

Allocating State Authority in View of Constitutional Changes in Georgia

Ketevan Khurodze
Caucasus University
Caucasus School of Law
The Director of Research Center
Georgia

In February 6, 2004 Georgian Parliament made some kind of changes in Georgian constitution. It aimed to allocate state authority in a way making more effective the issue of solving the existent problems. It should have been anyway improved today or some day, though this might have been done more easily and smoothly. It is true that constitutional changes were somehow easily done, but in reality we have received revolutionary changes and this kind of changes will be done in legislation as well in order to make it correspondent to the constitution itself.

Issues like, how was constitutional survey bill received, were the requirements, procedural issues of the 2nd item of Article 102 maintained is still under doubt. But the issue that the bill was not published for public discussion should not recall and should not be explained with the fact that similar bill was presented in the parliament. The President created special constitutional commission, which gathered several times, but commission member interviews show that the bill was not valuable studied and accordingly conclusions and comments were not made in time. Despite the fact that non governmental organizations estimated this bill negatively, this did not prevent the parliament to discuss and accept it in an urgent manner.

It is interesting whether the authors have achieved their aims with these changes – to have “powerful president”, “powerful parliament”, and “powerful government”. If this is possible, how the power will be distributed among them? In conditions like this is the mutual balance principal maintained and state authority distribution will stay in democratic frames? In order to clarify this issues let’s see what are the president, parliament and state authority on one hand and their inter control and interaction mechanisms on the other.

1. The president of Georgia

The president, who has been the head of the state and executive government, now is the head of the state managing the country and its internal and external politics, state unity, coordination of state bodies. Here he the arbiter. The president is the highest representative of the country in external issue in the country and besides its borders - international relations. He signs constitutional agreements (on the basis of the changes of March 30, 2001), international agreements and contracts, negotiates with foreign countries, hosts the ambassadors of foreign countries and foreign organizations and gives the highest diplomatic ranges to other diplomatic representative accreditations.

The president is authorized, in the name of the state to make constitutional agreement with the Georgian apostolic autonomy orthodox church; also, he is authorized to make decision concerning foreign citizens and giving citizenship to citizens without Georgian citizenship, in other words to give them naturalistic citizenship, renew Georgia citizenship, make decision about leaving Georgian citizenship and ceasing the citizenship; to give respectful citizenship and double citizenship, if he or she has some special merit for Georgia and or this depends on Georgian interests – give a shelter to foreign citizens and citizens with no citizenship; forgive to condemned.

The President has rather a big authorization in state security and self-defense fields. Namely, for state building and organization state defense system, the president creates national counsel, that he himself leads. The president personally appoints the members of this counsel.

The president is the Supreme Commander-in-Chief of military forces. He appoints and relieves the head of General Headquarters of Military forces and approves its structure.

The president participates in organizing Court authorization. Namely, he is in the chair of Law Supreme Counsel, appoints its four members, appoints and relieves the judges (following the rule of law), appoints three members of the constitutional court.

The president appoints the presidents of the National Bank.

The president appoints the referendum, signs and publishes the law, issues orders, awards state awards, supreme military, special and honorary title. The president makes the president administration as well, appoints its heads.

We shall come across to president's other authorities separately, in connection with the parliament or the state, as its accomplishment is directly connected to the parliament or the state.

2. Georgian Parliament

Parliament is the highest representative body of the state accomplishing legislative government, defining general directions of the internal and external policy of the country, controlling state operations. The Parliament represents rather a great power in any democratic country. Country's advance and development greatly depends on it. The parliament possesses legitimate possibility to adopt political-governmental decisions and create legal basis for country's progressive development.

Legislation or legislative operation is the exclusive authority of the parliament. It is true, that the president has the right not to sign the law and accordingly make a veto, but he or she has no absolute right to block the law. In case the president again refuses to sign it, the head of the parliament is authorized to sign and publish the law.

The competency of the parliament covers as well: to notify or to release before the deadline the authority of the member of the parliament; the elect the head of the parliament and its deputies; create internal bodies; ratification and abolishment of international agreements and contracts; to adopt the resolutions;

The parliament elects three members of the constitutional court, four members of the Supreme Court, the head of the Chamber of Control; defines the variety and the membership of military forces. With the presentation of national security counsel it approves the quantity of military forces; without the consent of the parliament it is unacceptable to arrest or detain the member of Supreme Court or the deputies, to search his or her flat, working place or private things, to sue for criminal crime.

The parliament has an exclusive right to raise the issue of impeachment under the rule of constitution and to the members of persons involved. The parliament should be informed about signing the agreements and contracts which do not need ratification. Other authorities of the president and the parliament we shall discuss below.

3. Relationship of the Parliament and the president

The president appoints the date of the elections 60 days before the elections, he appoints special elections as well and the first day of the meeting in 20 days after the elections.

General directions of the internal and external policy of the country is defined by the parliament and directed and accomplished by the president. The president is authorized to convoke special session or meeting, In case this initiative is issued in the parliament and the president has not published invitation act, the parliament is obliged to begin working in 48 hours. State of war declares the president, but he issues this decision (decree) in the parliament during 48 hours. If the parliament does not approve it, accordingly state of war will be declared abolished. The parliament gathers 48 hours after the declaration of the state of was by the president.

It is true that according to the constitution the president is authorized to promulgate decrees similar to the rule of law only in emergency situation, but this kind of authority is considered in the law on "State of War", in other words he promulgates the decree during the state of war or emergency situation as well. Together with the, the promulgated decree is presented to the parliament during 48 hour for approval.

The president is not able to use military forces without the consent of the parliament during emergency situation or in order to accomplish international obligations. The president decides the issues like to lead, use or move military forces of other states in order to defend the state in special and occasions considered in the law, but this decision is immediately presented to the parliament for approval.

The parliament with the presentation of the president elects the chairman and the judges of Supreme Court, the members of the counsel of national bank. The present presents

the General Prosecutor to the Parliament for making an appointment. Special authority the president gained after constitutional changes concerning the Parliament is the right to discharge the parliament before appointed term. This was one of those acute issues which were more or less actual while making those changes. This idea had its supporters and opponents. The supporters were declaring that the Parliament will have a right to state distrust to the government. This time authority distribution principle requires giving a president right to discharge the Parliament. To the opinion of the opponents, in case the parliament will be discharged this will create legislative crisis especially due to a fact that Georgian parliament is of single chamber style

There are states where single chamber parliament may be discharged following the constitution (Portugal, Bulgaria). Differently from Georgia these countries have rather complicated procedures for accomplishing this issue and in Georgia this may happen with very simple, president resolution.

This kind of practice of foreign countries does not mean that it is acceptable. In Judicial and political literature the right to discharge single chamber parliament is estimated negatively almost unanimously. This goes against the superlative principle of the Parliament. This time legislative authority comes under the influence of the president and practically accomplishes his policy. Parliament facing such a danger will never be brave in making decisions. After this we naturally come to a question: do people, country need such a representative body? That will not be able to be effective and real opponent to a president, will not be able to be distrustfully to the government, especially when the government represents the president team .??? This time the last chance is the braveness of the members of the parliament – to interchange their position, lots of social-legal privileges to the interests of the country and the nation. Parliament making this this kind of decision mostly depends on it members: “me” or “my country”.

Parliament crisis does not face bicameral countries (double chamber system) there as a rule in case the Lower Chamber is discharged all parliamentary factions are directed to upper chamber. In case discharging single chamber system parliament this crisis is inevitable before electing the new parliament. Special elections are held following the constitutional changes after setting in motion the resolutions about discharging the parliament among 45- 60 days. In other words it is possible that the country may stay without parliament during two months and accordingly during all those activities the legislative body should be accomplishing may be stopped for two months.

The resident is not able to discharge the parliament with its own initiative. This may happen only following the constitution in cases:

- a) If the government and the program presented by the president will not be able to gain confidence three times repeatedly. This time president discharges the parliament and appoints special elections and the government will itself: appoints the prime-minister and agrees to him to appoint the ministers. This is rather complicated situation when releasing the parliament is justified. If the president declares distrustfulness three times

repeatedly, he should be given a possibility not to create governmental crisis and apply to this kind of method;

- b) If declares distrustfulness to the government and the president does not agree to this decision, the parliament is authorized during 90 to 100 days again declare distrustfulness. This time the president is able to discharge the parliament. If the government is powerless accomplishing its functions, fulfilling the governmental program and declares distrustfulness to the president twice, the president, on its part is authorized to make decisions for the government – discharge the parliament. This kind of situation is more real when the government is the supporter team of the president and the parliament is opposition;
- c) Parliament may be discharged when the prime minister puts under doubt the trustfulness of the government in the parliament for discussing the issues around the bills concerning the budget of the country, tax code and the structure of the government, the rule of authority and operations. If the parliament will not declare trustfulness, the president is authorized to discharge again the parliament.

This are those three cases considered in the constitutional changes but not one of those conditions may be used to discharge the parliament, if:

- before 6 months after electing the parliament
- 6 months before president authority
- When the country is in state of war or emergency situation
- The parliament accomplishes impeachment procedures;

Consequently during impeachment procedure the president will not be able to discharge the parliament. The issue of impeachment may arise in case abrogating the constitution, high treason or making criminal crime. Parliament makes impeachment procedure beside the danger of its discharge. The fact that the parliament may do this for blackmail on the president or preventing to be discharged is groundless as the basis for the impeachment is defined in the constitution and rising this issue with out motivation (or more precisely on the non constitutional basis) is inadmissible. Together with this, when the procedure for declaring the trustfulness or distrustfulness to new membership of the government is being accomplished arising the issue for dismissing the president with the impeachment is inadmissible.

Discharged parliament is gathered when the president declares the state of war or emergency situation it has to approve whether the state of war or emergency situation will be continued or not. It is admissible to approve this kind of “decree” concerning the situations mentioned above, but what does it mean “continuation”? If the state of war and emergency situation had already been declared, so how was the parliament discharged? Would not be this non constitutive? This term is some how obscure and needs more definition.

If the parliament is not gathered during 5 days and does not approve (continue) president decree on stating (continuing) emergency situation, stated emergency situation is abolished, and the state of war is abolished when the parliament will not approve president decree on

stating (continuing) state of war during 48 hours. The president presents the parliament the decision on making the truce during 48 hours.

The president needs the consent of the parliament to stop the operations of self-governmental institutions and other representative bodies of territorial units or to discharge them in cases considered in the constitution. The president appoints and discharges Ambassadors of Georgia and other diplomatic representatives.

After constitutional changes the president has gained new and rather a serious right when he was mandated the right to promulgate the act similar to the rule of law – decree, during the period after discharging the parliament and gathering the first session of the new one. This decree concerns tax and budgeting issues. But it will lose its value if the newly elected parliament from the first session during a month will not approve it, in other words this decree may be active at least during 4 months. This is not small period in tax and budgeting sphere.

If before the changes the president has a legislative initiative right without any restriction, after this changes he has this right in “special occasions” only. With the president demand the parliament discusses the bill he presents out of term.

Once in a year, the president reports to the parliament about the most important issues of the country.

In case the president is not able to accomplish his authorities or his authority is stopped before the term, president responsibilities are directed to the head of the parliament. Person responsible for the president operates in the framework of the constitution and the responsibility for organizing special election lays on the parliament.

Each issue mentioned above is discussed as the most important issue of president and parliament relationship. On the basis of this they are controlling and balancing each other in order to avoid misbalance of the government and development of damaging situations.