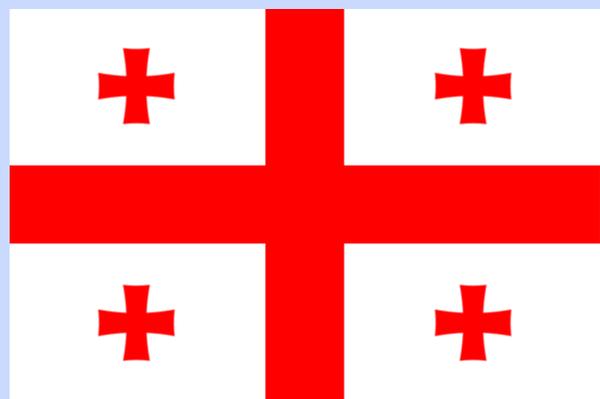


COUNTRY REPORT

GEORGIA



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Introduction¹

Following the dramatic disintegration of Soviet Union, Georgia faced new reality of political sovereignty. During the last three decades of post-communist transformation, Georgian political system severely changed its morphology. In particular, its political system has been autocratic-nationalistic, hybrid, neoliberal autocracy and again hybrid/post-authoritarian. The long road of political, social and cultural transformation seems to be an unfinished adventure for Georgia. Considering the needs and contexts of the political regimes experienced by Georgia, constitution of Georgia respectively faced drastic and harshly debated changes. In the process of formation and reformation of new political systems, and in the process of constitution making, the method of deliberative democracy was either the subject of political denial or it performed the role of formal carnavalesc ritual.

Country Background

Georgia is a parliamentary republic located in South Caucasus. However, since its independence (1990s) until very recently, it was a presidential republic with powerful domination of the president. Constitutional history of Georgia dates from 1921 when the first constitution in the history of Georgia was adopted by that time Democratic Republic of Georgia led by Social Democrats². This constitution formally inaugurated and institutionalized regime of modern parliamentary democracy first time in the history of Georgia. However, Georgian constitution of 1921 did not manage to function in practice due to the immediate collapse of the Democratic Republic of Georgia and social democratic government that ended up with incorporation of Georgia into the Soviet Union. During the Soviet era, Georgia adopted several constitutions (in 1922, 1927, 1937 and 1978). All four Soviet Georgian constitutions enjoyed great quality of formal democratic standards, including social rights protection, principles of solidarity, minority protection and welfare for all.

In 1991, following the disintegration of Soviet Union, Georgia formally became sovereign state. However, due to the chaos and general instability resulted from the collapse of Soviet order, Georgian could not maintain to adopt genuine constitution until 1995. In 1993, ex-foreign minister of Soviet Union and that time chairperson of parliament of Georgia and head of state Eduard Shevardnadze (who took power after the collapse of President Zviad Gamsakhurdia's rule in 1992) convened state constitutional commission of Georgia and charged it with preparation of new constitution of Georgia. Following this work, in 1995 parliament of Georgia adopted its new constitution by which presidential system and the principles of separation of

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² As a result of Russian Revolution in 1917, Georgia gained its independence in spring of 1918. Democratic Republic of Georgia continued to exist only three years (1918-1921). In February of 1921, Georgia lost its independence and respectively joined Soviet Union.

power were formally inaugurated. Since 1995 Georgian constitutionalism experienced difficult path, crisis and challenges which I shall describe in this paper later.

Formal Constitution Making

According to Georgian constitution, it can be revised by a constitutional law and it underlines that “More than half of the total number of the Members of Parliament, or no less than 200 000 voters, shall be entitled to submit a draft constitutional law”. Constitution also emphasizes that parliament makes submitted draft of constitutional law subject for a national public discussion. Regarding the principle of its adoption, constitution clarifies that “A constitutional law shall be considered adopted if it is supported by at least two thirds of the total number of the Members of Parliament. The constitutional law shall be submitted to the President of Georgia for signature within 10 days following its approval, in one hearing, without amendments by at least two thirds of the total number of the members of the next Parliament”.³

Usually, considering the practice and experience of constitution making process in recent history of Georgia (since its independence from 1990s), deliberation process for constitution making was mostly driven by elites (parliament and state constitutional commission). However, since 2017 the practice of deliberation process for constitutional changes was significantly transformed and it involved citizens and wider public to reflect on it.

As I already mentioned it above, this paper will also describe the problems of Georgian constitutionalism. But before discussing the difficult post-soviet road taken by Georgian constitutionalism let me briefly discuss here state of democracy in post-soviet Georgia.

Democracy in Georgia

Democracy in post-soviet Georgia is principally hijacked by the political, social and cultural doctrines of neoliberal ideology. To put it simple, in Georgia, neoliberalism as a radical form of liberalism is equated with the idea of democracy. This means that the ideals of the minimalistic state, deregulation, low taxes and all radical concepts of free market economy on the one hand and the idea of democracy on the other hand, are interconnected and interdependent in the perceptions of dominant political class. However, mention should be made, that the making the ideals of free market economy as vital for democracy became dominant exercise in many post-communist societies. And of course, it was political elites who organized such ideological process. In this context, it is also claimed that the managerialism, technocratic rule and monetarism became dominant ideology of post-communist elites.⁴ Given this, Georgia was not an

³ See article 77 of the Constitution of Georgia <https://matsne.gov.ge/en/document/view/30346?publication=36>

⁴See for example Gil Eyal, Ivan Szeleniy and Eleanor R. Townsley, *Making Capitalism without Capitalists: Class Formation and Elite Struggles in Post-Communist Central Europe* (London and New York: Verso, 2000)

exception. Moreover, technocratic traditions and tyranny of monetarism is something that fanatically prevails mostly in Georgia than in other states of former Soviet Union.

It is not new for the political and social theory that neoliberal ideology contradicts the collective pathos of democracy. Neoliberal ideology is disharmonious with the ideal of democracy as it simply favors the interest of few, not many. Neoliberal state (and ideology) seeks to advocate the interests of wealthy capitalistic class by creating relevant rules, structure of thinking and institutions that must ensure realization of this goal; it provokes individualism and excludes the need of collective interests.⁵ Therefore, unsurprisingly, neoliberal ideology marginalizes necessary ideals and socio-cultural conditions for modern democracy that are for instance social justice, equality and welfare for all. Of course, one may rightly claim that democracy has many forms, and in this way, what we may call democracy in Georgia, and I guess in many other states today across the globe, is neoliberal democracy, which is, to say it again, nihilistic with the principal pathos of democracy. At least, it's skeptical with the pathos that is understood by ordinary citizens that democracy should work for all, not for few.

Georgian political and cultural project of democracy is a tautological and imitative project that was mostly formed by the influence of external factors. This means that, Georgian political elites (trained already in 1990s on early stage of transition) were heavily influenced by the canons of Anglo-American liberal state, by idealizing the principles of small government and free market economy. In this context, democracy in Georgia is perceived by many (including those of cultural and civic elites) as a systematic refusal and cynical categorization of the idea of state and government. Georgian model of democracy is radical peripheral attempt to adapt with neoliberal state as the only model of democracy where state has nothing to do with economic intervention and welfare for all.

As I argue it elsewhere, neoliberal language and liberal terminological signifiers such as “good governance” and “good institutions” have become the principal ideological-linguistic determinants of the democratization process in ex-communist states. In this way, the post-communist elites were influenced by global institutions to adopt a politico-ideological orientation that would fit neoliberal ideas and practices.⁶ Of course, Georgian was part of this imitative practice and here, mentality of political institutions, administrative class and social structures are restricted and controlled by the canons of neoliberal game. In fact, Georgian democracy is a mirror of liberal hagiography where institutions and legal norms are higher moral categories than human

⁵See some critical works on neoliberal state and ideology. Pierre Bourdieu, *Acts of Resistance: Against the Tyranny of Market* (New York: New Press, 1999); Noam Chomsky, *Profit over People: Neoliberalism and Global Order* (New York: Seven Stories Press, 1999); David Harvey, *A Brief History of Neoliberalism* (Oxford, UK: Oxford University Press, 2005); Loic Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham and London: Duke University Press, 2009).

⁶See my article, Bakar Berekashvili, ‘Democracy and Liberalism: Crisis, Pathologies and Resistance’, *The Copernicus Journal of Political Studies*, No.2/2018, p. 51

and human well being. Though, it's not something new for liberal class in general⁷. In Georgia, poverty and economic stagnation is not considered as a threat to democracy, but rather ordinary technical problem that could be solve by government's neoliberal programs. This type of political thinking is rooted from the autocratic rule of former president Mikheil Saakashvili who promoted the idea of Georgian democracy by creating fanatical pro-free market mentality and by creating ideological discourse of pro-American fanaticism as Georgia's road to democracy, while the problems of poverty and inequality were marginalized, ignored and stigmatized. Sadly, this practice still prevails in political and even in cultural life of Georgia.

Problems of Georgian Constitutionalism and Road to Deliberation

Considering the post-soviet tradition of technocratic thinking, Georgian lawyers believe that constitution must be written only by them and in a good technical and legal manner. In fact, constitutionalism in Georgia is imprisoned by the technocratic mentality of lawyers sitting in power. In 1995, Georgia adopted constitution and since then, it has changed many times. Unsurprisingly, subject of changes were always conditioned by the political needs of certain political class. At the very beginning, constitution of 1995, introduced presidential system in Georgia which favored the interests of president Shevardnadze. Also, by this constitution, Georgia's road to liberal capitalistic democracy became stronger and proactive. No public deliberation was used in the process of constitution-making that time. Constitution was written by the politicians and lawyers without using any methods of greater public deliberation. Since 1995 Georgian constitution was subject of several changes. The changes also occurred (without public deliberation) after the dramatic Rose Revolution of 2003, including major constitutional changes that emerged in 2009 when president Saakashvili made attempt to reform the political system of country and constitution.

In 2009, State Constitutional Commission was established in order to change the constitution and thus to fundamentally change the political system of the country. In particular, commission was assigned to submit the draft of constitution designed for new parliamentary system. So, Georgia started to move forward completely new political system. In 2010 Georgia adopted constitutional changes, moving gradually towards the parliamentary system. The goal of this fundamental change was as following: to keep in power neoliberal president of Georgia Mikheil Saakashvili after his second presidential term (ended in 2013) by taking the position of Prime Minister. However, this did not happen due to the defeat of his political party in parliamentary elections 2012, which brought new political party in power that was in opposition

⁷ For example, even prominent liberal thinker Ralf Dahrendorf revealed that "Liberals sometimes risk being unduly concerned with means rather than ends, with democratic institutions and markets rather than human well-being". (See Ralf Dahrendorf, *After 1989: Morals, Revolution and Civil Society*. New York: Palgrave Macmillan: 1997, p. 60).

before. From 2010 to 2012 Georgian constitution again experienced several changes. Similarly with previous experience, constitutional changes organized by Saakashvili's government did not enjoy public deliberation mechanism.

After 2012, new political party in power, Georgian Dream, decided to strengthen the process of political and constitutional reforms in order to ensure comprehensive transition of Georgia to parliamentary system. From 2016 to 2017 new wave of constitutional reforms were organized by Georgian Dream. State Constitutional Commission was re-established to prepare the draft of constitution that would lead Georgia to genuine parliamentary system. In 2017 constitutional changes were adopted by parliament which came into the force in 2018. According to revised constitution, Georgia internalized the spirit, major political components and practice of parliamentary system. The power of parliament and government was increased and strengthened while president keeps symbolic and ceremonial power.

Unlike with previous experience, this time, constitution making process enjoyed larger mechanism of deliberative democracy. Draft of constitution was discussed in almost every cities of Georgia with wider citizens' participation and media coverage was also largely ensured. Although in 2018 full transition to parliamentary system was finalized, there was still another wave ahead for another step of greater transformation of country's political and electoral system.

In 2019 following the demonstrations demanding the changes in electoral system, Georgian Dream proposed new initiative to decrease electoral threshold with 0.67% for forthcoming parliamentary elections scheduled on 31st of October 2020. The goal of the proposal was to enable larger political representation in parliament of Georgia. In this context, Georgian Dream also announced its willingness to abolish majoritarian system and to keep proportional representation as the only method. However, in Autumn of 2019, Parliament of Georgia fails to pass constitutional changes to hold 2020 legislative elections under proportional system. Members of Georgian Dream who supported this initiative from the initial stage, changed their decision and played central role to vote against of it. As it was expected, of course, Georgia Dream was accused by the opposition forces in political manipulations. Next year, in 2020, Georgian Dream reinitiated constitutional changes (in compromise with political opposition) to introduce important changes in election system. Deliberative process for the public discussion around the changes was launched via media (Georgian Public Broadcaster was in charge to cover it). So, finally, in summer of 2020, Parliament of Georgia approved another constitutional changes. According to changes, threshold for legislative elections 2020 was defined as 1%. Also, there will be 120 proportional mandates and so called 30 majoritarian mandates in parliament of Georgia.

Deviations of Georgian Constitution

There are two principles in current constitution that makes Georgian constitution either unprecedented or antidemocratic. We may say deviant too.

First principle is about taxes. Already in times of neoliberal president Saakashvili, Georgian constitution did not allow parliament to introduce new common state tax as it was a subject of referendum. So, in fact, parliament and state was deprived its very original task – to define, to change or re-change the taxes (apart from some minor exceptions, for example, this did not apply for excise tax). This article of the constitution (until 2017 it was well know as article 94) was ideological manifestation of Georgian neoliberal democracy where state and state institutions have no mission of economic intervention. This article was probably the most vivid reflection of the idea of neoliberal state guaranteed by the constitution.

In 2017, when another wave of constitutional changes was rightly framed in public deliberative method, this article of the constitution became subject of public discussion like whole draft of the constitution was deliberatively discussed in Georgia. In Tbilisi, group of students, academics, activists and citizens, largely protested article 94 not only during the deliberative meetings between the citizens and politicians dedicated on constitutional changes, but they also organized several public discussions and debates on this topic. It is no surprise that Georgian liberal civic elites supported the article, by using manipulative mechanism of referendum as will of people which according to them must not be questioned⁸. The article was also advocated by large financial corporations and wealthy business structures. In the end, in 2017, Georgian political class as well as whole financial and cultural neoliberal class reached compromise by which this constitutional norm still appears in constitution but only for next 12 years.

This very strange and antidemocratic character of Georgian constitution was also underlined by Venice Commission who concluded that:

A Referendum on taxes is a very rare figure in comparative law and it seems that the draft provision transforms the principle “no taxation without representation” into “no taxation without referendum”. Having said this, according to the draft provisions, the referendum in this matter may only be initiated by the Government and here as well, the Parliament appears to be completely excluded from the process of imposition of a new type of common tax etc. The Venice Commission considers it preferable that in the first instance it is up to parliament to decide on the introduction of new taxes. The decision of parliament could then be submitted

⁸ See for example this statement of Georgian liberal civil society <https://transparency.ge/en/post/georgian-parliament-might-do-away-public-involvement-when-deciding-increase-or-introduce-new>

*to the people for their approval or disapproval, either by parliament itself or by the President.*⁹

Second principle that makes Georgian constitution indeed unprecedented is about the dogma of so called Euro-Atlantic integration. According to Georgian constitution “The constitutional bodies shall take all measures within the scope of their competences to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organization”¹⁰. This article of the constitution was made possible by joint efforts of Georgian liberal civic elites in cooperation with ultraliberal political and financial class. Moreover, this was the most irrational and anti-political approach from Georgia’s leading civic elites which only demonstrated power of class interests and struggle for domination.

Indeed, that was something which mirrors ideological hegemony in Georgia and what are the priorities of Georgian liberal civic elites. Together with big financial corporations they fought against the removal of the article dealing with common taxes and referendum, but they were pleased to support the article of EU-Atlantic integration. This is also something which says even about ideological disharmony of Georgian liberal civic and political elites with political project of EU. In particular, if continental European states are still based on the politics of welfare state (even though there is crisis of welfare state), Georgian liberal class, on the level of constitution, advocates neoliberal paradigm, and dominantly rejected the opinion of group of academics, students and activists who were actively involved in public deliberation process.

Constitution-Making Process and Public Deliberation as a Symbol of Ideological Battlefield Deliberation

Constitution-making process in post-soviet Georgia never reflected collective interests of society and almost never considered to build big ideas or aims based on needs of majority of citizens. In fact, nevertheless it was subject of deliberation or not, constitutional changes in Georgia always served the interests and needs of private capital and neoliberal state. The article on taxes is probably the best example of it. Moreover, the process of constitutional changes was inconsistent not only with needs or demands of society but it also contradicted with general spirit of the constitution.

In particular, acting Georgian constitution claims that Georgia is a social state and it even declares that “The State shall take care of strengthening the principles of social justice, social equality and social solidarity within society”.¹¹ However, there are no specific guarantees and means given by the constitution to realize this promise. Let

⁹ See Venice Commission opinion on the draft revised constitution of Georgia [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)

¹⁰ See article 78 of the constitution of Georgia <https://matsne.gov.ge/en/document/view/30346?publication=36>

¹¹ See article 5 of the constitution of Georgia <https://matsne.gov.ge/en/document/view/30346?publication=36>

us say, no goal is determined to achieve this claim. Even more, it makes things in opposite. For example, to come back again with problematic topic of article on taxation, this article for many years is lobbied by financial stakeholders and neoliberal civil society. The aim of such organized support in favor of this constitutional norm is in fact to organize powerful resistance against any chances of any government to fundamentally change taxation system, for example, to replace current flat taxation with system of progressive taxation.

When this article appeared in the constitution (under the political regime of Saakashvili), that time constitution making process did not enjoy any practice of public deliberation. Therefore, it was exclusively lobbied and introduced by that time neoliberal authority of Mikheil Saakashvili, which, of course was happily endorsed by rich local or international financial groups as well as by liberal class of the country. However, in 2017, when new wave of Georgian constitutional changes emerged, this time, this process was subject of deliberation.

As I already mentioned it above in 2017 article on taxation became the subject of public deliberation. Although discussions around this issue did not engage great number of citizens and could not succeed to mobilize mass protest for its removal (it was rather polemics between neoliberal and antineoliberal groups), attempts of small group of activists and scholars to remove this article was pretty enthusiastic and it was based on needs of current social reality of Georgia and it advocated collective interests against the interests of private capital. In this process, public campaign *Constitution for Equality – No to Liberty Act* was formed. It was self-organized group of enthusiastic citizens (including students, scholars and left-wing members of parliament) who resist pathologies of neoliberal order in Georgia. This group took active part in the process of deliberation, equipped with rational argumentation and with accurate articulation of their demands. They organized public speeches, discussions and petitions. However, unsurprisingly, in the end, as a result of mobilization of business associations and liberal civil society in the process of deliberation to lobby this article, parliament agreed to keep this constitutional norm. In fact, in 2017, deliberation was used by large companies and liberal civil society to bargain with political class to keep neoliberal pattern of transition for next 12 years.

It is well known that without progressive taxation no welfare state may function properly and effectively. In this context, speaking about debated article on taxation is not merely legal issue but its mostly political and even moral concern. Given this, considering the nature of this norm, we may claim that there are big barriers for welfare state in Georgia that are erected by the constitution. It must be also underlined that in this case, when talking about article on taxation, deliberation process was manipulatively used by rich companies to reject needs of social reality and finally this process played a role for private capital interests.

In general, we may say that in Georgia in the process of constitution-making, including the public deliberation process, mainstream political class favor the decisions which does not correspond the goal of the constitution to make Georgia as a social state but it follows today's needs of rich financial class. Even though, the aim of bringing

the culture of public deliberation in the process of constitutional changes was to provoke greater citizens' involvement in the process, ironically, this process was mostly elite driven and decisions were taken by marginalizing the interests of society. In other words, considering the dramatic failure of welfare institutions conditioned by the collapse of Soviet Union which provoked enormous growth of all forms of inequality and structural violence during the last three decades of post-soviet transformation, Georgia is in extreme need to make a goal for fundamental revision of its social and economic system. In this context, the ideal of welfare state becomes the only method for now to resist the pathologies of neoliberal capitalism. But, unsurprisingly, Georgia's mainstream political and economic elites still follow the rotten road of neoliberal transition and this can be also observed in many aspects of their engagement in the process of deliberation and of course, constitutional rule on referendum for taxes is not alone symbol which reflects their neoliberal dogmatism.

Conclusion

Certainly, it is worthy to note that today, constitution-making process in Georgia enjoys greater practice of the deliberative method which was not a tradition until 2017. In this context, Georgia makes some attempts to deconstruct the practice of recent authoritarian past where the method of public deliberation was clearly ignored and marginalized. However, Georgia still needs to take powerful efforts to ensure that the method of the deliberative democracy will not leave any impressions of formal ritual. This means that the voices and needs of citizens must be heard and taken into the consideration in order to deconstruct the past of neoliberal autocracy and in this way to fight against its legacy. In other words, of course, the culture of deliberative democracy is welcomed, but this must have particular influence on the political mentality of the political class engaged in the process of constitution-making. Otherwise, deliberative method in this process will only create façade mask for narrow-minded interests of post-soviet political elite.