

Law

Forms of State Government in Georgia

Joni Khetsuriani

Academy Member, Constitutional Court of Georgia, Batumi

ABSTRACT. In the history of Georgia, almost all forms of State government and their varieties have been used. Until the first annexation of Georgia by Russia (1801), in the course of many centuries Georgia had been a monarchical State, represented as an absolute monarchy. In the 12th century, under Queen Tamar, there was an attempt to establish a parliamentary monarchy. After the restoration of Georgian State independence in 1991, in the past 17 years, in Georgia all types of republican government - parliamentary, presidential and semi-presidential systems alternated. Recently the idea of the expedience of establishing a parliamentary monarchy has emerged. The Article analyses the pro and contra arguments. It is observed in this article that the choice between a republic and a monarchy should be made by the people through a referendum. © 2008 Bull. Georg. Natl. Acad. Sci.

Key words: republic, monarchy, government in Georgia.

Monarchy had existed for the longest period in Georgia. It originated centuries ago and continued its existence until the first Russian annexation in 1801. The annexation resulted in the abolishment of the Georgian Statehood and the ceasing of the centuries-old rule of the Bagrationi dynasty.

In Georgia the monarchical rule had been present in the form of an absolute monarchy up to 1801. Georgia had to survive in an aggressive geopolitical environment. The major task, permanently at stake for Georgian kings, was to preserve the integrity of the country both against regional separatism and foreign aggression. The fulfilment of this task needed the utmost centralisation of State authority, for which the absolute monarchy was a most appropriate form of government. However, as it is unanimously observed in legal doctrine, the authority of Georgian king has never been despotic, autocratic government [1]. Moreover, there was an attempt in the history of Georgia to introduce another type of monarchical rule. Namely, at the end of the 12th century, circa 1185, in the reign of Queen Tamar, there was a plain political programme for changing the State government, put forward by a group led by Qutlu Arslan the

“mechurchletukhutsesi” (finance minister) against the royal authority [2]. The programme of Qutlu Arslan provided for the establishment of a representative body – “karavi”, which would have been entrusted with legislative powers and the exclusive entitlement to administrate supreme justice, leaving the king with the executive authority only. If analysed in modern terms it is clear that the political group intended to introduce a parliamentary monarchy. This historical fact is significant inasmuch as there was no such precedent in the world for a parliamentary monarchy in terms of an idea, *a fortiori* a practice at the material time. England, which is considered to be the origin of parliamentarism, adopted the *Magna Carta Libertatum* only after 30 years of the aforementioned fact, in 1215, and the first parliament was established after 80 years, in 1265. As regards the famous theorists Locke (England) and Montesquieu (France) they were born almost four centuries after the fact.

While the programme of the group of Qutlu Arslan failed, both sides compromised: Qutlu Arslan was not punished and the proposal about a separate “karavi” of the noblemen was rejected; but in accordance with the agreement concluded between the royal authority and

the supporters of Qutlu Arslan, the regal power was limited by the “joint participation and unanimity” of the “Darbazi” [3]. Thus, a monarch and the “Darbazi” jointly ruled the country. Given the fact that the royal power was partly limited and it did not result in the separation of power in any form between the monarch and the “Darbazi”, this change in State government did not contain the features of dual monarchy. Absolute monarchy continued its existence in Georgia, although the royal power was limited to some extent.

Starting from 1801, Georgia was forcibly incorporated in the Russian Empire, which was a monarchy itself. Hence, after the abolishment of the Georgian Statehood, the Georgian nation had to exist in the foreign monarchical State until 1917, when the Russian monarchy collapsed as a result of revolutions.

In 1918-1921 Georgia was an independent State. In accordance with the Act of Independence of Georgia of 26 May 1918, “the political form of independent Georgia shall be a democratic republic”. Thus, the restoration of the monarchical rule did not ensue from the restoration of the Georgian Statehood. On the contrary, the republican system was defined as the form of State government. Moreover, the opting for the aforementioned form of government by the 1921 Constitution of the Democratic Republic of Georgia acquired even more categorical and unprecedented character. Defining the form of State government, Article 1 of the 1921 Constitution of Georgia reads as follows:

“A Democratic Republic shall be the eternal and unalterable form of the political system.”

The reference to the words “eternal and unalterable” (denoting something not subject to revision) is not incidental in the above context. The imperative provision of Article 148 of the same Constitution is an obvious proof of that. It reads as follows: “The abolition of the form of government of the Democratic Republic of Georgia shall not be suggested to be subjected to the revision of the Constitution”.

The report on the above-mentioned issue was presented by the Chairman of the Constitutional Commission P. Sakvarelidze to the Constituent Assembly on 24 November 1920 and read as follows: “Nothing is eternal. The future generation may dislike some articles of our Constitution and it will be perfectly natural to amend, change them. The article, however, which legislates an independent democratic republic of Georgia, must be unalterable. A new public system can be introduced, a new Constitution can be drafted, but this article must be provided for by the new Constitution without any changes” [4].

Our ancestors obviously left “an eternal republic” to us in the beginning of the 20th century. It can only be explained by the fact that social democrats were in the majority of the Constituent Assembly at the material time and the monarchical rule was unacceptable to them as a matter of principle, in the first place, from the ideological standpoint.

The Constitution established a parliamentary republic as a form of State government, although with considerable peculiarities. While the State authorities were organised on the basis of the separation of powers, there was no position of the Head of State in the system of State government. The Chairman of the Government supplemented the tasks of the Head of State to a certain degree. The Head of the Government was entrusted with the “Highest Representation of the Republic” under the Constitution. However, this position was not equivalent to that of a President being the Head of State in a parliamentary republic. Such an original model of a parliamentary republic is the creation of the then social democrats. Unlike them national democrats supported a presidential republic and therefore criticised the replacement of the position of a president with the institution of a Prime Minister with broad competences. A representative of the national democrats’ party G. Gvazava, when discussing the draft Constitution of the Republic of Georgia in the Constituent Assembly, observed that it was necessary to have in place “a President and a Parliament accountable to the Government. And N. Zhordania attempts to find something in the medium, to create a system, which has existed nowhere. We will not surprise Europe by that but will do harm to Georgia” [5].

It must be mentioned that also from 1918 until 1921, when the Constitution was adopted, a parliamentary republic as a republican form of State Government existed in Georgia without the Head of State – President, i.e. it was the same system as was established by the Constitution of 1921. Hence the view, which has much support in legal doctrine, that N. Zhordania was the first President of Independent Georgia, is groundless.

In the aftermath of the second annexation of Georgia by Soviet Russia (1921) the country emerged as a socialist type of a State. It had become the Soviet Socialist Republic of Georgia, which was forcibly incorporated into the Soviet Union, having a formal right to leave the Union. All four constitutions of Soviet Georgia were based on the principle of separation of powers. While the basic laws provided for the Legislative, Executive and Judiciary, the communist party was the guiding and leading power of the society and the political system; it was the cornerstone of State and public bod-

ies and the only political association of citizens within the political system of the material time. The decisions of the communist party were obligatory for any State body or public organisation. Hence, the separation of powers was a fiction only.

Taking into consideration of the form and political regime of government, Georgia was a totalitarian republic in 1921-1990 (the term "republic" is only referred to, in this context, as an antipode to "monarchy").

Early in the 1990s Georgia restored its independence once again. The reformation of the State authorities became necessary. In the transitory period the authorities started modernisation of the Soviet Constitution of 1978, on the one hand, and drafting of a new law on the basis of the Constitution of 1921, on the other.

As the result of the revision of the 1978 Constitution, the government of the country was established in the form of a parliamentary republic, although without the institution of the President, i.e. almost in the same way as was provided for by the 1921 Constitution of Georgia. An evident shortcoming of this model was that there was no Head of State. This deficiency was made up by the broadened competences of the Chairman of the Government under the 1921 Constitution of Georgia and of the Chairman of the Supreme Council under the Constitution of 1978. However, to sum up, these institutions were only a surrogate for the Head of State.

In order to fill the lacuna, amendments were made in the Constitution of Georgia of 14 April 1991 with a view to introducing the position of the President of the Republic. As a result of the Constitutional amendment, Georgia became a semi-presidential republic as the Fifth Republic of France. This model of government was somewhat a symbiosis of institutions characteristic of parliamentary and presidential republics. While the institution of the President is rather powerful in a semi-presidential republic, there is a powerful Head of the Government too at the same time. The Government in general must enjoy the vote of confidence of the Parliament. The possibility to dismiss the Parliament and the Government makes this model very flexible.

On the basis of the constitutional amendments, Zviad Gamsakhurdia won the elections held on 26 May 1991 and became the first President of Georgia.

At the end of 1991 the acute political crisis escalated in open armed hostilities in Georgia, which were followed by the overthrow of the legitimate authorities and a coup d'état. An illegal Military Council came into power and suspended the Constitution, dismissed the Supreme Council and took charge of the State government institutions. A military dictatorship was established in Georgia.

On 6 November 1992 the newly elected Parliament passed a special law "On State Authorities", which was designed to define the competences and the procedures for the organisation and activities of State bodies of Georgia until the adoption of a new Constitution. To put it in the words of G. Gvazava, we tried once again to surprise Europe since it is still a puzzle which system of State government was introduced by the Law "On State Authorities". In accordance with the law, the Parliament of Georgia consisted of the members elected through majoritarian and proportionality procedures and the Chairman of the Parliament - directly elected by constituents. At the following stages the two thirds majority of the parliament elected the Chairman of the Parliament to the position of Head of State, although he or she would retain the position of the Chairman of the parliament. It would make the Chairman of the Parliament or Head of State the head of the Executive as well. In fine, this was an unprecedented and unknown case in terms of the forms and types of the acknowledged criteria of State government. Hence, it is difficult to determine what model of State government existed in Georgia in 1992-1995.

On 24 August of 1995 Georgia adopted a new Constitution. It is the second basic law in the history of independent Georgia. The new Constitution established the presidential system of State government. Under the system, the President of Georgia, elected directly by constituents, is the Head of State and of the Executive and there is no collegial and accountable link. The Government is only a consultative body, accountable to the President. The President enjoys broad competences but s/he is not entitled to dismiss the Parliament. This model of State government was rather similar to that of the United States of America, which is known as purely, i.e. classical presidential republic.

The model of a presidential republic introduced by the Constitution has proved in the long run to be ineffective for a Young Democracy in transition. An obvious confirmation of the aforementioned was the authority crisis in November 2003 in Georgia, as a result of which the Head of State resigned and, following the constitutional amendments of 6 February 2004, the presidential government was replaced by semi-presidential, mixed type government. The Government of Georgia took its place among the highest agencies of State mechanism, as a collegial body; the President was exempted from the obligations of the leader of the Executive; s/he remained the Head of State only. The Government is accountable both to the Parliament and the President.

The President is meanwhile entitled to dismiss the Government and dissolve the Parliament.

While the country changed its presidential government into a semi-presidential one, the mechanisms of check and balance have been established in the way that the balance was lost in favour of presidential authority. Due to the aforementioned, the role and significance of the Judiciary have been considerably undermined, which has become one reason for the next political crisis.

Thus, in the history of Georgian State government almost all forms and their types have been tried. Among the types of a republic all have been tried: presidential, semi-presidential (mixed) and parliamentary republic. As regards monarchical government, only one type – absolute monarchy has been employed. Parliamentary monarchy remained unknown to our country.

The alteration of all forms of a republic took place in the last 17 years, which is characteristic of a country in transition, attempting to leave totalitarian (socialist) regime and come closer to democratic standards.

Such a frequent change of the forms of government is, I believe, preconditioned by an exaggerated perception of the State institutions' possibilities, by entrusting those institutions with challenges whose solution is impossible even by the introduction of the most democratic system. It has happened nowhere that the change of the form of government or its type (even being the most democratic) has instantaneously resulted in universal well-being, the establishment of civil society and introduction of democratic rule. As empirical evidence all over the world shows, the above-mentioned challenges can be solved both in conditions of a republic (presidential, semi-presidential, parliamentary) and a monarchy (parliamentary monarchy). Despite the forms and types of State government being different in the Federal Republic of Germany and Italy (parliamentary republics), the US and Argentine (presidential republics), Great Britain and Japan (parliamentary monarchies), there is a democratic government regime in all those countries. Accordingly, it is crucial that the government system be based on the rule of law principles and its forms and types depend on the country's historical development, amongst other various factors.

Due to the fact that, as discussed above, all types of republican government were tried in Georgia and this could not ensure the desired stable, steady development of the country, the alteration of State authorities in accordance with the procedure established by the Constitution, territorial integrity, well-being of the people, the protection of human rights etc. Hence, the society

started to think about the expediency of introduction of a parliamentary monarchy.

The idea was supported by the Catholicos-Patriarch Ilia II, some political parties, and organisations as well.

In this regard it is interesting to discuss the arguments which can be used in favour of the restoration of monarchical rule (certainly parliamentary monarchy) in Georgia.

The restoration of monarchy in Georgia will be the restoration of historical justice in the first place. The Georgian people never objected to monarchical rule. There was no referendum held on this issue in Georgia and neither the will of the people was expressed in the form which would have a legal implication. Monarchical rule in Georgia was abolished as a result of aggression and annexation by a foreign State – Russia. The restoration of monarchical rule would restore certain legal connections between the present Georgian Statehood and that existing before 1801 and would create a perception of the continuity of Georgian Statehood.

In the case of the restoration of monarchy there will be no more the institution of the President, which contains much risk of transformation into a totalitarian rule. There has not been a precedent of changing the President in accordance with the procedures established by the Constitution, by elections; it was always preceded by a civil war, a coup d'état and a revolution.

Under a parliamentary monarchy the Head of State is a monarch, who will hold this position for lifetime and s/he can only be replaced through succession to the throne. Furthermore, the heir to the throne, the future monarch is prepared for ruling the country in all respects, s/he is brought up in the national spirit and for serving the country. A monarch is not dependent on political changes and ensures the continuity of the internal and foreign political direction. A monarch does not exercise the rule directly, basically s/he has a moral influence on the authorities. In reality, it is a Parliament elected by the people and a Government having the majority seats in the Parliament which rule the country. A monarch is above all political and party disagreements and exercises the role of a neutral arbiter in the political processes running in the country. Stemming from this, it is excluded for the Head of State becoming a dictator or a totalitarian ruler under a parliamentary monarchy. On the contrary, the Head of State, a monarch is not to allow any political force the usurpation of power.

A monarch is a symbol of the integrity of the nation and of the country. Unlike other organs of State authorities, which are created on the basis of the will of the majority of constituents, a monarch represents the entire

nation, the people, each citizen, despite their ethnical origin and political conviction. Hence, a monarch is the guarantor of the consolidation and integrity of the nation.

Under a parliamentary monarchy, there are more possibilities for the co-existence within the unitary kingdom of State units, historically developed on the territory of the country, for ensuring territorial integrity and overcoming separatist tendencies. These issues are very important for present Georgia, which has not yet decided on the territorial organisation and has not restored the jurisdiction all over the territory of Georgia.

The monarchy clearly embodies the idea of a national Statehood. It ensures the protection and the preservation of national traditions, language and religion, cultural heritage and national identity in general. And this is especially important for small nations in the light of present-day globalisation.

Thus, the introduction of a parliamentary monarchy in Georgia can contribute to the further improvement of the system of State government and the solution of the urgent problems of public life. Meanwhile, it will be a mistake to assume that the restoration of the monarchy is as simple as the introduction of a presidential republic instead of a parliamentary republic. The replacement of a presidential republic with a parliamentary monarchy denotes the move from one type of the form of government to another. Hence, the general aspects of the republican rule stay intact. Accordingly, the political life and social consciousness face such reforms with certain patience. As regards the replacement of a republic by a monarchy, this already means the move from one form of government to another and is related to deep, essential changes. Accordingly, the successful accomplishment of such a change needs a certain amount of time and due preparation of social consciousness. It would suffice to recall the reverse process and how much time and how many revolutions were required in various countries to overthrow absolute monarchies and introduce republican rule.

Even in countries where there still are parliamentary monarchies, retained and successfully discharging the functions of democratic government, the reforms of State authorities were instituted. These reforms were accomplished through the limitation of absolute monarchy, on the one

hand, and by enhancement of people's powers, on the other. I.e. the form of State government was not changed but instead the type within a form of government. Monarchical rule became more democratic, acceptable for the people and continued its existence as a result of such changes. The stability of state authorities and monarchical rule got closely related and the upbringing of generations is running in that reality and based on that spirit.

There is a huge temporal gap between the present generation of the Georgian nation and the Georgian monarchic State. Since 1801, in the course of almost two centuries, many generations have been brought up in our country not only without the awareness of one's own Statehood but also in conditions of relentless ideological fight against the monarchy (especially in the Bolshevism era). Hence, in my opinion, the Georgian national consciousness is unlikely to be ready nowadays to make a choice between republic and monarchy in favour of the latter. The existing socio-economic situation would also hinder the solution of the issue in favour of monarchy. It is impossible to introduce monarchy in a country, where overcoming poverty is one of the major State challenges of the authorities. Another stumbling block is that in case of introduction of a parliamentary monarchy, the question who might become a monarch from the Bagrationi dynasty is not decided yet and still open to debate.

While it is certainly perfectly feasible to overcome the above-mentioned hindering factors, it requires much time and efforts. The consensus of the political forces of the country to be reached on the issue and purposeful measures to be taken accordingly within the framework of State policy are essential in order to convince the population that the introduction of monarchical rule would help the solution of the vital challenges at stake for the Georgian State. After this the people will have to choose between republic and monarchy through a referendum, since, in my opinion, the change of the form of State government cannot be decided by political parties only, even if they have won the elections.

I believe, only in the above-mentioned way it is possible to accomplish, in the 21st century, the endeavouring of the introduction of a parliamentary monarchy in Georgia, which commenced in the 12th century.

სამართალი

სახელმწიფოს მმართველობის ფორმები საქართველოში

ჯ. ხეცურიანი

აკადემიის წევრი, საქართველოს საკონსტიტუციო სასამართლო, ბათუმი

საქართველოში სახელმწიფოს მმართველობის ფორმებიდან ყველაზე ხანგრძლივად მონარქიული მმართველობა მოქმედებდა, რომელიც საუკუნეთა სიღრმეში იღებს სათავეს და 1801 წლამდე, რუსეთის მიერ საქართველოს პირველ ანექსიამდე გაგრძელდა. ისტორიის ამ მონაკვეთში მონარქიულ მმართველობას აბსოლუტური მონარქიის სახე ჰქონდა, თუმცა, საქართველოს მეფის ხელისუფლება არასდროს ყოფილა დესპოტური ერთმმართველობა. უფრო მეტიც, მე-12 საუკუნეში, თამარ მეფის დროს პარლამენტური მონარქიის შემოღების მცდელობას ჰქონდა ადგილი (მეჭურჭლეოვანების ყუთლუ-არსლანის დასის პოლიტიკური პროგრამა).

საქართველოს ისტორიაში სახელმწიფოს მმართველობის თითქმის ყველა ფორმა და მათი სახეობები იყო გამოყენებული. რესპუბლიკური მმართველობიდან გამოიცადა მისი ყველა სახეობა: საპრეზიდენტო, ნახევრად-საპრეზიდენტო (შერეული), საპარლამენტო მმართველობა; მონარქიული მმართველობიდან კი მხოლოდ მისი ერთ-ერთი სახეობა — აბსოლუტური მონარქია. რაც შეეხება პარლამენტურ მონარქიას, მისი გამოყენების პრაქტიკა ჩვენ ქვეყანას არ გააჩნია.

საქართველოში მმართველობის რესპუბლიკური ფორმის ყველა სახეობის მონაცვლეობა უკანასკნელი ჩვიდმეტი წლის მანძილზე მოხდა, რაც, ჩვენი აზრით, გამოწვეულია სახელმწიფო მმართველობის ინსტიტუტის შესაძლებლობების გადაჭარბებული გაგებით, მასზე იმ ამოცანების დაკისრებით, რომელთა გადაჭრაც მხოლოდ მმართველობის თუნდაც ყველაზე დემოკრატიული სისტემის შემოღებით შეუძლებელია. ამავდროულად მიზეზით უნდა იყოს გამოწვეული ქართულ საზოგადოებაში ბოლო დროს გაჩენილი იდეა — ქვეყანაში პარლამენტური მონარქიის შემოღების მიზანშეწონილობის შესახებ.

სტატიაში გაანალიზებულია ის არგუმენტები, რომლებიც საქართველოში პარლამენტური მონარქიის შემოღების სასარგებლოდ შეიძლება იქნეს გამოყენებული. აქვე არის წარმოდგენილი ის ხელის შეშლელი გარემოებებიც, რომლებიც მნიშვნელოვან დაბრკოლებებს ქმნიან სახელმწიფოს მმართველობის ფორმის ასეთი ტრანსფორმირებისათვის. მათი დაძლევა დიდ დროს, ძალისხმევასა და საზოგადოებრივი ცნობიერების სათანადო მომზადებას მოითხოვს. არჩევანი რესპუბლიკასა და მონარქიას შორის თავად ხალხმა უნდა გააკეთოს რეფერენდუმით, რადგან სახელმწიფოს მმართველობის ფორმის შეცვლა, ავტორის აზრით, არ შეიძლება იყოს მხოლოდ პოლიტიკური პარტიების, თუნდაც არჩევნებში გამარჯვებულის, გადასაწყვეტი საკითხი.

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