

THE FIRST CONSTITUTION OF GEORGIA: BETWEEN MYTHS AND REALITY

ABSTRACT

The Constitution plays an essential role in the history and political-legal life of any state, even if it only has a formal status. The First Constitution of Georgia had a special fate, it did not just become a legal document, but it also constituted a symbol of the country's independence and the historical-cultural development of the country.

The Constitution of 1921 is one of the most remarkable legal acts that was enshrouded in myths even in process of being accepted. As the years go by, the myths about it are only strengthening. The reason behind this is not only the distinctive structure, history, and content of the current Constitution, but also the unsustainable status of the current constitution and the numerous changes, which have led to skeptical, often even to contemptuous attitudes.

The paper discusses some exaggerated and some considerations already enveloped in myth, that are related to the First Constitution of Georgia, assesses their credibility and authenticity.

I. INTRODUCTION

In the history of every state, there are political and legal documents that carry special authority and recognition. Perhaps, their content is not as valuable as people imagine it, or it may no longer even have a legal force, yet, as a symbol, it is still eloquent and exercises such a power that even the Constitution would be envious. There are many examples of similar documents. The Declaration of Independence of the United States, which constitutes a declaration of the creation of a new state on the one hand and, a declaration of war on the other hand,¹ has never had legal force despite its status;² However, it is probably difficult to find a person who would diminish its importance, especially since it has been attested in the Supreme Court's case-law as an essential act³ incorporating the basic principles, that make interpretations of the fundamental

* Professor, Doctor of Law, Vice Rector, Sulkhan-Saba Orbeliani University [d.gegenava@sabauni.edu.ge]

¹ *Gegenava D.* (ed.), *Constitutionalism*, General Introduction, Book I, 2018, p. 23 (in Georgian).

² *Sandefur T.*, *The Conscience of the Constitution, The Declaration of Independence and the Right to Liberty*, Cato Institute, 2014, p. 15.

³ *Sandefur T.*, *The Conscience of the Constitution, The Declaration of Independence and the Right to Liberty*, Cato Institute, 2014, p. 15.

principles of the state and law possible. Nevertheless, *Thomas Jefferson, Abraham Lincoln, James Wilson*, and numerous other political figures considered the Declaration of Independence to be a founding act of the country.⁴ Similar in status, but different in terms of its legal force, is the First Constitution of the Weimar Republic⁵ which had existed as a draft for almost 70 years before its adoption and it could not be passed by the Frankfurt National Assembly at first because of the emperor (Kaiser).⁶ Symbolically, due to its special significance, its modified version was finally approved in 1919.⁷

Georgia is very proud of its history and the continuous cultural process that took place in the same territory – in a historic place. Unfortunately, from a legal point of view, the country's experience lags far behind other areas. Regardless of several distinctive statutes from the medieval times,⁸ far more important for the contemporary Georgian legal culture and consciousness is the experience of the recent history and the historical statute that is even considered sacred. The First Constitution of Georgia combines several fundamental moments at once - it affirms the existence of the First Republic and Georgia's independence, it emphasizes the cultural and social level of Georgian politics at the time; It summarizes the Georgian legal thinking and technique of the previous century. Therefore, it is logical to have so much talk, discussions, excessive and unexaggerated critiques around it. It is noteworthy that, along with the real characteristics, some unreal and already mythical signs are attributed to the Constitution, and it is idealized.

The aim of the article is to review the First Constitution of Georgia as a basic law with its political and legal characteristics, also intends to highlight and analyze some common myths and rumors regarding the Constitution, and adjust them to reality as much as possible, because regardless of how remarkable the statute being dealt with, it is always desirable to have detailed and extensive information about it so that the deliberations of the later generations can be based on rationalism and critical thinking, instead of superpatriotic statements imbued with heroism.

II. THE FIRST CONSTITUTION - THE FIRST EXPERIENCE

The Constitution of 21 February 1921, was one of the first acts of constitutional significance in Georgia from a classical constitutionalism point of view. Obviously, over the course of several millennia, the country has had a number of state-regulating acts, however, it did not have a constitution, the main purpose of which is the limitation of

⁴ *Anastaplo G.*, Reflections on Constitutional Law, 2006, p. 15.

⁵ *Gegenava D.* (ed.), Constitutionalism, General Introduction, Book I, 2018, pp. 36-37 (in Georgian).

⁶ *Melkadze O., Ramishvili N.*, German Constitutional Law, 1999, p. 7 (in Georgian).

⁷ *Melkadze O., Ramishvili N.*, German Constitutional Law, 1999, p. 9 (in Georgian).

⁸ *Gegenava D.* (ed.), Introduction to the Constitutional Law of Georgia, 2021, pp. 33-34 (in Georgian).

power.⁹ In this respect, the first and most prominent statute is the Act of Independence of Georgia of May 26, 1918, which did not remain as a mere declaration and on March 12, 1919 it was adopted as a law by the newly elected Constituent Assembly at its very first session.¹⁰ This event had more legal than symbolic significance, because in fact the seven-point act laid down the most important principles for the transition period, to some extent even served as a ‘small constitution’ throughout the existence of the Georgian Democratic Republic. Considering its content, the Act of Independence is even viewed as a preamble to the First Constitution,¹¹ however, this assessment is exaggerated, as the Constituent Assembly approved the text for the Constitution in absence of it and even adopted it.¹²

The adoption of the Constitution was of extreme importance for the Democratic Republic. The fact that among the three South Caucasian republics, only Georgia managed to adopt a basic law, added a special value to the aforementioned event. The Constitution itself became a natural symbol of Independence and freedom. Perhaps this explains the special attitude and emotional connection that the modern society has towards it. Most people do not ask questions about the legitimacy of the First Constitution, it is even observed as the basis for the Restoration of Independence and as a continuation of the legacy that existed in the First Republic. For this reason, the preamble of the current Georgian Constitution emphasizes the connection with its historical and hereditary legacy,¹³ in this way, the problem of legitimacy that the current constitution had since its adoption, is somehow eliminated and it underlines the function of that unperformed social integration, the implementation of which was much awaited by a great number of political players in 1995.

The 1921 Constitution was a challenge for the Georgian law. As there had been no similar previous experience, it was logical that special attention was given to its creation and adoption. The first Constitutional Commission was established within the framework of the National Council,¹⁴ which was later superseded by the Commission

⁹ *Gegenava D.* (ed.), Introduction to the Constitutional Law of Georgia, 2021, pp. 33-34 (in Georgian).

¹⁰ *Shvelidze D.* (ed.), 1028 Days of Independence, Daily Chronicle of the First Republic of Georgia (1918-1921), 2013, p. 132 (in Georgian).

¹¹ *Gegenava D., Kantaria B., Tsanova L., Tevzadze T., Macharadze Z., Javakhishvili P., Erkvania T., Papashvili T.*, Constitutional Law of Georgia, 4th edition, 2016, p. 34 (in Georgian).

¹² *Demetrashvili A.*, The Constitution of Georgia of February 21, 1921 from the 2011 Revision, in: ‘At the Origins of Georgian Constitutionalism - 90th Anniversary of the Constitution of Georgia of 1921’, 2011, p. 11 (in Georgian).

¹³ Preamble of the current version of the Georgian Constitution, available at: <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> (accessed 1.7.2021).

¹⁴ *Matsaberidze M.*, Elaboration and Adoption of the Constitution of Georgia of 1921, in: ‘At the Origins of Georgian Constitutionalism - 90th Anniversary of the Constitution of Georgia of 1921’, 2011, p. 18 (in Georgian).

of the Constituent Assembly.¹⁵ On behalf of the last composition of the Commission, it can be stated that the constitution's the process of drafting the Constitution was very interesting and intensive. The Draft Constitution included both the classical concepts, institutions, and principles, as well as the major innovations relevant to the world at that time. The basic law of the First Republic took the experiences of other states into consideration, however, most importantly, it did not attempt to blindly integrate any normative order.¹⁶ In order the people to better understand the content of the Constitution and to not keep it as legal exclusive, *Pavle Sakvarelidze* the Chairman of the Constitutional Commission, was publishing commentaries on each chapter of the Constitution in the press under a pseudonym.¹⁷ He and several other members of commission, as well as, the invited experts, showed rare enthusiasm and professional passion while trying to make the First Georgian Constitution a common national act. For this purpose, both the Commission and the Constituent Assembly spared no effort.

III. CONSTITUTIONAL PROVISIONS AND THE MYTHICAL VEILING

1. THE BEST CONSTITUTION

Romanticizing the past is a characteristic of many nations and people, often manifested in strange forms. In the presence of the current Constitution, which has a serious problem with the social integration function, special attention needs to be paid to the First Constitution of Georgia. The scholars of politics and constitutional law frequently cite and refer to it as the best Constitution although this myth is far behind the reality. Certainly, it is one of the most prominent texts of its time, especially given its geographical location, however, it had some weighty problems, which naturally prevented it from being qualified as the best Constitution.

The First Constitution had severe systematic problems: 1. It was strongly ideologized, it was basically reiterating the basic provisions of the Social Democratic Party's program. 2. The Constitution contained a considerable number of social rights, the implementation of most of them would question not just the sustainability and authority of the basic law, but it would also call the existence or non-existence of the state itself into question. 3. The basic law formed an unbalanced super-parliamentary republic without a proper and effective check and balance system. 4. The absence of the institution of the head of state and the partial distribution of his rights and responsibilities to some state structures would inevitably lead to constitutional and political crises and in a parliamentary

¹⁵ *Shvelidze D.* (ed.), 1028 Days of Independence, Daily Chronicle of the First Republic of Georgia (1918-1921), 2013, p. 135 (in Georgian).

¹⁶ *Kantaria B.*, Fundamental Principles of Constitutionalism and the Legal Nature of the Form of Government in the First Georgian Constitution, 2013 (in Georgian).

¹⁷ *Gegenava D.*, European Foundations of Georgian Constitutionalism: The Struggle for the Rule of Law, in: 'European Values and Identity', 2014, p. 120 (in Georgian).

republic the responsibility of dealing with these rests exactly with the head of state. 5. While the novelties of that period were still undeveloped in Georgia, they were already taking roots in the European Constitutionalism (e.g. Constitutional Control)

Despite the problems, the 1921 Constitution had numerous positive aspects about which much has been written and spoken, therefore, these will not be presented in the article. Ultimately, all this speaks for a good basic law that had many problems, and was not best in any way, yet it was exceptional for its geographic area and culture.

2. HASTILY ADOPTED AND LATER SUSPENDED

One of the serious allegations made against the First Constitution relates to its hasty adoption, without an in-depth examination. For any act, especially the basic law of the country, perhaps be nothing can be as humiliating and offensive as a hasty adoption, this automatically implies that was enacted without exhaustive understanding, observation, and adequate consideration. In this matter the Constitution is indeed simple, the work process on it had started within the National Council and the first Constitutional Commission was established at that time,¹⁸ the legal and historical successor of which became the Constitutional Commission of the Constituent Assembly. It is also noteworthy that the Constituent Assembly approved the Constitutional Commission as soon as its election on March 18, 1919.¹⁹ As a result, it can be noted that the work on the Constitution lasted for at least three years. Regardless of being considered at different paces and compositions of the Commission, the process continued and the project of the Constitution was discussed in detail by chapters and even by articles.²⁰ Many key issues were reviewed and agreed upon in advance, the same applies to some key chapters for instance, even in 1920, it was already known that the head of the state would not be mentioned in the Constitution,²¹ an agreement had been made around the model of church-state relations²² and the corresponding regulatory norms,²³ as well as the immutability of the form of state governance²⁴ and etc.

¹⁸ *Matsaberidze M.*, Elaboration and Adoption of the Constitution of Georgia of 1921, in: 'At the Origins of Georgian Constitutionalism - 90th Anniversary of the Constitution of Georgia of 1921', 2011, p. 18 (in Georgian).

¹⁹ *Shvelidze D.* (ed.), 1028 Days of Independence, Daily Chronicle of the First Republic of Georgia (1918-1921), 2013, p. 135 in Georgian).

²⁰ *Matsaberidze M.*, Constitution of Georgia of 1921: Development and Adoption, 2008 (in Georgian).

²¹ *Gvazava G.*, Basic Principles of Constitutional Law, 2nd edition, 2014, pp. 7-16 (in Georgian).

²² *Matsaberidze M.*, Constitution of Georgia of 1921: Development and Adoption, 2008, p. 78 (in Georgian).

²³ *Gegenava D.*, Basic Legal Aspects of the Church-State Relations (1917-1921) and the First Constitution of Georgia, in: *Gegenava D., Javakhishvili P.* (eds.), Democratic Republic of Georgia and the Constitution of 1921, 2013, pp. 178-179 (in Georgian).

²⁴ *Kantaria B.*, Fundamental Principles of Constitutionalism and the Legal Nature of the Form of Government in the First Georgian Constitution, 2013 (in Georgian).

The work on the Constitution took longer than initially planned, and for this reason, the Constituent Assembly requested a corresponding report and concrete results.²⁵ Therefore, to the claim that the Constitution was adopted hastily is – absurd. The Constitution was adopted in an expedited procedure – this argument is both true and logical, the Constitution of an independent state was considered as one of the most serious mechanisms to fight against the approaching enemy and for the political elite the adoption of the Constitution was a matter of principle. Therefore, the Constituent Assembly was convened during the war, and it approved prepared draft of the Constitution.

Another important accusation levelled against the First Constitution was the suspension of the Constitution by the Constituent Assembly.²⁶ This is not confirmed by any historical or legal circumstance. The existence of this fact is the result of the imagination of the Soviet Security Services. They made every effort to justify their actions, to present occupation as a solution, but they failed. The legitimate government of the Democratic Republic left Georgia and as a matter of principle, they did not sign the Act of Surrender for the Bolshevik invaders.²⁷ The Government continued to fight for the Independence of Georgia, regardless of being in emigration. With this in mind, why would the Constituent Assembly suspend the validity of the Constitution, even if it had formal authority to do so. Moreover, it should be noted that the Basic Law did not allow for the idea of its suspension at all.²⁸

3. AN ACT WITH NO PRACTICAL EFFECT

On February 21, 1921, the Constitution of the Democratic Republic was adopted, and the Fall of Tbilisi took place on February 25th. As a result, the Constitution is often being referred to as an inactive document, which was valid only for four days.²⁹ The existence of this myth is also attributed to the Soviet Special Services, since the proposal implies the assumption that the Fall of Tbilisi led to the termination of political processes in Georgia, which is certainly not true. The Government of the Democratic Republic of

²⁵ *Gegenava D.* (ed.), Introduction to the Constitutional Law of Georgia, 2nd edition, 2021, p. 39 (in Georgian).

²⁶ *Shengelia R.* (ed.), Fundamentals of Georgian Law, 2004, p. 71; *Tsnobiladze P.*, Constitutional Law of Georgia, Volume I, 2005, p. 100 (in Georgian).

²⁷ *Shvelidze D.* (ed.), 1028 Days of Independence, Daily Chronicle of the First Republic of Georgia (1918-1921), 2013, p. 433 (in Georgian).

²⁸ 1921 Constitution of Georgia, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021); *Gegenava D.* (ed.), Introduction to the Constitutional Law of Georgia, 2nd edition, 2021, p. 50 (in Georgian).

²⁹ *Demetrashvili A.*, The Constitution of Georgia of February 21, 1921 from the 2011 Revision, in: ‘At the Origins of Georgian Constitutionalism - 90th Anniversary of the Constitution of Georgia of 1921’, 2011 (in Georgian).

Georgia stayed in Batumi until mid-March and was defending itself from there, leading the political processes. This is also indicated by the fact that the Constitution was published in Batumi after the Fall of Tbilisi.³⁰ The fact of the subsequent publication of the Constitution and the presence of the Government in Batumi confirms that the myth concerning the validity of the constitution for only four days is unsubstantiated. The Constitution was in legal force at least until the moment, when the Government of the Democratic Republic of Georgia left Georgia, and was *de jure* in effect for the entire period of the Soviet occupation and the restoration of state Independence, until the adoption of the new Constitution, that finally lead to the ending of the tragic, yet interesting adventure of the First Constitution.

4. A STRONG PARLIAMENTARY REPUBLIC

The Democratic Republic of Georgia was a clearly expressed parliamentary republic with its parliamentary supremacy and a power vector deviated towards the Parliament. The Parliament, as the highest representative body of the state, was the power concertation center. Due to the fear of transferring and allocating the power to the head of the state, the institution of the president was rejected.³¹ The electability of the Chairman of the Government for a one-year term, the issue of ministerial responsibility, as well as the relationship between the Parliament and the government suggest that the First Constitution was establishing not just a parliamentary republic, but a super-parliamentary republic with a completely unbalanced system of separation of power, that would make the realization of the principles of accountability and responsibility of the Government impossible in practice. Hence, in this regard, the provisions of the Constitution are not characterized with exemplary norms and seriously lack the mechanism of checks and balances, in absence of which, it is irrelevant to speak about the strength and stability of a parliamentary republic.

IV. WHAT WOULD HAPPEN IF...?

When talking about the First Republic of Georgia and the Constitution, perhaps the most common combination of words is – ‘what would happen if...?’ Indeed, what would happen if the Post-Soviet Union had not invaded Georgia, Georgia had continued living independently, and the Constitution had fulfilled its purpose. After all, one thing is certain, in any case, the Constitution would have needed amendments and that is

³⁰ *Sioridze M.*, Place, time and circumstances of the publication of the First Constitution of Georgia in: ‘At the Origins of Georgian Constitutionalism - 90th Anniversary of the 1921 Constitution of Georgia’, 2011, pp. 42-50 (in Georgian).

³¹ *Gvazava G.*, Basic Principles of Constitutional Law, 2nd edition, 2014, pp. 7-16 (in Georgian).

natural. The founders did not deny this and even noted that the Constitution could never be permanent, its content should be renovated, revised by upcoming generations, as needed.³²

It would have been very difficult for the Constitution to implement in practice, especially in regard to the rights, since the scope and content of these rights would have turned out to be a heavy burden for a young, emerging state. As a result, the political elite would have been forced to improve the part of the rights, consolidate the provisions, and renounce some of them.

The amendments would have been required with regard to the norms on state power. In practice, unbalanced government relations would have created problems, especially in a multi-party Parliament. Some neglected functions of the head of the state would have been relevant, or it would have been established as an institution in the future, or the Chairman or other organs of the Government would have been strengthened functionally.

Numerous things could have happened in the circumstances of independence, various interesting and important amendments would have taken place in the Constitution part of which would have succeeded, some probably not, yet it would be an independent state's decision made in accordance with its political agenda and directed towards the political relations and the proper functioning of the state.

V. CONCLUSION

The First Constitution of Georgia is destined for popularity and constant relevance, just like the current or the future Constitutions of Georgia are ordained to be compared with the First Constitution. The history of the drafting and the adoption of the 1921 Constitution, its special legitimacy coupled with its role in a twisted historical storm, will always ensure its presence as a distinctive Act. It is true that the First Constitution was not ideal and complete, neither is it possible to properly assess its practical relevance, but it can be certainly concluded that for the Georgian reality it was a special legal act, that still has a sacred nature until now. There are many myths about it, and they will remain in the future too (some will diminish, some will glorify), but the truth is that it is, in any case, a self-sufficing Constitution with its own shortcomings, party sympathies and stereotypes that were typical for that period. Meanwhile, it is impossible not to mention its democratic character, the attempt to create innovation in multiple directions and, the courage, with the help of which the Constitution of a young state was seeking to establish a legal order based on European values in the state.

³² *Matsaberidze M.*, Constitution of Georgia of 1921: Development and Adoption, 2008 (in Georgian).