

THE 1921 CONSTITUTION OF GEORGIA: A SYMBOL OF THE INDEPENDENCE OF GEORGIA

ABSTRACT

The founders of the Democratic Republic of Georgia (1918-1921) considered the drafting of the basic law of the country, the Constitution, to be particularly important and saw its adoption as the most significant event after the Declaration of Independence. The Constituent Assembly of Georgia (1919-1921) drafted and adopted the Georgian Constitution on 21 February 1921, which holds its honorable place in the history of world constitutionalism. It is based on two basic principles – the freedom of the nation and the freedom of an individual. The Constitution provided solid foundation for the development of the Georgian state with its coherent democratism. In Soviet times, the 1921 Constitution was a symbol of what the Georgian State should have been like. And after the restoration of independence, it was indisputable, that the 1921 Constitution had to serve as the basis for the new constitution of the country.

I. DRAFTING THE CONSTITUTION – THE MAIN TASK OF THE CONSTITUENT ASSEMBLY

The process of the drafting and adoption of the Constitution lasted for almost the whole period of existence of the Democratic Republic of Georgia. The working process of the basic law of the country had started even before the Declaration of Independence. During the short period of the existence of the Transcaucasian Federation (from 22 April to 26 May 1918), the National Assembly of Georgia instructed the group members, who were elected from Georgia and were working on the Transcaucasian Constitution, to also start working on the Constitution of Georgia, as it became clear, that the Constitution of the Federation could not be written until the constitutions of the subjects appertaining to the Federation would be established.

The Transcaucasian Federation was dissolved soon after and the National Assembly of Georgia (hereinafter the ‘Parliament of Georgia’) elected the Constitutional Commission (from 6 June 1918 to 8 March 1919), the working materials of which were passed on

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to the Constitutional Commission of the Constituent Assembly (from 18 March 1919 to 21 February 1921)¹. However, the Constitutional Commission of the Constituent Assembly decided to start working from scratch.²

In view of the composition of the Constituent Assembly, which was dominated by the Georgian Social Democratic Workers' Party,³ the drafting and adoption of the Georgian Constitution practically fell into the hand of one political party. In spite of their own socialist ideology and the revolutionary sentiments felt by the parts of masses, the Georgian Social Democrats separated themselves from those political actors, who called for an immediate start of the 'building of socialism'. In the opinion of the Georgian Social Democrats, there were no conditions in the country to render the start of socialist transformations possible and the presence of socialists in the government had to be used for the building of a coherent democratic republic in Georgia.

The first Chairman of the Constitutional Commission, the Minister of Justice of the Democratic Republic of Georgia, *Rajden Arsenidze* provides interesting information about the work of the Commission: 'As we started to write the draft constitution, we had the constitutions of every rights-based democratic republic of the world in hand. We worked almost incessantly, day and night. Every article, every provision, every idea led to lots of debate and even conflicts, but in the end, we would reach an agreement, because every member of the Constitutional Commission was fully aware and treated this very responsible task with complete seriousness. It should be noted that we have adopted many basic ideas from the Constitution of Switzerland and adjusted them to the reality of Georgia; However, we have also taken some principles from the constitutions of the other rights-based democratic states.'⁴

¹ At its third sitting, on 18 March 1919, the Constituent Assembly elected 15 members of the Constitutional Commission, along with the other commissions. The Commission was composed of the representatives of the party factions of the Constituent Assembly. The Social Democrats had 10 members in the Commission. The National Democratic and the Socialist Federalist Parties had two members each, whereas there was only one Socialist Revolutionary in the Commission. The formation of the Commission was not subject of debate. The factions had determined their candidates in advance. The Social Democratic Party representatives in the Commission were *R. Arsenidze*, *S. Japaridze*, *P. Sakvarelidze*, *L. Natadze*, *V. Japaridze*, *K. Andronikashvili*, *R. Chikhladze*, *M. Rusia*, *G. Pagava* and *P. Tsulaia*; the National Democratic Party representatives were *S. Kedia* and *G. Gvazava*; the Socialist Federalist Party representatives were *I. Baratashvili* and *G. Laskhishvili*; the Socialist Revolutionary Party representative was *I. Gobechia*. Later on, the representatives of the new factions were added to the Constitutional Commission as well, namely *G. Veshapeli* from the National Party and *T. Avetisian* from the Dashnaks.

² It seemed easy to ensure continuity in the work of the Constitutional Commission, since the Commission was still dominated by the Social Democratic Party members and several members of the Constitutional Commission of the Parliament (*S. Japaridze*, *P. Sakvarelidze*, *R. Arsenidze*) were also elected in the Constitutional Commission of the Constituent Assembly.

³ As a result of the elections of February 1919, 109 out of the 130 members of the Constituent Assembly were Social Democrats. After two additional elections the number of the Social Democrats was reduced to 102, however this did not change the balance among political actors represented in the Constituent Assembly.

⁴ *Inasaridze K.*, The Short 'Golden Age', Democratic Republic of Georgia 1918-1921, Radio Documentation

The fundamental principles of the Georgian State were set forth in the Act of Independence of 26 May 1918. According to the decision of the Constitutional Commission, not only did the principles stipulated in the Act of Independence serve as the basis for the relevant articles of the Constitution, but the Act of Independence itself had to be attached to the Constitution as an introductory part. *Giorgi Gvazava* commented that the Act of Independence ‘is the birth of our state’, ‘... it is a fact from which our rights emanate and flow...’.⁵

The issue addressed firstly was the meaning of the ‘democratic republic’,⁶ the foundation of which was declared in the Act of Independence. All the parties delivered their opinions on this issue. The matter was resolved on the basis of the vision of the representatives of the Social Democratic Party, which believed in the synthesis of two forms of the democratic republic, namely the direct and the parliamentary democracy.

It was decided to divide the constitution into chapters, and chapters - into separate articles. The members of the Commission assigned to the drafting of different chapters worked on them independently and afterwards their drafts were presented to the Constitutional Commission, which discussed them at its sittings.⁷

II. MEASURES TO ACCELERATE THE WORK ON THE DRAFT CONSTITUTION

The drafting of the Constitution by the Commission was delayed, which concerned the opposition parties. In October 1919 the faction of the National Democrats in the Constituent Assembly raised the issue before the Presidium of the Constituent Assembly in order to demand the Constitutional Commission to submit the Draft Constitution within one month. The Faction stated that it was the main function of the Constituent Assembly to draft the Constitution and there was still no progress in this regard despite the passing of 7 months. Due to the internal as well as the foreign conditions, it was necessary to hasten the drafting of the Constitution. From the perspective of the internal situation in the country, it was expected, that ‘such a historical act will put the internal

(Munich), 1984, pp. 254-255 (in Georgian).

⁵ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 859, p. 139 (in Georgian).

⁶ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 181, p. 17 (in Georgian).

⁷ The initial outline of the Draft Constitution looked as follows: 1. General Provisions (*R. Chikhladze, P. Sakvarelidze*); 2. State Territory (*P. Sakvarelidze, R. Chikhladze*); 3. Rights and Duties of Citizens of the Republic of Georgia (*K. Japaridze*); 4. Army of the Republic (*K. Andronikashvili*); 5. State Finances (*Sp. Kedia*); 6. Judiciary (*I. Baratashvili*); 7. The State and Church (*L. Natadze*); 8. Local Self-Government (*M. Rusia*); 9. Parliament; 10. Public Officials (*P. Sakvarelidze, R. Chikhladze*); 11. Rights of National Minorities (*G. Laskhishvili*); 12. Revision of the Constitution (*G. Naneishvili*); 13. Right to vote (*G. Pagava, P. Tsulaia*).

life of our country on the path of peace, raise awareness of the people about their rights and establish propriety in the country'.⁸

The National Democratic Faction asserted that the adoption of the Constitution would be even more important from an international perspective. It was up to the victorious states of the First World War to recognize or not to recognize the newly founded states, including Georgia. The support of the Western countries would be granted to those newly founded states, whose 'national spirit and will' would be directed towards 'the formation of a rights-based state and the establishment of propriety instead of anarchy and civil war'.⁹

As a response, the Chairman of the Constitutional Commission at the time, *Rajden Arsenidze*, declared that the work on the Draft Constitution was reaching its end and the 'major part of the Constitution was already drafted'. He promised the Constituent Assembly that the Draft Constitution would be submitted to it in January 1920.¹⁰ Moreover, the Constitutional Commission decided to present the already drafted chapters of the Constitution to the public for its feedback.¹¹ According to this decision, the following chapters were published in 1919 in the 285th and 298th issues of the newspaper 'Republic of Georgia': 1. Executive branch; 2. Rights of the citizen; 3. Social rights; 4. Learning and Education; 5. Relationship of the sexes, 6. Armed forces of the Republic; 7. Judiciary; 8. State and Church; 9. Local Governments and 10. Public Officials.

In January 1920 the Social Democratic Faction of the Constituent Assembly demanded sternly from the Constitutional Commission to accelerate its work on the Constitution.¹² The Presidium of the Constituent Assembly expressed its concerns as well. On 7 February 1920 the Constitutional Commission was sent a special address, in which the Presidium reminded the Commission of the promise to finalize the work on the Draft Constitution in January 1920 and noted that 'January has passed, but there are no signs of the submission of the draft to the Constituent Assembly; neither it is clear to the Presidium, when we can expect its submission'.¹³

The work of the Commission was indeed seriously flawed. The progress of the work was clearly unsatisfactory. For example, on 24 December 1919, they started discussing the

⁸ The Central State Historical Archive of Georgia, Foundation 1836, Directory #1, File no. 46, p. 3 (in Georgian).

⁹ The Central State Historical Archive of Georgia, Foundation 1836, Directory #1, File no. 46, p. 3 (in Georgian).

¹⁰ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 191, p. 67 (in Georgian).

¹¹ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 180, p. 31 (in Georgian).

¹² The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 180, p. 62 (in Georgian).

¹³ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 191, p. 67 (in Georgian).

provisions on ‘social rights’, they reached Article 7 and postponed the rest for the next sitting. However, they returned to the discussion of this issue only on 4 February 1920. On 24 January 1920, *Pavle Sakvarelidze* proposed to collect all the materials prepared by the Commission and to print the Draft Constitution, which would be distributed among the members of the Commission and the factions. Moreover, he proposed to ascertain ‘which issues were still unconsidered’¹⁴. The Commission accepted this proposal unanimously.

Certain organizational changes were also carried out in the process. The Chairperson of the Constitutional Commission, *Rajden Arsenidze* was appointed as the Minister of Justice. Therefore, the issue of his substitution with a new member from the Social Democratic Faction and then the election of the new Chairperson of the Commission was raised at the sitting of 24 January 1920.¹⁵ On 30 January 1920, *Rajden Arsenidze* was replaced by *Konstanstine Japaridze* as a member of the Constitutional Commission.¹⁶ However, *Rajden Arsenidze* continued his active participation in the work of the Constitutional Commission.

At the sitting of 4 February 1920, *Pavle Sakvarelidze* was elected as the Chairperson of the Constitutional Commission and *Sergi Japaridze* was elected as his associate.¹⁷ The changes led to improvements in the work of the Commission. The records of the Constitutional Commission serve as evidence of the improvement. They are well-structured, re-printed and often edited by the Chairperson.

In order to alleviate the dissatisfaction caused by the delays in preparation of the Draft Constitution, the Constitutional Commission decided once again to publish those chapters of the draft that were ready at the moment. The following chapters were published in the issue of 17 February 1920 of the newspaper ‘Republic of Georgia’: 1. State Finances; 2. State Territory; 3. General Provisions; 4. The Parliament; 5. Citizenship.

It is noteworthy, that from the end of January to the beginning of April 1920, the same newspaper published a series of letters of *Pavle Sakvarelidze* on the Constitution of Georgia. These were commentaries on the basic provisions of the already published chapters of the Draft, aimed at raising public awareness on the constitutional issues. In spring 1920, the Constitutional Commission focused on the elaboration of a special chapter on the rights of minorities, which turned out to be quite time-consuming.

¹⁴ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 181, p. 64 (in Georgian).

¹⁵ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 181, p. 65 (in Georgian).

¹⁶ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 181, p. 411 (in Georgian).

¹⁷ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 181, p. 66 (in Georgian).

III. THE FINAL EDITING OF THE DRAFT CONSTITUTION BY THE CONSTITUTIONAL COMMISSION

At the sitting of 14 February 1920, the Constitutional Commission debated the system of the structural arrangement of the Constitution. *Pavle Sakvarelidze* proposed to divide the Constitution into chapters and then into Articles. According to him, ‘such a system should be considered the best in order to avoid ambiguity’.¹⁸

On the sitting of 6 March 1920, the Constitutional Commission elected the so-called Minor Commission, composed of *Akaki Chkhenkeli*, *Pavle Sakvarelidze* and *Giorgi Gvazava*. The Minor Commission also invited the former Chairmen, the Minister of Justice, *Rajden Arsenidze*. It was the task of the Minor Commission ‘to revise the Constitution, to review the feedback and to systematize them’. The Minor Commission had to submit the reviewed materials periodically to the bigger Commission for its final decision.¹⁹ The ‘revision’ implied the re-consideration of the already drafted parts of the Constitution for their further amendment. It was decided to carry out this work by chapters and the authors of the chapters had to be informed in advance about the discussion of the respective chapters.

At the sitting of the Constitutional Commission of 6 March 1920, an Editorial Commission was formed along with the Minor Commission. The task of the former was to make editorial changes to the Draft Constitution. The Editorial Commission was composed of *Akaki Chkhenkeli*, *Pavle Sakvarelidze* and *Giorgi Gvazava*. Moreover, the prominent activists, like *Kirile Ninidze*, *Ivane Javakhishvili*, *Ivane Gomarteli*, *Grigol Kipshidze*, *Ekvtime Takaishvili*, *Varden Kipiani* and *Ivane Karichashvili* were invited to the Commission get involved in its work.

At the sitting of the Constitutional Commission of 21 April 1920, when the work on the Draft Constitution was close to its end, the issue of its publication was raised. Previously the Commission had decided to publish the Draft Constitution together with its commentary. At that point, the commentaries on every chapter were not available. It is noteworthy, that the Commission deemed it particularly important to publish the commentaries on the Constitution. As *Pavle Sakvarelidze* stated, that ‘the commentaries will be particularly important material for the history and moreover, it will make it easier for the public presently to learn about the Constitution and become acquainted with it’.²⁰

¹⁸ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 180, p. 160 (in Georgian).

¹⁹ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 181, p.139 (in Georgian).

²⁰ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 181, p. 210 (in Georgian).

All the members of the Commission shared the opinion, that the commentaries had to be published by all means. Therefore, the previous resolution on the publication of the commentaries was maintained. However, at the same time they decided to print the Constitution ‘as a draft, without its commentaries’²¹, since the commentaries were not finished at that time.

At the sitting of 22 May 1920, the Constitutional Commission made the final decision to ‘print the Draft Constitution without commentary for its presentation to the public’²² and asked the respective permission from the Presidium of the Constituent Assembly. The first reading of the text of the Draft Constitution, edited by the Editorial Commission, was carried out at the sitting of the Constitutional Commission of 2 June 1920. On the same day, it was decided not to make any additional amendments to the text and ‘submit the Constitution for print today’. The Minor Commission was assigned with the task to proofread the typeset and enter the necessary amendments in the print-ready text of the Constitution.²³

On 8 June 1920, the Constitutional Commission submitted the printed Draft Constitution to the Presidium of the Constituent Assembly, delivered from the printing house. The Commission noted that they had also drafted an explanatory note with approximately 300 pages. However, it would take a long time to print the explanatory note, as it still required proofreading and some content-wise revision. Since the ‘submission of the Draft Constitution for review has already been late’, it was decided to print only the Draft Constitution at the moment and leave the ‘explanatory note project’ unpublished. However, it was noted that the explanatory note could be considered ‘as a material, which can be published later and can be used presently for the clarification of various issues’.²⁴ It is noteworthy that the full text of ‘the explanatory note project’ is not available in the materials of the Constitutional Commission, however, it can be assumed, that the commentaries on the separate chapters of the Constitution, that were saved in these materials, were parts of that note.

On 9 June 1920, the Presidium of the Constituent Assembly considered the Draft Constitution submitted by the Constitutional Commission and ordered that ‘as soon as it is printed, the Draft Constitution should be sent to the factions of the Constituent Assembly, its every member, the government and the agencies’.²⁵ Besides, a separate

²¹ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 181, p. 210 (in Georgian).

²² The Central State Historical Archive of Georgia, Foundation 1833, Directory # 1, File no. 181, p. 249 (in Georgian).

²³ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 181, p. 265 (in Georgian).

²⁴ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 181, p. 136 (in Georgian).

²⁵ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 863, p. 22 (in Georgian).

decision had to be adopted on the issue of the submission of the Draft Constitution to the Constituent Assembly for deliberations.

The Draft Constitution published in June 1920, consists of 17 chapters and 166 Articles. The Constitutional Commission paid particular attention to the structure of the Draft. As *Pavle Sakvarelidze* noted, the Constitutional Commission aspired ‘to align the contents of the chapters of the Constitution of Georgia with their titles, to devise simple and clear structure and to also ensure that it is easy to study’.²⁶ The structure of the Draft Constitution was adopted without further amendments by the Constituent Assembly.

After the publication of the Draft Constitution and the discussion of the constitutional issues at the Second Convention of the Social Democratic Party, a part of the leadership of the Party formed an opinion, that the deliberations on the Draft Constitution by the Constituent Assembly had to be launched immediately. On 8 July 1920, it was decided at the sitting of the Central Committee Presidium of the Social Democratic Workers Party of Georgia, chaired by *Noe Ramishvili* (and attended by *Aleksandre Lomtadze*, *Ioseb Salakaia*, *Vasil Tsuladze*, *Ilia Badridze*, *Silibistro Jibladze*), that the Constituent Assembly ‘should launch the deliberations on the Constitution and the budget immediately’.²⁷

The issue was raised again at the sitting of the Central Committee of 11 July 1920 (attended by *Noe Ramishvili*, *Aleksandre Dgebuadze*, *Vasil Tsuladze*, *Ioseb Salakaia*, *Evgeni Gegechkori*, *Seit Devdariani*, *Bagrat Mikirtumovi*, *Noe Khomeriki*, *Silibistro Jibladze*, *Noe Zhordania*, *Akaki Chkhenkeli*). *Evgeni Gegechkori* called for an immediate start of the deliberations on the Draft Constitution by the Constituent Assembly, as the adoption of the Constitution was important for ‘the foreign affairs’ and would help the legal recognition process of Georgia.²⁸ *Noe Zhordania* opposed this proposal and stated, that it would be impossible to immediately start the consideration of the Draft Constitution due to several reasons: (a) other political parties were not ready to start deliberations on the Draft Constitution and for that reason they ‘oppose the start of deliberations now’; (b) it was questionable whether they would be able to have the necessary quorum, as the representatives of other parties in the Assembly could ‘all go on vacation now’, then it would be necessary to have the ministers attend the sittings in order to constitute a quorum; (c) moreover, it would be ‘absolutely impossible’ that only the representatives of the Social Democrats consider and adopt the Constitution without the participation of other parties, as it would lead to ‘much dispute and discontent in the parties’; (d) it was also necessary to initiate a press campaign before starting the deliberation on the

²⁶ See the newspaper ‘Republic of Georgia’ of 8 February 1920 (in Georgian).

²⁷ The Central State Historical Archive of Georgia, Foundation 1825, Directory #1, File no. 130, p. 92 (in Georgian).

²⁸ The Central State Historical Archive of Georgia, Foundation 1825, Directory #1, File no.129, p. 52 (in Georgian).

Constitution and ‘there should be written a lot’ about the issue. Due to these reasons, *Noe Zhordania* declared that ‘the Government postponed the deliberations on the Constitution’.²⁹

Other members also participated in the debate and it appeared, that the majority of the leadership of the Social Democratic Party opposed the postponement of the deliberations. Thus, it was decided, that the deliberation should ‘not to be postponed. Deliberations should start now. There should be general debates, followed by the statements of our factions about the amendments and then the Commission will be instructed on further work’.³⁰ However, at the end, the attempt to immediately start deliberations on the Draft Constitution by the Constituent Assembly appeared to be futile.

IV. BEGINNING OF THE DELIBERATIONS ON THE DRAFT CONSTITUTION BY THE CONSTITUENT ASSEMBLY

The Rules of Procedure of the Constituent Assembly did not provide for a special rule for the deliberations on the Draft Constitution. Therefore, when the issue of the deliberations on the Draft Constitution appeared on the agenda, it raised the question whether to they should consider the Draft Constitution by the same rule applicable to ordinary laws, or to adopt separate procedural rules. Finally, it was decided that the Draft Constitution had to be adopted not in three readings, which was an ordinary rule, but in five readings.³¹

On 24 November 1920, at the extraordinary 59th sitting of the second session of the Constituent Assembly, the deliberations on the Draft Constitution started. The Chairperson of the Constitutional Commission, *Pavle Sakvarelidze* delivered the speech, which was followed by the extensive speeches of the representatives of the parties. The main political actors of Georgia had formed an official stance on the project of the Draft Constitution after the sitting of the Constituent Assembly of 8 December 1920.

The first sittings devoted to the deliberations on the Constitution demonstrated, that the deliberations would take a long time and holding one sitting per week would not

²⁹ The Central State Historical Archive of Georgia, Foundation 1825, Directory #1, File no.129, p. 52 (in Georgian).

³⁰ The Central State Historical Archive of Georgia, Foundation 1825, Directory #1, File no.129, p. 53 (in Georgian).

³¹ The first reading - General deliberations on the basic rules of the Constitution; The second reading – General deliberations on the basic provisions of individual chapters of the Draft Constitution; The third reading – Article-by-article deliberations of the individual chapters; The fourth reading – Deliberations on the amendments and corrections offered to eradicate the conflicts across various chapters; The fifth reading – Final editing of the full text. There had to be a 10-day interval between the second and the third readings, which could be used for the deliberations on the separate chapters.

be enough. Therefore, to accelerate the deliberations on the Draft Constitution, it was decided unanimously by the joint sitting of the Presidium and the representatives of the factions of the Constituent Assembly on 7 December 1920, that in addition to Wednesday, one more day had to be devoted only to the deliberations on the Constitution. They chose Sundays as such a day, namely the period from 12 to 3 p.m. Tuesdays would still be devoted to the ordinary legislative issues, Fridays – to the urgent issues and if there would be any time left, that time would also be used for the deliberations on the Constitution.³² This addition to the rule of deliberations on the Constitution was approved by the Constituent Assembly at its sitting of 7 December 1920.³³

V. DEBATING THE ORGANIZATION OF THE CENTRAL GOVERNMENT

The presentation of the Constitutional Commission practically expressed the position of the Social Democratic Party, but there were number of fundamental issues on which there was no uniform opinion in the party, as evidenced by the speech of *Noe Zhordania*. He emphasized the basic issues of the state organization and severely criticized the respective part of the Draft Constitution. Firstly, he considered it impossible to reconcile the institutions of the direct democracy, such as referendums and legislative initiatives, with the parliamentarism. In the parliamentary systems, the government is formed and dissolved at the will of the majority in the parliament. The parliamentary system implies governmental crises, which may be evoked by the disagreement with parliament even on the small, practical issues. If the parliament approves of the general policy direction of the government, in case of the disagreement on separate issues, the government has to obey and execute the resolutions of the parliament.

The second important controversy in the draft according to *Noe Zhordania*'s opinion, was the negation of the functions of president. He stated, that the presented system, 'is a true offspring of parliamentarism... the presence of a president is indispensable for parliamentarism'. For example, in the case of governmental crisis, the president continues to function and makes the necessary decisions. *Noe Zhordania* believed, that 'parliamentarism and the systems of democracy' had to be synthesized in such a manner that would allow overcoming the inherent flaws of the draft. He considered it necessary to elect the head of the government for a fixed term, who would also 'function as a president and representative of the state'. During the general deliberations on the Draft Constitution, the debates were mostly structured around the issues raised by *Noe Zhordania*. Moreover, the representative of the National Democratic Faction, *Giorgi*

³² The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 863, p. 84 (in Georgian).

³³ The Central State Historical Archive of Georgia, Foundation 1833, Directory #1, File no. 736, p. 226 (in Georgian).

Gvazava further emphasized these very issues in his speeches and categorically called for the introduction of the institution of president.

VI. CONSIDERATION OF THE PROPOSALS OF THE FACTIONS ON THE DRAFT CONSTITUTION AND THE ALTERNATIVE DRAFT OF THE SOCIALIST-REVOLUTIONARIES (SRS)

According to the rule of the deliberations on the Draft Constitution, the factions submitted their amendments to the Presidium of the Constituent Assembly by chapters in the fixed time. These amendments were later sent to the Constitutional Commission for their opinion. The Constitutional Commission considered the proposals of the factions at its sittings and found some of them acceptable (mostly those initiated by the Social Democratic Party). The proposals of the factions, together with the opinion of the Constitutional Commission, were sent to all factions prior to the article-by-article deliberations on the respective chapters to finally determine what part of them would be adopted. In view of its composition, the Constituent Assembly mostly adopted those amendments that were submitted by the Social Democratic Party.

At the sitting of the Constituent Assembly of 15 December 1920, *Ilia Nutsubidze* submitted the Draft Constitution prepared by the Socialist Revolutionaries (referred to as ‘SRs’) and by doing so, the SRs have chosen the path of full negation of the draft prepared by the Constitutional Commission. It appears, that the SRs hoped, the Constituent Assembly would hold deliberations on both drafts equally and this would provide an opportunity for their party to clearly separate themselves from other parties, to improve their reputation in public and to create an impression that their project was the true expression of the interests of the people.

The alternative draft presented by the SRs was denounced not only by the Socialist Democrats, but also by other parties (from 12 to 13 February 1921). It was decided that the draft submitted by the SRs would not be considered by the Constituent Assembly. The SRs faction could propose the relevant amendments during the deliberations on the Draft Constitution.

VII. DEBATE ON THE PROCEDURE OF ADOPTION OF THE CONSTITUTION

During the deliberations on the Draft, the heated debate took place on the issue of who would adopt the Constitution. There were two opinions established: 1. The Constitution had to be adopted by the Constituent Assembly, 2. In order to adopt the Constitution, a referendum had to be held – the fate of the Constitution had to be decided by the people. There were arguments on both sides. The supporters of a referendum argued, that it

would be an extremely democratic and logical step to approve the Constitution through a referendum. If the amendments to the Constitution could ‘only enter into force after the approval by the majority of the people’ (Article 147 of the Constitution), then the adoption of the Constitution itself should also require the approval of the people.

The Socialist Federalist *Samson Dadiani* supported holding a referendum and stated, that if the people were entitled to amend the Constitution, it ‘would be illogical not to ask the very same people in the beginning, whether they want this constitution’, as the people are the ‘only holders of sovereignty’. Therefore the ‘Constituent Assembly cannot grant anything to the people, since the powers of the Constituent Assembly itself are delegated from the people’.³⁴ The adoption of the Constitution through a referendum was categorically demanded by SRs, as they hoped that the draft prepared by the Commission would be dismissed by the people and this would create a momentum for the draft prepared by their party.

However, the majority of the Constitutional Commission was made up of the opponents of the referendum. In their view, the Constituent Assembly was elected exactly for the adoption of the Constitution. The decision of the issue was certainly depending on the position of the Social Democratic Party. The Conference of the Social Democratic Party of Georgia (from 19 to 20 January 1921) decided that it was necessary to accelerate the adoption of the Constitution and therefore it ultimately dismissed the idea of holding a referendum.³⁵ However, in the end the Constituent Assembly had to adopt the Constitution under such circumstances, which most probably nobody could have predicted.

VIII. WHEN WOULD THE CONSTITUENT ASSEMBLY FINISH THE DELIBERATIONS ON THE CONSTITUTION?

In January-February 1921 the Constituent Assembly of Georgia continued the deliberations on the Draft Constitution. The Social Democratic Party, which was in power in the Democratic Republic of Georgia and had constitutional majority in the Constituent Assembly, could finish the deliberations on the Draft Constitution relatively fast and adopt it, but the leadership of the Democratic Republic of Georgia considered the in-depth and long deliberations on the Constitution to be a fundamentally important political event for the country.

The deliberations on the Draft Constitution were protracted. On 20 January 1920, the Conference of the Social Democratic Party demanded the governing bodies of the party to finish the deliberations on the Constitution ‘no later than two months’.³⁶ Thus,

³⁴ See the newspaper ‘Popular Affairs’ of 21 October 1920 (in Georgian).

³⁵ See the newspaper ‘Unity’ of 23 January 1921 (in Georgian).

³⁶ See the newspaper ‘Unity’ of 23 January 1921 (Nr. 16), p. 2 (in Georgian).

the deliberations on the Constitution and its adoption had to end before mid-March 1920 and the Social Democratic Faction in the Constituent Assembly had to follow this decision. It is not beyond the realm of possibility that the Constitution would be adopted on 12 March 1921, on the day of the third anniversary from the time that the Constituent Assembly started its work.³⁷ By finally adopting the Constitution, the Constituent Assembly would accomplish its mission.

Whether it had been March 12th or any other day, the Constitution would by all means be adopted in spring 1921, which would be followed by the parliamentary elections pursuant to the Constitution in autumn. The further developments would be determined by the Constitution. Article 61 of the 1921 Constitution states: ‘The Parliament starts its work on the first Sunday of November, every year. The elections of the new parliament will be held in autumn, at the same time in the whole Republic, presuming that the newly elected members will attend the opening of the Parliament.’

Before the summoning of the new Parliament, the Constituent Assembly of Georgia would continue to function. This issue was addressed in Article 149 of the Constitution: ‘Until the first meeting of the first Parliament, the Constituent Assembly will fulfil the function of the Parliament.’

The first Sunday of November 1921 was November 6th. If the Soviet occupation had not occurred, this would be an important date in the life of the Democratic Republic of Georgia and it would enter the history of Georgian parliamentarism. But in reality, November 6th of 1921 turned out to be another blank Soviet day. One could feel the expectation of the anniversary of the ‘Great October Revolution’ in the Soviet newspapers issued on that day and the anniversary was celebrated the next day in Georgia, as well as in the rest of the Soviet Union.

IX. THE BEGINNING OF THE WAR OF FEBRUARY-MARCH OF 1921, THE ADOPTION AND PUBLICATION OF THE CONSTITUTION

The first Constitution of Georgia was not adopted hastily, as it was stated in the Soviet times³⁸ and this phrase has been circulating in some articles and the works of the scholars until now. The 1921 Constitution was not a rushed document. The Draft Constitution

³⁷ The opening of the Constituent Assembly of Georgia was coincided with the anniversary of the Russian February Revolution. Symbolically, this declared the fact that Georgia stayed loyal to the democratic ideals of the February Revolution.

³⁸ For example, *G. A. Eremov* wrote the following on this matter: ‘The Constituent Assembly hastily approved the Draft Constitution at the evening sitting ... Only four of its chapters were deliberated article by article and other chapters were approved without deliberations. Even the rules that they adopted for the approval of the Constitution were violated.’ *Eremov G.A., The Stages of the Development of the Constitution of the Soviet Georgia* (Stalin Tbilisi State University Publishing, Tbilisi), 1960, p. 110 (in Georgian).

had been developing for a long time and its deliberations had been ongoing in the Constituent Assembly since 24 November 1920. The agenda of the sitting scheduled on 16 February 1921 included the chapters 7-15 of the Draft Constitution for the article-by-article deliberations, whereas the last two chapters of the Draft had to be deliberated upon on February 17th. This would end the article-by-article deliberations of the Draft. As for the eradication of the possible conflicts across the chapters and the final editing of the overall text, the Constituent Assembly would not need a long time. However, the normal progression of the deliberations on the Draft Constitution was disrupted by the invasion of the Red Army of the Soviet Russia. The Democratic Republic of Georgia was subjected to a deadly threat.

The beginning of the war, the battles occurring close to Tbilisi, naturally affected the work of the Constituent Assembly. The deliberations on the Draft Constitution were further accelerated. The speakers, as it was noted in the press of that time, tried to express their positions in the succinct and precise manner. On 21 February 1921, the Constituent Assembly of Georgia unanimously adopted the Constitution of the Democratic Republic of Georgia at its extraordinary sitting and accomplished its mission. Later, the member of the Constituent Assembly, *Giorgi Gvazava* recalled: ‘The Constituent Assembly continued to work ardently, even when the city was under the attack of the Russian Army, you could hear the cannons and bombs exploding in the sky... We dissolved only in the morning, when we had finally approved our Constitution – the basic laws of the Georgian Republic.’³⁹

On the next day, on 22 February 1921, the Constituent Assembly of Georgia approved the French translation of the Constitution of the Democratic Republic of Georgia, which was printed later in France. It has an inscription: ‘The French translation was approved by the Constituent Assembly on 22 February 1921.’ There is no other information available about the sitting of the Constituent Assembly of 22 February 1921.⁴⁰

Article 11 of the 1921 Constitution stated: ‘After its approval and adoption, the Constitution should be published by the Constituent Assembly along with the signatures of its members.’ However, there was no time to print the Constitution in Tbilisi. The Government of Georgia fled first to Kutaisi, where the Constituent Assembly held its sitting on February 28th and then spent the period from March 10th to March 17th in Batumi before emigrating from Georgia.

The Constitution was printed in Batumi, most probably, at the end of February or the beginning of March, when the Government was already in Batumi in the then famous printing house of *Nestor Khvingia*. The Constitution was entitled as follows:

³⁹ *Gvazava G.*, Georgia and the National Democratic Party (The Second Letter, Paris), 1928, p. 11 (in Georgian).

⁴⁰ *Iakobashvili I.*, On the French Translation of the 1921 Constitution of Georgia, in: ‘Georgian Parliamentarism’, Volume II, N1(3), 2020, pp. 28-29 (in Georgian).

‘The Constitution of Georgia, adopted by the Constituent Assembly of Georgia on 21 February 1921.’

It turns out that *Nestor Khvingia* was the owner of the printing house, that was technically well-equipped by the standards of that time and in view of the books and newspapers printed by him, he seemed close to the ideology of the Social Democratic Party governing Georgia.⁴¹

X. THE ISSUE OF THE APPLICATION OF THE 1921 CONSTITUTION

It is often noted about the application of the 1921 Constitution in the scholar and journalistic works, that ‘the 1921 Constitution had practically never been applied’. Such an argument depicts the reality, that the Constitution was adopted under the war and Georgia lost this war, the whole of the territory of the Democratic Republic of Georgia was occupied by the Soviet Russia and Turkey.

With regards to the application of the Constitution, it is stated sometimes that ‘it was in force for only 4 days’, so from the day of its adoption until February 25th, when the Georgian Army left Tbilisi. However, the war continued for another two weeks after the surrender of Tbilisi and the Democratic Republic of Georgia continued its existence. The Government of *Noe Zhordania* left Georgia after March 17th. *Karlo Inasaridze*, the prominent representative of the Georgian emigrants viewed the issue of the application of the 1921 Constitution in exactly same light. He stated that ‘the application of the Constitution ceased in Georgia on 18 March 1921, when the Soviet Russian Red Army conquered the independent Georgia’. *Karlo Inasaridze* differentiated between the *de facto* and *de jure* application of the 1921 Constitution. He noted that ‘the application of the Constitution of the independent Georgia has ceased *de facto* after the Bolsheviks took over our country, however *de jure* it is still in force’.⁴²

What was the attitude of the people, who worked on the basic law of the land towards the issue of the application of the 1921 Constitution? The Constituent Assembly adopted and published the Constitution of Georgia, as a result the Constitution entered into force. Article 10 of the Constitution states: ‘This Constitution is applicable at all times and incessantly, unless the Constitution itself states otherwise.’ Such cases of the non-application were provided by Article 43, namely, in case of an insurgence or a war the Parliament was authorized to temporarily suspend certain guarantees of rights. Under

⁴¹ *Sioridze M.*, The Place, Time and Circumstances of the Printing of the First Constitution of Georgia, in: ‘At the Beginnings of the Georgian Constitutionalism – 90th Anniversary of the 1921 Constitution of Georgia (Materials of the Scientific Conference)’, the Center for Research and Promotion of Constitutionalism, 2011, p. 47 (in Georgian).

⁴² *Inasaridze K.*, The Constitution of Georgia and Its Roots, in the Collection: *K. Inasaridze*, Political Culture (Paris), 1992, p. 69 (in Georgian).

Article 44, in case of a widely spread epidemic the Government was allowed to suspend the application of several articles of the Constitution temporarily.

Once it became applicable, no one could suspend the 1921 Constitution entirely. It was allowed to suspend some of its articles in emergencies, to revise all of its articles as a result of constitutional amendments, except for the form of government, but it did not provide for the mechanism of its total suspension. The information widely spread in the Soviet scholarship, that the Constituent Assembly ‘adopted the resolution on the temporary suspension of the Constitution of Georgia’⁴³ at its last sitting on 17 March 1921, is false. The Constituent Assembly had no power to suspend the Constitution.

Unfortunately, the stenogram of the last sitting of the Constituent Assembly was not found. However, that sitting and the resolution adopted on it, is mentioned in the memoirs of the Colonel *Aleksandre Zakariadze*, who did not mention anything about ‘the temporary suspension of the Constitution’.⁴⁴

‘The Constituent Assembly in Batumi has decided unanimously to send the national government of Georgia, headed by Noe Zhordania, abroad. He was allowed to form the coalition government with the following composition: two representatives of the Social Democrats, one representative of the National Democrats and one representative of the Socialist Federalist Party. Mr. Noe Zhordania was allowed to take the specialists and persons important for his work with him.

The Government was assigned with the task to protect the interests of Georgia and the Georgian nation before the the governments and nations of the globe...

*This was the final resolution of the freely elected Parliament of the free Georgian nation. Therefore, until the Georgian nation is free and has the real opportunity to freely elect its parliament, this resolution stays in force for every Georgian and citizen of Georgia.*⁴⁵

The suspension of the Constitution is also not mentioned in the memoirs of *Iona Todua* on the work of the Constituent Assembly in Batumi.⁴⁶

When referring to the last sitting of the Constituent Assembly in Batumi, *Karlo Inasaridze* also says nothing about the suspension of the Constitution: ‘On 16 March 1921, the Constituent Assembly of the Democratic Republic of Georgia held its last sitting in Batumi and assigned the government of Georgia chaired by *Noe Zhordania*

⁴³ *Eremov G. A.*, The Stages of Development of the Constitution of the Soviet Georgia (Stalin Tbilisi State University Publishing, Tbilisi), 1960, p. 110 (in Georgian).

⁴⁴ The memoirs of *A. Zakariadze* were given to *G. Sharadze* in 1990 and he later published this work fully – *Zakariadze A.*, Democratic Republic of Georgia (1917-1921), in: *Sharadze G.*, the History of Georgian Emigration Journalism, Volume IV, 2003, pp. 177-316 (in Georgian).

⁴⁵ *Zakariadze A.*, Democratic Republic of Georgia (1917-1921), in: *Sharadze G.*, the History of Georgian Emigration Journalism, Volume IV, 2003, p. 296 (in Georgian).

⁴⁶ *Todua I.*, ‘The Notes of Escape’, in: *Todua-Tsulukidze K.*, My Adventure and Some Memories, Soviet Past Research Laboratory, 2019, pp. 143-144 (in Georgian).

to leave the territory of Georgia and to continue its work in exile for the restoration of independence of Georgia.⁴⁷

The year 1921 turned out to be transformative in the history of the Georgian constitutionalism. On 21 February 1921, the Constituent Assembly of Georgia accomplished its main mission and adopted the Constitution, even though the attack of the Soviet Russia and establishment of the regime of occupation did not allow Georgia to exist under the legal effect of this Constitution. After the Sovietization, Georgia was ruled by the puppet Revolutionary Committee, which dismantled the democratic institutions and the state sovereignty of Georgia. The Constitution of Soviet Georgia was adopted on 2 March 1922, following the sample of the 1918 Constitution of the Russian Federation. Its comparison with the Constitution of the Democratic Republic of Georgia reveals the false democratic and facade nature of the Soviet constitutionalism.

XI. THE CONSTITUTION OF GEORGIA OF 1921 AND THE GEORGIAN POLITICAL EMIGRATION

In the beginning of the Soviet occupation, the forces acting for the liberation of Georgia believed that after the deoccupation of Georgia the Constituent Assembly of Georgia and the government appointed by this Assembly would be back in power. This is evidenced by the Address to the Presidium of the Constituent Assembly adopted by the Conference of the Social Democratic Workers Party of Georgia that was held illegally in Georgia in February 1922:

‘To the Presidium of the Constituent Assembly of Georgia: Nikoloz Chkheidze, Ekvtime Takaishvili and Simon Mdivani

*The Social Democratic Conference of Georgia greets you, fully assured, that the violated rights of the Georgian Republic will soon be restored and it will again be governed by the supreme body expressing the free will of the people and its legitimate government.*⁴⁸

This address is dated 7 February 1922. Approximately in one month, on 3 March 1922, the three political parties of Georgia (Social Democrats, Democratic Party and Socialist Federalist party) adopted the joint declaration, which underscored that these three parties ‘enjoyed the support of 93% of the members of the Constituent Assembly, which protected the Georgian independence unanimously’. According to the demands of the declaration the Russian occupation army had to leave Georgia and the occupation had to be stopped, ‘which will naturally be followed by the

⁴⁷ Inasaridze K., *The Short ‘Golden Age’, Democratic Republic of Georgia 1918-1921*, Radio Documentation (Munich), 1984, p. 479 (in Georgian).

⁴⁸ *The Report of the Illegal Conference of the Social Democratic Workers Party of Georgia*, published in the magazine ‘Free Georgia’, Issue Nr. 22, 1922, p. 21 (in Georgian).

restoration of the legitimate regime established by the Constitution of the Republic'.⁴⁹

With the passing of time, a new political reality was formed and some changes were already considered necessary in the organization of the Georgian State after the deoccupation. In this respect, the project of the new program of the Georgian Social Democratic Workers Party, prepared by *Noe Ramishvili* and published in 1925, should be mentioned. Some of its provisions were not consistent with the 1921 Constitution and implied that the Constitution had to be amended. For example, *Noe Ramishvili* considered the formation of new autonomous regions in Georgia feasible:

*'The restoration of the autonomy granted to Abkhazia and Muslim Georgia by the Constitution of the Democratic Republic, as well as Saingilo (Region of Zakatala), since it is decided by the treaties concluded with the neighbors and the judgement of arbiters, that it should be returned to Georgia. Autonomy should be granted to all the small nations as well, which are fully settled on a certain territory and will express their will thereto through the secret, universal, direct, equal and proportional elections.'*⁵⁰

It is interesting, how the political emigrants (namely, the Social Democratic Party) imagined the restoration of the constitutional order in Georgia. In 1941, when the Soviet Government was in difficult circumstances, it was not ruled out that the German Army would enter the Georgian territory. The Foreign Bureau of the Georgian Social Democratic Party developed an interesting document, which provided for the restoration of the independent statehood of Georgia. The German Army did not invade Georgia, and even if they had invaded it, the question, whether Nazi Germany would have allowed the steps for the restoration of Georgian independence is a wholly different issue.⁵¹ What matters here, is the vision of the Georgian emigrants: if the German Army had entered Georgia, the local anti-Soviet political forces in Georgia would have had to form a temporary government. For the formation of the permanent government, it was necessary that the national government of Georgia returned from exile. To return to the path of a normal life, 'all the political Articles of the Constitution will be restored and the freedom of speech, press, assembly, faith, association, etc. will be declared'.⁵² Though not expressly stated in this document, it can be assumed, that the restoration of the political rights would allow for the holding of the elections and the new legislative body would be entitled to amend the 1921 Constitution in a way, that would be considered necessary by the political forces coming to power after the elections.

⁴⁹ The Declaration of the Political Parties of Georgia, published in the magazine 'Free Georgia', Issue Nr. 20, dated 15 April 1922, p. 4 (in Georgian).

⁵⁰ *Ramishvili N.*, Project of the Program of the Georgian Social Democratic Workers Party (For Discussion), published in the magazine 'Fight', Issue Nr. 10-11, 1926, p. 36 (in Georgian).

⁵¹ The Georgian emigrants were greatly influenced by the example of 1918, when Germany supported the Independence of Georgia at the time.

⁵² Our attitude in the times of war - in the magazine 'Our Banner' (Notre Drapeau), Issue Nr. 1, 1949, pp. 33-34 (in Georgian).