



Division of authority in Georgia

When evaluating the performance of any country or government on its promises of liberal and democratic reform, it is important to first assess how power and authority are divided in the given country and how we can qualify it in terms of regime. Only after this can we talk of accountability and commitment.

This report looks at the division of power in Georgia both horizontally—among the branches of the government on the national level—and vertically—between the central and local governments. We believe that this will serve the reader as a backdrop for better understanding more specific issues of governance and the Georgian government's reform performance to be discussed in future publications.

The type and structure of the government at the national level

The debate about which institutional arrangements are most conducive for democracy—both regarding transition to democracy and its consolidation—is a classic, yet unresolved issue of contemporary political science. Some argue for the virtues of parliamentarism and question the effectiveness of the presidential system, while their opponents back the effectiveness of the checked and balanced style of presidentialism.ⁱ The issue of institutions is especially important for countries that have only recently had the opportunity to build a state of their own and determine their own destiny. Georgia too had to make the choice after acquiring independence. Initially, in the Constitution adopted in 1995 the choice was made in favour of presidentialism. After the Rose Revolution of 2003, however, the post-revolutionary parliament in February 2004 adopted amendments that formally transformed the structure into a semi-presidential one. But the labels do not always correspond with the content and Georgian institutional structure is a case in point.

Semi- Presidentialism (or Super-Presidentialism) Georgian Style

Presidentialism is mostly associated with more concentration of power and authoritarian trends. The only exception all agree on is the USA. For this reason, transfer to a more dispersed semi-presidential system that allows for the cabinet and separation of capacities of head of state and head of government was generally welcomed both nationally and internationally. But what the changes brought in fact was the even further strengthened authority of the president, increasing his capacity while diminishing his share of responsibility. What Georgia has got is effectively a *super*-presidential system, which is much likened to the Russian Federation and Central Asian states.

Although the creation of the government (cabinet of ministers) altered the existing constitutional framework and drove it away from presidentialism, formally creating the semi-presidential system, in reality the body lacks independence. Effectively, the branches are neither separated, nor equally empowered for checking each other. Although the semi-presidential system in theory implies limited authority of the president, empowers government and strengthens parliament, the Georgian experiment produces a very different situationⁱⁱ.

This divergence between labels and content has been noted by many analysts, the earliest being the Venice Commission of the Council of Europe, whom Mr. Saakashvili had asked to comment on the draft



amendments. Unfortunately, none of the Commission's recommendations were taken into account because the amendments had already been adopted by the time the Commission gave its opinion.

According to the current constitution the parliament is at president's mercy – it can be quite easily dismissed, while the cabinet largely remains immune from parliamentary no-confidence, if the president chooses so. In cases if the parliament does not approve presidential candidate(s) for the prime minister or his/her cabinet, the president himself is authorised to appoint them and sack the parliament. The cabinet is rendered to be a presidential body, rather than a branch of its own. President is given quite extensive legislative powers, especially regarding the state budget. Additionally, he has assumed certain functions that are traditionally reserved for the judiciary.

These amendments to the constitution have an interesting story. The draft amendments had originally been prepared under former President Shevardnadze and were presented for discussion in 1998. The opposition, the young reformist faction that had by then already broken away from Shevardnadze's Citizens' Union party, strongly opposed the amendments, calling them an attempt to turn Georgia into an authoritarian state. This opinion was also shared by many international constitutional law experts. Mr. Shevardnadze, in turn, did not bother to submit the bill to parliament. In 2004, when Mr. Saakashvili submitted the amendments, the required one month deliberation period was skipped, since the draft had already been subjected to public discussion under Mr. Shevardnadze. In this case, the context and the outcome of these discussions were ignored.

Aside from institutional preferences, the conduct of the government is cause for concern. The constitution has proven to be open to completely changing and rewriting. Vakhtang Khmaladze, former MP involved in the constitutional process since early 1990s, warns that such irresponsible treatment of the founding document can not possibly produce the sense of security and continuity, even in the legal sense, that is essential for consolidating a democracy. At the time of writing this report, the parliament is about to start hearing further amendments to the constitution, proposed by the president on October 24. The draft has not yet been adopted, since the one month period is envisaged by the constitution for debating the constitutional amendments before their adoption, thus the text is not yet final. Still, the discussion of current proposal can be useful.

The most controversial of all proposals is the one setting simultaneous presidential and parliamentary votes for 2008, the concrete date subject to the president's decision. Usually the two elections are deliberately separated by any democratic constitution as a matter of principle, as to insulate the influences of the parties/personalities and circumstances. This then produces better balance of power and influence among the branches and provides safeguards for ensuring representation and diversity. Besides, with this arrangement the current parliament's mandate will be extended by several months, while cutting the period of current presidency by several months as well.

Aside from all the content-based criticism, the very fact that the executive for the second time in two years is changing the fundamental rules without practically any public deliberation is worrying. Here under insufficient discussion we are not overlooking the one month constitutional period, but besides this safeguard there needs to be at least some consensus on the need for changes and on their nature. When no amendment is on the political agenda and the very idea of changes is only rumoured about several days prior to submission, the process can hardly be regarded as democratic. Once again, the public and even many MPs are only able to voice their opinion and participate post factum – when the decision is already made, with the need of prior consensus building largely ignored. This situation is aggravated (or may be, caused) by the fact that the ruling party has been able to secure the constitutional



majority in the parliament, meaning that the president does not actually need the support of any party other than his own.

Unlike true semi-presidential systems, in Georgia the government is responsible and accountable to the president, not the parliament. In fact, the prime minister and the government are so much reliant on the president that right to dominate the parliament and the ability to disband it seem to be the real motive behind changing the system. Most vividly this is expressed by the provision of the Constitution stipulating that the government should resign upon the arrival of the new president (Art. 80, 1), summing up the notion that the government is the arm of the president and distant from the parliament.

Although the parliament may vote confidence/no confidence to the government, this can only be regarded as irrelevant in the Georgian case, since the president may choose to share the parliament's opinion or not. In the latter case, he can dismiss the parliament. At the same time he can keep the government intact – not even in the interim/care-taker capacity, but practically permanently (Art. 81, 1). Essentially, the president can punish parliament for being too independent-minded or rebellious. Along the same lines is the situation with the confidence vote (Art. 80, 4): the president may nominate the same cabinet three times – even if the parliament objects. If the parliament fails to approve the nomination after the third time, the parliament may be disbanded and the government appointed by presidential decree. There is only one way for the parliament to ensure that its non-confidence leads to dismissal of the government: it must secure a three fifths majority for the motion. In the Constitution this is termed “unconditional no-confidence” (Art. 81, 2).

Extensive budgetary powers are yet another angle of Georgian presidential authority. The budget needs the president's approval to be introduced to the parliament, but additionally, if the parliament fails to approve it, this does not automatically bring about dismissal of the government. Rather, again the parliament is in danger of itself being disbanded. Subject to the president's will, the government may remain in place, and the draft budget is approved by the president (Art. 81, 4). Such extraordinary intrusion into the very exclusive duty of the parliament is practically unheard of for democratic regimes – no matter the type and structure.

The president's role in law-making is not limited to the budget only. He can initiate laws in parliament (Art 67, 1) and at the same time is given the power to veto, which is extremely hard to override (Art 68, 4). This coexistence of the two very important powers is a unique case for constitutional practices internationally. Even though the right to initiate legislation is limited to undefined “special circumstances,” in practice no extraordinary justification has yet been required.

Although the judicial system has been more immune from intrusions by law, the president has assumed important powers in this sphere as well. He may halt or abolish the acts of government or individual ministries if they conflict with the constitution, ordinary laws or the president's own acts (Art. 73, 3). Thus, not only are the president's acts assuming the powers of law, but he himself is acting as a judge, in fact assuming the authority of the Constitutional Court. On the positive side, under the current proposed amendments the president will cede the power of appointing all judges to the Supreme Council of Justice (of which he still remains a chair). This is undoubtedly a positive step toward ensuring the independence of the judicial branch and of the whole system of justice.



Devolution – or maybe not

Good and democratic governance, which Georgia has long pledged to implement, does not imply the proper division of authority and functions for better performance on the national level only. Equally important is securing a functioning democracy on the very low levels. Democracy can not consolidate if there is no grassroots practical knowledge and experience. But strengthening the system of local self-governance has not proven to be a priority for the government, despite the new law on local self-governance that was adopted in December 2005ⁱⁱⁱ. Contrary to the preamble that asserts that the law creates the foundation for local governance on the basis of the Constitution and the European Charter of Local Self-Government, experts agree that the document is far from encompassing the spirit of the Charter. Indeed, some civil society representatives who were initially involved in drafting the law resigned, citing ineffectiveness of the process and disagreement even on the most basic principles of the document. After drafting was completed, a coalition of non-governmental organisations published its criticisms and recommendations, practically none of which were taken into account during hearings.

Davit Losaberidze, local expert on self governance issues explains that besides the regular functions of being close to the people and delivering services, in new democracies like Georgia self governance also assumes two additional very important functions: breeding and empowering local elites (in place of clans) and controlling and countering disintegration through political decentralisation. Unfortunately, none of these objectives have been met by the current legislation. Instead, local governance has now been more distanced from the population. Georgia now has in effect two levels of governance: the national and local, on the regional (district) level. This has replaced previous three levels, where below the regional level, individual towns and villages/several villages united were entities themselves. Now only three or four cities remain as individual entities.

But it is not the very fact of clustering the formerly independent bodies into larger units of self governance that is disturbing. In fact, all experts shared the view that the previous system was made of entities too small to perform practically any of their functions. The need for reducing the number of self governing entities through mergers and clustering was and still is recognised, but arguably the government has taken this idea to the extreme. Experts warn that side effects will inevitably follow. To begin with, smaller and more distant rural communities will be sidelined by richer towns. There are no guidelines defining how the funds of the self governing unit (region, in our case) are to be divided. Thus, allocation of funds and financing projects could be determined by special interests rather than regional needs.

There is also another side of the problem: the cities/towns that contribute the greatest share to the common budget of the self governing unit are now deprived of the opportunity of using the funds exclusively to serve the needs of the city. Instead, they now are to support not only themselves, but rural and poorer villages at the discretion of the regional government. Previously, the latter function was to be fulfilled by the central government. This new system has also reduced the incentives for cities to be more effective and proactive.

The legislation envisages a formula through which equalising transfers should be made from the central budget to local ones, designated for the regions having per capita income below the national average of all regions. Although all parties agree that the very fact of having a formula in the law is a positive step, the concern is that the formula cannot possibly be operational and realistic due to ambivalent nature of its components.



Besides, the villages physically distant from the administrative centres will find it harder to access governance bodies, especially in mountainous regions. This will certainly be a factor in reducing democratic participation. It is feared that this might also serve as an additional force accelerating migration to towns and possibly abroad.

The real functional independence of the local self-governing bodies is questioned in several instances. First of all, the governor or the special representative of the president unrelated to the local democratic processes is still present in every region. Their status or practical duties in the context of self governance are not at all clear. Secondly, the promise of having the local executives popularly elected was not kept by the new law. The executives, the *gamgebelis* for the region and mayors for the self-governing cities, are elected by the local councils.

Most importantly, limitations are set by the law on administrative oversight of the bodies of local self governance. Oversight does not only apply to the legality of the decisions made by the local bodies. Rather, appropriateness of the decisions/actions is also to be checked. The local self governing body must either alter its decision at the directions of the oversight body, or refrain from action altogether. This can only be regarded as a limitation of the independence of local governance and ungrounded intrusion into the democratic process.

Not all NGOs are critical of the present scheme. The National Association of Local Authorities of Georgia (NALA) argues that the more complicated system takes longer to deliver the end product and the simplified system of regional governance is easier to administer. In addition, they argue that the new system will require fewer human resources, which was one of the problems of the old system.

The main problem is that the government seems uninterested in effective self governance. Instead of decentralising and empowering the general public, the government, especially the executive, is trying to further centralise governance in order to realise its own vision unhindered. The new system of self governance is in reality nothing new. Rather, what was presented as the new system was precisely how the two-tier local governance really functioned. Instead of revitalising the legally existing system the *de facto* status quo has been institutionalised.

Conclusions and Recommendations

While discussing general governance patterns in Georgia personalisation of power and authority is evident. Power of institutions tends to be contingent with the personal standing of their heads/executives, and not really having lives of their own. The Georgian parliament is a perfect example. Influential during Shevardnadze's presidency, it now performs mostly the rubber stamp function for the government of Saakashvili. Local governance need not be mentioned here – it has never been given either considerable authority or independence for being counted as a major force in national politics.

At present, there is practically no division of authority or of competences in Georgia. No institution/agency is immune from interference, at least in reality if not legally. Although this is argued to be a way for using the window of opportunity for quickly reforming and rebuilding the Georgian state, supporters of this idea clearly miss the point. A functioning state, especially a democratic one, cannot be built overnight at the orders of a small well-intentioned group. Democracy requires exercise of democratic processes in which participation is guaranteed and important institutional changes are carefully deliberated upon before enactment.



To ensure the latter, practices in other post-Soviet countries can be of use. The Moldovan model – although not yet perfectly functional – provides an interesting example. There the parliament volunteered to publish draft bills on its web site 15 working days prior to the formal introduction of the bill through the legislative process. This ensures that civil society is allowed to submit comments, opinions or proposals. Thus Moldovan civil society is given the chance to influence decision-making, unlike the Georgian case, where information is not provided in advance and comments can most often be made post factum only.

The Georgian government should recognise that participation needs to be granted for all stakeholders. In this case, the most important stakeholder is the public, which through its local representative bodies and the civil society organisations ought to be taken into account.

The current policy of centralising power at all levels in the hands of the executive – meaning the president and not really the cabinet, can only be implemented in the one party system. If the opposition makes significant gains in the next parliamentary elections, the result can be political turmoil. The president will be much more likely to use the power of dissolving parliament vested in the current constitution, further endangering political stability. Then drawing on the previous experiences in turn the constitution can be further remade to suit the plans of any future winner. Only through ownership and democratic process can a constitutional democracy and a modern state function.

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¹ See: Linz, Juan (1990): The Perils of Presidentialism. Journal of Democracy, vol. 1 Issue 1 pp. 51-69;

Linz, Juan (1990): The Virtues of Parliamentarism. Journal of Democracy, vol. 1, Issue 1 pp. 84-91;

Mainwaring and Shugart (1997) Juan Linz, Presidentialism, and Democracy: A Critical Appraisal. Comparative Politics, vol. 29, Issue 4, pp. 449-471;

Lipset, Seymour Martin (1990): The Centrality of Political Culture. Journal of Democracy, vol. 1 Issue 4, pp.80-83

² Professor Herman Schwartz, constitutional law expert member of the so called ‘Chicago Group’, the constitutional commission of experts drafting the Georgian constitution of 1995, commenting on the draft amendments prepared under Mr. Shevardnadze notes that Georgia’s new model is very different from the French one, despite the claims of modelling after it and even taking into account the misgivings of the French system. Even if the two were similar, Schwartz thinks that adopting such a model would probably not be a wise decision for a country like Georgia.

³ The new code became effective with the election of new local governance bodies on October 5, 2006