

CONSTITUTIONAL STATUS OF THE PRESIDENT OF GEORGIA IN THE FIELD OF FOREIGN RELATIONS

ABSTRACT

In the constitutional legal space of Georgia, coexistence of the subjects with the right to represent the country in the field of foreign relations is a very problematic issue. In the wake of the constitutional reforms implemented in Georgia in 2004, 2009-2010, and 2017-2018, the forms of state governance of Georgia were changing, which, in turn, led to changes in the powers of the President of Georgia and the executive power in the field of foreign relations. According to the Constitutional Law of October 15 2010, which came into effect from the moment of swearing-in of the President elected as a result of the next regular Presidential Elections of October 2013, the form of state governance of Georgia was changed. The change of the main characteristics of the governance model led to the risk of overlapping of competences and conflict of powers in the field of foreign relations not only between the President of Georgia, the Prime Minister, the Minister of Foreign Affairs, and other ministers, but also in the executive power itself. In addition, as a result of the constitutional reform of 2017-2018, the Constitution was revised again, which shaped differently both the governance model and the powers of the President of Georgia in the field of foreign relations.

Ensuing from the above, the article will discuss the constitutional status of the President of Georgia in accordance with the constitutional reforms implemented in the field of foreign relations and the current edition of the Constitution. The article shall overview the intersecting powers of the President of Georgia and the Government of Georgia in the field of foreign relations in conditions of the current governance model of Georgia and the constitutional experience of the countries with a governance model, similar to Georgia in terms of the President's foreign powers.

I. INTRODUCTION

The Constitutional reform was carried out in accordance with the Constitutional Law of February 6 2004, which replaced the presidential republic with a form of governance, the “conceptual basis of which is the so-called French model”.¹ Consequently, instead of

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¹ Avtandil Demetrashvili and Irakli Kobakhidze, the Constitutional Law (Innovation Publishing House 2010) 67 (in Georgian).

the so-called “American presidential” governance model was introduced the “French” semi-presidential governance model.² By the Constitutional Law of October 15 2010, which came into force from the moment of swearing-in of the President elected as a result of the next regular Presidential Elections of October 2013, the form of state governance of Georgia was also changed, which caused certain divergence of opinion in the society, as some believed that it was a model of parliamentary governance, while others considered it a mixed model with some of the features of a republican governance model. The difference of opinion was to a certain extent preconditioned by the fact, that the model of governance, existing at that time, did not contain the features of classical parliamentary governance, but represented its different interpretation.

In accordance with the Resolution N65-I of the Parliament of Georgia of December 15 2016 on “Creation of the State Constitutional Commission and Approval of the Statute of the State Constitutional Commission”, the Constitutional Commission was created again for the purpose of revising of the Constitution, within the framework of which opinions were repeatedly expressed regarding the change in the governance model, “Therefore, the faulty system of parliamentary governance, which the Constitution [...] [established], needed to be [...] [revised]”.³ As a result, by changing the method of direct election of the President by adoption of the Constitutional Law of Georgia on Entering Changes to the Constitutional Law of Georgia on Amending the Constitution of Georgia⁴, the existing model became more approximated to the model of parliamentary governance. Consequently, “on December 16, 2018, along with the swearing-in of the President of Georgia, the new, current edition of the Constitution of Georgia, which was elaborated on the basis of the constitutional reform of 2017-2018, came into force.”⁵ As a result, the powers of the Government of Georgia and the President of Georgia in the field of foreign relations were defined in a different way, which will be discussed in the present article together with the above-mentioned issues.

The issue presented in this paper is of state importance as it is related to the country’s foreign policy and its image, both internally and externally, as there are gaps left in the national legislation, which allow for discretionary actions and different interpretations by the government. Consequently, the field of foreign relations is a quite problematic

² Avtandil Demetrashvili, *Chronicles of the Constitutionalism in Georgia, the Constitutional Reform of Georgia of 2009/2010* (Seventh Publication, Regional Center for Research and Promotion of Constitutionalism 2012) 24 (in Georgian).

³ European Commission for Democracy through Law, *Opinion on the draft revision of the Constitution*, 20 <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)013-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)013-e)> (in Georgian) [last accessed on 15 July 2023].

⁴ On entering changes to the Constitutional Law of Georgia on Amending the Constitution of Georgia <<https://matsne.gov.ge/ka/document/view/4110673?publication=0>> [last accessed on 7 July 2023].

⁵ Irakli Kobakhidze, *Constitutional Law, State Organization Law*, series of legal textbooks “RES PUBLICA” (first edition, Favorite Style Publishing House 2019) 31 (in Georgian).

issue and requires separation of competences not only between the President of Georgia and the Prime Minister, but also between the executive power as a whole and the President of Georgia. That is why in the present paper we shall discuss the powers of the President of Georgia in the field of foreign relations on the backdrop of the constitutional reforms, taking into account the governance model and foreign practices.

II. THE INSTITUTE OF THE HEAD OF STATE – THE PRESIDENT

The term “head of state”, as explained by Giorgi Kverenchkhiladze, is used in the modern constitutions and scientific literature to emphasize the special status of this person, and the origin of the term itself is historically related to the role and powers of the monarch in the political-legal life of the state, which is applied both to monarchs who actually “rule” (Jordan, Oman) as well as those, who only “reign” (monarchs of the European states).⁶ Giorgi Kverenchkhiladze notes, that the mentioned term is also applied to those Presidents, who independently exercise the powers of the head of state (USA, Mexico, Brazil), as well as those Presidents, who exercise the powers of the head of state in agreement with the government or on the advice of the government (Italy, Germany).⁷

It can be said, that the status of the head of state is the main characteristic of the institution of the President. “The head of state is a general concept, which existed in various forms in different states at different times, either in the form of one person or a collegial body”.⁸ With reduced or expanded powers, the institution of the President can be found regardless of any type of the republican government. The word “president” comes from the Latin term “praesidens” and literally means “the one sitting in the front”. It is possible, that the founders of the USA assigned this title to the Head of State, introduced by the Constitution of 1787, due to his role of the political leader of the state - the “legatee” of the Monarch, the highest official in the republican form of governance.⁹ Accordingly, “the Presidential system as a form of government was created as an alternative to a Monarchy and Parliamentarism”.¹⁰

If we look at the history of world constitutionalism, it becomes clear that the establishment of the institute of the President and the presidential model of state governance is

⁶ Vasil Gonashvili and others, *Introduction to the Constitutional Law*, Ivane Javakhishvili Tbilisi State University, Faculty of Law (Meridian Publishing House 2016) 369 (in Georgian).

⁷ *ibid.*

⁸ Zaza Rukhadze, *the Constitutional Law of Georgia* (Young Lawyers Association 1999) 313 (in Georgian).

⁹ Avtandil Demetrashvili (ed), *Constitutional Law Handbook* (Hollywood Publishing House 2005) 271 <<https://iuristebi.files.wordpress.com/2012/12/e18399e1839de1839ce183a1e183a2e18398e183a2e183a3e183aae18398e183a3e183a0e18398-e183a1e18390e1839be18390e183a0e18397e1839ae18398e183a1.pdf>> (in Georgian) [last accessed on 7 July 2023].

¹⁰ Héctor Fix-Fierro and Pedro Salazar-Ugarte, ‘Presidentialism’ in Michel Rosenfeld and Andrés Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012) 628.

connected with adoption of the Constitution of the United States of America in 1787.¹¹ The founding fathers of the USA opted for a “rigid” model of separation of the state power, which implies a strict separation of powers between the legislative, the executive and the judicial branches of the state power, as well as non-interference in each other’s competences. According to this model, the President should be the head of state, who would be the head of the executive power.¹² The so-called “American Model” of the Institute of the President was soon introduced in the European states as well.¹³ “After the USA, in 1848, the President’s position was simultaneously institutionalized only in two countries, France and Switzerland, and it is noteworthy, that these countries were not “copy-pasting” the American model of presidency, but immediately developed the so-called “European model” of president’s institute.”¹⁴

The constitutional-legal status of the President differs depending on the features of the governance models, e.g., in a Presidential Republic, the institution of the President is characterized by the expanded powers of the President. The executive power is in the hands of the President, and he/she performs the functions of the Head of State and the Head of the government at the same time.¹⁵ In presidential systems, the President of the Republic is exclusively at the head of the executive branch of the power, and there is no dual executive power.¹⁶

In a parliamentary republic, the positions of the head of state and the head of the executive power are separated from each other, in particular, the duty of the head of the state is performed by the President, and the duty of the head of the executive power is performed by the Prime Minister.¹⁷ In countries with a parliamentary system, as a rule, the functions of the head of state and the head of the government are separated, in particular, the duties of the head of state usually include representation of the country, performance of ceremonial duties, and expression of national identity, values and aspirations.¹⁸ The head of state, the President, as a constitutional arbiter, may also have limited functions, which are expressed in the discretionary powers to appoint the Prime

¹¹ Dimitri Gegenava and others, *The Constitutional Law of Georgia* (fourth edition, publishing house of Davit Batonishvili Institute of Law, 2016) 228 (in Georgian).

¹² *ibid.*

¹³ *ibid.*, 229.

¹⁴ Group of authors, *supra* note 9, 271.

¹⁵ Pierre Pakte and Ferdinand Mellen-Sukramanian, *Constitutional Law* (28th edition, Tbilisi University Press 2012) 228 (in Georgian).

¹⁶ Thomas Sedelius, *The Tug-of-War between Presidents and Prime Ministers, Semi-Presidentialism in Central and Eastern Europe* (Universitetsbiblioteket 2006) 32.

¹⁷ Dimitri Gegenava and others, *Introduction to the Constitutional Law* (Sulkhan-Saba Orbeliani University Publishing House 2021) 138 (in Georgian).

¹⁸ Elliot Bulmer, *Non-Executive Presidents in Parliamentary Democracies*, *International IDEA Constitution-Building Primer* (Second edition, International Institute for Democracy and Electoral Assistance (International IDEA) 2017) 4 <<https://www.idea.int/sites/default/files/publications/non-executive-presidents-in-parliamentary-democracies-primer.pdf>> [last accessed on 7 July 2023].

Minister, dissolve the Parliament, make non-political appointments, the power of veto, and etc.¹⁹ At the same time, a collegial government has its head - the Prime Minister, who is responsible for defining, implementing and enforcing executive policies, and generally running the state.²⁰

Maurice Duverger advanced the concept of a 'semi-presidential' regime: a mix of a popularly elected and powerful presidency with a prime minister heading a cabinet subject to assembly confidence.²¹ According to Maurice Duverger, semi-presidentialism may be defined by three features: a) A president who is popularly elected; b) The president has considerable constitutional authority; c) There exists also a prime minister and cabinet, subject to the confidence of the assembly majority.²² A semi-presidential system divides the executive into two (roughly) equally legitimate parts, only one of which – the prime minister – depends on assembly confidence for its survival in office,²³ while the president is elected directly.²⁴

Accordingly, in a mixed model of government, the head of state is the President, although the executive branch is bicephalic in nature, with powers distributed between the President and the Prime Minister.²⁵ The peculiarity of the semi-presidential model is the fact, that the President is assigned certain powers in the executive branch of power, and unlike the classical parliamentary government model, has special jurisdiction that can be exercised without countersignature, which excludes the nominal nature of his/her powers.²⁶ As Richard Albert states, the dominance of the president in semi presidential systems is not surprising, as it embodies a compromise of sorts inasmuch as the president possesses an extraordinary range of constitutional powers, although those powers are, in turn, circumscribed by the constitutional text.²⁷

The Montesquieu model of separation of powers, which is an indicator of a legal and democratic state, envisaged separation of power between the three branches of the

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ Matthew Søberg Shugart, *Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns* (French Politics, Palgrave Macmillan 2005) 323-324 <<https://link.springer.com/content/pdf/10.1057/palgrave.fp.8200087.pdf>> [last accessed on 7 July 2023].

²² *ibid.*

²³ Steffen Ganghof and others, 'Australian bicameralism as semi-parliamentarism: patterns of majority formation in 29 democracies' (2018) 53 *Australian Journal of Political Science* 212 <<https://d-nb.info/1218871288/34>> [last accessed on 7 July 2023].

²⁴ *ibid.*, 214.

²⁵ For details, see Malkhaz Nakashidze, *Peculiarities of the relations of the president with the branches of government in the semi-presidential system of governance (on the example of the Republic of Azerbaijan, Georgia and the Republic of Armenia)* (University Publishing House 2010) 15, 55 (in Georgian).

²⁶ François Frison-Roche, *The Political Influence of Presidents Elected by Universal Suffrage in Post-communist Europe*, European Commission for Democracy Through Law (Venice Commission), 6 <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD\(2004\)040-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(2004)040-e)> [last accessed on 7 July 2023].

²⁷ Richard Albert, 'Presidential Values in Parliamentary Democracies' (2010) 8 *International Journal of Constitutional Law* 226.

government. According to the mentioned model, in order to prevent accumulation of power in the hands of one person, it is distributed between the legislative, the executive and the judicial authorities, i.e. “to ensure, that no one can abuse power, it is necessary [...] that power should be a check to power.”²⁸ Separation of powers is a “common feature” of modern constitutionalism.²⁹ The main essence of the distribution of power implies not only democratic governance, but also checks and balances of power by each branch of government, separation of competences between the branches of power and possibility of mutual control. As Besarion Zoidze explains, the principle of separation of powers assigns its function and responsibility to each branch of government.³⁰ One of the factors for determining the current governance model in the country is ensuing from the principle of the separation of powers, i.e., the relationship between the powers assigned to the institution of the President and the executive power.

III. THE FIELD OF FOREIGN RELATIONS AND THE CONSTITUTIONAL STATUS OF THE PRESIDENT - FROM REFORM TO REFORM

Both, “in the history of Georgian constitutionalism and in the history of independent Georgia, the problem of the first person of the state has always been the subject of intense discussions and consideration. During the drafting of the Constitution of the First Republic of Georgia, the problem was solved easily, i.e., according to the principle – “there is no president, there is no problem”, they completely refused the institute of the head of state, and his traditional powers were distributed between the parliament and the prime minister, elected for the term of one year”.³¹

If we look at the constitutional reforms of Georgia, we will see that the issue of the country’s head of state, the first person and his powers were constantly undergoing changes. Until 2004, in Georgia was established the so-called “American presidential model of government”, where the President enjoyed broad powers, and was both the head of state and the head of government, while the government as a collegial body did not exist. Subsequently, a substantial revision of the Constitution was carried out and the so-called “Presidential Model” was replaced by the “mixed semi-presidential” model. Consequently, “Georgia from the so-called “American model” transitioned to the “French model””.³² The mentioned model was characterized by the bicephalic

²⁸ Charles Louis de Montesquieu, *The Spirit of Laws* (CIPDD 1994) 180-181.

²⁹ Albert, *supra* note 31, 209.

³⁰ Besarion Zoidze, *Constitutional Control and the Order of Values in Georgia* (German Society for Technical Cooperation (GTZ) 2007) 60 (in Georgian).

³¹ Demetrashvili, *supra* note 2, 24.

³² Malkhaz Matsaberidze, *Political System of Georgia* (Ivane Javakhishvili Tbilisi State University

nature of the executive power, in particular, the executive power was divided between the President and the Prime Minister.

The Constitutional law of October 15 2010, adopted on the basis of the constitutional reform of 2009-2010, defined the constitutional status of the President of Georgia in a different way. As a result of the mentioned reform, according to the Constitution of Georgia, the President was no longer “the cornerstone of the government system, but it would not be correct to “downgrade” the President depict him/her as a symbolic figure, vested with only a ceremonial or representative function”,³³ especially since “the institution of the head of state is a necessary attribute of the statehood.”³⁴

According to the current edition of the Constitution of Georgia, the President of Georgia is the head of the state of Georgia.³⁵ “As a rule, the concept of the head of state implies the highest executive and the highest representative in foreign relations”³⁶, however, the constitutional law of 2010, which came into effect in 2013, reduced the powers of the President of Georgia in the field of foreign relations. In particular, according to paragraph 3 of Article 69 of the Constitution of Georgia, effective from 2013 to 2018,³⁷ the President of Georgia was not the highest representative in foreign relations, but represented Georgia in international relations. According to the current edition of the Constitution of Georgia, the President is no longer the highest representative in foreign relations. Based on the status of the President of Georgia, at first glance it is possible to conclude, that he/she no longer has effective powers and is no longer a governing link within the system of distribution of power, “although it would not be correct to vest this institution with only a ceremonial, symbolic, representative function.”³⁸

According to Article 73, paragraph 1, subparagraph “a” of the same version of the Constitution valid from 2013 to 2018,³⁹ the President of Georgia shall conduct negotiations with other countries and international organizations in

Publishing House 2019) 242 (in Georgian).

³³ Avtandil Demetrashvili, “Peculiarities of the New System of Government in Georgia” in the compendium of Gia Nodia and Davit Afrasidze (eds), *From Super-Presidency to Parliamentarism: Constitutional Changes in Georgia* (Ilia State University Publishing House 2013) 31-32 (in Georgian).

³⁴ Demetrashvili, Kobakhidze, *supra* note 1, 265.

³⁵ Article 49, edition of the Constitution of Georgia of June 29 of 2020 <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> [last accessed on 7 July 2023].

³⁶ Dimitri Gegenava and others, *Constitutional Law of Georgia* (second edition, Davit Batonishvili Law Institute Publishing House 2014) 229 (in Georgian).

³⁷ The Constitution of Georgia, which came into force after 2013 presidential elections and was in effect until December 16 of 2018, when the president-elect of Georgia in the next elections was sworn-in. <<https://matsne.gov.ge/ka/document/view/30346?publication=34>> [last accessed on 7 July 2023].

³⁸ Demetrashvili, *supra* note 2, 25.

³⁹ The Constitution of Georgia, which came into force after 2013 presidential elections and was in effect until December 16 of 2018, when the president-elect of Georgia in the next elections was sworn-in. <<https://matsne.gov.ge/ka/document/view/30346?publication=34>> [last accessed on 7 July 2023].

agreement with the Government, conclude international agreements and treaties, appoint and dismiss ambassadors and other diplomatic representatives of Georgia on the recommendation of the Government, accredit es of foreign states and international organisations in agreement with the Government. Before the mentioned change, the President independently concluded international treaties and agreements, as well as conducted negotiations with foreign states, accredited ambassadors and other diplomatic representatives of foreign states and international organizations, and appointed ambassadors and other diplomatic representatives with the approval of the Parliament. According to the constitution, which was effective from 2013 to 2018, the powers of the president in the field of international relations were “narrowed”, since the President exercises these powers only in agreement with the government. In the opinion of the Venice Commission, the rewording of Article 73, paragraph 1, sub-paragraph “a” contained an even more problematic regulation, and “the amendment adopted during the second reading will not eliminate concerning moments”, since the powers in the field of foreign relations are not fully separated between the President of Georgia and the government.⁴⁰ According to Article 69, paragraph 1 of the Constitution of the same edition, the President of Georgia is the guarantor of national independence and unity of the country and shall ensure the functioning of state bodies within the scope of his/her powers granted by the Constitution.⁴¹ “Despite the fact that according to the Constitution the President allegedly did not [...] [possess] the necessary and sufficient powers for proper performing of his/her high status and numerous functions, the President, as the first person of the state, had sufficient competence [...]”⁴² The institution of countersignature was quite broadly used, according to the version of the Constitution in force from 2013 till 2018, since almost every act of the President required the co-signature of the Prime Minister to give to them legal force, and “taking into account the international practice, i.e., the constitutional legal practice, the exercise of the powers of the head of state, which to a certain extent is related to the implementation of executive powers, is subject to countersignature”.⁴³

According to the aforementioned edition of the Constitution, “the degree of legitimacy of the President is particularly noteworthy, as the President can always declare that he/

⁴⁰ European Commission for Democracy through Law, Final Opinion, 43 <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)028-geo](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)028-geo)> (in Georgian) [15.07.2023].

⁴¹ The Constitution of Georgia, which came into force after t2013 presidential elections and was in effect until December 16 of 2018, when the president-elect of Georgia in the next elections was sworn-in <<https://matsne.gov.ge/ka/document/view/30346?publication=34>> [last accessed on 7 July 2023].

⁴² Demetrashvili, supra note 2, 25.

⁴³ Giorgi Kverenchkhiladze, Novelties of Georgian constitutionalism: the constitutional structure of the President and the government and specificity of interrelationship in the light of the 2010 constitutional reform (Center for Constitutional Studies 2013) 7-8 <<https://conlaw.iliauni.edu.ge/wp-content/uploads/2013/10/kverenchkhiladze.pdf>> (in Georgian) [last accessed on 7 July 2023].

she is functionally the President of every citizen of Georgia, since he/she is the head of state elected by direct universal suffrage”.⁴⁴ According to Giorgi Gogiashvili, the opinion was expressed, that the President of Georgia, with his/her functions and powers (and what is important, elected directly), was superior to the Presidents of purely parliamentary republics, but was a little weaker for the semi-presidential model.⁴⁵

IV. THE PRESIDENT OF GEORGIA AS THE COUNTRY’S REPRESENTATIVE IN FOREIGN RELATIONS

According to article 49 of the Constitution of Georgia of current edition⁴⁶ the President of Georgia is still the Head of the state, and is the guarantor of the country’s unity and national independence, also, the Supreme Commander-in-Chief of the Defence Forces of Georgia, but the President is not the highest representative in international relations, but represents Georgia in foreign relations. According to the recommendation of the Venice Commission, it was proposed to divest the President of the powers listed in the field of foreign powers, since the aforementioned power “increases the risk of conflict between the government and the President,”⁴⁷ especially since “the starting point of the 2009-2010 Constitutional Commission was to distance the President from the executive power.”⁴⁸

The degree of legitimacy of the President of Georgia is decreasing, as starting from 2024 the President of Georgia shall be elected for a term of 5 years by the Electoral College, on the basis of universal, equal and direct suffrage.⁴⁹ However, the extent to which the way the president is elected affects his actual power is debatable, since “presidents are presidents, regardless of how they came to power.”⁵⁰

At the same time, Article 52 of the current version of the Constitution⁵¹ begins with a new sentence, in particular, the President of Georgia exercises representative powers in foreign relations with the consent of the Government. With the mentioned provision the Constitution emphasizes the fact, that the President of Georgia implements the

⁴⁴ Demetrashvili, *supra* note 2, 27.

⁴⁵ Giorgi Gogiashvili, *Comparative Constitutional Law* (World of Lawyers Publishing House 2014) 185 (in Georgian).

⁴⁶ June 29 of 2020 edition of the Constitution of Georgia <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> [last accessed on 7 July 2023].

⁴⁷ Kverenchkhiladze, *supra* note 48, 5.

⁴⁸ Gegenava, *supra* note 41, 116.

⁴⁹ Article 50, June 29 of 2020 edition of the Constitution of Georgia <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> [last accessed on 7 July 2023].

⁵⁰ Margit Tavits, *Presidents with Prime Ministers: Do Direct Elections Matter?* (Oxford University Press 2008) 235.

⁵¹ Article 52, paragraph 1, subparagraph “a” of current the Constitution of Georgia, dated by June 29 of 2020 <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> [last accessed on 7 July 2023].

representative powers with the approval of the government. According to the same article, the President, along with the implementation of representation in foreign relations with the consent of the government, and not in agreement with the government, as indicated in the previous edition of the Constitution, conducts negotiations with other states and international organizations, concludes international treaties, and accepts the accreditation of ambassadors and other diplomatic representatives of other states and international organizations, again, with the consent of the government. In addition, the President appoints and dismisses the heads of diplomatic missions upon nomination of the government.

According to Article 55 of the current edition of the Constitution, the Prime Minister represents Georgia in foreign relations and concludes international treaties on behalf of Georgia. Accordingly, in the Constitution of Georgia appeared a provision, according to which the power to conclude international agreements apart from the President, was also granted to the Prime Minister. In addition, according to the current version of the Constitution, ministers no longer represent the country in foreign relations within their competence.⁵² However, despite the fact that the Constitution no longer contains the mentioned provision, according to Article 111 of the Law of Georgia “On the Structure, Authority and Rules of Operation of the Government of Georgia” the Prime Minister and ministers represent Georgia in foreign relations within the scope of their authority. Which means that there is still an overlap of powers in the sphere of foreign representation between the government, i.e., its head and members, and the President.⁵³

According to Article 4 of the Law of Georgia on “International Treaties of Georgia”, the following treaties shall be concluded with foreign states and international organizations: a) interstate agreements - on behalf of Georgia; b) intergovernmental agreements - on behalf of Georgia; c) international interagency agreements – on behalf of the ministry of Georgia, State Security Service of Georgia or on behalf of the Prosecutor’s Office of Georgia.⁵⁴ A treaty shall be concluded on behalf of Georgia when the parties consent the treaty to be an interstate agreement, as well as a treaty relating to: territorial claims and armistice; human rights and freedoms; citizenship; participation of Georgia in interstate structures and other international unions (organizations); use of the territory and natural resources of Georgia; borrowing and lending of loans by the State, and issuing state guarantees.⁵⁵

⁵² Article 78, paragraph 4, Constitution of Georgia, which came into effect after 2013 Presidential elections and was in effect until December 16 of 2018, when the president-elect of Georgia in the next elections was sworn-in. <<https://matsne.gov.ge/ka/document/view/30346?publication=34>> [last accessed on 7 July 2023].

⁵³ The Law of Georgia on the Structure, Authority and Rules of Operation of the Government of Georgia <<https://matsne.gov.ge/ka/document/view/2062?publication=41>> [last accessed on 7 July 2023].

⁵⁴ Law of Georgia on International Treaties of Georgia <<https://matsne.gov.ge/ka/document/view/33442?publication=17>> [last accessed on 7 July 2023].

⁵⁵ Article 4, paragraph 2, the Law of Georgia on International Treaties of Georgia <<https://matsne.gov.ge/ka/document/view/33442?publication=17>> [last accessed on 7 July 2023].

According to the amendments entered into the Law in 2018, Article 4 of the mentioned law was added to paragraph 41, according to which “the Prime Minister of Georgia represents Georgia in foreign relations. The Prime Minister of Georgia concludes interstate agreements on behalf of Georgia. The President of Georgia exercises representative powers in foreign relations with the approval of the Government. The Government of Georgia directs all actions that Georgia implements on the international level in relation to interstate agreements, including negotiations, signing of the agreements, and their recognition as binding. With the approval of the Government of Georgia, the mentioned actions or their part can be carried out by the President of Georgia”.⁵⁶ These amendments already specified, that the Prime Minister of Georgia concludes such international agreements that have an interstate status. In addition, the norm contains an interesting provision, in particular, that the mentioned actions or part of them can be carried out by the President of Georgia with the approval of the Government. Consequently, the legislator allows for the possibility, that the President of Georgia is also authorized to conclude an international agreement between the states, but this requires consent of the Government of Georgia. Consequently, according to the Constitution of Georgia, as well as the Law of Georgia on International Treaties clearly establish two subjects with the right to conclude an international agreement, i.e., the Prime Minister, who concludes an international agreement, which is specified in the Law of Georgia on International Treaties as an interstate international agreement, and the President, who concludes an interstate international agreement with the approval of the Government of Georgia.

It follows from the Constitution of Georgia that the President of Georgia can conclude any type of international agreement (be it interstate, intergovernmental, or interdepartmental) with the consent of the Government of Georgia, since the Constitution does not specify what type of international agreement the President is authorized to conclude. As for the Prime Minister, Article 55 of the Constitution specifies that the Prime Minister shall conclude international agreements on behalf of Georgia. According to the Law on International Treaties, it is possible to conclude only inter-state agreement on behalf of Georgia. Based on the above, the Prime Minister can conclude only an international agreement between states.

The goal of the 2017-2018 constitutional reform was the approximation with the parliamentary governance model, as a result of which the powers of the President of Georgia were reduced, one example of which is the granting of the power to conclude international agreements to the Prime Minister in the current edition of the Constitution of Georgia. As mentioned above, before that, the power of the Prime Minister to conclude an international agreement was not provided by the Constitution, in force from 2013 to 2018, and only the President had this power in agreement with the

⁵⁶ The Law of Georgia on International Treaties of Georgia <<https://matsne.gov.ge/ka/document/view/33442?publication=17>> [last accessed on 7 July 2023].

government.⁵⁷ Accordingly, the powers of the President of Georgia have reduced, but it is interesting, whether it is expedient to reduce the powers of the President in the sphere of international relations.

The president, even as a nominal ruler, has to work in the international arena as a guarantor of the country's unity and national independence, and as discussed above, under the parliamentary governance model the President should be mainly engaged in the exercise of representative powers. Taking into consideration the above, it is somewhat vague, what is the purpose of distribution of the power of representation between the President and the Prime Minister, in particular, when the President can exercise the power of representation of the country with the approval of the government, while the Prime Minister can exercise this power without such approval, especially since the Constitution does not confer to either of them the status of the highest representative.

When considering this issue, it is important to refer to the constitutional experience of different countries, which have similar governance model as Georgia. Since the Constitution of Georgia proposes the establishment of a classical parliamentary republic with a weak President, the powers of the President in the field of international relations in countries with the parliamentary governance model need to be discussed.

V. THE PRESIDENT IN THE PARLIAMENTARY REPUBLIC

“The President of the Parliamentary Republic is often referred to as the “State Notary””.⁵⁸ “The parliamentary system separates the positions of the Head of the State and the Head of the Executive Power. The head of state has only formal, ceremonial and also reserve competences. In a parliamentary republic, the head of state is the President “without authority””.⁵⁹ In such a system, the head of state represents the state both in domestic and foreign relations, is a neutral arbiter in the system of separation of powers, and is also a symbol of the state's unity, loyalty, and representation of the people.⁶⁰

It can be said that reaching an agreement on selection mechanism of the Head of State is one of the most controversial issues.⁶¹ The crucial point is that the head of government in a parliamentary system is chosen by members of the national legislature. For this

⁵⁷ Article 73, paragraph 1, subparagraph “a” of the Constitution of Georgia, which came into force after 2013 presidential elections and was in effect until December 16 of 2018, when the president-elect of Georgia in the next elections was sworn-in. <<https://matsne.gov.ge/ka/document/view/30346?publication=34>> [last accessed on 7 July 2023].

⁵⁸ Dimitri Gegenava, Introduction to Georgian Constitutional Law (Sulkhan-Saba Orbeliani University Publishing House 2019) 194 (in Georgian).

⁵⁹ Lana Tsanava, ‘The Head of State’, compendium Dimitri Gegenava and others (ed), Constitutionalism, General Introduction, Book II (Sulkhan-Saba Orbeliani Publishing House 2020) 157-158 (in Georgian).

⁶⁰ *ibid*, 158.

⁶¹ Tavits, *supra* note 58, 2.

reason, in a parliamentary system there is no true separation of powers between the legislature and the executive, at least in the sense, that it is in a presidential system, where the president is separated from the legislature.⁶² Indirectly elected presidents are vested with the broadest power by the typical constitution in the field of military and foreign policy, in particular, many constitutions appoint the president as the Supreme Commander-in-Chief of the Armed Forces, and the constitution grants the president the right to represent the country internationally.⁶³

The parliamentary system of government is characterized by the superior position of the Parliament in relation to the executive power, therefore, the Parliament, which is the highest representative body, not only forms the government, but also controls it.⁶⁴ As for the head of state, whether monarch or president, he /she generally holds no real power, but his/her “role increases during governmental and parliamentary crises”.⁶⁵ In a parliamentary system, the Parliament is the only source of popular sovereignty.⁶⁶ “Parliamentary systems have their name due to their founding principle, which is called the sovereignty of the Parliament”⁶⁷. As Giorgi Kakhiani points out, the transition to the parliamentary model means moving the epicenter of political life to the Parliament, which means the beginning of a new era in Georgian constitutionalism.⁶⁸

Based on the above, it is considered that the parliamentary system is the popular government, because the members of the Parliament, elected by the people, are authorized to observe and control the activities of the government and take appropriate measures.⁶⁹ This system is characterized by the fact that the President is distanced from the executive power and his/her authority does not overlap with the authority of the executive power, he/she does not participate in the daily activities of the government and

⁶² Thomas O. Sargentich, ‘The Presidential and Parliamentary Models of National Government’ (1993) 8(2/3) American University International Law Review 579-580 <<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1870&context=auilr>> [last accessed on 7 July 2023].

⁶³ Tavits, *supra* note 58, 2.

⁶⁴ Konstantine Kandelaki and others, ‘Constitutional systems and the constitutional process in Georgia (1995-2009), development perspective’ (Open Society Georgia Foundation 2009) 13 <<http://constitution.parliament.ge/uploads/masalebi/bibliography/OSGF-2009-2010-konst-procesi.pdf>> (in Georgian) [last accessed on 7 July 2023].

⁶⁵ *ibid.*

⁶⁶ *ibid.*, 21.

⁶⁷ Giovanni Sartori, *Comparative Constitutional Engineering, An Inquiry into Structures, Incentives and Outcomes* (2nd Edition, New York University Press 1997) 101.

⁶⁸ Giorgi Kakhiani, ‘Observations on Some Issues Related to the Draft Constitutional Law’ (2012) 1-2(3-4) Davit Batonishvili Law Institute, Law Journal “Sarchevi” 192 <https://dspace.nplg.gov.ge/bitstream/1234/146099/1/Sarchevi_%202012_N1.pdf> (in Georgian) [last accessed on 7 July 2023].

⁶⁹ Lana Tsanova, *Principles of Government Responsibility: The Practice of Constitutionalism and Georgian Legislation* (University Publishing House 2015) 11 <http://press.tsu.ge/data/image_db_innova/disertaciebi_samartali/lana_canava.pdf> (in Georgian) [last accessed on 7 July 2023]; Otar Melkadze and Otar Makharadze, *Organization of Political Power in the Countries with Parliamentary System (Regarding Georgian Problems 2001)* 27 (in Georgian).

the parliament, and consequently, it can be said that the President is not the addressee of the protest wave, which gives him/her the opportunity to be a neutral arbiter⁷⁰ and thus can “bring the country out of the state of a crisis situation in a constitutional way, using the “soft power””.⁷¹

The President does not enjoy the right of a legislative initiative or veto, and his/her main powers are somewhat symbolic, such as, for example, appointment and pardon, and the President cannot act independently, as he/she basically implements the will of the parliamentary majority, and formally participates in the formation of the government.⁷² The role of the President increases when there is a diversity of parties, the Parliament and the Government are unable to act in concert and a parliamentary crisis occurs, which can be overcome by removing the government or dissolving the parliament.⁷³

In a parliamentary republic, the President is traditionally elected by the Parliament, although there are different ways of electing a president.⁷⁴ It can be said that “the temptation to intrude on the powers of the head of government and the cabinet is greater when parliamentary democracies have a president as the head of state—generally someone who has had a former political career. One method that parliamentary systems use to minimize this risk is not to allow the president the democratic prestige and implicit power of being popularly elected. Instead, the usual procedure is that the parliament elects the president.”⁷⁵ When analyzing parliamentary regimes, political scientists ignore the role of the head of state: the monarch, the governor-general in the British Commonwealth of Nations, and the president in republics.⁷⁶ Monarchs and their “successor” presidents in a parliamentary republic cannot be just a relic of the past.⁷⁷ However, it should be noted that in the case of a parliamentary regime, “if the role of the head of state were only decorative, the separation of the roles of the head of state and the head of government would lose its meaning.”⁷⁸

⁷⁰ Gogiashvili, *supra* note 50, 156.

⁷¹ *ibid.*

⁷² Tsanava, *supra* note 72, 158.

⁷³ *ibid.*, 159.

⁷⁴ *Ibid.*, 160.

⁷⁵ *ibid.*; Arend Lijphart, *Patterns of Democracy, Government Forms and Performance in Thirty-six Countries*, second edition, New Haven and London (First edition 1999. Second edition 2012) 128.

⁷⁶ Juan J. Linz, ‘Presidential or Parliamentary Democracy: Does It Make a Difference? The Failure of Presidential Democracy’ in Juan J. Linz and Arturo Valenzuela (eds), *Baltimore and London*, Vol. 1 (Johns Hopkins University Press 1994) 46.

⁷⁷ Tsanava, *supra* note 72, 160.

⁷⁸ *ibid.*, 160-161.

VI. FOREIGN POWERS OF THE PRESIDENT IN THE CONTEXT OF A PARLIAMENTARY MODEL OF GOVERNANCE ON THE EXAMPLE OF DIFFERENT COUNTRIES

1. GERMANY

Germany is a parliamentary federal republic,⁷⁹ according to the Constitution⁸⁰ of which the federal president is elected by the federal assembly, like the president of Georgia, who is elected by the electoral college at the next elections⁸¹, which corresponds to the role of a neutral arbiter, assigned to the president by the Constitution.⁸² Germany represents a classical type of parliamentary republic, where the state government is based on the scheme of division of power into legislative, executive, and judicial authorities.⁸³ The Federal President of Germany is the head of state, elected for a 5-year term by a majority vote of the Federal Convention. Any German who is entitled to vote in Bundestag elections may be elected as president.⁸⁴ The Federal Assembly consists of the Members of the Bundestag and an equal number of members elected by the parliamentary assemblies of the Länder on the basis of proportional representation.⁸⁵

The status of the President in the field of foreign relations: a) The Federal President shall represent the Federation in international law. b) He shall conclude treaties with foreign states on behalf of the Federation. c) He shall accredit and receive envoys. d) Treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment.⁸⁶

According to Article 59 of the Constitution of Germany⁸⁷, the Federal President shall represent the Federation in international law. He shall conclude treaties with foreign states on behalf of the Federation. He shall accredit and receive envoys, while the treaties that regulate the political relations of the Federation or relate to subjects of

⁷⁹ Vasil Gonashvili (ed), *Constitutions of Foreign States*, Part III (Union “Lawyers for the Rule of Law” 2006) 48 (in Georgian).

⁸⁰ Article 54, Basic Law for the Federal Republic of Germany <<https://www.btg-bestellservice.de/pdf/80201000.pdf>> [last accessed on 7 July 2023].

⁸¹ Article 50, Constitution of Georgia of June 29 of 2020 <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> [last accessed on 7 July 2023].

⁸² European Commission for Protection of Democracy through Law, Opinion on the draft revised Constitution, 53 <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)013-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)013-e)> (in Georgian) [last accessed on 15 July 2023].

⁸³ *Constitutions of Foreign States*, supra note 92, 58.

⁸⁴ Article 54, Basic Law for the Federal Republic of Germany <<https://www.btg-bestellservice.de/pdf/80201000.pdf>> [last accessed on 7 July 2023].

⁸⁵ *Constitutions of Foreign States*, supra note 92, 59.

⁸⁶ Article 59, Basic Law for the Federal Republic of Germany <<https://www.btg-bestellservice.de/pdf/80201000.pdf>> [last accessed on 7 July 2023].

⁸⁷ *ibid*, Article 59.

federal legislation shall require the consent or participation, in the form of a federal law, and in case of administrative agreements the provisions concerning the federal administration shall apply.

Thus, according to the German constitution, the general power of representation is granted to the president (without reference to consent or agreement), as well as the power of signing a treaty, however, some issues are specified, in regard to which the president has a limited scope of independent action to conclude agreements. Orders and directions of the Federal President shall require for their validity the countersignature of the Federal Chancellor or the competent Federal Minister.⁸⁸ It is clear from the above, that the president independently carries out foreign representation and concludes international agreements, and in the field of foreign relations there is almost no free space where the powers of the president and the executive authority overlap. On the example of Georgia, it can be said that, according to the current version of the Constitution, the power to represent the country in foreign relations is still divided between the Prime Minister and the President.

The Constitution of Germany also contains a provision, according to which relations with foreign states shall be conducted by the Federation. Before the conclusion of a treaty affecting the special circumstances of a Land, that Land shall be consulted in a timely fashion. Insofar as the Lands have the power to legislate, they may conclude treaties with foreign states with the consent of the Federal Government.⁸⁹

2. HUNGARY

Hungary is a unitary parliamentary republic in which the parliament has a leading role.⁹⁰ Hungary's Head of State is the President of the Republic, who represents the unity of the nation and monitors the democratic operation of the State. The President of the Republic is the Commander in Chief of the armed forces.⁹¹ Any enfranchised citizen who has reached the age of thirty-five prior to the date of election may be elected to the office of President of the Republic for a term of five years. The President of the Republic may be re-elected to such office no more than once. The President is elected by the Parliament.⁹²

Status of the President in the field of foreign relations: The President of the Republic shall a) represent the State of Hungary; b) conclude international treaties on behalf

⁸⁸ *ibid*, Article 58.

⁸⁹ *ibid*, Article 32.

⁹⁰ *Constitutions of Foreign States*, *supra* note 92, 690.

⁹¹ Article 29, Constitution of the Republic of Hungary <<https://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex2.pdf>> [last accessed on 7 July 2023].

⁹² *ibid*, Article 29/A.

of the Republic of Hungary; c) if the subject of the treaty falls within its legislative competence, prior ratification by the Parliament is necessary for conclusion of the treaty; d) accredit and receive ambassadors and envoys.⁹³

Accordingly, the President of Hungary represents the Republic of Hungary (and not the government)⁹⁴ and has the authority to sign international agreements on behalf of the Republic. Also, if the subject of the agreement is a matter within the competence of the Parliament, prior consent/ratification of the Parliament is required before concluding of such an agreement. Ambassadors Extraordinary and Plenipotentiary are appointed by the President. Therefore, unlike Georgia, in this case, we do not have a conflict with the executive power in terms of the President's foreign powers, since according to the Hungarian constitution, only the President enjoys the power of representation in foreign relations, which does not require the countersignature of the Prime Minister or the relevant minister.⁹⁵ As to the issue of concluding international agreements, as stipulated by the Constitution, the government concludes international agreements on behalf of the government of the Republic, and the President on behalf of the Republic, and moreover, the co-signing mechanism applies to concluding of international agreements.⁹⁶ Consequently, the categories of agreements to be concluded by the President and by the Prime Minister are clearly separated into those to be concluded on behalf of the Government, and on behalf of the Republic. Appointment/recalling of ambassadors by the President of the Republic and conclusion of international agreements require the countersignature of the Prime Minister or the responsible minister.

3. BULGARIA

Bulgaria is a parliamentary republic. According to the Constitution,⁹⁷ the President is the head of state, who is directly elected by the voters for a term of 5 years. The President shall embody the unity of the nation and shall represent the State in its international relations.⁹⁸

Status of the President in the field of foreign relations: The President shall a) represent the State in its international relations; b) conclude international treaties in the

⁹³ *ibid*, Article 30/A.

⁹⁴ The government can enter into international agreements on behalf of the government of the Republic, see Article 35.1(j), Constitution of the Republic of Hungary <<file:///C:/Users/User/Downloads/The%20Constitution.pdf>> [07.07.2023].

⁹⁵ *ibid*, Article 30/A.

⁹⁶ Article 35, Constitution of the Republic of Hungary <<https://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex2.pdf>> [last accessed on 7 July 2023].

⁹⁷ Articles 92, 93.1, Constitution of Bulgaria <<http://www.parliament.bg/en/const>> [last accessed on 7 July 2023].

⁹⁸ *ibid*, Articles 92-93.

circumstances established by the law; c) on a motion from the Council of Ministers, appoint and remove the heads of the Republic of Bulgaria's diplomatic and permanent missions at international organizations.⁹⁹

Therefore, differently from Georgia, only the President of the country has the power of representation in the field of foreign relations, and the country's executive power, which, according to the Bulgarian Constitution,¹⁰⁰ determines the country's domestic and foreign policy, does not interfere in the authority of the President to exercise this power. Also, the powers of the President of the Republic include conclusion of international agreements in cases defined by law, and on a motion from the Council of Ministers, appoint and remove the heads of the Republic of Bulgaria's diplomatic and permanent representatives at international organizations, and receive the credentials and the letters of recall of the foreign diplomatic representatives to this country.¹⁰¹ The Council of Ministers concludes, confirms or denounces international treaties when authorized to do so by law.¹⁰² As for the right of representation in international relations, the Constitution grants the President the right to exercise this power independently. The President's decrees shall be countersigned by the Prime Minister or the minister concerned.¹⁰³ As we can see, even when concluding an international agreement, the Bulgarian Constitution does not stipulate for the need of approval by the Council of Ministers, but requires countersignature of the Prime Minister or the minister concerned only in regard to decrees issued in the field of foreign relations.

4. CZECH REPUBLIC

The Czech Republic is a parliamentary republic. According to the Czech constitution, unlike classical parliamentary republics, the president is elected directly. The President of the Czech Republic is the head of state, elected not by the Parliament,¹⁰⁴ but directly by popular elections for a term of five years.¹⁰⁵ He/she is the head of state and represents the country.¹⁰⁶

Status of the President in the field of foreign relations: the President of the Republic shall a) represent the State with respect to other countries; b) negotiate and ratify

⁹⁹ *ibid*, Articles 92, 98.

¹⁰⁰ *ibid*, Article 105.

¹⁰¹ Article 98, Constitution of Bulgaria <<http://www.parliament.bg/en/const>> [last accessed on 7 July 2023].

¹⁰² *ibid*, Article 106.

¹⁰³ *ibid*, Article 102.

¹⁰⁴ *Miloš Zeman* became the first directly elected president in 2013, before that, according to Article 54, paragraph 2 of the Constitution, the President was elected by the Parliament at a joint session of the Chambers.

¹⁰⁵ Articles 54-55, Constitution of the Czech Republic <https://adsdatabase.ohchr.org/IssueLibrary/CZECH%20REPUBLIC_Constitutional%20law.pdf> [last accessed on 7 July 2023].

¹⁰⁶ Vasil Gonashvili and others, *Constitutions of Foreign Countries, Part I* (Second Revised Edition, Union "Lawyers for the Rule of Law" 2008) 632 (in Georgian).

international treaties; c) has the right to delegate the negotiation of international treaties to the government or, with its consent, to individual members thereof; d) receive the heads of diplomatic missions; e) appoint and recall heads of diplomatic missions.¹⁰⁷

In accordance with the Constitution of the Czech Republic, representation in the field of foreign relations is carried out by the President of the country. In addition, the President conducts negotiations and is authorized to conclude international agreements and also ratifies them. An important authority is delegation negotiation of international treaties to the Government or, subject to the Government's consent, to its individual members. Decisions made by the President of the Republic pursuant to the field of foreign relations shall be valid only if countersigned by the Prime Minister or by an authorized member of the Government. Consequently, responsibility for a decision made by the President of the Republic, which must be countersigned by the Prime Minister or a member of the Government authorized by him, shall be borne by the Government.¹⁰⁸ Accordingly, it can be said that the so-called "bipolarity" is not observed in the field of foreign relations according to the Constitution of the Czech Republic.

VII. AN "INVISIBLE" OR "NEUTRAL" PRESIDENT IN THE PARLIAMENTARY REPUBLIC ON THE EXAMPLE OF GEORGIA

The parliamentary model of governance can be said to contain some challenges for the institution of the President, since, at first glance, the institution of the President does not possess effective authority in the sphere of execution, and the President stands far from the executive power, but at the same time, if necessary, he/she becomes the main figure on the political chessboard, who is able to defuse a political crisis and at the same time be equipped with the function of a "neutral arbiter".

On the example of Georgia, it should be noted that the head of the state is the President, whose degree of legitimacy, ensuing from direct elections, is quite high, even compared to the degree of legitimacy of the executive power. The importance of the status of the President and his/her role in parliamentary democracies does not lose its relevance, and in turn, the degree of legitimacy of the President is a subject of constant debates, in particular, whether it is important for the functioning of the regime, whether the president is elected directly by citizens, or indirectly by a representative body.¹⁰⁹ Today, Georgia has a directly elected president, however, from 2024, the head of state will be elected indirectly.¹¹⁰ It is necessary to analyze whether it is possible for a directly

¹⁰⁷ Article 63, Constitution of the Czech Republic <https://adsdatabase.ohchr.org/IssueLibrary/CZECH%20REPUBLIC_Constitutional%20law.pdf> [last accessed on 7 July 2023].

¹⁰⁸ *ibid*, Article 63.

¹⁰⁹ Tavits, *supra* note 58, 1.

¹¹⁰ Article 50, edition of the Constitution of Georgia of June 29 of 2020 <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> [last accessed on 7 July 2023].

elected President to be a nominal figure in a parliamentary republic, and an indirectly elected President to be more active in terms of involvement in foreign policy and its implementation,¹¹¹ and whether the degree of legitimacy of the President depends on the way he/she was elected.¹¹² On the basis of consideration of this issue, it should be determined, what makes the institution of the President powerful and influential in a parliamentary republic. Thus, the real power of the President of Georgia on the way to parliamentary democracy can be determined clearly by analyzing the powers of the President.

The foreign powers of the president are the subject of constant discussion and controversy, and against this background, the question of who has the right to represent the country in foreign relations is relevant – as the guarantor of the country’s unity and national independence, “only the President has the right to speak or be heard as a representative of the nation,”¹¹³ or is it possible, that this right can be shared with the executive power. Effective power in the field of foreign relations facilitates expansion of Presidential power in other areas, of course, to varying degrees in different countries.¹¹⁴ Coexistence of the President and the Prime Minister on the background of the ceremonial powers of the President is characteristic of the parliamentary regime, however, viewing the President’s powers only as ceremonial does not correspond to reality, since all the presidents of the parliamentary regime are vested with additional clearly defined powers in the field of governance process, which can be divided into legislative and non-legislative powers. In particular, the legislative powers are the right to veto, legislative initiative, the power to issue a decree, and non-legislative powers can be considered the power to form and/or dismiss the government, and besides, most constitutions grant presidents the role of commander-in-chief of the armed forces and certain prerogatives in the field of foreign relations.¹¹⁵

Article 49 of the Constitution of Georgia defines the status of the President states, in particular, the President of Georgia shall represent the country in foreign relations. At first glance, the mentioned authority is presented as exclusive, because it is stipulated in the article, that establishes the status of the President, in particular, this provision states that the President of the country is 1) The President of Georgia is the Head of state of Georgia; 2) is the guarantor of the country’s unity and national independence; 3) the President of Georgia is the Supreme Commander-in-Chief of the Defense Forces

¹¹¹ *ibid*, 233.

¹¹² *ibid*, 239.

¹¹³ Louis Fisher, ‘The “Sole Organ” Doctrine, Studies on Presidential Power in Foreign Relations’ (2006) 1 Law Library of Congress 1 <<https://sgp.fas.org/eprint/fisher.pdf>> [last accessed on 7 July 2023].

¹¹⁴ Juliet Edeson, ‘Powers of Presidents in Republics, Papers on Parliament’ No. 31 (Published and Printed by the Department of the Senate Parliament House, Canberra 1998) 110 <<https://www.aph.gov.au/binaries/senate/pubs/pops/pop31/pop31.pdf>> [last accessed on 7 July 2023].

¹¹⁵ Tavits, *supra* note 58, 29.

of Georgia; d) the President of Georgia shall represent Georgia in foreign relations. The existence of the said authority in the norm, defining the status of the President, indicates the importance, that the legislator assigns to a representation of the country in the field of foreign relations and the fact that the said authority is characteristic of the institution of the President. However, we should not forget the status of the President as the head of state, therefore, whether the Constitution contains or does not contain a provision, that the President is the representative of the state in foreign relations, the fact is that the country has the head of state and this status gives him/her a certain privilege of representation in the field of foreign relations, as well as defense.

Article 52 of the Constitution, which defines the powers of the President, states that the President with the consent of the Government, shall exercise representative powers in foreign relations, negotiate with other states and international organizations. Hence, it is already clear, that the President cannot represent the country in foreign relations without the approval of the government, therefore, negotiations with other states and international organizations also require such approval. Article 55, paragraph 3 of the Constitution stipulates that the Prime Minister shall represent Georgia in foreign relations and conclude international treaties on behalf of Georgia. The Constitution of Georgia duplicates the right of representation in foreign relations and grants this authority to both the Prime Minister and the President, with the reservation, that the latter will need approval of the government. It is important to establish the goal of the legislator, when he stipulated in the Constitution of Georgia, that the right of representation in the field of foreign relations is assigned to the two highest political figures - the President and the Prime Minister of Georgia. The article establishes the authority of the President to “exercising” foreign powers, which means “implementation in practice”,¹¹⁶ and the mentioned term indicates to a somewhat extended authority of the President. According to the supreme law of the country, foreign policy is implemented by the government,¹¹⁷ therefore, to some extent, according to the given provision the government delegates to the President the representative powers.

It is important to define what is meant by foreign representation in general, and whether it is possible to divide this authority between two persons. This implies working visits to different countries and meetings with their leaders, working meetings at summits, meetings with international organizations, expressing support to a specific country by visiting it, cooperation in any field, be it political, trade, economic, energy, or cultural, strengthening of bilateral contacts, friendship or partnership between countries, and etc. In some cases, the mentioned visits may even be related to the signing of an international agreement.

¹¹⁶ Explanatory dictionary of the Georgian language, Language Modeling Association <<http://www.ena.ge/explanatory-online>> [last accessed on 7 July 2023].

¹¹⁷ Article 54, Constitution of Georgia of June 29 of 2020 edition <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> [last accessed on 7 July 2023].

According to the principle of separation of powers, as well as taking into consideration current model of government and the institution of the President, if the provision of the Constitution of Georgia on the right of representation of the country in the field of foreign relations to be understood in such manner that any step and issue must be agreed with the government of Georgia, and only in case of approval by the government the President shall be able to go on a working visit abroad, this will be a certain “derogation” of the institution of the President, as according to the Constitution, the President is not a figure subordinate to the Prime minister and/or the government as a collegial body, and he/she is not accountable to the government of Georgia. Therefore, the provision, which states that the President needs the consent of the government to exercise representation in the field of foreign relations should not be interpreted in this manner, as this will create political and legal “awkwardness” both, within the country and abroad. Also, as mentioned above, according to the Law of Georgia on “Structure, Authority and Rules of Operation of the Government of Georgia” the Prime Minister and ministers represent Georgia in foreign relations within the scope of their authority. Which means that the circle of persons, to whom the legislation grants the right of representation in the field of foreign relations is quite large, although according to the current edition of the Constitution, the country does not have the highest representative in foreign relations.

On the backdrop of the symbolic status of the President in the context of the parliamentary governance model, it is important to distinguish between the role of the President as a symbol of the state, and the power of the President to influence and define foreign policy,¹¹⁸ since “the mere presence or absence of the President in itself changes the dynamics of the parliamentary regime”.¹¹⁹ “Recent and far-reaching changes ongoing globally represent a challenge both for the leaders, who implement foreign policy, as well as for those who study foreign policy.”¹²⁰

According to Article 52 of the Constitution of Georgia, one of the authorities of the President of Georgia in the field of foreign relations is to accept the accreditation of ambassadors and other diplomatic representatives of other states and international organizations with the consent of the Government; also, upon nomination by the Government, appoint and dismiss ambassadors and other heads of diplomatic missions of Georgia. According to the Law of Georgia on “Structure, Authority and Rules of

¹¹⁸ Sujit Choudhry and others, *Semi-Presidentialism as Power Sharing: Constitutional reform after the Arab Spring* (Center for Constitutional Transitions and International IDEA 2014) 91 <<https://www.idea.int/sites/default/files/publications/semi-presidentialism-as-power-sharing-constitutional-reform-after-the-arab-spring.pdf>> [last accessed on 7 July 2023].

¹¹⁹ Tavits, *supra* note 58, 236.

¹²⁰ Juliet Kaarbo and others, *The Analysis of Foreign Policy in Comparative Perspective, Domestic and International Influences on State Behavior* (CQ press 2013) 4 <<https://hostnezt.com/cssfiles/internationalrelations/The%20Analysis%20of%20Foreign%20Policy%20in%20Comparative%20Perspective.pdf>> [last accessed on 7 July 2023].

Operation of the Government of Georgia”,¹²¹ the government, within the limits of its competencies defined by the Constitution and the law, refers submission to the President of Georgia on appointment and recall of ambassadors and heads of diplomatic missions of Georgia; also, approves of accreditation of ambassadors and other diplomatic representatives of other states and international organizations.¹²² The recent past shows that the field of foreign relations is a field, that has become the subject of conflict between persons with higher authority on numerous occasions, therefore, when determining the separation of powers in this field, each word has a special meaning at the legislative level. For example, let’s consider the word “submission” of the government. According to the explanatory dictionary of the Georgian language, submission means “an official statement containing some desire”.¹²³ Also, “submission” is defined as an “official written appeal, statement”.¹²⁴ Submission of the government regarding the appointment of ambassadors and heads of diplomatic missions implies the desire to appoint an ambassador and the head of a diplomatic mission to some specific country, but what is the role of the President in the exercise of said authority? Does the President have the right to either appoint persons to these positions, or to reject their appointment, and does such submission mean a priori that the President shall appoint the mentioned persons to the position unconditionally? It is also important to determine, whether it is the constitutional obligation of the President to appoint ambassadors and heads of diplomatic missions, or it is his/her authority, and the President arrives at a decision at own will. Does it follow from the specificity of the parliamentary republic that the President is only a signatory of documents in the field of foreign relations, and his real will is not expressed in actions. According to Article 53 of the Constitution, a legal act of the President of Georgia shall require the countersignature of the Prime Minister, and political responsibility for countersigned legal acts lies with the Government. Does this provision mean that the selection of ambassadors or the heads of diplomatic missions is only within the competence of the government, and the President must only formally sign their appointment? In addition, what legal regime applies to such cases, when the President refuses to appoint a candidate nominated by the government to the mentioned position due to a whole range of reasons or justifications.

¹²¹ Article 5, paragraph “w”, Law of Georgia on Structure, Powers and Rules of Operation of the Government of Georgia <<https://matsne.gov.ge/ka/document/view/2062?publication=41>> [last accessed on 7 July 2023].

¹²² Article 5, paragraph “x”, Law of Georgia on Structure, Powers and Rules of Operation of the Government of Georgia <<https://matsne.gov.ge/ka/document/view/2062?publication=41>> [last accessed on 7 July 2023].

¹²³ Orthographic Dictionary of the Georgian language <<http://ena.ge/explanatory-online>> [last accessed on 7 July 2023].

¹²⁴ National Library of the Parliament of Georgia <<http://www.nplg.gov.ge/gwdict/index.php?a=term&d=14&t=34418>> [last accessed on 7 July 2023].

The President, in the exercise of foreign powers, including in the sphere of appointing ambassadors, submits written proposals to which, according to the Rules of Procedure of the Government of Georgia, the Government declares its consent.¹²⁵ Consequently, the government is obliged to consider the proposals of the President, including those, related to appointing ambassadors, and arrive at a decision, which means that the role of the President in the sphere of appointing ambassadors is not limited to facsimile.¹²⁶ Also, according to Article 5 of Resolution No. 206 of November 16, 2005 of the Government of Georgia on Approval of the Regulations of the Ministry of Foreign Affairs of Georgia, the duties of the Minister of Foreign Affairs include submission of proposals to the President of Georgia regarding the appointment or dismissal of extraordinary and plenipotentiary ambassadors of Georgia, permanent representations of Georgia in international organizations and the heads of diplomatic missions.¹²⁷ Taking into consideration the above, the term “submission” used in the Constitution should not be understood as an already made decision that should be automatically confirmed by the President, but it refers to a written appeal of the government, expressing its desire to appoint a specific person to the relevant position.

The role of the President lies in the fact that the constitution grants him/her the power to appoint ambassadors, which implies that the President may not appoint a specific person as an ambassador based on such nomination. Accordingly, the legislation provides for communication of the Minister of Foreign Affairs with the President not only for the purpose of informing, but also to a certain extent for reporting purposes, in the form of submission of proposals to the President. In this case, the word “submission” also means taking into account the will of the President, otherwise the term “consent” of the government would have been used.

It is important to mention two circumstances, namely, firstly, the legislation of Georgia does not contain a provision regarding what will happen if the President refuses to appoint a person as an ambassador, and secondly, what will happen if the President for an indefinite period of time does not approve or reject the appointment of a candidate as an ambassador. The Constitution does not provide for a deadline or legal consequences if the President refuses to appoint a candidate as an ambassador. The legislator did not indicate in the basic law of the country, that the ambassador will be considered as appointed in such case, or that he/she will be appointed by the Prime Minister. According to the Constitution of Georgia, the general powers of the President make

¹²⁵ Article 52, Decree No. 77 of the Government of Georgia dated February 14, 2018 on Approval of the Rules of Procedure of the Government of Georgia <<https://matsne.gov.ge/ka/document/view/4062183?publication=11>> [last accessed on 7 July 2023].

¹²⁶ Statement of the President <<https://fb.watch/fxm4RIH-o8/>> [last accessed on 7 July 2023].

¹²⁷ Article 5, paragraph 1, subparagraph “m” of the Resolution No. 206 of the Government of Georgia of November 16 of 2005 on Approval of the Regulations of the Ministry of Foreign Affairs of Georgia <<https://matsne.gov.ge/ka/document/view/10678?publication=30>> [last accessed on 7 July 2023].

it clear that if the President uses his/her discretionary power and refuses to appoint a candidate, the legislator proposes as an alternative, that the candidate shall be considered as appointed. For example, “If the President of Georgia does not appoint the Prime Minister within the specified period, he will be considered appointed”. Hence, it follows from the Constitution of Georgia, that if the President refuses to appoint a person as an ambassador, the appointment procedure will not continue, and such a person will not be considered as officially appointed ambassador without being appointed by the President.

The word “submission” should be interpreted as presenting a proposal of an institution, in this case, the government, to the President, regarding the appointment of a specific person to a relevant position, and in case of a positive answer decision in the given regard is reached through the government’s submission and requires the co-signature of the Prime Minister. After the co-signing, the government is responsible for the final decision on the appointment of the person as ambassador.

According to the examples of countries with parliamentary governance, considered above, the issue of appointing ambassadors, as well as the field of foreign relations, is considered as the sphere, in which the President is engaged actively, as this authority is inherent to the institution of the President, who exercises certain powers independently, or requires the co-signature of the government/Prime Minister.

Regarding signing of international agreements by both - the Prime Minister and the President with the consent of the government, it should be taken into consideration as to why the legislator tries to link the authority to conclude an inter-state international agreement to the President of Georgia, instead of assigning it exclusively to the Prime Minister; Why the right of representation is assigned both to the President and the Prime Minister; Why there is an attempt to ensure domination of the President in this field again, even nominally. The answer may be that, in general, this is viewed as belonging to the list of “authorities of the President”, regardless of the model and form of government in the country, because the sphere of foreign relations is the sphere of engagement of the President as the head of state. That is why the opinion of the President, as a state institution, should be taken into account in regard to appointing of ambassadors as well. Otherwise, the government, as the executive branch, would itself have carried out any action in the field of foreign relations as the “sole body”.¹²⁸ Consequently, the fact that the government “implements” the country’s foreign policy does not deprive the President, as an institution, of the right to engage in the field of foreign relations and make decisions.

It is important to note that the implementation of foreign policy by the government does not mean, that the only body in the field of foreign relations is the government, since

¹²⁸ Fisher, *supra* note 21, 1.

the field of foreign relations, even under a formal presidency, is the field of regulation characteristic of the institution of the President under any form of government, whether parliamentary or a mixed government model. The said authority is exercised by the President, regardless of whether he/she is a part of the executive branch or not. A “non-executive president” is found in almost all countries with parliamentary governments,¹²⁹ like Georgia. A non-executive President often has the discretionary power to effectively “intervene” and confront the elected government, and thus, lead to a power struggle.¹³⁰

The field of foreign relations and the problem of separation of competences did not arise only in the political-legal field of Georgia, but it has been and is a subject of discussion for centuries, regardless of the form of government. The constitutional fathers were convinced of Montesquieu’s dogma of the separation of powers. They distributed the powers of government among independent legislative, executive, and judicial departments.¹³¹ And yet, where should they place the foreign relations power? Some wanted to give it to the President,¹³² some to Congress.¹³³

The 26th President of the United States of America, Theodore (Teddy) Roosevelt, described the President as “the ruler of the people” whose “duty” was to do whatever the needs of the nation required unless such action was prohibited by the Constitution or laws.¹³⁴ Article 78 of the Constitution of Georgia stipulates for integration into the European and Euro-Atlantic structures, in particular, “the constitutional bodies shall take all measures within the scope of their competences to ensure full integration of Georgia into the European Union and the North Atlantic Treaty Organization”. The mentioned article imposes the obligation to do everything to promote the European future of the country, as well as in the organization of the North Atlantic Treaty for the integration of Georgia to the President of Georgia as a constitutional body, who is the head of state, the guarantor of the country’s unity and national independence, the Supreme Commander of the Defense Forces of Georgia and the representative of Georgia in foreign relations. As part of the fulfillment of this obligation, the President, as the head of the state, is obliged to take all measures within the scope of his/her authority to ensure full integration of Georgia into the European Union and the North Atlantic Treaty Organization. In the mentioned context, the political space and the concept of multi-party parliament should be emphasized, since “parliamentary democracies governed by multi-party cabinets arrive to foreign policy decisions in a politically difficult context”.¹³⁵

¹²⁹ Bulmer, *supra* note 113, 1.

¹³⁰ *ibid.*

¹³¹ Quincy Wright, ‘The American Political Science Review’ (1921) 1(15) The Control of Foreign Relations, American Political Science Association, 4 <<https://www.jstor.org/stable/pdf/1944023.pdf>> [last accessed on 7 July 2023].

¹³² *ibid.*

¹³³ *ibid.*

¹³⁴ Theodore Roosevelt, *An Autobiography* by Theodore Roosevelt (Project Gutenberg eBook 2006) <https://www.gutenberg.org/cache/epub/3335/pg3335-images.html#link2H_APPE7> [last accessed on 7 July 2023].

¹³⁵ Ryan K. Beasley and Juliet Kaarbo, ‘Extremity in the Foreign Policies of Parliamentary Democracies’

VIII. CONCLUSION

As mentioned before, the coexistence of subjects equipped with the authority to represent the country in the field of foreign relations in the constitutional legal space defined by the Constitution is very problematic, especially since the issue of representation of the country in the field of foreign relations is of state importance and is directly related to the image of the country and its foreign policy course. This is especially important in countries with such a governance model, where the President also performs the functions of a neutral arbitrator. During the political crisis or “fluctuations” of the foreign-political course, it is the President, who has the main function of neutralizing and balancing various spheres of the country’s governance, including foreign relations. Moreover, representation does not mean only the statement made by the head of state, expressed position, visits or relations with the international community, it also means the expression of the country’s position and its representation in the international arena, which affects the current and future life of each citizen. The head of state, who represents the country, is the face of the country in the international arena.

Based on the best constitutional experience of the countries discussed above and the corresponding governance model, the authority to represent the country in the field of foreign relations has been assigned to the President of the country. Hence, based on the experience of our country and countries with similar governance and for the purpose of establishing the best model in the field of foreign relations and ensuring the effective distribution of powers, we consider it expedient to grant the right of representation to the President, who, at the same time, would have the obligation to cooperate with the executive power. As to the issue of international treaties and agreements, in this case too, it would be desirable not to grant the President the right to conclude any type of international agreement, but to vest him/her with the authority to conclude interstate international agreements on behalf of Georgia, which, on the one hand, narrows the powers of the President, but, on the other hand, the mentioned change is correct and suitable for the institution of the presidency and appropriate to the status of the President as the head of state.

We consider it important to note that the exact scope of authority of the executive power and the President in the field of foreign relations cannot be determined by the legislation, as this often depends on the relationship between state institutions based on the Constitution of Georgia, which in many cases implies an agreement between the institution of the President and the executive power, and most importantly, requires the will for constructive mutual cooperation based on the interests of the country and for the purpose of common welfare.

(2014) 4(58) *International Studies Quarterly*, International Studies Association 729 <<https://academic.oup.com/isq/article/58/4/729/1814017>> [last accessed on 7 July 2023].