the opposition in the Parliament at such election is impossible, it would be naïve to expect free and fair election.

5. Political reforms in Azerbaijan. Integration into Europe seen in the light of the European neighborhood policy

5.1. Political reforms in Azerbaijan

The political changes that took place in the contemporary history of Azerbaijan, including political reforms, are best seen in the context of economic and regional developments, and the ruling political regime. Amongst the political events that had significant impact on political history, one should first name changes that affected the social life of the USSR in the late 1980s. Perestroika and glasnost proclaimed by Gorbachev created conditions for democratic changes in every sphere of public life, but at the same time revealed many long-standing unresolved problems. Soviet-time blunders in the handling of interethnic issues, unequal development of nations, the economic crisis and other factors created an environment in which decentralization tendencies grew visibly.

It was in these circumstances that Heydar Aliev was discharged from his post of Politburo member and first deputy chairman of the USSR Council of Ministers, and a special analytical group was sent to inspect his activities. Meanwhile, in late 1987 – early 1988 ethnic Azeris were abolished from Armenia, and the Council of People’s Deputies of the Nagorno-Karabagh autonomy decided to annex the oblast to the Soviet Republic of Armenia. Doubtless, there was a link between the causes and effects of both events. Harassment of ethnic Armenians in Sumgait in February 1988 resulted in tensions and casualties; the Karabagh issue became a priority in the public and political life of Armenia and Azerbaijan. Both nations failed to use the opportunities opened by democratization and directed their efforts at escalating hostilities. The ensuing rupture of economic ties, exile of autochthonous Azeris from Nagorno-Karabagh, and problems with accommodating the refugees in other parts of Azerbaijan were used to obstruct the activities of the expert group sent from the center to inspect the activities of H. Aliev and the authorities of Azerbaijan.

When National Front radicals destroyed the Soviet border between Nakhichevan and Iran in December 1989, this was further proof of the fact that developments in Azerbaijan did not only have to do with the Karabagh conflict. They were chiefly intended to damage the reputation of Azerbaijani authorities in the eyes of the central powers. If people who interpret those events in terms of the struggle of the Azerbaijani nation for its rights and freedoms try to understand why they had to take place in Nakhichevan and specifically on the border with Iran, they will realize that those events were

but mass disorders that violated international legal standards and were aimed at damaging the reputation of national authorities in the eyes of the society and the international community.

Those events, depicted as an attempt to attract the attention of the international community to the problems of the divided Azeri nation, once again showed that National Front radicals were totally out of control and presented a threat to people's lives and property. Amidst such lawlessness, it was no accident that criminal actions were committed: harassment and abuse of ethnic Armenians, in some cases accompanied by plundering of their property. The Communist party of Azerbaijan, due to the perestroika and glasnost proclaimed by Gorbachev, was able to permit informal public organizations to operate freely. The attempt made in the late 1980s to restrict human rights and freedoms guaranteed by the Constitution, and the growing culture of public debates, were some of the reasons why Soviet troops invaded Baku in January 1990, killing many innocent people.

The removal from office of the head of the communist party of Azerbaijan A. Vezirov, whom people blamed for all the trouble and accused of being an Armenian spy, and the activities of the expert group that was sent to inspect the activities of H. Aliev, both served to undermine public confidence in socialist values. After a curfew was imposed on Baku, the Azerbaijani society that had longed for democracy for years began to react adequately to changes taking place in other parts of the USSR. Amendments of the Constitution made in the 1990s established the institution of presidency in Azerbaijan. This step was positive in terms of separation of powers and helped Azerbaijan to identify itself as an independent state. The creation of other parties besides the communist party paved the way for democracy and a new political culture.

As a cautious but important step, a number of provisions were removed from the Constitution of Soviet Azerbaijan (including provisions establishing the leading role of the communist party and describing the building of the Azerbaijani state by the farmers and workers under the flag of the October Revolution etc., and the opening paragraphs that eulogize the communist regime), and the words "Soviet Socialist" were dropped from the name of the Republic of Azerbaijan.

The change of state symbols, especially the Supreme Council's decision to change the flag, was welcomed by the nation as a restoration of the Democratic Republic of Azerbaijan that existed in 1918-1920. It was in those years that the authorities of Azerbaijan made important steps to ensure public participation in governance. There were many National Front representatives in the Councils of People's Deputies and in the Supreme Council. The government created conditions for the activity of political parties and public organizations, free press and television were developing. The economic and political activities of the government, and attempts to resolve the Karabagh problem, were heavily criticized by the National Front. The criticism encouraged the government to take even more radical steps in the direction of economic and political independence and the resolution of the Karabagh conflict.

One can only regret that the outcomes of such steps were not always positive. One of the positive steps on the way to full-fledged independence of Azerbaijan had been the declaration of economic independence in May 1991. The Constitutional law on the foundations of the economic independence of Azerbaijan had been in fact a political step that indirectly corroborated Azerbaijan's independence from the USSR. The law created a legal framework for implementing independent economic and social policies in the interests of the population, in line with international law and universal values.

The goal of the law was to proclaim economic independence, which implied the right to determine the structure of national economy and its development avenues, independent policies in the areas of finance and budgeting, loans, prices, investments, science, technology, foreign economic relations and public welfare. The law laid the economic foundation of the political independence of Azerbaijan. The political consequence of this law was that it created a legal framework for Councils of People's Deputies to exercise their constitutional powers to strengthen local self-government and democracy.

According to this law, the Supreme Council made a ruling by which part of the state property could be handed over to local authorities. Local authorities were to use their property and define its legal status in accordance with the statute. It was prohibited to estrange the property of local authorities, hand it over to other agencies or redistribute it without prior consent of the local authorities. Local authorities had the right to use and dispose of land, water and other natural resources according to the rules provided for by the statute. The law stipulated that local authorities

could manage all local affairs at their discretion, catering to the interests of the local population, with the direct participation of the population or by means of local state or public agencies, using their local authorities' material and financial resources.

It was planned to establish local self-government in administrative divisions. In every division, local Councils of People's Deputies were the main local authority that regulated all other levels of local authorities. By comparing the powers that this law assigned local authorities to those now exercised by municipal authorities, we can conclude that the 1995 Constitution and the laws on local self-government adopted by the Milli Majlis are not in line with the provisions of the European Charter of Local Self-Government and disregard democratic principles and values.

Most of the constitutional amendments adopted after the declaration of economic independence were in the spirit of democratic reform. This includes the substitution of the Council of Ministers with a Cabinet of Ministers, the main executive body which is chaired by the President and reports to the Supreme Council at least once a year. This decision was fully in line with the principle of separation of powers. The Constitution stipulated that the Supreme Council approves the candidacy of Prime Minister proposed by the President; the Prime Minister reports to the Supreme Council; the Supreme Council may pass a no confidence vote to the Cabinet and disband it by a two-thirds vote. That Constitution was thus more advanced and democratic than the one adopted in 1995. According to the present Constitution, if the Milli Majlis rejects the candidacy of Prime Minister proposed by the President three times, the President may appoint the Prime Minister without the consent of the Milli Majlis. Rather than ensure the independence of executive and legislative authorities from each other, this article makes it impossible for executive authorities to report to the legislative body. It is the lack of mutual accountability between branches of power that prevents the Milli Majlis from exercising proper control over the execution of the budget by the Cabinet.

The failed Moscow coup-d'état on August 19, 1991 heralded the beginning of the disintegration of the USSR, and in the same August the Supreme Council of Azerbaijan adopted the Declaration on the Restoration of Independence of the Republic of Azerbaijan.

The first multi-party election in the history of Azerbaijan during which candidates could campaign freely, and the operation of free media both demonstrated the democratic potential of the society. Yet we must not forget that every political step in the direction of independence was linked to the Karabagh conflict that was the main concern of the society and had enormous influence over political developments in those years. It is most unfortunate that positive reforms conducted on the way to independence – including freedom of speech, press, political parties, public organizations and assembly – did not just fail to bring the resolution of the conflict any closer, but, to the contrary, the conflict became the authorities' Achilles heel, used by the National Front in order to put significant pressure on the government. This fact hindered reforms, weakened local authorities and severed their link to the central powers. The conflict over Nagorno-Karabagh had been used to create chaos in the society; the authorities were forced to abuse the rights of the Armenian community and restrict the powers of the local authorities of Nagorno-Karabagh. Misusing the opportunities provided by political reforms, the National Front adhered to the maxim "an independent state can do what it pleases on its own territory". Accusing the authorities of inaction, making them abuse the Armenian community and use force against it, the National Front ruined the reputation of the authorities in the eyes of the nation and the international community. Another actor interested in the demise of the ruling powers, H. Aliiev, then elected Chairman of the Supreme Council of Nakhichevan, did not fully recognize the legitimacy of the President or the Constitution, and supported the National Front by all possible means.

Of all political changes effected in 1991, the Constitutional Act on Independence is of the greatest historical consequence. This document did not just proclaim political independence but also spiritual and historical independence. The official declaration of the fact that Russia had annexed Azerbaijan in 1920 had formed a new understanding of the 20th century history of Azerbaijan. The document did not just incite popular optimism and pride for independence but also a feeling of responsibility that self-government implies, and sometimes helplessness and fear. The document pointed out the colonization policy that Russia had led in Azerbaijan for seventy years, its unscrupulous exploitation of natural resources, pillage of national riches, mass harassment of the people of Azerbaijan, and abuse of national dignity. In fact, this document embraced the ideas that the National Front had aired in city

squares starting from 1989, and supported the plan to break off relations between the authorities of Azerbaijan and the USSR. Despite the fact that this was a document of historical consequence, its provisions aimed at severing ties with Russia, alongside rumors of Russian troops helping separatists in Nagorno-Karabagh, served to encourage hostile attitudes towards Russia. This weakened the stand of Mutallibov with his “pro-Russian” image.

5.2. Integration into Europe in the light of the European neighborhood policy

Since 1992, the EU assistance to Azerbaijan has amounted to over 400 million Euros. The European Humanitarian Aid Office jointly with other programs provided this assistance to Azerbaijan at the time of hardship. Over these years, bilateral ties between the EU and Azerbaijan have evolved from the stage of humanitarian aid to the stage of cooperation and partnership.

At present, cooperation between Azerbaijan and the EU covers the following areas:

- The Technical Assistance Program (Tacis) is involved in the legal, administrative and institutional reform, supports private business and economic development. Within the framework of Tacis, the TEMPUS program works with universities. TRACECA and INOGATE are also components of Tacis.
- The Food Security Program assists the government in structural reforms.
- REHAB Program is involved in the rehabilitation of areas destroyed during the war between Armenia and Azerbaijan.
- The EKSAP program is aimed at the improvement of living standards and development of the economy of Azerbaijan.

These EU programs are aimed at poverty reduction in Azerbaijan, which was as high as 60% in the mid-1990s. To this end, since 1992 the EU has been indirectly assisting in institutional capacity building and structural reform of the government of Azerbaijan, and directly assisting with social welfare measures and economic development. EU programs provide the government of Azerbaijan with invaluable assistance in the implementation of poverty reduction programs.

The main goal of the Partnership and Cooperation Agreement (PCA) between Azerbaijan and the EU is to encourage the creation of market economy, ensure equal treatment of local and foreign businessmen, and integration into world economy. To achieve this goal, the PCA envisages measures to bring the legislation of Azerbaijan in line with EU legislation. In order to coordinate the work of government agencies, the government of Azerbaijan established a State Commission on the PCA. This commission is a state agency and takes into consideration Azerbaijan’s interests.

The goals of EU policy in Azerbaijan are clearly formulated in a number of documents, including the EU Strategy paper for Azerbaijan and the PCA. There is no doubt that European programs and projects are instrumental to the EU goals and also to Azerbaijan itself and the region in general. It should be mentioned that the EU has an adequate understanding of the problems arising from the transition to market economy, and from the Karabagh conflict. One can only regret that it sometimes misinterprets the political environment which is the main cause of these problems and the main obstacle to their resolution. This shows on the prioritizing of projects implemented in Azerbaijan. Since relations between the EU and Azerbaijan cannot evolve outside the prevailing political and economic context, the EU should take more notice of the national context and political setting.

Considering how important it is for the countries of the South Caucasus, including Azerbaijan, to be engaged in the European neighborhood policy, we must thoroughly examine the policy of the government of Azerbaijan with respect to its commitment to European values. We must admit that although many laws adopted by the Parliament in recent years took formal notice of democratic principles, there are in fact no mechanisms for the implementation of these laws. This situation makes it very difficult for the society to understand and accept European values. Because the laws do not work, and the government is not responsible for their implementation, the public is losing confidence in European values. The government not only fails to meet its obligations to the CoE but discredits this organization in the eyes of the society. By adopting decisions on paper but failing to enable the activities of democratic institutions such as municipal authorities, the ombudsman, the Press Council

and the recently established Public Television, etc. the government is trying to play a double game with the society and the CoE.

Based on the Security Strategy in Europe adopted by the CoE in 2003, the South Caucasus is an important region in the sphere of European interests. That is why the European Commission recommended to the EU to include the countries of the South Caucasus in the European Neighborhood Policy (ENP). The Commission will prepare country reports that will assess the situation with democracy, human rights and rule of law in the three countries, and measures taken to achieve progress in these spheres. Furthermore, the EU pays special attention to the development of market relations. These principles were the basic when Azerbaijan was admitted to the Council of Europe and OSCE. Main conditions for admission into the ENP include combating corruption, organized crime and terrorism; supporting civil society; judicial reform; concrete steps toward the resolution of regional conflicts. The unresolved conflict over Nagorno-Karabagh and failure of the governments of Armenia and Azerbaijan to take concrete steps towards its resolution impede economic integration of the two countries that could have served for the benefit of both nations, and peaceful coexistence for the coming decades.

In this study we tried to analyze the importance of European values for the domestic and foreign policy of Azerbaijan after it regained independence upon the fall of the Soviet totalitarian regime, and especially in the last decade of H. Aliev's rule. The goal of the EU is to promote the wellbeing of its constituent nations, to strengthen peace and security, ensure respect for human rights and the rule of law. As a neighbor of Europe, independent Azerbaijan made a commitment to human rights and signed UN conventions on fundamental human rights and freedoms. As a member of OSCE and the CoE, Azerbaijan signed the European Convention for Protection of Human Rights and Fundamental Freedoms. Azerbaijan made an important political step by signing the main conventions of the World Labor Organization that concern labor standards and protection of labor rights.

Unfortunately, an examination of the political, economic and social situation in Azerbaijan once again proves that signing international conventions or making a commitment to European values does not mean implementing them. We have to realize that for these values to be implemented, the government of Azerbaijan must have the political will to do so. The window of opportunity opened by Azerbaijan's accession to international organizations such as the CoE, OSCE and UN, and its inclusion into the European Neighborhood Policy, should be used in order to build a democratic society and integrate into the European family of nations.

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INTERNATIONAL CONFERENCE

Constitutional/Political Reform Process in Georgia, in Armenia and Azerbaijan: Political Elite and Voices of the People

Organized jointly by CIPDD and International IDEA

*18-19 March 2005, Hotel Metechi Sheraton
Tbilisi, Georgia*

The conference report^{xxii}

The international conference *Constitutional/Political Reform Process in Georgia, in Armenia and Azerbaijan: Political Elite and Voices of the People* was held in Tbilisi, Georgia on 18-19 March 2005. The conference was jointly organized by the International Institute for Democracy and Electoral Assistance (International IDEA), an intergovernmental organization based in Sweden, and the Caucasus Institute for Peace, Democracy and Development (CIPDD), a Georgian non-governmental organization. The conference was organized within the framework of a joint IDEA/CIPDD project: *Voices of Georgia in Constitutional and Political Reform*, June 2004 - August 2005.

The conference was dedicated to the exchange of information about the reform process in the three South Caucasus countries, Armenia, Azerbaijan and Georgia, and their prospects for the European Integration, with a particular focus on the constitutional and political reforms in Georgia.

Up to 55 participants- representatives of Georgian Authorities and Civil Society, experts from Armenia and Azerbaijan, as well as, International Organizations and Diplomatic guests took part in the conference. The conference was opened by Ms. Armineh Arakelian (Regional Representative and Head of Programme for the South Caucasus-Europe, International IDEA), Mr. Ghia Nodia (Chairman of CIPDD), H.E. Nino Burjanadze (Chairperson of the Parliament of Georgia) and Mr. Jacques Vantomme (First Counselor, European Delegation for Georgia and Armenia).

Opening session

Speakers: Mr. Ghia Nodia (Chairman of CIPDD)

Ms. Armineh Arakelian, (International IDEA's Regional Representative and Head of Programme for the South Caucasus-Europe)

H.E. Nino Burjanadze (Chairperson of the Parliament of Georgia)

Mr. Jacques Vantomme (First Counselor, European Delegation for Georgia and Armenia)

Ghia Nodia, the chairman of CIPDD, opened the conference and welcomed the participants. Mr. Nodia spoke about the project background and explained the role of International IDEA and CIPDD in the project, stating *inter alia* that the project was aimed at promoting the values of democracy by enhancing knowledge about democracy, and that it had brought together the expert community to do research on the prospects of democracy in the three South Caucasus countries. The speaker noted that since the Rose Revolution, Georgia has been in the process of important constitutional reforms, with more changes expected. So far both Georgian and international experts, including the Council of

Europe, had criticized the new Georgian government for the constitutional changes adopted in February and not inclusive enough process that led to them, but the Georgian government justified them by necessities of the transitional period. Mr. Nodia singled out two main issues that had served as research topics for the project: (i) relations between the presidential and parliamentary power and (ii) relations between the central and regional authorities, which is one of the hottest political issues at the moment in Georgia. He also praised International IDEA for its work in Georgia, including its first project from 2001 to 2003 aimed at assessment of the state of democracy in Georgia implemented by a team of Georgian experts, practitioners and public participation efforts.

Nino Burjanadze, the Speaker of Georgian Parliament welcomed the participants and expressed the hope that future cooperation in the region will be even more intense. She said that Georgia was on an important stage of development where parliament had to play a vital role. The speaker stressed that strengthening state democratic institutions was the most urgent task for the Georgian government. Certain past developments including the constitutional changes passed in February 2004 had changed the central government system. The speaker pointed out that the adoption of the changes should have been based on wider discussions, as the Georgian public was ready and willing to participate in political processes. H.E. Burjanadze noted that the topics of the conference were very important for Georgia and for those countries on the way of great changes. She singled out issues such as the division of state power, the introduction of checks and balances, the cooperation between the branches of government and most importantly, the issue of decentralization and municipal government.

Armineh Arakelian, International IDEA's Regional Representative and Head of Programme for the South Caucasus-Europe, welcomed the participants and spoke about how International IDEA supported the development of democratic institutions through the empowerment of people and people participation. She noted that IDEA's programme in Georgia and in the region project had started four years before and had been based on the local partnership approach. The idea was to bring together expertise and public debate to diagnose the country's assessment of its own state of democratic development and reflect and decide the future road map. The analysis of political reforms had been presented as policy papers. Ms. Arakelian emphasized that democracy assistance is not about interfering in the internal affairs of the countries and societies and imposing from top-down or outside –in prescription but to support the empowerment of nationals, people and society to make civically aware and responsible democratic choices and build home made democratic societies and states, to support alternative democratic initiatives locally owned and realized which targets people individual and collective human development needs and self realization. Ms. Arakelian on behalf of International IDEA expressed gratitude to the Swiss Agency for Development and Cooperation (SDC) for their support and earmarked financial contribution to IDEA core budget; International IDEA's member states' embassies and consulates for Georgia and Armenia: H.E. Harry Molenaar, Ambassador of the Netherlands for Armenia and Georgia; and H.E. Dipak Vohra, Ambassador of India for Armenia and Georgia. At the end thanked all Georgian, Armenian and Azeri experts and civil society representatives from centre but also regions; Georgian authorities and the European and international partners for their input and participation in the realization of the programme.

Jacque Vantomme of the EC Delegation to Georgia and Armenia pointed out that the strongest ambition stated by the Georgian government so far had been its European ambition and stressed the importance of the topics to be discussed at the conference. The speaker said that the EU took great interest in the political reforms in Georgia and underlined the EU's focus on the issues of democracy, rule of law and good governance. Mr. Vantomme spoke about the new framework of EU cooperation for the three countries - the EU Neighborhood Policy, which is designed to offer EU neighboring countries to participate in the EU activities and strengthen their security, and extended privileged relations to neighbors, accompanied by financial assistance.

Panel 1. Georgia's European Choice and Constitutional/Political Reform Process in Georgia: Policies and People's Attitudes

The moderator: Jonathan Wheatley (Free University, Berlin)

The presenters: Marina Muskhelishvili and Luiza Arutiunova (Centre for Social Studies)

Presentation. The first presenter, Marina Muskhelishvili from the **Center for Social Studies (CSS)** presented the background paper on constitutional changes in Georgia and the outcomes of the sociological research conducted by the CSS within the framework of the joint IDEA/ CIPDD project on the process of the constitutional/political process in Georgia and related public discourses (see the research papers in this volume). The following reflects discussion on her papers and presentation.

Discussion. The debate over the issue was opened by Ghia Nodia, who described the study as interesting and innovative research that illustrated well the inherent problems of Georgia's democratic development. He then discussed the point in the research that there is dichotomy between the government being goal-oriented and society being process-oriented in Georgia, pointing out that the way out of this vicious circle was for the government to learn how to operate the process properly and the society to think more about effective means to achieve goals. However, he said, that orientations towards goals and processes cannot be treated as two equal alternatives: government policies should first and foremost be goal-oriented and the process was justified only when it led to the achievement of the goal. Mr. Nodia also argued that it would be wrong to say that in Georgia the government (whether previous or current) was primarily goal-oriented while the public was concerned about legitimacy of the process: primarily, people want the government to be effective, that is achieve particular goals, and it is ineffectiveness that cost Shevardnadze's his popularity. The current government also only has a chance to maintain its popularity by providing services effectively. The civil society also should learn to discuss issues of effectiveness more rather than just to focus on propriety of processes (though the latter is no less important of course. He cited an example of the police: its work should be measured by not only its being not corrupt, but also and first of all by its ability to seize criminals. Ms. Muskhelishvili agreed to Nodia's argument that the goal should lead the process; however, she said the problem was that Georgian society was not a structurally differentiated society, and there was no clear demarcation line between civil and political societies. Therefore, the society was unable to control the process of the government achieving its goals. Mr. Nodia agreed that indeed the Georgian society was unstructured in the sense that there were not clearly articulated interest and/or social groups in society. However, he disagreed with the very normative statement that there should be a clear distinction between civil and political societies. To the contrary, he argued that the problem seems to be the fact that the discourse of the civil society in Georgia tends to be anti-political, that is it is trying to define itself in contrast with the political society, claiming that politics is bad and corrupt whereas civil society is good and honest, therefore it should not get smeared by engaging in political processes. These attitudes are rooted in post-Communist dissident discourse, Mr. Nodia said. In contrast, in more developed democracies, e.g. in American society, there was no differentiation between civil and political society, and there was a great deal of horizontal mobility from government to civil society and vice versa. American civil society actors were not ashamed of having political affiliations. Mr. Nodia concluded that this very insistence on the differentiation between civil society and political society was one of the reasons why our societies found themselves in a vicious circle.

Ms. Muskhelishvili said that that the US situation was hardly attainable in post-totalitarian countries where civil society was even more passive than in post-authoritarian countries. She reiterated that the goal of research was to establish whether the principle of constitutionalism (limited government) had any prospects in Georgia. And the findings showed that it was possible to achieve constitutionalism through a constructive dialogue among the different discourses. However the present situation was such that citizens just insisted on their message while politicians' reiterated theirs, and there was no dialogue between the two.

Answering the question of an expert from Azerbaijan, Mais Gulaliyev, as to what was the reason of the previous government's downfall, its ineffectiveness or its weakness, Ms. Muskhelishvili agreed that the weak government notion should be differentiated from the notion of ineffective government,

and both should be distinguished from the activist government. We did not have authoritarian regime in Georgia, nor do we have it now, she said. On the question, why the values have not changed along with so many changes in Georgia, Ms. Muskhelishvili said that societal development was a slow process; Political culture was a retentive culture: a need for a charismatic leader had been retained by the Georgian population. Certain views will undergo changes, but some will persist, she said. We have passed one generation and maybe there will be a shift but a radical change is most unlikely, she added.

Jonathan Wheatley posed a question about the implications of the identified discourses for constitutionalism, bringing in a debate about why the upper chamber if being elected through a single mandate constituencies, posed a threat of introducing traditionalist values. The debate moved to the decision of the parliament to downsize the parliament to 150 members, of which 50 members would constitute an upper chamber. It was noted that although it was decided that 50 members would be elected from single-mandate constituencies, it had not yet been defined what the constituencies would be. The fact that the constituencies had not been defined looked strange to everybody. Mr. Nodia said that by downsizing the parliament, the latter had expressed its respect to the referendum, but once again repeated a mistake of the organizers of the referendum themselves by not putting this issue in the context of the reform of the administrative-territorial organization of the country. Vakhtang Khmaladze, retorted to that saying that the constitutional changes did not define what type of single-mandate constituency membership would be applied. The changes leave it to the law to decide, he said. Mr. Khmaladze said that this could be done so as not to link it to the administrative-territorial organization. Another issue is whether it is reasonable to have a two-chamber parliament which may be a luxury, he said adding that we should take into consideration the Georgian reality and consider problems of Abkhazia and South Ossetia here. Mr. Khmaladze said the two chamber parliament seemed to him an appropriate mechanism, a balancing lever inside the parliament once the problem of Abkhazia and Ossetia were determined, so this possibility should be reserved for conflict-resolution purposes. The fact that the chambers will be elected based on different systems may even be better and be beneficial for balancing, he said.

Panel 2. Design of National Power in Georgia

The moderator: Guido Galli, Programme Officer/Democracy Building and Conflict Management, International IDEA HQ

The presenters: Vakhtang Khmaladze, CIPDD/IDEA Project expert
Jonathan Wheatley (Free University, Berlin)

Presentation. Vakhtang Khmaladze presented the policy paper developed by a group of local Georgian experts. His presentation was followed by remarks by Jonathan Wheatley (see both papers in this volume). Levan Bezhashvili, the chairman of the Legal Issues Committee of the Georgian Parliament, who was scheduled as the third speaker, could not attend due to urgent business in Parliament.

Discussion. Opening the debate by reacting to Mr. Wheatley's suggestions, Mr. Khmaladze agreed that indeed they had discussed the possibility of giving the president the right to dismiss the parliament after the parliament voted no confidence in the government and failed twice to appoint a new government, in order to thus tie the choice of government to the people's will and harness the parliament's arbitrary decision. However, Mr. Khmaladze disagreed that it would be reasonable to give the president the right to veto the parliament's decisions. Mr. Wheatley said that in an ideal world it would be the parliament that would decide on the executive, but if it was not possible then the president should be able to step in. What he was proposing was the notion of a double safety model because in Georgia there were possible twin dangers – super-presidentialism on one hand in which the president would have unconstrained unchecked power, and the risks of a parliamentary system on the other hand, in which a non-institutionalized party system might lead to unstable government and failure to elect an executive.

Avtandil Demetrashvili, another member of the expert group, in reaction to an earlier remark of one of participants, explained why was it that the constitution had the provision about the introduction of an upper chamber, but no provision about the Georgia's federal organization. In the initial draft both provisions were present but in the course of debates, the latter provision had been removed, while the provision about the upper chamber was kept. He said that an important stage for forming the two-chamber parliament would be the decision on the territorial arrangement of the country. Without that decision the introduction of the two-chamber parliament would be unrealistic. However, he disagreed that such parliaments were only characteristic of federal states.

Ghia Nodia and Aharon Adibekian, an expert from Armenia, asked the group of experts what their vision of the state's development was under the current circumstances, considering the need to adapt the commonly accepted liberal democratic values to the Georgian reality. Mr. Nodia said that the present government's strategy was clear: its strategy was to undertake quick modernizing reforms, establish a more effective state executive power, and create macroeconomic conditions conducive to development. Presumably, the authorities believed that to achieve that they should implement unpopular reforms and during that painful process they needed to strengthen constitutional guarantees for them to stay in power. The authorities understand, he said, that the model introduced through February 2004 Constitutional amendments is far too imperfect and that's why they said it would be replaced in about seven years' time. One may agree or disagree with this strategy, but it is there. However, the presented policy paper lacks the vision of what the state strategy should be and what is appropriate for the state to do, Mr. Nodia concluded.

The debate focused on several other issues, in particular on the election threshold for political parties and representation for ethnic minorities either through the introducing of ethnically based parties or an upper chamber of parliament.

Almost all debaters converged on that the 7 percent threshold was far too high. However, the appropriateness of introducing a 4-percent election threshold recommended by the policy paper was also questioned by some participants. The authors of the paper had argued that the 4-percent threshold would be the right barrier for the parliament to express the will of the majority voters. Mr. Nodia said that the experts' arguments were not persuasive enough, and if the idea was to have a more representative parliament, then why 4 percent and not 1 or 2. On the other hand, Georgia had experience of having a very representative parliament in 1992-1995 that was totally ineffective. He added that in reality small parties did not necessarily represent segments of the population. The fact that more representative system is better even if it is not effective is not an axiom, he said.

Ararat Esoyan from Akhalkalaki inquired whether the creation of ethnically based parties could serve as a remedy to problems on the horizontal level of government. Mr. Khmaladze stated that his belief was that political parties should be created over a common ideology rather than on the basis of an ethnic factor, and therefore he did not see how ethnic parties could contribute to the unity of Georgia as a state.

Mr. Wheatley said that the one logic behind the upper chamber was to represent diverse interests. Therefore, an upper house would need in some way to represent minority interests. However, a thorough and well-thought-through base should be created for the election into the upper chamber, if such was created, in order to ensure its genuinely representative nature. In a situation where there is a problem of the participation of ethnic minorities in political life of Georgia due to the language barrier and due to the lack of representation in power structures there is a problem to be addressed and an upper house is capable of redress the balance of under-representation, Mr. Wheatley said.

Ghia Nodia said that the dominant opinion in the political elite of Georgia was that it was not right to institutionalize ethnic minorities and the principle that all citizens are equal should be the premise. Yet, we should face a problem: about 16-7 percent of the population is not integrated because of their

ethnic origin and they do not see the existing political parties as a mechanism of participating in political life. Therefore although Mr. Nodia shared the view that good parties should be based on political and ideological values rather than ethnicity, the experience of post socialist countries such as Bulgaria show that, the creation of ethnic parties is not the end of the world and this does not necessarily bring about the particularization of certain groups. On an initial stage, ethnically based parties may actually be serving as a better mechanism for minority integration than the upper chamber. He concluded that in principle he agreed that ethnic parties were bad and not appropriate for a normal political system, but what was bad should be proved by political practice and not through the banning of such parties.

Levan Ramishvili of the Liberty institute stated that sometimes the ruling party representatives justify the necessity of maintaining 7 percent threshold by saying that the change of that threshold would contribute to the creation of ethnic parties. So, even if such parties are allowed by the law, this threshold will always hinder the representation of these parties.

Jonathan Wheatley agreed with Mr. Nodia saying that ethnic parties might indeed be a more effective way of representing national minorities. If that was the case one would need to reduce the barrier. This would relate to the barrier to enter parliament by the party list since two largest minorities, Azeri and Armenia both make around 6 percent of the population each, and it is unlikely that every member of that minority would vote for one party, so there would be a reason to reduce the barrier certainly below five percent, if you would allow such parties to represent national minorities. Mr. Nodia noted that changing the barrier is not absolutely necessary because ethnically based parties can still create coalitions with other parties.

Sergey Minasian, an expert from Armenia, agreed that the banning of ethnic parties would perpetuate the present situation whereby each party had a nominal representation of ethnic minorities. As for the fear that the ethnic minorities could have excessive influence on national decisions, he said, it was totally ungrounded, as ethnic minorities in Georgia represented 12-13 percent of the population. Mr. Khmaladze said he did not fear that the ethnic parties would influence national choices, but rather that the creation of such parties would alienate citizens of Georgia from each other rather than unite and integrate them.

Levan Ramishvili suggested that given the misbalanced constitutional model of government, whereby parliament was weakened considerably, the creation of an upper chamber and the split of the parliament might lead to the further weakening of the parliament and the strengthening of the executive.

Mr. Wheatley agreed that there were possible dangers of the second chamber increasing the power of the executive. There is risk of an upper chamber actually consolidating the possibility of government authoritarianism, he said, citing an example of Kazakhstan. Mr. Wheatley admitted that the role of the upper chamber in some places was far from reducing the potential of government authoritarianism but was instead intended to strengthen the presidential power and weaken parliament and therefore care should be taken not to repeat such scenarios.

Rahman Badalov, an expert from Azerbaijan expressed his skepticism over the demand of such debates on the part of the government. Ghia Nodia said that the problem with governments in the South Caucasus region was not only their authoritarianism, but also the lack of mechanisms to produce policies. Specifically, this is the problem that the Georgian government may have a general strategy but no definite policies.

Panel 3. Distribution of Power between national and sub national levels of power in Georgia

The moderator: Armineh Arakelian, (International IDEA's Regional Representative and Head of Programme for the South Caucasus-Europe)

The presenters: David Losaberidze (CIPDD/IDEA Project expert)
Alexander Mihaylov (Resident expert of the Council of Europe)

Presentation. David Losaberidze presented a policy paper on the situation of local self-government in Georgia. Alexander Mihaylov, resident expert of the Council of Europe in Georgia, reviewed the policy paper (both these papers are included in this volume). Mr. Mihaylov also presented his own views on the preferable model for development of local government in Georgia. Mr. Vano Khukhunaishvili, deputy chairman of the Regional Policy, Self Government and Mountainous Regions Committee of the Parliament of Georgia, who was also expected to be on the panel, sent his regrets that he fell sick and could not attend.

Mr. Mihaylov pointed out that today there was the consensus in Georgia that the current state of local government was untenable there was a need to develop a new cohesive and clear system. The urgency of decentralization and the territorial-administrative division was further strengthened by the fact that a number of other reforms which were under way in Georgia needed to be placed and considered in the context of decentralized regional arrangement. Most critical step had already been made – the government had expressed its interest in and prioritized decentralization. The president and the government understand that the constitutional provision stipulating the deferring of the administrative–territorial arrangement of Georgia until its integrity is restored, should be overcome. An administrative-territorial reform is likely to improve the quality of state government in Georgia and secure such economic results that are very important for Georgia's integration into European structures. No European programme can function at a local level at present in Georgia as local governments do not have their financial resources or property, Mr. Mihaylov noted.

Mr. Mihaylov then spoke about the possible levels of state government organization, stressing that European experience showed that for a country like Georgia there should be three levels – central, regional and local. He suggested that European models whereby local self-governments were strengthened at the first level, and regions were governed as de-concentrated units would be most appropriate in the Georgian context. It would be possible then to establish self-governments at the regional level in 5 to 10 years' time. Mihaylov also made a point that the regional division could be decided on the basis of the size of regions, and named 30,000 population as the optimal size of unit. In this version, Georgia should be divided into 120 regions. He said in a country like Georgia it would be difficult to consolidate several self-governments to form a region. However, he added, it was up to the Georgian government as to what kind of division should be introduced.

Mr. Mihaylov then spoke about the functions of regional governments, pointing out that they would have the function of region's development. A governor appointed by the president will have the right to supervise and coordinate central government units on this territory and will be responsible to implement the national policies at the regional and local levels, he said. Abkhazia which may have a special status will not have governors appointed by the president but instead will have local self-governments at the regional level, he added.

Mr. Mihaylov then spoke about the importance of the size of local governments, stating that there were two systems in the world: strong councils and weak mayors, and vice versa. In our countries, he said, we should have councils elected on the proportional basis and mayors elected through the majoritarian system. Mayors will represent the municipality, but all the functions including budget, finance, property, policy, strategy should be the functions of the council and this parity will ensure that there is no corruption or conflict of interest. Such a system worked well in many countries. As for the villagers who will lose their self-governments, they can elect village mayors who can act as the representatives of their villages whereas municipal centers will not have such mayors - the functions will be performed by the mayor of the municipality.

He then moved to the question of the division of competences. There should be a clear division of competencies: e.g. secondary education can be the function of local governments, while higher education and strategy development can be the competence of the national government. Changing too many laws should be avoided, he added, and named a few laws that needed to be adopted in Georgia, among them the law on administrative-territorial arrangement, the law on regional development, the law on local property, and the law on local budgets.

Mr. Mihaylov was then asked to speak about the decentralization programme of the Georgian government supported by the European Commission. He said *inter alia*: Within the framework of the programme in July 2004, a state commission was set up under the president of the country which prepared an action plan. The commission is a group that unites experts from parliament, the executive and NGOs. The action plan outlined such measures as the ratification of the European Charter on Self-Government, the establishment of an association of self-governments, developing laws on property and budget of self-governments. Many of these objectives have been fulfilled: Georgia signed the European Charter, the association has been established, and the laws on budget and property are submitted to Parliament for consideration. Now the commission has moved to the next phase of developing a policy, after which working groups will be set up to work on specific issues.

Ms Arakelian also asked Mr. Losaberidze to assess the level of willingness and readiness of the Georgian authorities to implement reforms aimed at genuine democratic and rights based local self government in Georgia. It was noted that the day before he had attended the sitting of the state commission mentioned by Mr. Mihaylov. Mr. Losaberidze said that while the Georgian government had appeared to be dragging its feet on devolving power to the local government for the previous year or so. The latest meeting, however, showed that the situation was starting to change. The government now seemed to be opening up for changes and quick reforms, possibly because of the increasing pressure from the West and also because the political elite seemed to acknowledge that the country could not be governed from a single office in the centre.

David Losaberidze added some remarks on the European Charter, stating that the Charter would come into force as of 1 April 2005. Once the charter is ratified and comes into force, then a country faces sanctions if it fails to meet its requirements. The president and the government understood the importance of the charter, he said, and the president had authorized the commission to prepare a whole set of legislative acts and major principles by the end of May. It has been agreed that Georgia's priority should be the first level of self-government, the municipal level. By the end of April the commission will have the first drafts of these laws ready and the progress in this issue seems realistic, Mr. Losaberidze said.

Discussion. Following Losaberidze's and Mihaylov's speeches, a debate started. There were more questions about the charter itself. Mr. Losaberidze explained that the Charter was passed in 1985 as a set of recommendations for the EU member states. It had transformed into a convention over time. The main principles of the Charter include property rights of self-governments, their right to have their own budgets, and the principle of transparency. It contains a number of provisions of which countries should select several for them to meet; states can ratify the charter with reservations regarding some of its provisions but the Charter supercedes relevant national laws.

Ararat Esoyan pointed out that the consolidation of self-governments might lead to the situation whereby small communities were left without any leadership. He cited an example of one Javakheti community, which united five villages and the villagers were unable to procure any certificates in their villages and had to travel to the centre to get a simple document. Consolidations of small self-governments may lead to controversies based on historical and cultural factors, Mr. Esoyan said, noting that some villages might claim superiority over others and might be displeased with the decision of becoming part of larger communities, with no real powers left to them. Apart from that, Mr. Esoyan said, if village mayors are elected, then we will have a four-level state government system, rather than a three-level one which we are now discussing. The language problem will

remain, Mr. Esoyan said, bringing back into the debate the issue of the state language in the regions and suggesting that the regional division should be accompanied by an introduction of bilingualism in certain regions respecting the ethnic minority rights.

Mais Gulaliyev pointed out that what European experts prescribed for the South Caucasus countries might not be appropriate for these countries and suggested that experts consider local realities. Mr. Mihaylov described this as Euroscepticism and pointed out that former Socialist countries did not have the luxury of trying on different models and making mistakes. He said these countries needed to start with commonly accepted standards that had been experimented already over years. The international community never pressures the countries; there are only the mechanisms of development, understanding, education, and discussions, and after that the countries start to change, he said.

Robert Muradian of the Akhaltsikhe Local Council underscored the need for improving the qualifications of the local government personnel. He pointed out that when people got elected in local councils, they had minimal knowledge of what they were supposed to do. This is a serious problem along with the lack of resources and budgets, he said. He cited his example, saying that when he was elected he knew nothing about the local government. Mr. Muradian suggested that a training-consultative centre be established for the local government personnel.

Mr. Aslan Chanidze from Batumi expressed his skepticism in the effectiveness of the laws developed hastily. He pointed out the need of considering numerous factors for the laws to be good. He stressed the importance of public awareness, saying that the population was not aware of what the government was preparing. The European Union and international community should pressure the government to develop and implement effective laws. Ararat Esoyan agreed to the above point saying that no information had reached Javakheti concerning the development of the laws or the establishment of the commission. If such a situation is perpetuated and the public and the regions do not participate then there will be no people in the regions to implement the reforms that will be developed in the centre, he said.

Alexander Mihaylov said in his conclusive speech that the group of experts would be visiting regions and discussing the drafts. The strategy was to pressure from the bottom and the top at the same time. The new association of self-governments has a national strategy of education, and it is expedient that local governments get involved in this strategy implementation, he said. Mr. Mihaylov also said that the intention in Georgia was to introduce the proportional system of election at the lower level in order to strengthen the party system in the country. That will be a digression from international standards, but anyway we believe that in Georgia we should start with proportional elections, he concluded.

Panel 4. Constitutional/political reform process in Armenia and European integration

The moderator: H.E. Dipak Vohra (the Indian Ambassador in Armenia and Georgia)

The presenters: Dr. Sos Gimishyan (Expert)

Dr. Aharon Adibekian (Expert)

Dr Sergey Minasian (Expert)

Presentations. **Sos Gimishyan**, an expert from Armenia, presented the policy paper on the political/constitutional reform underway in Armenia. He made an overview of the system of the state government in Armenia, as well as Armenia's constitution. According to him, the constitution of Armenia provides certain guarantees for the realization of self-government powers. About a dozen laws are in place to regulate the system of local self-government; the European charter has been ratified; a number of legislative acts have been passed to regulate the process of self-government. However, although the competences of local self-governments were defined at a legislative level, they

were quite limited in practice, as local governments were unable to fulfill those competences due to the lack of resources and budgets. The national government justified its reluctance to delegate financial resources to local self-government by the argument that local self-government bodies are weak and they cannot perform, Mr. Gimishyan said.

Mr. Gimishyan pointed out two major conditions needed for the development of transitional countries – (i) the establishment of the rule of law and the fair and independent judiciary system; and (ii) the decentralization of power, i.e. the creation of functioning local government bodies.

Mr. Gimishyan then overviewed the Armenian constitution, particularly looking into the question of what it provided for the local governments. He said that the constitution clearly differentiated between the national government and the local self-government. The constitution concedes that neither the president nor the central authorities have the right to impose their will on local bodies or guide them. He stressed that this was a very important provision for a democratic development. Further, he said that a constitution comprised a chapter dedicated to self-government, which stipulated that bodies of self-government, both the councils and mayors, were elective. The rights to property, including financial resources, own revenues and local budgets are also stipulated by the constitution. The Armenian constitution stipulates that local governments are accountable to the law only, and no other body.

Mr. Gimishyan then spoke about the new draft constitution, and its positive and negative sides. He said *inter alia*: The main problem with this constitution is that the government has the right to vote no confidence in the elected town mayors. This procedure is well practiced in Armenia against opposition mayors. Since 1996, more than 120 cases of no-confidence votes have occurred, of which 90 per cent lacked legal basis. Therefore it is expedient that this article should be removed from the constitution. Instead, the no-confidence motion has now been spread over the councils in the new constitution. If the new constitution is passed, then there is no independence for self-governments - they will become a fiction, an appendix to the central government; The second fault with the new draft is that it defines the number of council members from 5 to 15 members, and such small councils are likely to be easily manipulated by the state government. The only positive change proposed is the provision that allows local self-governments to address the constitutional court. The constitution has lost the article that stipulated that self-government should extend to the whole territory of Armenia. When the article was there, the self-government was established in the 60 percent of Armenia's territory, while the rest remained under the deconcentrated central power. Another article that is canceled is the one that allowed local self-governments to independently form their executive structures. The central government has always dreamt of having influence on the appointment of staff in the self-government bodies. Overall, the new draft is a step back, and if it is adopted, the self-government will have no future in Armenia, Mr Gimishyan concluded.

Aharon Adibekian, an expert from Armenia presented the research outcomes on the youth participation in social and political reforms in Armenia. He pointed out that the youth was in a state of unpredictability in a country where there was no hierarchy of values and no channels of social mobility. In this situation, radical social changes in society were very unlikely. Mr. Adibekian compared the situation in Armenia with that in the West, pointing out that the West had managed to separate the youth from the grown-up population and had illustrated that the youth was the segment of society that was more apt to achieve higher levels in the future. Mr. Adibekian noted that the youth was a driving force in revolutions in post-Socialist countries, adding that societal development was based on the conflict of generations and if a society had institutional mechanisms of resolving conflicts, then that society could be considered modern rather than traditional.

Mr. Adibekian said that he attempted to study the expectations of the youth and the openness of society for the political and social integration of the youth. He said he had also attempted to find out if the Armenian youth was revolutionary enough to replicate what happened in Georgia or Ukraine. The findings of the study showed that the Armenian youth remained very traditional, relied on family

which defined his/her future, and expected very little from the state; certain segments of the youth were interested in politics, socialization, participation in interest groups and NGOs, but no more than that. The school reform too is perfectly in line with the traditions, reaffirming traditional values, not in any sense corresponding to the 21st century's values, Mr. Adibekian concluded.

Dr. Adibekian expressed his regret that a similar study conducted in 1997 in three countries - in Armenia, Georgia and Ukraine, had given much greater grounds for optimism. The youth was ready then for more active actions whereas at present a decline in activism can be observed. The youth seems to be more ready to emigrate than do something valuable in his/her own country, he said.

Sergey Minasian from Armenia spoke about the dynamics of cooperation between the EU and Armenia and the new prospects in light of the new European Neighborhood Policy. The speaker noted that since gaining its independence, Armenia had prioritized the cooperation with the EU. Moreover, he added, Armenia sees its future as a member of the EU in the future. Since June 2004, Armenia has been participating in the European Neighborhood Policy (ENP); this policy is important for Armenia in many ways, such as economic development, democracy building, political dialogue and strengthening democratic institutions; It is important also in the conceptual terms, as integration processes can be used to achieve regional security, a stable regional development, and peace in South Caucasus; Armenia's future development is seen in the European dimension. This includes the democratic settlement of the Nagorny-Karabakh conflict, settlement of Armenian-Turkish relations and the release of more than a decade blockade of Armenia by Turkey and Azerbaijan, the recognition of the 1915 Armenian Genocide by Turkey, he said. Mr. Minasian pointed out that the cooperation with the EU was not a goal in itself. The process of integration into the EU structures was focused on the harmonization of laws, democracy building, economic cooperation etc. Mr. Minasian also noted that according to the EU evaluation (march 2005), Armenia had achieved more positive results than Georgia or Azerbaijan in terms of the fulfillment of the ENP requirements.

Mr. Minasian then mentioned the possible role of the Rose Revolution in the EU's opening up for the South Caucasus countries and including them into the ENP. He also pointed out that in contrast to Georgia, Armenia did not have any serious lobbyists in the EU.

Discussion. Ghia Nodia noted that there were similarities between self-government systems in Georgia and Armenia in that sense that at the legislative level they were independent, but in reality they could not practice that independence, and inquired what resources and levers the local governments had in Armenia. Mr. Gimishyan said that the laws in Armenia clearly defined the competencies of self-governments. In Armenia, where constitutionally both the mayors and the councils are elected, he said, the powers of mayors are still strong, but the budgets are adopted by the councils, and it is the councils that make any changes to the budgets. The councils have the right to vote no confidence in mayors, albeit through state bodies. As for the resources, Mr. Gimishyan said, we propose now to include a provision in the constitution stipulating the right to own revenues, including tax on land and property and also percentage transfers from the national income and profit taxes as a minimum. At present the budget of local governments constitutes 8.1 percent of the overall state budget and we dream of getting at least 20 percent, he said.

Ghia Nodia said that Georgia indeed had lobbyists in the EU and that in general the government had been very proactive in forming a group of lobbyists - recently a new group of friends was formed, he said, consisting of former socialist countries. Mr. Nodia inquired whether Armenia had used such active policies of gaining lobbyists. Also, he inquired about the attitudes in Armenia towards the European orientation, pointing out that in Georgia there was almost a full consent of the political elite and the population on that matter.

Mr. Gimishyan said that Armenia was very tightly linked to Russia, in terms of resources and economy. However, recent polls placed Russia and Europe at the same level in terms of orientation. In 1990-91, the population's orientation to Russia was 60 percent, which now has fallen to 30-35

percent, he said, adding that the number of those oriented to the USA had fallen for the benefit of Europe.

In the end, Mr. Gimishyan once again stressed the importance of the new draft constitution's provision that gave the right to citizens to appeal directly to constitutional courts and stated that this would allow the citizens to appeal to the constitutional court regarding those issues that were beyond the competence of local courts. He cited an example of the introduction of social cards in Armenia which had caused much controversy and had displeased many citizens. Mr. Gimishyan also said that the new draft constitution was expected to be put to referendum in June 2005, but he also said that he doubted that the government was willing to call the referendum.

Panel 5. Constitutional/political reform process in Azerbaijan and European integration

The Moderator: Alexander Mihaylov (Resident expert of the Council of Europe)

The Presenters: Mayis Gulaliyev (Expert)

Rahman Badalov (Expert)

Niyazi Mehdi (Expert)

Mais Gulaliyev overviewed the political reforms that had taken place in Azerbaijan over the past decade. He noted that political and constitutional reforms in Azerbaijan had always been considered in the historical context and the chronology of these reforms had been divided into two parts – before the advent of the president Heidar Aliyev and his government and after he came to power. The 1995 constitution established new forms of local government and introduced such a system that would enable the president to rule the regions through his representatives in regions. The elections of 1999 established two different governments at the regional level – local governments and self-governments. To date, such an organization of government has been maintained and the state has wasted its resources on keeping double government.

Mr. Gulaliyev described the present self-government system in Azerbaijan as utterly dysfunctional; the constitution does not define their status, which means such governments do not have real power; nor do they have finances or any other resources necessary for exercising power, he said. The same can be said about the municipalities whose per capita revenue is 60-70 cents annually; the budget of some municipalities is only 800 dollars a year, he added.

Mr. Gulaliyev said that local self-governments and municipalities can obtain certain power only through a referendum. However, he added, this is a painstaking procedure and today the prospects for the increase of powers of municipalities or the execution of the principle of the separation of powers do not seem realistic.

Rahman Badalov, an expert from Azerbaijan, spoke about the conceptual issues of the country's organization. He noted that although there were various definitions of democracy types, Azerbaijan failed to fall under any of those definitions. Mr. Badalov said in no case Azerbaijan could be described as a transitional democracy, rather it was a consolidated regime which knew well how to react to challenges and how to maintain control over the processes, at the same time leaving those areas uncontrolled that did not threaten its security.

Mr. Badalov then named some parameters useful in assessing political systems and pointed out that the election systems that mattered and were decisive, but the willingness of governments to refuse to use their administrative resources in the elections. Another parameter that should be used is the consolidation of the political system closely linked to the transition. Mr. Badalov also spoke about the European integration issue, noting that Azerbaijan had made a choice in Europe's favor as early as the 19th century. Although there will always be people who are likely to oppose Azerbaijan's integration into Europe, the choice has been made, he concluded.

Niyazi Mehdi, an expert from Azerbaijan said that there were certain discourses about reforms in Azerbaijan, but these discourses were not prevalent in the population, nor did the ruling party acknowledge these discourses. Mr. Mehdi said the discourses seemed to have been imposed from outside as neither society nor the political elite seemed to be acknowledging the need for them. Mr. Mehdi added that the reforms in Azerbaijan had illustrated that it was impossible to translate structural reforms into qualitative ones.

Overall, the experts from Azerbaijan drew a very bleak picture of Azerbaijan's situation. Mr. Gulaliyev said there were no reasons for Azerbaijan to be optimistic - the West would not support Azerbaijan having a democratic government, as it had its stake in the country and the present situation suited it. Mr. Gulaliyev expressed his disillusionment with the international organizations that praised the Azerbaijani government instead of criticizing it.

Ghia Nodia noted that the reason for such a pessimistic outlook of democrats in Azerbaijan could be the contrasting results of the elections of 2003 in Georgia and Azerbaijan; this then was reflected in Azerbaijan's pessimistic attitude towards the West – while rapport with the West established in Georgia, in Azerbaijan, in contrast, skepticism and disillusionment with the West set in. Mr. Nodia then said that he saw the secret of future success in the coexistence of two factors: the presence of the critical mass of democratic forces and the active support of the West. Neither factor will help achieve success without the presence of the other, he said. Mr. Nodia in the end underscored the importance of the establishment of a democratic elite in Azerbaijan that would be capable of holding a dialogue with the West.

Mr. Gulaliyev expressed regret that the new generation in Azerbaijan was not interested in politics and was more involved in business and office employment. Marina Muskhelishvili described this trend as positive, saying that this might mean that Azerbaijan's way to development would be more evolutionary than revolutionary.

Closing session

Ghia Nodia and Armineh Arakelian closed the conference and thanked the participants. The conference has provided a horizontal dialogue at the civil society level and between the three countries experts and activists.



About CIPDD

The Caucasus Institute for Peace, Democracy and Development (CIPDD) was founded in August 1992 in Tbilisi, Georgia. It is a non-governmental and not-for-profit organisation. CIPDD is not linked to any political party.

CIPDD is a public policy think-tank. There are two large areas in which it is active: democratic transformation and institution building, and creating foundations for sustainable peace and security. CIPDD conducts policy research, issues publications, and organises conferences, workshops and roundtable discussions. The Institute sees its mission in enhancing level and broadening the scope of public policy discussion in Georgia. One of the latest public discussion events it held was an international conference *One Year after the Revolution of Roses: Achievements and Failures. Can Georgia Be One of the New Democracies?*, organized in cooperation with Centre for Liberal Strategies (Sofia, Bulgaria).

CIPDD is mainly active in Georgia. However, it is also involved in cooperative projects in the South Caucasus and Black Sea–Balkans area. CIPDD often works in partnerships and coalitions with other civil society organisations, Georgian or foreign. For instance, it works with partner organizations in Armenia and Azerbaijan on developing cooperation between journalists of the three countries through use of Internet resources (using the website www.caucasusjournalists.net). In a partnership with the Institute for Regional and International Studies (Bulgaria) and Institute for Development and Social Initiatives (Moldova) CIPDD conducted a comparative “democracy audit” in three countries: Georgia, Bulgaria and Moldova. In cooperation with the Russian partners, CIPDD runs a joint Georgian-Russian website www.pankisi.info.

Apart from promoting its own policy recommendations, CIPDD is involved in advocacy efforts for human rights and democracy causes. For this end, CIPDD usually gets involved in coalitions of like-minded organisations and individuals. Together with a coalition of Georgian non-governmental organizations, CIPDD works on a project aimed at enhancing capacity of Georgian civil society organizations. In another coalition of Georgian non-governmental organizations, CIPDD is involved in lobbying efforts aimed at decentralizing Georgian political power system.

In the last years, issues of ethnic and religious minorities have become a focal area of CIPDD work. CIPDD coordinates the efforts of OSCE High Commissioner on National Minorities to monitor developments in Samtskhe-Javakheti region in Georgia with regards to conflict indicators. It also works with German Technical Cooperation (GTZ) in research and analysis in Kvemo Kartli, a region of Georgia where ethnic Azerbaijani population is concentrated. Currently CIPDD works on the religious education curriculum for the Ministry of Education of Georgia.

CIPDD is involved in several policy research projects on problems of religious minorities in Georgia, state of Georgian political parties, and problems of regional print media in Georgia. For this end, it cooperates with the Netherlands Institute of Multiparty Democracy and Institute for War and Peace Reporting (UK).

Since June 2004, CIPDD is involved in joint project with International IDEA South Caucasus office, *Voices of Georgia in Constitutional and Political Reform*. In 2002-03, several CIPDD fellows took active part in the process of democracy assessment in Georgia through local experts and activists that IDEA SC facilitated.

For more information, see CIPDD website at www.cipdd.org.

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About International IDEA

Created in 1995, the International Institute for Democracy and Electoral Assistance (IDEA) is an intergovernmental organization that promotes sustainable democracy worldwide.

IDEA aims to:

- Assist countries in developing and strengthening democratic institutions.
- Provide a forum for researchers, policymakers, activists and professionals to discuss democratic principles.
- Blend research and field experience, and develop practical tools to improve democratic processes.
- Promote transparency, accountability and efficiency in managing elections.
- Help local citizens evaluate, monitor and promote democracy.

International IDEA in the South Caucasus-Europe: Challenges towards Sustainable Democracy

International IDEA (the International Institute for Democracy and Electoral Assistance) based in Stockholm, Sweden, created in 1995, is an intergovernmental organization with 23 member states across all continents. IDEA plays a crucial role in supporting and advocating home-bred, participatory democratic processes in the South Caucasus. Being an international, inter-governmental organization, it has proven to be impartial and was able to engage in a short period of time a wide network of reform oriented thinkers and practitioners from different regions of the South Caucasus in a dialogue process about the challenges facing the region. This process-oriented and participatory assessment of the challenges of democracy constitutes an important tool for domestic actors to put their concerns on the political agenda and advocate political change.

Beyond fostering participation and debates, International IDEA's intervention in the South Caucasus supports and facilitates development of democratic political agenda and constitution building as well as strengthens the capacities of relevant state administration, non-governmental organizations and civic actors, and political institutions.

The South Caucasus-Europe Programme of International IDEA has been started in autumn 2001 operating both at country level mainly in Georgia and at regional level including Armenia and Azerbaijan. International IDEA's Programme Office in Armenia is accredited with a diplomatic status. IDEA's main activities in the South Caucasus region include a process of democracy assessment in Georgia through local experts and activists (2002-03); research and dialogue on democracy at local level (2002-05); fostering regional dialogue on home made democracy building processes (2003-05); professional development of electoral administration - "BRIDGE South Caucasus-Eastern Europe" as well as Election Assessment in the region (2003-05); political and institutional reform agenda setting and Constitution building mainly focused in Georgia, but also included Armenia and Azerbaijan (2004-05); political parties research in Armenia and Georgia (2005); possible initiation of country project in Armenia (2006-07) on political reform agenda setting and professional development of electoral administration - provided complementary funding is available.

As a contribution to promoting sustainable democracy in Georgia and in the wider context in the South Caucasus region, International IDEA, in partnership with Georgian and regional actors, in autumn 2001 initiated a programme of 'democratic assessment through dialogue' at country and regional levels. The overall objective of the programme is to advance democracy by facilitating political dialogue and articulating a democratic reform agenda, respectful of pluralism. At the first stage of dialogue process in Georgia (2002) IDEA has provided the national actors with a platform for thinking, reflection, analysis and debate to help them assess their country's political, social and cultural development over the past decade and up to the present. The emphasis of the programme is on dialogue which in 2003 resulted in series of 12 Discussion Papers and Agenda for Debate "***Building Democracy in Georgia***". They serve local and national actors, together with International IDEA's support, to widen the discussion and debate on the issues and recommendations. In 2004-05 IDEA South Caucasus programme, in cooperation with Georgian NGO Caucasus Institute for Peace, Development and Democracy (CIPDD) continue and will finalize the dialogue process in Georgia with a regional dimension, focusing on generating a national constitutional and political reform agenda through public participation, mainly on the two topics of "*State power at the national level: balance between its branches*" and "*Distribution of state power between the national and sub-national level*". Main objective of the project is to support public debate and enhance society's interest and involvement in the Georgian constitutional processes. This would increase both quality and legitimacy of the process of constitutional change. Two groups of leading Georgian experts and activists developed policy papers on the two respective issues. Draft policy papers were then discussed in five Georgian regions and the capital with participation of government representatives, NGOs, academics, journalists. Suggestions developed in these public debates were incorporated in the policy papers. Two European experts have commented those policy papers. In addition a sociological research has been also conducted separately which identified public discourses on the current constitutional process. Furthermore, the project has a regional dimension including expert and activist analyses on political reforms in Armenia and in Azerbaijan within a European integration perspective. Three experts/activists from Armenia and three from Azerbaijan prepared research and policy papers on these issues. Within the framework of this joint project International IDEA and CIPDD organized an International Conference in March 2005 in Georgia. It was dedicated to the exchange of views about the reform process in the three South Caucasus countries, Armenia, Azerbaijan and Georgia and the prospects for their European integration.. On this subject all policy papers prepared by the group of Georgian, Armenian, Azeri and European experts/activists were presented and debated at the conference. At the final stage of the project the outcomes are shared and will be published in order to be taken into account by the national authorities in the public policy development in the three countries, as well as, by international and donor community in their partnership policies.

Assistance to institution reform is being supplied as the outcome of the assessment in particular at election administration area through "BRIDGE (Building Resources in Democracy, Governance and Elections) South Caucasus-Europe" project, which is the regional version of the initial BRIDGE Project - a comprehensive capacity-building training curriculum for electoral administrators, created by the Australian Election Commission (AEC), International IDEA, and United Nations Election Assistance Division (UN EAD) in response to the need of electoral administrators from different countries. It was initiated in 2003 by International IDEA and implemented jointly by UNDP-Georgia, IFES-Georgia and IDEA South Caucasus-Europe Programme, through developing professional skills of electoral administration in Georgia. The next stage of "***BRIDGE South Caucasus-Europe- EMB Professional Development***" project (2004) had a regional dimension of network building, advocacy and training of facilitators in the South Caucasus and wider Eastern Europe. Throughout this phase a regional core group was created in the South Caucasus, which undertook preparation of regionalized and contextualized BRIDGE EMB training curriculum, as a strong capacity building tool for electoral administrators in the South Caucasus countries, and wider in the Eastern European states. This curriculum in Russian was printed in 2004 and was the main tool at regional Train the Facilitator course. This course created a corps of facilitators, 'catalysts' in the region who have international accreditation and can deliver EMB training courses independently in their countries. In 2005

International IDEA mainly focuses on EMB Professional Development and institution building of the Central Election Commission (CEC) of Georgia, in cooperation with the CEC Georgia and the core group of people formed in 2004. In January 2006 a similar national project, additionally including public outreach dimension, as well as political reform will be started in Armenia, provided additional funding available.

Within the framework of the initiative of Election Assessment in the South Caucasus region, in December 2004 International IDEA's South Caucasus-Europe Programme finalized publication of a discussion paper "*Election Assessment in the South Caucasus: Armenia, Azerbaijan, Georgia (2003-04)*" in English and in Russian, which provide one research work and two commentary papers by local experts and activists on national elections for each of the three South Caucasus countries, as material for discussion and debate.

In April 2005 International IDEA started embarking on a programme of *Research and dialogue on the functioning and regulation of political parties in Armenia and in Georgia* in cooperation with local actors. Together with a worldwide network of research partners, IDEA will secure global coverage and relevance. The study will gather comparative information on the internal functioning of political parties, attempting to get as full a picture as possible regarding key aspects of the challenges faced by political parties in Armenia and in Georgia.

Assistance to democracy building in the South Caucasus is carried out in the local government area through "Democracy at the Local Level: A Guide for South Caucasus" Project 2002-04. On the regional level, relevant people from the three countries increasingly participate in IDEA activities, thereby exchanging lessons learned between them and creating more solid regional co-operation among democracy actors. In 2003 IDEA published and widely disseminated the Russian regionalized version of IDEA Handbook "*Democracy at the Local Level: A Guide for the South Caucasus*". Independent experts and activists in three South Caucasus countries prepared country specific case studies reflecting upon the newly developed local governance systems in their respective countries. These case studies were integrated in the regionalized version of the handbook, which provide both: an introduction to basic tools for understanding and practicing local democracy, and an overview of the first decade of experience in the South Caucasus. The publication serves as a basis for discussion and debate on these crucial issues throughout the region.

The "*Pomegranate – Journal of Democracy for the South Caucasus*" in Russian and English, has been initiated and supported by International IDEA in November 2002 with its partners in Armenia, Azerbaijan and Georgia as a platform of reflection and exchange between the thinkers, activists and policy makers within a regional cooperation development perspective. The pilot *No: 0* of the Journal was published in May 2003 in Yerevan, Armenia and widely disseminated.

In autumn 2003 International IDEA published regionalized version of IDEA's Handbook "*Women in Parliament: Beyond Numbers*" in Russian. This initiative was a response to local activists and experts concerned with equal gender participation in politics and predominance of men as parliamentarians, cabinet ministers, etc. in the region. It aims at sharing and making accessible IDEA's expertise and knowledge in this field of democracy building in the region and promoting further dialogue and agenda development on this issue in the region.

Building on the successful achievements of the Programme in the South Caucasus during last four years, IDEA will continue to work closely with Georgia and Armenia, as well as regional and international partners.

For more information on the programme and its activities, please contact International IDEA's Programme Office in Armenia and consult the programme's information website, which provides an overview and up-to-date information on the programme as well as a library of links to relevant documents and resources: www.idea.int/southcaucasus/.

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