

DEMOCRACY AND CITIZENSHIP

Civic Education
Student Course Reader

Greer Burroughs
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Marine Kvatchadze
Lela Gaprindashvili
Levan Izoria



USAID
FROM THE AMERICAN PEOPLE



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2012



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This course reader was developed in the framework of the four-year Increased Trust in the Electoral Process (ITEP) program, implemented by the International Foundation for Electoral Systems (IFES).

The reader is made possible by the support of the American people through the United States Agency for International Development (USAID). The contents are the sole responsibility of the authors and do not necessarily reflect the views of the International Foundation for Electoral Systems, USAID or the United States Government.

Editor: IFES Georgia

Layout and Design: Sopho Tarkashvili

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ISBN 978-9941-0-4084-9

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INTRODUCTION

The democratic mind is not natural...egocentricity and ethnocentricity are primary forces in humans and, like breathing, require no special training. Democracy, on the other hand, consists of habits and competencies that require cultivation without which they will not sprout in the first place¹.

What are the habits and competencies required of citizens of democratic societies? Does democratic citizenship differ in significant ways from other forms of citizenship? If humans are not naturally inclined towards democratic principles, how then can they be developed sufficiently for democratic societies to survive? These are some of the questions that have guided the development of this text. As Georgian society continues on the road to democracy, citizens will need to acquire new knowledge, skills and attitudes. The goal of this text and its companion course is to assist university level students in their preparation as democratic citizens so that they may work to advance democratic principles and practices in Georgian society and reap the benefits that such a system has for the community and individual.

Scholars generally agree that for a healthy democracy to flourish, citizens must play an integral role. Although the structure and operations of a country's government define the "type" of the governance system, citizens play a role in how that government structure is enacted. In democratic societies, citizens are called on to make decisions and take actions to advance and protect the interests of the society and the individuals within it. Most modern democracies are actually republics. This is a system of indirect democracy where the people of a state democratically elect representatives to act on their behalf and govern. Under this system, the people are not directly engaged in the daily governance of a state, though the source of the government's power still rests with the people. Therefore citizens play an essential role that they must be equipped to carry out. To do this effectively, citizens must acquire knowledge of certain democratic principles and develop a set of skills and attitudes that support democracy. This text is designed to provide much of the knowledge you will need to understand the

¹ Walter Parker, *Educating the Democratic Mind* (Albany, State University of New York: 1996), 3.

system of democracy as it is developing in Georgia and recognize what role citizens can and should play, while empowering you yourself to do so. For some this may be an introduction to new ideas and for others this information may provide a review of some topics you are already familiar with. No matter where you currently are in your own understandings of democratic citizenship, the journey will hopefully remain a life-long process, for with democracy comes the possibility of great freedoms, but so too comes great responsibilities.

Lessons from the Past

History offers many lessons for us when we consider different approaches to governance and how different characteristics have advanced or inhibited the development of democratic ideals. Below are several scenarios drawn from distant as well as more recent historical events. As you read each scenario, stop to think about the questions that are posed and consider what the lessons for democracy development have been. Remember, sometimes we learn as much from mistakes as we do from successes.

Scenario 1

A group of men travel to a new land far from the society they have always lived in order to form a new colony. They will have much freedom to live their daily lives as they choose. The men travel to this new land seeking wealth. They have heard stories of gold and silver ready for the taking! The men are starting with nothing other than the supplies they have brought and their ambition for wealth. Most of the men are from the “gentlemen” class of their society and therefore are not accustomed to engaging in physical labor. These men are used to others doing these tasks. Their mission is to find riches. When the men arrive at the destination, they must choose a location to settle. They select a site near water, but the land is marshy and there are many mosquitoes which can spread disease among the men. There are also native people already living in the region. How do you suppose the men will fare? Consider the problems and challenges you think they would encounter. What actions do you think they would need to take to ensure their survival?

As you might imagine, the colony’s start was filled with difficulties. In fact the colony almost didn’t succeed. The men spent so much time in pursuit of wealth that practical issues of survival were not attended to, such as building structures and gathering a food supply adequate to survive the cold winter months that were soon to come. Many of the men contracted diseases and became sick while scarcity of food led to

starvation. Nearly half of the men died in the colony's early years. Tensions with the native people also led to periodic conflicts which threatened the men's safety. Could this have been avoided?

The scenario described above actually occurred in 1607 when 104 Englishmen settled the colony of Jamestown in what is now the State of Virginia in the United States. Today the United States is home to more than 300 million people and has operated as a republic for more than 200 years, and yet the very first British colony almost didn't succeed. One of the primary reasons the colony's success was jeopardized was a lack of adequate leadership. Additionally, the pursuit of individual interests among most of the men came before a shared commitment to the common good, and this also placed the colony in jeopardy.

In the fall of 1608, a man named John Smith was elected President of the colony's governing council. Smith instituted a policy of rigid discipline which required all men to work for the benefit of the colony stating, "He who does not work, will not eat." The colony's survival in the early years is credited to Smith's strong leadership. There are several lessons from the Jamestown experience worth considering. The first is the need for some form of government, i.e. leadership, rules for individuals in a society to follow and a system of consequences when rules are not observed. Philosopher John Locke explains that we accept this reality out of self-interest and therefore we enter into a "social contract". The social contract is the idea that members of a society agree to follow a set of rules in order to receive benefits from societal membership. Some of the benefits that Locke described were protection of life, liberty and property. In the section on government that follows this chapter, you will learn more about Locke's theories and how they have influenced governments today. For now though, ask yourself why do you choose to abide by the laws of the societies you belong to? You will probably agree that the "social contract" has great benefits for humankind. However, another lesson from Jamestown shows that perhaps there are some drawbacks to the social contract. The individuals at Jamestown learned that they had to supplant some of their personal desires to secure the survival of the society. We depend on one another to ensure our common good; therefore, we surrender some of our power to governing forces. A question that may come to mind then is how much power should citizens be required or willing to give up to benefit the common good? Let's see what history can teach us about this question.

Scenario 2

Now imagine a time long ago in Ancient China. The year is 221 B.C. and the people of China have been at war with each other for more than 200 hundred years, causing disunity, great pain and suffering for all. The Emperor Shi Huangdi comes to power and unifies the nation. Under Emperor Shi Huangdi, China prospers; trade is advanced, a common language is adopted and the Great Wall of China is constructed. How did one man end centuries of civil war and bring unity and prosperity? The answer is in the manner that Emperor Shi Huangdi ruled. He imposed absolute order by executing anyone suspected of disloyalty. Thousands were killed in his military campaigns, in his attacks against intellectuals, and thousands of others died or suffered under forced labor. Shi Huangdi instituted a strict campaign of censorship and book burning to promote a common message; scholars who did not comply were buried alive. The Emperor used the military to impose his laws and harsh penalties throughout the nation. How do you suppose the people felt about their leader? Did Emperor Shi Huangdi serve the people of China well by ending civil war and bringing advances to the nation? Were the sacrifices of some necessary and worth the advancement for the larger society? Do you think the ends justified the means that were used to unify China and lead to these advances?

Although some may argue that the actions of Shi Huangdi were necessary to ensure the success of the nation, the people of his time may have felt differently. The nobles and peasants alike suffered under his rule and rebelled. In 207 B.C., after only fifteen years, Emperor Shi Huangdi was overthrown and his rule came to an end. One lesson of the ancient Qin Dynasty, as well as many other dictatorial regimes, is that when human rights of citizens are violated, there can be no true allegiance among the people for the government. Repressed people eventually rebel. Therefore, while it is important for individuals to give up power to government, another necessary requirement of government is that it exists to protect and advance the human rights of the citizens. Thomas Jefferson, the primary author of the American Declaration of Independence from England, wrote in the Declaration:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government.²

² Preamble of the American Declaration of Independence (US 1776).

Do the words of Thomas Jefferson suggest that whenever people are unhappy with their government they should abolish it? Certainly not, he cautions that this must not be done for “light and transient causes”. Tension between individual rights, desires and needs and the “common good” or “general welfare” are ongoing in democratic societies. That is why in democratic systems we regularly turn to government to help resolve these tensions and set standards for behavior. We generally agree to abide by the standards because this brings order, safety and security to society.

The notion of “giving up” some of our power to government is central to democratic governance for other reasons as well. Since most modern democracies are republics, citizens elect representatives to make decisions to further the constituent’s interests and advance the general welfare of society. When we do not agree with the direction our representatives are charting for society we are able to exercise our power by choosing to elect someone new to represent us. Thus we expect modern democracies to be responsive to the people’s needs and wishes. However, this is not all we expect from our governments in modern democracies. There are several “Principles of Democracies³” that have been used to guide nations with developing democracies and assess the successes of existing democracies. As many nations develop democratic reforms they turn to these principles as guides. Therefore, it will be important to consider the relevance of these principles for Georgian democracy.

Principles of Democracy

Scenario 3

Picture the year 1215 and the place is England. It is the Middle Ages and absolute rule by monarchs is the prevailing system, thus the King of England has almost total power over his subjects. Only the Catholic Church rivals him for complete control. In order to meet his financial obligations to the Church, the king imposes heavy taxes on his subjects. Those who do not pay the taxes receive harsh punishments. Members of the upper class in England, the nobles and the barons are particularly upset with the king’s actions, but what can they do? How do you suppose the nobles felt having to pay so much of their wealth to the king? To make matters even worse, if the king chose to jail someone for failure to pay their taxes, there was very little the person could do. Would you have argued against the king’s power under such circumstances?

³ “Democracy for All,” Street Law, Inc. Washington, D.C., U.S.A.
<http://www.lawanddemocracy.org>.

In 1215, several nobles banded together against the king and civil war broke out. When the nobles seized London the king agreed to meet with them and hear their demands. What demands do you suppose the nobles made and why would the king agree to any of their demands?

The nobles forced the king to sign a document which has become known as the Magna Carta. The document outlined many laws governing relationships in England. Some of the most important principles were: 1) the prohibition of imprisonment, exile or punishment of an individual without previous juridical decision; 2) the obligation of the king to ask the consent of the Parliament before imposing taxes; 3) the recognition of the powers of the Parliament. A final provision of the Magna Carta declared that if the king violated the terms, then the nobles would have the right to wage war against him. These provisions helped establish the democratic principles of accountability, the rule of law and controls for the abuse of power. As Winston Churchill said in 1956, "Here is a law which is above the king and which even he must not break. This reaffirmation of a supreme law and its expression in a general charter is the great work of Magna Carta; and this alone justifies the respect in which men have held it."

In modern democracies today, people expect accountability from their governments. This simply means that the government must make decisions and take actions that represent the will of the people. The principle of the Rule of Law is one of the most important in democratic societies. This principle means that no one is above the law, everyone must follow the laws and all are held equally accountable if they violate the law. Lastly, by forcing the king to agree to the concessions, the nobles limited his power and forced him to work with the English Parliament, particularly in seeking Parliament's consent in levying new taxes. Whenever a governing body must answer to another force, their power is limited and thus the opportunity for abuse of power is also limited. Although the Magna Carta primarily guaranteed rights for the Noblemen of England in the 13th Century, the rights were eventually extended to commoners and the document established principles that democracies such as the United States were later built on.

Scenario 4

It is the latter half of the 20th Century. Imagine that after years of receiving an education in your native language, the government of your country declares that all major courses will be taught in another language – the "official" language of the government. Several months pass and you and your schoolmates are having difficulty mastering

the new language and passing classes. What opportunities would you have without an education? Does the government have an obligation to respond to your needs even though your people are not represented in government? How would you respond?

In June of 1976, this is what happened to the children of Soweto, a township in South Africa. The students were living under a system known as Apartheid. Under this system the economic, political and social power of South Africa was in the hands of the white minority. Oppressive policies were enacted under this system that denied blacks and coloreds (mixed raced) citizens who made up over 70 percent of the population, many basic human and civil rights. The white ruling government imposed harsh laws that limited the types of jobs for non-whites, provided a sub-par system of education and even restricted where blacks and coloreds could live, travel and work. The new law requiring that education be offered only in the “official” language was just another method used to oppress the black and colored population. However, this time the students responded to the injustice by protesting in the streets. More than 10,000 students marched in protest, but the demonstration was short lived. Police opened fired and 23 of the students were killed.

Although the Parliament that enacted these laws was elected, this system can hardly be viewed as “democratic” as many Principles of Democracy were violated. One of the most basic violations was that of the black and colored citizens’ Human Rights. Human rights mean protection and respect for human life and human dignity. Some of the human rights that were denied to people in South Africa were freedom of expression, freedom of association, freedom of assembly, the right to equality and the right to education. This example also illustrates the necessity for the principle of Equality in a democracy. Equality in this sense means that all individuals are valued equally as members of society and all should have equality of opportunity and justice. No one should be discriminated against because of their race, religion, ethnic group, gender or sexual orientation. Another principle that can be explored through this example is the idea of a Bill of Rights as a principle of democracy. A Bill of Rights lists the rights and freedoms that all individuals of a country are guaranteed. Many democratic nations include a Bill of Rights as part of their nation’s constitution, thus requiring government to uphold these rights. The thousands of black and colored citizens living under the Apartheid in South Africa had no such protections and thus the violation of their rights was viewed as “legal” under the system. Fortunately the system of Apartheid collapsed in 1994, in part due to the attention the international community focused on South Africa after the Soweto killings. Today the majority black and colored populations enjoy equal rights alongside fellow white citizens.

Scenario 5

It is the not so distant past and the place is a modern, industrialized nation. People in this nation are generally protected by laws from infringements on their rights. This has developed over time as many minority groups have demanded equal protection under the law. However, there is a group of people who still experience discrimination due to their physical or mental condition. These people are identified as persons with disabilities. They are isolated from society in many ways; lack of educational or employment opportunities, limited access to public places, and lack of suitable housing are some of the challenges they face. Due to these circumstances these individuals are not able to enjoy the rights, protections and opportunities that other, non-disabled citizens enjoy. What can these individuals do to improve their situation? Can a minority demand that laws be changed that do not apply to the majority of the society? Should government listen to their demands?

The country is the United States of America and these conditions persisted for much of the nation's history until many of the individuals with disabilities, their friends and family members believed that such conditions were not fair and should not exist in a democratic nation. These individuals wanted the government to pass laws that would end discrimination towards people with disabilities. To reach this goal they formed activist groups and spent years working to change the laws by holding and attending protests and rallies, raising money, drafting legislation, increasing public awareness of the issues, testifying before legislative bodies, negotiating with lawmakers, lobbying government officials, and filing lawsuits to challenge laws seen as discriminatory⁴. Given that people with disabilities were in the minority in the United States, the activists knew they had to gain support from the general public. This was done by educating the public and politicians about who people with disabilities really were in order to break down existing stereotypes and myths. Much of the work the activists had to do was to change the perception that people with disabilities couldn't make valuable contributions to society.

The fight for equal rights for persons with disabilities has resulted in the enactment of many laws. Some of the most important laws are the 1973 federal "Rehabilitation Act" which prohibited agencies or organizations that received federal funds from discriminating against qualified individuals solely on the basis of the individuals' disability. Also the 1975 "Education for All Handicapped Children Act" established that children with disabilities have a legal right to an education. Although activists were very pleased with these changes they believed more protections were needed and

⁴ Arlene Mayerson, *The History of the ADA: A Movement Perspective*, <http://law.marquette.edu/s3/site/docs/psconference/history-of-ada.pdf> (1992).

continued to petition government. Their efforts paid off in 1990 when the United States Congress passed and President George H.W. Bush signed into law the “Americans with Disabilities Act”. This major legislation guaranteed equal opportunity for persons with disabilities in employment (including private businesses and nonprofit agencies), transportation and state and local government operations. In order to ensure that this law is properly implemented and the rights of persons with disabilities are upheld, many activists work on the local level. One such activist, Karen Dempsey (a disabled person), has worked with the government in her own community and sees progress. She explains,

The town has really gotten on board and been making great improvements over the last five years by implementing the ADA [the Americans with Disabilities Act] Transitional Plan of 2005. But there are things we need to keep working on, like more sidewalk ramps and curb cuts (for wheelchair users) and other access issues.⁵

Many citizens like Karen Dempsey worked hard to bring about change and improve conditions for people with disabilities. What can we learn about democracy from these individuals and this scenario? Consider which of the principles already discussed apply. For instance, does the principle of equality apply? Other principles that apply are citizen participation, political tolerance and transparency. For a democracy to work citizens must be active participants. While voting is considered to be a central citizen responsibility, it is only one way that citizens can influence outcomes in democratic societies. Becoming informed about and forming a stance on issues, choosing to support issues by joining community groups and associations, signing petitions or writing letters to politicians, attending community meetings, rallies and even protesting, are all important ways to express one’s views and have a voice in a democratic society. It was through actions such as these that laws were adopted which ensured equal rights for persons with disabilities.

Another important principle highlighted by this case is political tolerance. This means that all individuals, even when they represent a minority view, must have the freedom to speak out and organize. Further this must be allowed without repercussions against such groups, therefore they are entitled to the protection of the law, even when the views are distasteful to the majority or even anti-government. Minority voices must be heard in a democracy to avoid “tyranny of the majority” where only majority views and interests are expressed and represented in society. If the advocates for persons with disabilities had not been able to organize and express their views then change may never have come. Many Americans did not understand the plight of persons with

⁵ Chris Bergeron, “Activists seek more from Americans with Disabilities Act,” *MetroWest Daily News*, May 23, 2011, <http://www.metrowestdailynews.com/highlight/x1078554340/Activists-seek-more-from-Americans-with-Disabilities-Act#ixzz1RMz6XKA7>.

disabilities and quite possibly still would not had these activists not been free to bring these issues to the attention of the public and the lawmakers. Another relevant principle - transparency, is the notion that citizens must be able to get information about what decisions are being made, by whom and why in government. In many democracies, some decisions can only be made after the public has been able to comment on proposed laws. This can be done by attending public meetings or contacting representatives in government. Many of the advocates for persons with disabilities used these avenues to make their case to government, and some even spoke before the Congress. Advocates such as Karen Dempsey can continue to monitor progress due to the transparency required of government's actions, spending and implementation of legislation. Each of these principles allow for many voices in a society to be heard.

Scenario 6

For thirty years one man ruled a nation as the president. At first he seemed to serve the country well, improving the nation's infrastructure and developing the economy. However, over time he gradually gave more and more power to his inner circle, those in his family or his close supporters. He and his associates controlled most of the wealth in the nation, with big businesses paying them up to 50 % of their profits, while most in the country lived below poverty and lacked any real economic opportunities. The president also controlled the state run media and enforced strict laws against criticisms of the government. So although elections were held, no real opposition candidate could effectively run against the ruler. As the nation's population under thirty grew to 50 million of the country's 80 million inhabitants, these young people saw little hope for a secure future and the ability to exercise their human rights. Once again you must ask yourself, what would you do if you were faced with these conditions? Others who spoke out against the government were jailed and sometimes simply disappeared.

The country is Egypt, and the young people there finally determined they wanted to fight for their future and protection of their human rights. Under the rule of President Hosni Mubarak, many of the Principles of Democracy were not evident. Some of these are Regular, Free and Fair Elections, Multi-Party Systems and Economic Freedom. Regular elections are important to ensure that political leaders remain accountable to the people they must serve. Another component of free and fair elections is that all individuals within the society should be free to stand for public office, thus limiting the power of wealthy or ruling class. Additionally, for elections to reflect democratic ideals, opposing views should be represented, typically through a multi-party system. The elections that gave Hosni Mubarak the position of President of Egypt many times over his 30 year reign demonstrate that the mere exercise of holding elections doesn't

necessarily fulfill the spirit of these principles. The control that Mubarak had over the press did not allow for opposition candidates to voice criticisms of the government and make a case for change. Other laws that limited freedom of expression, as well as corruption in the government also made the chance for open and “fair” elections impossible. Therefore, the conditions for a multi-party system did not exist. Only with a multi-party system can people really hear opposing views and have a choice of candidates.

The citizens of Egypt also lacked true economic freedom. The principle of economic freedom is perhaps the most controversial since it implies that a particular economic system is necessary for democracy to flourish. It is generally accepted among democratic nations that government must allow some private ownership of property and businesses, and that the people should be free to choose their work. However, the extent to which governments serve to regulate the economy differs greatly among democratic nations. Therefore, many of the nations of Western Europe allow for a much more active role of government in owning, operating and regulating the production of goods and services. For instance, countries such as Sweden have government run healthcare and transportation systems, whereas a nation like the U.S. is more inclined to private ownership and allowing free-market forces to drive economic actions. It is up to the people in a democratic nation to determine the economic model that best suits the needs and conditions of the nation. Still, most would agree that the system in Egypt that allowed for the government to grow very wealthy while the majority of the citizens lived in poverty is a distortion of government’s role to regulate the economy and highly undemocratic. The citizens of Egypt finally rebelled and demanded the ousting of Mubarak. The last principle also deals with the importance of elections; however this is the necessity for the people and politicians in a democratic society to peacefully accept the outcome of democratically run elections. A final scenario to help illustrate this point comes from the West African nation of the Ivory Coast. When former President Laurent Gbagbo lost the presidential election to Alassane Ouattara in November of 2010, he and his followers would not accept the results and he refused to step down as president. This led to months of violence that caused injury, death, and economic and social upheaval for thousands. The unrest ended only with troops forcibly removing the former President Gbagbo. The suffering could have been avoided had this final principle been upheld.

The above passages have described conditions or principles that are associated with democracy. Using examples across the world and over time allows us to consider how differences in governance can advance or inhibit the development of democracy. No nation meets all of the ideals expressed in the Principles of Democracy all of the time. Humankind is still learning. However, the quality of democracy in a country depends

greatly on the citizens of the nation. In the next section of this chapter, the focus is on what citizens should know and be able to do in order to effectively participate in the process of reaching these democratic ideals and contributing to the improvement of their society.

In 1787, delegates from the original thirteen states in America met to reform their young government. At this meeting, the Constitution of the United States of America was written. This is the same document that has provided for the basis of all government in the U.S. since that time. However, an often told story in the U.S. is that as the meeting was ending, one of the Founding Fathers, Benjamin Franklin, was asked what kind of government the meeting delegates had created. Franklin is quoted as responding, “A republic, if you can keep it⁶.” Let us now explore what will be needed from citizens to “keep” democracy in Georgia healthy and thriving.

Democratic Citizenship

The privileged are usually not inclined to protect and further the interests of the oppressed...partly because to some degree their privilege depends on the continued oppression of others.⁷

The Principles of Democracy presented in the last section can only endure if there are forces actively at work to ensure their existence. Why is this so? As many of the scenarios presented in the last section and the quote above suggest, humankind tends towards self-interest even when it is at the expense of others in a society. When no constraints are placed on those in power, they inevitably become corrupted. An often quoted statement by Lord Acton, an English historian and politician in the late 19th century, “All power tends to corrupt, absolute power corrupts absolutely,” is as true today as it has been for centuries. One only needs to revisit the scenarios of South African Apartheid, Emperor Shi Huangdi or President Mubarak of Egypt to see how damaging unchecked power can be. How then can societies balance the real need for government, the tendencies towards self-interest and corruption, with the Principles of Democracy discussed in the first section of this introduction? The answer lies in how government is structured and monitored for abuses. The need for the citizenry to participate in this process is the focus of this section

⁶ The statement made by Franklin in 1787 was recorded in the diary of Constitution signer James McHenry.

⁷ Iris Marion Young, “Polity and Group Difference: A Critique of the Ideal of Universal Citizenship,” in *Theorizing Citizenship*, ed. Ronald Beiner (Albany: State University of New York Press, 1995), 189.

In a republican form of democracy, the interests of the people are best represented when the citizens are actively engaged in the selection and monitoring of public officials and the public policy making process. In instances where the public becomes detached from the process, a vital element of the system of checks and balances is lost and public officials may be free to act without the constraints placed on them by an active constituency. This may lead to politicians and government bureaucrats acting in a manner of self-interest that may be at odds with the public good and even violate the human rights of members of society. As the quote in the beginning of this section indicates, it may not be in the interests of those in power to represent the needs of the masses, thus the masses must learn to advocate for themselves.

In order to fulfill this role, citizens must be in possession of certain knowledge, skills and attitudes. Some of the knowledge needed regarding principles of democracy was already presented in the introduction. However, much more knowledge about the role of government, the system of governance in Georgia, the Georgian Constitution and various means of engagement through civil society, co-participation with government and citizen action will be needed. These essential topics will be the focus of this text. In section one “Systems of Public Administration” philosophical influences and a brief history of democracy’s development will be presented, along with an overview of different systems of governance. After this foundation is established, a history of government and the development of democracy in Georgia will be provided in order to provide a perspective on Georgia’s unique developmental challenges and realities against a background of global experience. Further, in order to hold government accountable, one needs to know the powers of each branch of government and the roles and offices within government. Working familiarity of the structure of government is also necessary in order for effective citizen engagement in policy making. How can citizens hope to influence policy, or be motivated to do so, unless they know the appropriate government agencies and offices to direct their efforts towards? Section one therefore addresses many of the key components of Georgian Government and the Georgian Constitution that you will need to know to effectively engage in your democracy.

As you learned earlier in this chapter, governments in a republican form of democracy have specific obligations to the people in providing for safety, security and the protection of human rights. How though can citizens play a part to ensure that government fulfills these functions? Sections two, three and four of the text provide vital information related to this issue. In section two “Human Rights”, you will learn about the rights that all individuals are entitled to and the evolutionary process of how these rights came to be defined and protected. All individuals need to know their rights and the rights of others so they may respect and safeguard these rights. Knowledge of the

state's responsibility and agencies to appeal to when human rights violations occur are also topics of extreme importance that will be addressed in this section. Section three of the text presents a study of "Civil Society." Members of a democratic society must be free to associate and organize with others to advance goals and when necessary, influence policy and hold government accountable. This is done through a sector of society known as "Civil Society." Civil society is a powerful tool for citizens to hold government accountable and advocate for change. In this section, you will learn about the history and the significance of civil society as a counterweight to government, along with information on actions of civil society in Georgia today. Each of these sections will provide important information about your rights and means to protect your rights and the rights of others.

Finally in section four, "Democracy And Citizen Participation" you will learn about rights and responsibilities of citizen engagement in a democratic society. Many of the governmental reforms that have been underway in Georgia over the last decade will be explored with a particular focus on how these reforms relate to the role of citizens. The notion of co-participation with the government in developing democratic practices and ideals in Georgia will be discussed, as well as actions that citizens may take independent of government or in conjunction with government to improve their societies. Examples offered in this section will help you understand how you can become more involved in your community and affect decision-making on key issues of societal importance.

All of the knowledge presented in these four sections is important to understanding the systems of democracy in Georgia, the obligations of the state, and the role of citizens in safeguarding and advancing democracy. However, knowledge alone is not enough. Scholars of democracy agree that for a society to truly develop and maintain a democratic form of government, citizens must be equipped with certain skills and that a "culture of democracy" must prevail. A successful democracy requires citizen participation, but of an informed and active citizenry. American political scientist Robert Dahl explains that a necessary requirement of effective democracy is that citizens possess an, "Enlightened Understanding."⁸ Dahl explains that for an enlightened understanding to exist, all citizens must have access to information and opportunities to express their views and hear alternative positions before reaching conclusions. However, in the information age we live in, rapid access to information alone is not enough. People must have the skills to critically assess information for bias and distortions of truth in order to form an objective picture. Thus when we speak of skills that are required of citizens in a democracy, some of these skills are the ability to access

⁸ Robert A. Dahl, *On Democracy* (New Haven: Yale University Press, 1998), 37.

information from multiple sources, to critically analyze information, reach informed conclusions, communicate with others on issues, listen to various perspectives, and compromise, (see table 1.1 for an extended list of skills recognized as important for democratic citizens to possess).

In democracies where citizens lack these important skills, it is possible that decisions can be made in a vacuum that reflect a majority view, but are poor decisions and possibly even harmful for society. For example, consider a situation where several farmers in a community notice that their crops are becoming diseased at an alarming rate. A group of scientists claim that an airborne fungus is the cause of the disease. Further, the scientists claim that the fungus appears to be resistant to pesticide and they recommend that all crops grown in a surrounding perimeter should be destroyed to slow the spread. Based on these recommendations and the alarming spread of the fungus, many of the local citizens implore government to act quickly and require that the identified crops be destroyed immediately. However, what if with a bit more investigation it is learned that this group of “scientists” are viewed as being outside of the mainstream of science in the methods they use and the conclusions they draw. Perhaps there is other compelling scientific information that contradicts these conclusions and suggests that the fungus is not an airborne pathogen, but rather is spread by an insect and that a pesticide may be effective in killing the insect. Citizens who are equipped with the skills to access information from multiple sources, critically analyze information, and communicate with others on issues would be prepared to make rationale, informed decisions. Such citizens would be positioned to take actions that better serve the community.

Table 1.1 *Skills Associated with Democratic Citizenship Participation*⁹

1.	Ability to think critically
2.	Make informed, responsible decisions
3.	Analyze information
4.	Evaluate information
5.	Discuss issues and consider multiple perspectives
6.	Recognize the role of bias, point of view and context, as well as assess the credibility of a source
7.	Examine current issues and events
8.	Formulate questions based on information
9.	Use effective strategies to locate information
10.	Summarize information in written, graphic and oral formats
11.	Work cooperatively with others to achieve a goal
12.	Provide leadership
13.	Problem solve
14.	Build an effective and rational argument

Other skills listed in table 1.1 relate to the ability of citizens to work together to advance common goals and address problems in society. As mentioned previously, individuals in democracies should be free to form associations with others. Such associations allow citizens to address common goals by drawing on the resources of the group. However, successful interactions with other citizens, organizations and government also require skills, particularly in the area of communications. Due to the importance of developing the skills associated with democratic citizenship, the companion course offered with this text will strongly emphasize your participation. Through class activities, assignments and projects you will have the opportunity to develop many of these important skills. You may also begin this process as you read the text. For instance, when you read about the different forms of government in section 1, question the benefits and drawbacks of each system. As well, when you read about the Constitution of Georgia, consider which Principles of Democracy are evident and

⁹ The identified skills presented in Table 1.1 are based on guides and assessments used in the United States for civic education: National Standards for Civics; The National Assessment for Educational Progress (NAEP) in Civics; The National Council of Social Studies Standards for Civics.

if there are elements that you believe should be strengthened. Approaching each section of the text in this critical manner will encourage you to see yourself as a partner in your democracy and help you to develop habits of mind associated with democratic citizenship. Remember, it is the responsibility of citizens in a democracy to hold their government accountable and to actively engage in the betterment of society. Section four in the text will provide examples of how citizens in Georgia and other nations are doing this. You will also gain some experience with active citizen engagement through the assignments you complete as part of the companion course.

A final sobering idea to understand is that the formation of a democratic system of governance is not a guarantee that democracy will flourish. As discussed with the “elections” of President Mubarak in Egypt, there is much more to democracy than allowing people to vote, (just as there is much more to democratic citizenship than simply voting in elections). During the 20th Century, scientists tell us that during times of social, economic or political crisis, countries that do not have a strong “culture of democracy” are more at risk for democratic institutions to break down. Democratic nations are more likely to survive crisis when there is a commitment to democratic ideals such as the rule of law, protection of human rights, equality among the citizenry and government officials and a commitment to transparency in government. Table 1.2 describes many of the attitudes that are associated with healthy democracies. As you read over the items presented in Table 1.2 ask yourself if you believe each of these attitudes is important for the maintenance of democracy based on what you have learned so far. Then ask yourself, which of these attitudes you currently possess. Some of these beliefs may come easy to you while others may develop over time based on experiences and new understandings. The final goal of this course is to aid you in the process of exploring and accepting these democratic ideals as important for a healthy democracy in Georgia.

Table 1.2 *Attitudes Associated with Democratic Citizenship*¹⁰

1.	Recognizing the need for individual's to take personal, political and economic responsibilities as citizens
2.	Respecting individual worth and human dignity
3.	Respect for and trust in institutions of authority; respect for the rule of law
4.	Tolerance of divergent views and lifestyles
5.	A sense of efficacy at being able to affect change in one's community
6.	A sense of civic responsibility as seen by promoting the healthy functioning democracy and participating in civic affairs in an informed, thoughtful, and effective manner

Conclusion

Nearly a decade ago, Georgian citizens and civil society and political representatives made a conscious decision to stand up for their most fundamental democratic rights and reshape their country's democratic trajectory. It is now up to your generation to take up the challenge of nurturing your democracy so that it may flourish. The goal of this text is to provide you with knowledge you will need to effectively participate as a democratic citizen in Georgian society. However, this is not a passive path. You will need to engage in the process with your mind and heart as you come to understand the crucial role you play in the maintenance and quality of democracy in Georgia.

¹⁰ The identified attitudes presented in Table 1.2 are based on guides and assessments used in the United States for civic education: National Standards for Civics; The National Assessment for Educational Progress (NAEP) in Civics; The National Council of Social Studies Standards for Civics.

SECTION ONE

SYSTEMS OF PUBLIC ADMINISTRATION

In the following section, you will be introduced to a number of concepts and ideas that will help you develop an understanding of the concept of the individual, his/her social frameworks, and the society. We will cover a number of perspectives on the “state of nature,” issues associated with it, and ways to resolve them as suggested by John Locke. This will run parallel to a discussion of the “social contract.” The above will help you understand the extent to which the cacophony of perspectives and views have influenced the organization of the modern state, the principal values in the relationship between a government and an individual, and the basis for regulating such relations.

After having read this section, you will be able to discuss the following key issues:

- The individual and society
- The state of nature and natural law
- The social contract
- The state, and the need for it
- Laws, morals, ethics and customs
- Values – freedom, equality and order

Chapter One

The Individual and the Society

Chapter one of this section will provide an overview of the freedoms and responsibilities that transform a person into a citizen; in this part, the individual will be viewed from the state's perspective. Additionally, we will explore the historical evolution of thought that has elevated the concept of citizen to the rank of state builder; analyze the advantages and disadvantages of becoming a citizen; discuss the responsibilities that society itself imposes upon the state; and finally, assess the responsibility of the state – the entity tasked with harmonizing freedom, equality and order. By the end of part one, you will be able to answer the following questions:

- What is an individual like as a social creature?
- What goals and interests drive an individual?
- What is a modern society like, and what are its values?
- What will happen if an individual deviates from the values approved by society?
- Who is responsible for the safe and peaceful coexistence of individuals?
- What is the relationship between an individual/citizen and the state?
- What is law?
- What norms regulate social relations?
- Can a state exist without government or the rule of law?
- What is the “state of nature?”
- What is the basis of a “social contract?”

CHAPTER 1.1

The Individual and the Society

“As soon as people become a part of society, they start to lose their feeling of weakness.”¹¹ These are the words of 18th century social and political philosopher, Charles-Louis Montesquieu. Montesquieu, along with other legal and social philosophers of the time, strove to present the individual as the main subject and value for the society and state. The quote above emphasizes the human nature upon which the philosophy of human life within the society and the state is founded. In other words, the individual is immensely valuable to society and his/her rights are often secured by the foremost law of the state – the constitution. Definition of an individual’s and a citizen’s legal status, or, in other words, declaration of an individual’s rights and duties by means of a constitution, is a part of his/her – a social creature’s – general social status. An individual’s social status is defined not only by legal regulations, but by many other social norms as well. The roles of a psycho-physiological creature, a person and a citizen enables an individual to take part in social relations and political life, and grants him/her with relevant rights, freedoms and duties.

In order to achieve their goals and protect their interests, human beings feel it necessary to unite their individual goals. To achieve this, they inevitably have to cooperate with one another.

The goals, interests and objectives of an individual are based on his/her cognitive attitudes towards his/her surroundings. Therefore, an individual needs not only a biological, but also a social reproduction. Consequently, “a society of human beings is a unity of individual efforts in a struggle for coexistence and satisfaction of common needs¹².”

Modern society is an extremely complex social phenomenon with regard to both structure and content. Today’s urbanized society consists of completely different layers and interest groups that in their turn have different goals and objectives. Logically, when there are different goals and objectives, people search for different ways and mechanisms to reach their ends.

The scenario described above vividly demonstrates that a society is not simply a mechanical aggregate of human beings. The main feature of a society as a social phenomenon and its sustainability is an association of people sharing common interests. In this association, people possessing individuality maintain contact with one another by means of a social consciousness that has become ethical in nature. In his work, “Nation and Mankind,” Mikhako Tsereteli described it by the following, “... Self-attitude

¹¹ Charles-Louis Montesquieu, *The Spirit of the Laws* (Tbilisi, 1994), 34.

¹² M. Tsereteli, “Nation and Mankind”, TSU, Tbilisi, 1990, p.39.

becomes a common, ethical phenomenon ... when an individual is, to a certain extent, aware of his/her individuality, his/her differences and similarities with other individuals, his/her obligation to close friends and relatives or institutions, since it is only by means of such comparative analysis that he/she can visualize his/her own responsibility, ethical self and position it in a certain relation to the other 'selves.' This implies an orderly life and a society where people have to obey certain rules. One of the most important elements of these rules is the common rule of ethics itself which, in a supreme way, regulates the common life of human beings.¹³

Eventually, we will be able to define the concept of a society as follows: It is "an organism, or a super organism consisting of individuals possessing the skill of setting an aim, whose visually organized common action satisfies all the needs of this organism through the means of special organs that each super organism possesses in order to perform certain functions¹⁴."

The social unity of human beings is reinforced by common values. Common values encourage individuals to communicate and maintain unity. A value is an evaluative attitude, an opinion on something good, bad, desirable or undesirable. A system of values is inherent in a society and creates a set of dominating opinions on facts and events. However, values are not equally acceptable for all individuals. A human being, per se, is an individualistic and an egoistic creature; there are always some members of a society for whom common values are unacceptable. Even a person acting within the bounds of common values may be found opposing and/or fighting a certain other value. The situation becomes more aggravated by recognizing that, through certain social relations, we are not only opposing values of a single person or of a group of persons, but also, at times, the compulsory rules established by a society.



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(Photo: Nino Toronjadze, Chancellor of the Georgian-American Academy)

¹³ Ibid., 47.

¹⁴ Ibid., 64.

Imagine for a moment that tax legislation does not consider payment of taxes as mandatory. In this scenario, there will certainly emerge a number of people refusing to pay a whole range of taxes. Therefore, it is the law that creates the conditions where the millions of citizens of Georgia pay taxes according to an established rule. This action of citizens is stipulated by law. Otherwise, the state's budget would never have enough resources, making it impossible to implement social and other programs, peaceful coexistence of people within a society, and the accumulation of different goals and interests of a modern society into the state's interests. All of the above are conditions for the existence of a state, its functioning and dynamic development.

It is a government's responsibility to safeguard and provide all of the abovementioned. In order to achieve public order, the state's direct responsibility is to govern (which includes all of the operational aspects of daily governance), while at the same time ensuring people's sense of dignity and security remains intact. The latter is the most important goal set before the government by society itself. Therefore, government, or governors are accountable before this very society.

Society, in its turn, has the right to hold governors accountable for their actions. This particular demand and its imperativeness are both conditioned by the legal and political relations between members of a society, government and the state. This kind of a law-based, legal relationship generates citizen-focused institutions which contribute towards the implementation of human rights, freedoms and duties in relation with the given state and government. Consequently, an individual being on such terms with the state, i.e. a citizen, has the right to make a government fully accountable for its actions. Below we will discuss in more detail the goal and the purpose of government as well as the concept of citizenship.

It becomes evident that for our safe and peaceful coexistence, the government has to create certain laws. However, the following circumstance should be emphasized: merely the creation of laws focused on nothing but safe coexistence is not fully sufficient for a modern individual and, therefore, cannot be the goal of a government. Creation of such a reality is easily achievable for a state by means of enforcing maximum order.

The goal of a modern public manager, a government, is drawing up laws, which apart from providing security, should also protect our dignity and welfare. It appears that a government should establish order by maintaining harmony between two values: freedom and equality. It should be focused on creating legislation that provides a reasonable balance between freedom, equality and order. It should also be mentioned that maintaining complete equilibrium between these values is one of the most

critical dilemmas in the relationship between the modern state, society, government, its individuals and citizens. The nature of this relationship is largely dependent on the existence and implementation of the aforementioned legislation, while the main responsibility for achieving this balance rests with the individual, citizen him/herself. Both, the adoption of good laws and their proper implementation by government are dependent on the active involvement of the citizen.

Generally, a law is a rule obligatory for all regardless of the attitude held by any individual towards this rule. The compilation of rules, i.e. laws, makes up the governing law.

Law – a compilation of rules of conduct aimed at the legal regulation of social inter-relations.

A legal norm, being a variety of social norms, “contains a provision defining an action or abstaining from an action, or at least some parts of the provision (e.g., legislative definitions), or the conditions for originating or altering the obligations imposed by general or individual conduct.¹⁵”

Similar to other social norms (e.g. ethics, morals, customs), laws regulate human relations; however, laws maintain distinctive characteristics that make them stand apart from other social norms.

Government has the ability to establish legal norms or turn them into sanctions. There are two ways for a legal norm to be adopted:

I. Identification - a rule of conduct or a norm that has no previous history; it has never been known or shown to be active within a society. It is created and identified by a state as an obligatory rule of conduct regulating legal relations – a legal norm.

II. Sanctioning - a way of adopting a legal norm when a rule of conduct has been known and active within a society (e.g., as a moral or ethical norm), but was not and could never have been made obligatory. If, for regulation of certain legal relations, a legislator deems application of such a norm as desirable, he/she will sanction this norm, transform it into a law and make it binding for all.

In the aforementioned cases, the source of legal norms – the laws, is the state and its government. The latter is the most important and most frequently the source of said laws, though not the only one. People themselves could be one of the sources

¹⁵ Reinhold Zippelius, *Legal Methods Doctrine*, Tbilisi, 2009, p.47.

of a law, for instance, when people adopt a law directly by means of a referendum. It should be noted that there may be some exceptions, such as when a legislation of a certain country does not provide for or accept the adoption of a law by the above rule. Thus, for example, according to the Georgian legislation, it is unacceptable to adopt a law through a referendum.

The compilation of legal norms constitutes the law, the distinctive features of which are: normative nature, formal definability, systematic character and implementation by the state. One other characteristic of law is enforcement, which should be envisioned as the state's guarantee of the law. Law is a result of human intellectual activity stemming from individuals who realize the importance of implementation of a certain action or abstaining from it according to a legal norm. However, as mentioned above, it may occur that certain individuals refrain from meeting the requirements of a legal norm. This is why every kind of law is supported by a state which ensures its fulfillment. Another feature of law is definability, which means that it should by all means be stated in a written and pre-defined form. Law is a complex and a systematic phenomenon which creates a single national legal system by various distinctive and classified standards. As previously mentioned, legal norms are not the only type of norms aimed at regulating public relations and behavior. Other types of such norms are **moral** and **ethical norms**.

A certain niche in regulating public relations is occupied by **customary norms**. Besides, there are certain rules regulating specific areas of public relations. Their action is based neither on obligation, nor on sanctioning, but rather on, say, public opinion. Such rules are: fashion, style of dress, rules of conduct at parties and other types of social gatherings, etc.

However, regarding the regulation of public and state lives and ensuring their dynamic and harmonious development, the most important set of governing norms are the legal norms described above.

In order to fully comprehend the necessity of regulating society by means of law, as well as the importance and necessity of the authority that might be establishing the rules of game – the government, one should take a look at an already well-treaded road that humanity has passed from the time of John Locke (1632-1704), to the period of the Founding Fathers of the United States of America.

To support the creation of a newly democratic and free state, early Americans have rather effectively used the works of Locke and other influential Enlightenment thinkers. In order to cultivate truly democratic values in their government, the Founding

Fathers incorporated Locke's work on the theory of natural law. Locke, and later on the Founding Fathers faced the same questions: Do we really need a government? What kind of government do we need? How should a government be organized? What is the main purpose of a government? What gives a government the right to set the rules of the game for others, in other words, to rule? These are obvious and perpetual questions. If we only take a glance at the most recent history of our country as well as of other countries, it will become evident to us that these are questions worth thinking about.

CHAPTER 1.2

The State of Nature and Natural Law

The state of nature and the philosophy of law are based on the existence of a state where there is no government or any laws created by it. According to Locke, there are laws in the state of nature too, which he describes by the following: "There is a natural law controlling the state of nature, which is binding for all, while mind, which is a law itself, teaches all who listen to it that while all humans are free and equal, nobody has the right to infringe upon another's life, health, freedom and property since every human is created by a single, almighty and infinitely wise creator.¹⁶" Here we encounter several problems typical within the state of nature. So what are they?

First of all, the problem lies within a person him/herself. He/she is a deeply individualistic and egoistic creature. Within a social apparatus, he/she creates the whole of society. If we assume that there is no government in a state of natural and that a human is free to act based on his/her natural rights, it is not hard to imagine that achieving a consensus on the essence of "natural laws" will become a rather complicated task. Where does a right of a person start and end? Where is the boundary of a person's freedom of action? In an uncontrollable (naturally free) environment, questions of this kind might prove to be crucial. Even in the state of nature, a person has fundamental rights like the right to life, freedom and welfare, simply because he/she was born as a human and has been unconditionally granted all these rights by God from his/her very birth. There's a great probability of losing these rights in the state of nature. Given the proclivities of human nature, there would always appear those who would easily exceed the boundaries of their own freedom and try to limit other people's natural rights. There is no government or rule of law in the state of nature, which is why in this case

¹⁶ *Introduction to Modern Thought, Vol. 1* (Tbilisi: Ilia Chavchavadze State University Publishing House, 2006), 270.

people have to defend their natural rights themselves. It is not difficult to imagine the many ways that peaceful coexistence and the universal rights of human beings can be damaged within such a state.

CHAPTER 1.3

The Need for Government

Now, as we have gotten acquainted with the inherent problems associated with the state of nature and natural laws, logically, society will recognize the necessity of “lawful authority” to solve the major problems linked with the state of nature. Government is precisely the mechanism of authority that has the ability to create laws enabling peaceful coexistence of human beings, safe and decent living conditions in a society and a state. Let us recall the problems associated with the state of nature and the lack of guarantees/protection of natural rights within it, before drawing a conclusion on the necessity of the creation and existence of a state. Indisputably, everybody has, for instance, a fundamental right to live, but if we imagine the possibility to exercise this right in a state of nature, it will always suffer the risk of being violated. Objectively speaking, this is an inviolable right and nobody should be able to deprive a person of it. For this reason, nowadays in states claiming to be democratic, the death penalty or its prohibition is defined by a constitution, notwithstanding the gravity of the punishable act. For instance, Article 15 of the Constitution of Georgia states:

1. Life is an inviolable right of a person and is protected by law.
2. The death penalty is prohibited.

In a state of nature there would be no government, and thus, no authority able to create a law that would, on the one hand, recognize the right to life as a fundamental right of an individual and, on the other hand, define the boundaries of a person’s free will in relation to that and other rights. The ideas of the need for government, protection of fundamental human rights, along with the safe and decent existence of a person, as well as the purpose of a government are explicit in the Declaration of Independence of the United States of America:

...We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are

instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government...

The Declaration of Independence of the United States of America, July 4, 1776

As already mentioned above, the main characteristics and conditional factor of a society and its sustainability is the perception of human unity. Here, it would make sense to ask a question: What makes a person, a highly individualistic creature, think of uniting his/her single will with the wills of others? The answer to this question is partially provided by the issues surrounding the state of nature and natural law. When a person becomes conscious of these issues, acutely aware that his/her life, freedom, property or aspiration for happiness is at risk, he/she starts thinking of ways to protect them. What can a person as an individual do in this case? The answer is simple: he/she becomes involved in a constant, unwarranted struggle for a safer existence, which can at times prove to be less than effective. This is the turning point, the moment when people start to face the need for unification of their single wills, and have to solve the issue of their shared and individual safety.

It is no surprise, as mentioned above, that neither an individual nor a collective struggle to resolve these issues would prove to be particularly effective. In this case, people and their unities would get involved in a constant and ceaseless struggle. Thus, they would hardly have any time or opportunity to strive for happiness and a better life. Safe and decent existence would certainly be out of the question as well. These inferences help us develop an answer to the question – what is the purpose of government? Given that society as a whole is incapable of protecting its members' natural rights, there appears to be a need for another type of institution. Such an institution would be enabled with power and authority and would agree to protect certain rights. Through this power and authority, it would establish certain rules. These rules would in turn ensure sustainability, along with the dynamic and peaceful development of the society. They would provide a reasonable and an expedient combination of private and social interests. Further, such an institution would be authorized with legal power and authority, on the one hand to establish rules, and, on the other hand, to ensure that each member of society observes these rules. Now, we have arrived at the necessity of having an authority that would convert different, often radically conflicting interests of separate individuals or union of persons into a single public, state goal and harmoniously lead them towards a single direction.

The abovementioned direction is the implementation of a function of maintenance and development of a society and its political institution – the state. Consequently, society has entrusted provisions of its own security, such as maintaining order, to the state.

Transferring this function to the state turns it into an everyday operational responsibility of the government. To achieve this aim, the state has special agencies and services with various capacities and authorities. The state implements the mentioned function by means of the police whose main responsibility is to act within its authority to maintain order, prevent crime, and effectively react if the need arises.

As an example, let us view a simple element of order – observation of traffic rules. Let us take a look at the statistics related to the violation of the above rules and its deplorable outcomes, as well as at the number of cases of violation that was not appropriately dealt with in instances where there were no patrol police on hand. And, if we imagine ourselves as being subject to each violation, we can easily realize how restricted our mobility would become. Finally, it could be said that people have come to a conclusion that it is necessary to have a certain power and authority (government) which will implement public administration, while people themselves will take the role of the governed at the expense of the rights they will have to surrender. The rights people surrender will be the price paid for ensuring their own interests, safe and peaceful coexistence. The best effort to solve this issue was Locke's social contract.

CHAPTER 1.4

The Social Contract

According to John Locke, a social contract between individuals and the state is the best way to solve the inherent problems associated with the state of nature. Locke's argument followed the ensuing rationale: in order to protect one's rights, one needs to surrender some of them and deliver them to an authority. The government will be equipped at the expense of the surrendered rights, and protect natural human rights.

Locke presents the following progression of events: initially, a society agreed to create an authority, i.e. the government. Subsequently, conditions were laid before the government – it was to rule and protect the security of the society. The agreement required legitimation of the government so that it could rule, define mandatory rules to each member of society, and protect and execute these rules/laws. Based on the conditions, people voluntarily surrendered some of the rights which enabled the government to govern the society.

Government rules only because it is empowered to do so by the society itself. The

basis for it is the rights and freedoms surrendered by the society. Here is another question: what is government and what is its main goal?

Before answering the question, we should emphasize that the will of the people, the society and the social perception of unity are the most important factors. This fact has been repeatedly proven throughout human history. For a concrete example, we can use the Mayflower Compact (11 November 1620)¹⁷ – a document drafted by the new settlers of New England¹⁸. Through this compact, the signatories agreed that the new colonies were to be free of Great Britain's laws, and they would establish their own rule. Essentially, this document has contributed to the creation of the America's social contract. Many American historians, including the sixth president of the United States of America, John Quincy Adams (in office from 1825-1829), deemed this document as the foundation for the Constitution of the United States of America.

¹⁷ Mayflower was a sailboat that transported English pilgrims to Cape Cod on the coast of Plymouth, in 1620. Mayflower is the symbol of the early European colonization of the United States. The origins of the American nation are associated with Mayflower settlement – Plymouth colony (commonly known as New England).

¹⁸ New England – the North-East region of the United States, including the City of Boston, the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

Chapter Two

Government

In chapter two, we will cover a number of key issues, including the essence and the purpose of government. You will learn about the way government should rule, the rights of citizens in that process, and the principal values that constitute the basis of relations between a state and an individual/citizen. Therefore, after having read this part, you will be able to discuss the following issues:

- What is government?
- How should government function?
- What is the main goal of government?
- What are the values of government, citizens and democracy?
- What is a constitutional government?
- What constitutes separation of power within a constitutional government?

CHAPTER 2.1

What is Government?

State authority is the lawful exercise of power and force. It has the ability to harmonize and help incorporate a society's diversity. This means that society is heterogeneous and is constantly developing. It consists of numerous separate societies sharing various goals and interests. Each of them has different conditions, ways and capabilities to pursue its goals and interests. The state's mission is to unite these differences in a logical manner, to place them within a common framework, to canalize them into a single channel and to undertake the role of securing and maintaining the society. Government is a phenomenon of a social consent. However, its social meaning is quite peculiar. This peculiarity is based on the normative and political characteristics of the government itself.

Government is political inasmuch as it is the means of maintaining a state policy. "In this cause, government is the 'mind' of the state which prolongs the existence of the state.¹⁹" State and government are often mentioned in the same context, though these notions are not identical. Our goal is to demonstrate how government and the individual, or government and the society, are interrelated, and how individuals and citizens participate in the process of governance. Therefore, it would be desirable to find a major dividing line between "state" and "government." In this respect, our main focus is the composition of government.

Andrew Haywood rightly emphasizes the distinction between the two terms through the scope of a constitutional government. We thus reveal the legislative regulation of the government and its limitation by law and human rights. Haywood states the following in regards to the demarcation: "The distinction mainly has to deal with the idea of a limited and constitutional government. In short, state authority can be restrained only in case the existing government fails to institute an unlimited and absolute rule in a state.²⁰"

Government is the constituting part of the state that has normative and political features. "At least in theory, the state expresses constant interests of the society, in other words, a common, general will,²¹" while the government, as a phenomenon bearing political consent and being a constituent part of state – "the preferences of those who are presently in power."²²

¹⁹ Andrew Heywood, *Politics*, (Tbilisi: Sakartvelos Matsne, 2008) 130.

²⁰ *Ibid.*, 136.

²¹ *Ibid.*, 16.

²² *Ibid.*, 18

The abovementioned fact once again accentuates the issues associated with the role of the state. Issues that become evident are the relationship between an individual and the state and the necessity of binding a state by means of law and human rights which are formed primarily at the constitutional level, creating the impetus for a constitutional government. In this respect, the Constitution of Georgia explicitly stipulates the binding of government by human rights. Namely, Article 7 of the constitution's General Provisions states:

*The state shall recognize and protect universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the state shall be bound by these rights and freedoms as directly acting law.*²³

We will discuss constitutional government in more detail below.

CHAPTER 2.2

What is the Purpose of Government?

When drafting the American Constitution, the drafters shared the views of natural rights philosophers from past and present, in that the main purpose of government is to protect natural human rights. We think that acknowledgement of this truth was perfectly expressed by the Founding Fathers in the Preamble of the United States Constitution, which says:

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*²⁴

The preamble of the existing Constitution of Georgia defines goals and objectives whose achievement has induced the Georgian people to adopt the constitution. The goals declared therein constitute a mandatory guide for the state authority of Georgia:

*The citizens of Georgia, whose firm will is to establish a democratic social order, economic freedom, a rule-of-law based social State, to secure universally recognized human rights and freedoms, to enhance the state independence and peaceful relations with other people, bearing in mind the centuries-old traditions of the Statehood of the Georgian Nation and the basic principles of the Constitution of Georgia of 1921, proclaim nation-wide the present Constitution.*²⁵

²³ *The Constitution of Georgia*, (Tbilisi, 2010),19.

²⁴ *The United States Constitution*. Translated by A. Kobaladze and S. Baramidze. Edited by M.Ugrekheldze (Tbilisi, 1993),9.

²⁵ *The Constitution of Georgia*, (Tbilisi, 2010),1.

We already know the essence and the purpose of the state, though we have not yet solved a major dilemma. The main problem lies not in acknowledgement of the need for government, but in determining what kind of government we need and how to create it.

CHAPTER 2.3

The Goal and the Forms of Government

The people who had assembled at Tahrir Square in Cairo, Egypt rejoiced upon hearing the news that Hosni Mubarak, president of Egypt, had announced his resignation. Mubarak's resignation was driven by powerful anti-government protests which resulted in the transferring of power to Egypt's army. Government and political crises that had engulfed Egypt and much of the Arab world in 2011 clearly demonstrated that the goal of government stays unchanged regardless the form of government. As far as people are the source of power, holding government accountable for its own actions is an infeasible right of the society. However repressive and non-democratic the government, citizens and society cannot be deprived of this infeasible right. The society has the right to remind the government, even by means of a revolution, of the abovementioned infeasible right. Sometimes it is not the form of government that matters, but rather the organization of power within it in a way that excludes the possibility of exercising its willfulness towards a citizen/society. Government is inclined towards such behavior: "Throughout history, for the most part, the government deprived people of their rights rather than protecting them.²⁶" Whenever there is a will and possibility, government will try to act in such a way, regardless of the form of government. Let us recall the rule of King Louis XIV of France (1644-1715), who managed to gain absolute power over his subjects. It was during his reign that the States-General (états généraux, France's legislative class-based assembly) – ceased to exist, which made the king sole and absolute ruler. In fact, the expression, l'état, c'est moi (literally meaning, "I am the state") is attributed to Louis XIV.

Our goal is to address the problem only generally, which means we need to find the form of government that is best able to meet its primary goal – protect basic human rights. To solve this important problem, it is critical to locate and understand the most effective form of government. For this reason, the Founding Fathers took an interest not only in natural rights but also in the historical period of the government of the Roman Republic, when the goal of government was progress and the protection of

²⁶ *The United States Constitution or the Art of Compromise* (Tbilisi: GCI,2001), 11.

society's general welfare. Establishment of said goals, and the rise of the Roman Republic, were conditioned by the Romans themselves who possessed a citizen's dignity. Consequently, the Founding Fathers stated that, "the majority of Americans possessed the dignity of the citizens of Rome. In their opinion, that kind of dignity was based on the Christian ideological heritage of Americans. The citizens who had been genuinely interested in general welfare would have to behave in a way appropriate for a good republican citizen."²⁷

Using the mentioned approaches, the Americans perfectly answered the question – "What kind of government could protect human rights in the best possible way?" For Americans, such form of government and form of authority became the republican government.

As constitutional and legislative practices of modern states and societies at times demonstrate, even seemingly democratic forms of government can be abusive towards the citizens it governs. An example of this is Egypt. While Egypt is officially a republic, abuses of power by the government and acts of oppression towards its own citizens became a regular occurrence. This acted as a catalyst for the Egyptians who took to the streets and exercised the right that Americans had rightfully expressed in their own constitution: "...whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it and appoint a new Government."²⁸ In this case, people have the right to revolution. On the other hand, in parallel with a republican form of government selected by the vast majority of countries to govern their states and their societies, there are other forms of government as well, such as a monarchy. However, comparing the techniques and methods of modern monarchies with those of Mubarak's Egyptian republic is impossible and unreasonable.

As can be concluded from the above, the main concern of every society is to select an acceptable form of own government and, more importantly, to organize government within the selected form so that it fully restrains the government's willful and oppressive tendencies towards individuals. Regardless of whether it is a constitutional monarchy or a presidential republic, a sole or a collective form of government, it should obey the law and law should regulate its action. Moreover, while governing, the government should be in strict compliance with the principles it is bound to by law.

²⁷ Ibid., 16.

²⁸ *The Declaration of Independence of the United States of America*, (US 1776).

A good historical example of a power bound by law is England's Magna Carta. By signing this document in 1215, royal power became subject to the following regulations:

1. The Church was freed from royal control;
2. Courts were granted independence;
3. Landowners' right to transfer land to the eldest son was recognized;
4. Freedom of movement was declared;
5. Search without a warrant was prohibited.

Implementation of the above conditions was a response to King John Lackland's attempt to abolish some of the powers previously exercised by the noblemen.

As illustrated throughout history, society is in constant threat of oppression. As expressed by revered American statesman, co-author and signer of the United States Constitution, Alexander Hamilton (1757-1804): "Should the whole power be given to majority, they will oppress the minority; should the whole power be given to minority, they will oppress the majority".²⁹ A way to minimize this risk is instituting constitutional government.

Constitutional government implies organizing government in accordance with the main political and legislative document of the state – the constitution, so that the government, while acting by the rules already agreed upon by society and for which the constitution has been declared, is bound by the constitution and the regulations established therein.

CHAPTER 2.4

Constitutional Government: Separation of Powers

While creating the Constitution, Americans invented a rather effective tool to avoid the risk of power abuse. The tool—separation of power, had been theorized and developed by the likes of Jean Bodin (1530-1596) and later, by Charles-Louis Montesquieu (1689-1755), and now stands as the main principle of modern constitutionalism. Known colloquially in America as "checks and balances," a separation of power means a constitutional distribution of power, authority and responsibility between

²⁹ Alexander Hamilton, "Federalist #69: To the People of the State of New York." *Federalist Papers* (14 March 1788).

three branches of government – the legislative branch, executive branch and the judicial branch.

The same principle of government organization is recognized by the existing Constitution of Georgia where separate chapters are assigned to the branches of authority and define the powers of each.

While each branch of authority is executing the powers assigned to it, the tool of mutual control and restraint is in action, based on the principle of separation of power. According to this principle, no single branch of government has the right or possibility to assume any function of another branch of authority.

No one shall have the right to seize the authority or usurp it. State authority shall be exercised on the basis of the principle of separation of powers.

The Constitution of Georgia, Article 5

Additionally, it should be noted that state authority is integrated and, all branches of authority, each being a component of an integrated state mechanism, cooperate and interact with one another closely.

CHAPTER 2.5

Government, Citizen and Democratic Values

This chapter will focus on the relationship between the state and the individual, and will emphasize the importance of the legal status of an individual, which implies the entire spectrum of rights, freedoms and duties. This status increases the mutual responsibility of an individual and a government. You will get acquainted with the civil society as a means of political and legal communication between a given state and an individual. Further, in this chapter we will encounter the values of freedom, equality and order and discuss the importance of their correlation.

The reality of an individual's legal status is not by any means limited to his/her rights, freedoms and/or duties subject to law. This status, i.e. the reality of his/her condition, depends on the attitude and activeness of an individual/citizen him/herself, in regards to the actual implementation of the avowed rights and democratic values. He/she should be constantly watchful of the government.

As already mentioned, the main purpose of government is to protect human life and property. However, it should be added that this goal alone can no longer meet the needs of today's society. The mentioned goal is about origin, primary purpose and content. For a person living within a modern society, a simple provision of existence is not sufficient. Accordingly, the concern of a modern government is not just the existence of an individual, but also the provisioning of conditions for the individual's wellbeing.

To meet this goal, it is important for the government to provide value-based legislative regulations, which become the tools and methods the government uses while governing the society and/or state. From a democratic viewpoint, the main dilemma for a government is the recognition of values, their legal execution and practical implementation.

Here we encounter a dilemma that emerges in the relationship between a government and an individual, a government and a citizen. "Throughout the history of mankind, government has been serving two main goals – protection of order (preserving life and protecting property) and protection of public welfare. Later, some governments added the third goal – provision of equality.³⁰"

The main dilemma of a government is maintaining a balance between each of these values. This actually serves as an important tool for measuring how a democratic government is performing. The essence of the dilemma is that there is a conflict between these values while public policy is implemented. At any given moment in history, this conflict looks just like the choice that government has made, that is, preferring one value over the other: "...When it is necessary to make a choice between freedom and equality, the Americans prefer freedom to equality more often than citizens of other countries. Just on the contrary, preference of equality to freedom was strongly expressed in the former Soviet Union, whose citizens traditionally received medical treatment, cheap lodging and other social benefits.³¹"

In the beginning of this chapter, we mentioned that the adequacy of one's legal status is based on citizenship. The legal status of a citizen (the unity of rights, freedoms and duties) is described more thoroughly in a state's constitution than that of non-citizens, foreign citizens and individuals with no citizenship. This circumstance proceeds from the form and content of the union existing between an individual and a state. In the case of citizenship, there is a perfect union; a legal and a political union between the

³⁰ Kenneth Janda, Jeffrey M. Berry, Jerry Goldman, *The Challenge of Democracy Essentials: American Government in Global Politics* (Tbilisi: GCI, 1995), 2.

³¹ *Ibid.*, 13.

citizen and the state. According to the Organic Law on Citizenship of Georgia of 23 March 1993:

*Citizenship means a political and legal union of a person with the Georgian State, which is expressed by a combination of mutual rights and responsibilities and is based on respect of human dignity and recognition of his/her rights and freedoms.*³²

It is worth mentioning that the Georgian legislation is especially notable for its diversity with regard to acquisition of citizenship. The Constitution of Georgia establishes both principles of birth and naturalization for acquisition of citizenship. According to Article 10 of the Organic Law on Citizenship of Georgia:

Citizenship of Georgia is acquired by:

- a) Birth
- b) Being granted a citizenship of Georgia (by naturalization)
- c) International agreements of Georgia and other cases provided for by the present Law³³.

The Constitution accepts both the *jus sanguinis* (“blood principle”) and the *jus soli* (“soil principle”). The *jus sanguinis* principle establishes the citizenship of a child regardless of the child’s birthplace. In this case, citizenship of the child is associated with the citizenship of the parents. While the *jus soli* principle, on the contrary, is not associated with the parents’ citizenship and implies acquisition of citizenship in accordance with one’s birthplace.

Based on the prerogative of the President of Georgia, Georgian citizenship may be granted to a citizen of a foreign state if he/she has any special merit before Georgia or mankind in general in the spheres of science or public activity, or if they possess a profession background or a qualification that falls within Georgia’s sphere of interest. Georgian citizenship can also be granted to a foreign national if the granting of citizenship to the individual is in the interest of the state.

Of special interest are the provisions of legislative regulation that focus on the maintenance of a union between a state and a person, regardless of the person’s location. According to the Constitution, Georgia assumes the responsibility to support its citizens regardless their location.

It is unacceptable to expel a citizen of Georgia from Georgia or to deliver him/her to a foreign state.

The issues of acquisition and deprivation of citizenship is minutely regulated by the Organic Law on Citizenship of Georgia.

³² Organic Law of Georgia on the Citizens of Georgia, March 25, 1993, <http://www.parliament.ge>

³³ Ibid.

Chapter Three

THE CONSTITUTION

Chapter three of this section will provide an overview of the supreme and foremost law of the Georgian state – the constitution. Our efforts will be directed towards the acknowledgement of its functions and its role within the national legal system. After having read this part, you will be able to discuss:

- The essence of a constitution and its history;
- Specific features of a constitution – such as: supremacy, constituent nature, legitimacy, direct action, and stability;
- The legal, political, social, and ideological functions of a constitution;
- The issues of a constitution: written and unwritten constitution, flexible and firm constitutions, permanent and temporary, and monarchical and republican constitutions;
- Constitutional traditions and the Georgian experience;
- General characteristics of the Constitution of 1995.

CHAPTER 3.1

The Essence and Brief History of the Constitution

A constitution is a key document that is both legal and political in nature, able to regulate the social and political agreements within a state. Constitutional regulations and accords balance a society's values in order to provide a safe and respectable existence for the individual and the citizen, while also ensuring their rights and freedoms.

The democratic and constitutional correlation between freedom, equality and order constitutes a type of government that secures human rights and freedoms. When a government is restricted in its freedoms, its ability to commit oppressive acts against an individual is restricted. This is what makes a constitution the supreme law of a country, providing key guidelines for both a person/citizen and for a democratic government.

The term "constitution" is derived from the Latin word *constitutio* and denotes institution, establishment, or structure. The term itself has a deep historical background, though it gained its present meaning no earlier than in 17th century when a representative of the "natural school," Thomas Hobbes (1588-1679) called it "the principal law of a state." Prior to that, "constitution" represented a certain type of decree issued by a Roman emperor, as well as an act on feudal privileges during Middle Ages.

The constitution – a vital instrument of a modern democracy was preceded by acts of constitutional importance, such as England's Petition of Right³⁴ adopted in 1628 and the Agreement of the People created in 1647. Although acts of constitutional significance were initially drafted in Europe, a classical constitution of modern significance was passed overseas, in the United States of America, in 1787. Later, the constitutional wave returned to Europe, and by the end of the same century, in 1791, constitutions were passed in Poland (May 3) and France (September 3). Subsequently, all European states (with the exception of England) created their own constitutions.

The character and content of a constitution as a legal and a political document as well as its purpose gradually improved in parallel with the development of societies and states.

³⁴ Petition of Right, http://en.wikipedia.org/wiki/Petition_of_Right. Adopted in 1628.

CHAPTER 3.2

The Features of a Constitution

Being the most important and the primary legal instrument in the hierarchy of a state's law, the constitution is characterized by a number of peculiarities. These peculiarities define its distinctive features as the state's key law and emphasize its significance as an important legal and political document for a society and a state, a citizen and/or association of citizens. In this chapter we will distinguish some of the essential features of a constitution which will demonstrate its role within a state's legal system.

The Constituent Nature of a Constitution

The constituent nature of a constitution implies the fact that a constitution is normally adopted by the people or on behalf of the people. Consequently, in modern constitutions, the essential characteristic is based on an unambiguous nature of a person's and a state's sovereignty. Moreover, the essential characteristic of a constitution is based on the uniqueness and the primary importance of the subjects authorized to create and adopt it. Therefore, no other legal acts or provisions may contradict the constitution.

Finally, the constituent nature of a constitution is directly associated with the origination of a new state and legal execution of a social and political order selected by the state. Therefore, basic changes linked with origination of a new state or with a social order are first and foremost expressed in a constitution. The constitution is actually a legal document that reflects the most important social and political relations and agreements that eventually embody the real way of life of a society.

Supremacy of a Constitution

It is the year 2008; people are gathered in front of the Parliament of Georgia and waiting in anticipation for the presidential inauguration ceremony. After the newly elected president, Mikheil Saakashvili ascended a duly prepared stage to take his oath, a reciter proclaimed "The Constitution of Georgia." The head of the Constitutional Court of Georgia, Giorgi Papuashvili laid the Constitution of Georgia on a tribune. The President took an oath by placing his hand on the Constitution. A presidential oath is a part of the Constitution. Within Georgia's legal environment, its Constitution is the supreme legal document, and by placing his hand on it, the president has taken an oath of loyalty before the nation and society.

A constitution defines the organization of government within a state. Accordingly, powers and responsibilities of every level of government: presidential, parliamentary, and judicial are regulated by a constitution. In a national legal system, the importance of a constitution is especially emphasized by its supremacy.

The **supremacy of a constitution** refers to its supreme legal power over all other standard laws or legal documents within a national legal system. On the one hand, it means that the constitution is a legal source for all civil, criminal, administrative and any other legislation, and on the other hand, supremacy implies that only state agencies provided for by the constitution have the authority to pass laws.

A constitution generates a responsibility which is adhered by the state and local government agencies and its officials. At times, a constitution directly emphasizes its supremacy. In Georgia, the supremacy of a constitution is provided for and protected by the Constitutional Court of Georgia, ensuring constitutional lawfulness, and the constitutional rights and freedoms of an individual.³⁵

The primary goals of a structural sub-unit of the Ministry of Internal Affairs, and the Department of Constitutional Security, are:

- Identification, prevention and neutralization of conditions and interests of foreign secret services aimed at weakening the normal functioning of the state, its structures and other agencies, prediction of political and economic threats to the country, collection and analysis of information towards this aim, protection of state's constitutional system and against change of government in a non-constitutional, violent manner through forms and methods of secret services, in a way established by the state;
- Identification and prevention of crimes against the state, including crimes by officials and those bearing signs of corruption and extremism;
- Preliminary investigation and criminal prosecution in cases within its competency in a manner established by the Procedural Code of Georgia and the governing code;
- The department also coordinates and oversees the activity of officers assigned to work on security issues at institutions that are of special interest for state security, and reviews information provided by them.

³⁵ *The Constitution of Georgia, Article 83. 24 August 1995.*

Constitutional Stability

Constitutional stability is the most important feature of the constitution, which defines its place within the national legal system.

Constitutional stability is ensured by the genuine social grounds behind the legal norms regulated by the constitution itself, the search for those grounds, and adherence to the rule(s) on making amendments to the constitution.

Constitutional stability includes a system of constitutional principles and provisions by act of which, a new political force having come to power has no opportunity to substantially influence the system and, therefore, alter the constitution according to the administration's views. In other words, it is not the constitution that adapts to the government, but rather the government adapting to the constitution. It is a duty of the government to adapt and adhere to the provisions of the constitution.

However, the above does not mean absolute stability, as every legal norm, including a constitutional norm is a type of a social norm. Their basis, naturally, should have a real social foundation. Therefore, the unpredictability of social life conditions requires bringing constitutional norms to conformity, which is necessary for its implementation.

Making amendments and additions to the constitution is regulated and governed by the constitution. This tool is one of the most important conditions for constitutional stability.

Constitutions vary from one another. Theoretically, constitutions are classified into two categories: **flexible** and entrenched **constitutions**.

Flexible constitutions provide a simple tool for making amendments and additions. An example of this type of constitution is the main law of the Federal Republic of Germany, which is subject to additions and amendments according to the rule that acts for current laws.

Entrenched constitutions provide more complex tools for additions and amendments. Complexities depend on legislators of a given state. For example, the Constitution of Georgia falls under this category.

The procedure for revising or amending the Constitution of Georgia is provided by Article 102 of the Constitution. According to the article, a draft law on general or partial revision to the Constitution shall be submitted to the Parliament of Georgia. However, submitting a draft law to parliament does not necessarily mean that it will be reviewed by parliament. The parliament will be given an opportunity to examine the draft law only after it has been presented for public review. Only a month after issuing the draft law, the parliament can start to examine it.

In 2010, the Constitution of Georgia was subjected to changes, which entailed the incorporation of amendments and additions to the constitution. The amended constitution will come into effect in October 2013 following the general elections, from the moment of oath taken by the President. Namely, in Clause 3 of Article 102 of the constitution, it was stipulated as follows: "The draft law on the revision of the Constitution shall be deemed to be adopted if it is supported by at least two thirds of the total number of the members of the Parliament of Georgia."

As can be viewed from the extract of the article, quite a large number of votes are needed in parliament before a constitutional amendment can be approved. Additionally, the Constitution of Georgia provides for initiation of its revision by citizens. In accordance with Clause 1 of Article 102, at least 200,000 voters, apart from other subjects, are entitled to the right to submit a draft law on general or partial revision of the Constitution, whereas with regard to regular state laws, 30,000 voters are needed to enjoy this right.

Legitimacy of a Constitution

Legitimacy of a constitution implies that its development and adoption have met all legal requirements. These requirements, as a rule, are regulated by the constitution itself. Naturally, a constitution adopted as a result of any form of violence, or one that contradicts or breaches the requirements of law, shall not be deemed legitimate. An essential determiner of legitimacy of the Constitution of Georgia is the will of the Georgian people. Correspondingly, it is stipulated in the Preamble of the Constitution of Georgia:

The citizens of Georgia, whose firm will is to establish a democratic social order, economic freedom, a rule-of-law based social State... proclaim before God and nation the present Constitution.

Direct Action of a Constitution

The constitution, as the foremost law of the state, constitutes the basis of the acting legislation of a country. Hence, there often arise such issues surrounding the balancing of constitutional and acting legal norms and the reverse influence of constitutional norms over legislative norms. In such circumstances, the issue of viewing the constitution as of an act of direct action gains a special importance.

The issue of direct action of a constitution “includes the issues of rather specific constitutional norms and their specific operations. Mainly these are general norms regulating the basics of state authority organization. As for content, direct action mainly covers restrictive constitutional norms. Therefore, it is important that legislation in accordance with the constitution provide an actual action of both constitutional and legal norms.³⁶”

Some states' constitutions recognize the whole constitution rather than its separate, specific constitutional norms, as a direct action act. For example, in the first paragraph of Article 6 of the Constitution of our neighboring state, the Republic of Armenia, it is stipulated: “The Constitution of the Republic possesses the supreme judicial power and its norms act in a direct way.”

There are certain constitutional norms whose actions are associated with corresponding legal acts. For example, in order for Clause 4 of Article 4 of the Georgian Constitution to come into action, it is necessary to issue an organic law, as explained by the governing norms of the Constitution: “The composition, authority and election procedure of the chambers shall be determined by the Organic Law.”

There are some constitutional norms whose action, given that there are no social agreements, are direct. The first part of Article 21 of the Constitution of Georgia states: “Property and the right of inheritance is recognized and provided for. It is unacceptable to abolish a property and the universal right to acquire, alienate or inherit.”

The issue of a direct action of the state is especially urgent in exercising constitutional control, since the Constitutional Court, as one of the institutional safeguards, provides for protection of the Constitution. It “makes decisions on the conformity of a constitutional agreement, a law, the President, the government, normative acts, and the supreme government bodies of the Autonomous Republic of Abkhazia and of the Autonomous Republic of Adjara with the Constitution.”

³⁶ Otar Melkadze, *Constitutionalism, Theoretical Issues* (Batumi University Publishing House, 2003), 81.

CHAPTER 3.3

Main Principles of a Constitution

The role of a constitution in regulating relations within society is based on the fundamental principles which are present in the document's makeup.

The fundamental principle of a constitution is the **principle of democracy**. Democratic principles within a constitution means that it recognizes and inculcates certain values as the basis of government authority and action.

These values are: freedom, equality and unbiased lawful justice. Constitutional democracy should be meeting three specific, often conflicting requirements. The first of them is - since it is democratic, it should be sensitive to people. The second is – since it is governed according to certain rules and procedures, it is limited in achieving the set goals and in using the means for implementation of those goals. Finally, as every government, constitutional democracy cannot last for a long period of time and keep its existence in the society unless it provides effective protection of law and order and is not complex in managing economy and protecting from a foreign threat (which implies not only an armed invasion of a foreign country, but also an organized crime, natural calamities and terrorism).³⁷

Separation of Powers

Separation of powers is a major principle of a constitution, since the organization of government falls under the document's authority. Constitutional regulation of the given principle is of special importance for the democratic institutions of a government. This principle is recognized by Article 5 of the Georgian Constitution. This means that government should be structured in a way that one of its branches does not overlap the other and does not assume its rights. Constitutional regulation of this principle of separation seems to be one of the safeguards against potential threats. It serves to prevent harmful acts by a government targeting individuals/citizens.

³⁷ Thomas M. Magstadt, *Understanding Politics: Ideas, Institutions and Issues*, trans. Archil Abashidze, Giorgi Gvalia, and Elene Nodia. eds. Gia Nodia, and David Aprasidze (Tbilisi: Ilia State University Publishing House, 2010), 69.

CHAPTER 3.4

Types of Constitutions

Constitutional and legal practices, as well as comparative analysis of different states demonstrates that diverse historical realities of different states vary from one another by a number of features. Likewise any kind of classification, including that of constitutions is conditional. This type of conditional nature means that you may encounter a lot of classifications that are similar or different.

Written and Unwritten Constitutions

One of the most important and widespread characteristics for classifying constitutions is dependent on the way it is expressed. Thus, constitutions are divided into **written** and **unwritten** types. A **written** constitution is a single, systematized normative act adopted by the supreme body of a state authority or by means of a referendum. An **unwritten** constitution is a non-systematized constitution, that is, appropriate public relations are regulated by various legislative acts, constitutional customs and precedent. This form of unity of norms is not systematized or recognized as a single legislative act. This type of constitution is exercised, for instance, in England, New Zealand and Israel.

Permanent and Temporary Constitutions

According to the effective period, constitutions are classified as permanent or temporary. The permanent character of a constitution does not necessarily mean that it is not subject to alteration and that no amendment or addition can be made to it.

A constitution is a unity of legal norms, while a legal norm is a kind of a social norm. Consequently, a constitution is a legal document that reflects, is based upon, and regulates an actual social and political situation. Therefore, alterations in the social and political situation are adequately reflected in the constitution.

The permanent nature of a constitution, according to the above classification, means that it contains no specific date, fact or event, the arrival of which would result in alteration or interruption or termination of a constitution. Whereas, the temporary nature of a constitution, on the contrary, implies such definitions. Adoption of a temporary constitution depends on various social and political circumstances.

Adoption of a constitution – the main law of a country, is a complex and a long-term process. In case a given state's social and political events change, which, in turn, necessitates adoption of a new constitution, definition of certain timelines becomes inevitable. In addition, the existence of a constitutional vacuum in the country is out of the question. When a state loses its grip over issues that are regulated by the constitution, it leads to undesirable consequences. In such circumstances, adoption of a temporary constitution is recommended.

According to the type of government, constitutions are classified as **monarchial** and **republican**.

Within monarchial constitution, a monarch (a king or a queen) is the chief of state, and state authority is conducted on his/her behalf. "Thus, presently, the government in UK belongs to Parliament and Government, while the Queen is the Chief of State."³⁸

Unlike a monarchial constitution, a **republican** constitution recognizes a president elected for a certain term as the chief of state, while a unified power is subject to the principle of its separation.

Based on its structure or its relevance, there are either **judicial** or **actual** constitutions, depending on the manner of adoption: **by the parliament, by means of referendum** or **octroyed**³⁹ constitutions. A constitution is adopted by means of a referendum when people do so through general voting in a direct and democratic manner.

The word "octroying" signifies the act of granting or conceding as a privilege. There are two types of octroying: **internal** and **external**.

In the case of **internal** octroying, a monarch develops a constitution him/herself, adopts it and offers to his/her people. An example of this type of constitution is the Constitution of France of 1814, adopted after the overthrowing of Napoleon.

External octroying entails the **granting** of a constitution when a former ruling country offers a constitution to its former colony. The Constitution of India had thus been created and adopted twice. Both offers coincided with the commencement of a national liberation movement (1919 and 1935), and both constitutions had been approved by the Parliament of England and sealed by the monarch.

³⁸ Chris Taylor, *Constitutional and Administrative Law* (Longman Publishing Group, 2008), 4.

³⁹ Octroyed Constitution (French "octroyer" – to grant) – a constitution issued by a head of government without any participation of representative bodies (parliament, etc).

CHAPTER 3.5

Constitutional Traditions of Georgia

When discussing Georgia's constitutional traditions, one should first consider its history. This is a history filled with a country's struggle to regain and defend its independence. It is due to these historical misfortunes that in Georgia, a country with a rich history of legislative thinking, the origin of constitutionalism is considered to be no earlier period than the beginning of 20th century, to be more precise, it is traced to the Constitution of the Republic of Georgia of February 21, 1921.

While discussing the history of world constitutionalism, we do not simply imply constitutional acts that express the essence of a constitution from a modern point of view. We also bear in mind some earlier acts that we have previously mentioned. Moreover, historians of law have construed and presented to us a view of Aristotle who claims that there are primary and secondary laws in a state, as a constitutional view.

The history of Georgian constitutionalism should be viewed in the same context. Since it is the objective reality that the first page of Georgian constitutionalism is the Constitution of February 21, 1921, a line should be drawn between the history of Georgian constitutionalism and the history of constitutional thought. The Constitution of 1921 in no way reflects the history of Georgian constitutional thinking and culture.

The history of Georgian constitutional thinking dates back to the period of the first unified Georgian State. Legal documents reflecting state authority can be found dating back to unification. Views on state organization, though not of a legal nature, however, of an earlier period are found in: "The Regulation of the Royal Court" ("xelmwifis karis garigeba"), deeds of gift, etc., issued by secular and church authorities.

A classical act of constitutional significance adopted after the origination of a unified Georgian State is "The Regulation of the Royal Court." Its constitutional significance is expressed by the fact that it clearly reflected the ideology of a strong and stable monarchical government and contained the characteristics of a centralized government, etiquette of a king's court, etc. The text of the document dates back to 14th century. Historian Ekvtime Takaishvili has attributed the act to the period of King George the Brilliant (1314-1346). Levan Surguladze, a distinguished scientist studying "The Regulation of the Royal Court" noted: "The fact that similar works covering the issues of a state system had been created demonstrates that... legislative thinking was on a high level in Georgia at those times."⁴⁰

⁴⁰ Levan Surguladze, *Sources of History of the Georgian Law*, (Tbilisi, 1984), 69.

From the perspective of constitutionalism, “The Rule and the Order on Coronation of Kings” (“wesi da gangeba mefed kurTxevisa”) deserves special attention as long as it defines the order of the king’s government, its machinery and functioning of the king’s court.

When characterizing Georgian constitutionalism, the Party of Kutlu-Arslan deserves to be highlighted. It is associated with the origination of the idea of parliamentarianism in Georgia. However, it should be noted that there is no consensus on the mentioned issue in the science of Georgian history.

There is an essentially different picture with regard to the history of Georgian constitutionalism in the first half of 17th century when King Vakhtang VI adopted the act of “Dasturlamali” The act is best characterized by a quote of Ivane Javakhishvili: by creation of “Dasturlamali.”. Vakhtang VI distinguished justice and government from each other once again and laid a solid foundation for state law. From then on, a definite rule of state authority was established, and which was no longer so easy to infringe and undermine.⁴¹”

To characterize Georgian constitutionalism, it is also important to take into consideration the views of participants of the conspiracy of 1832, legal and political concepts of the public figures of the 1860s (“the 60-iers”) and all of the other ideas that served towards the aim of rescuing the Georgian State, emerging during the period of oppressive policies conducted by the Russian Empire.

CHAPTER 3.6

Functions of a Constitution

A constitution is notable for its peculiarities on the subject of regulating relations that arise in a country’s public system, political sphere and multilateral functional purpose. With regard to the constitution as the main law, it is most common to distinguish its **legal** function. The legal function implies governance of appropriate public relations and legal regulation of the above relations.

Currently, there is a great deal of talk about the constitution being more than just a normative act. It is rightfully recognized as the most important **political document** of

⁴¹ Ivane Javakhishvili, *The History of the Georgian Law*; <http://lib.ge/body-text.php?6708>. (Also available at www.lib.ge)

a state. Hence, we can define the **political** function of a constitution as well. Constitutional reflection of correlation of state's political forces, definition of the correlation between given institutions, including agreement on the rules of politics and its legislative execution takes place in accordance with the above function. The free functioning of the existing political forces and equal opportunities for participation in the political socialization process is secured by constitutional norms, and it is stipulated in detail in electoral legislation.

The constitution also performs an ideological function within a state. This provides recognition of the authority of a constitution by unities of citizens and individuals. The ideological function of a constitution is also linked with the legal and political culture and contributes towards its improvement and development, and reinforces an individual's liberal attitude towards various democratic values. By use of the above function, a constitution becomes a part of a universal and a national culture.

Chapter 3.7

The Constitution of Georgia of August 24, 1995

The Constitution of Georgia consists of the text adopted in 1995 with amendments and additions to it, and the so called "attached part" – a Constitutional Law of Georgia on "The Status of the Autonomous Republic of Adjara" of July 1, 2004.

The Constitution of Georgia, according to its **legal** nature, is an **act of supreme legal power**. All other legal acts active within the state should be in compliance or proceeding from the Constitution. The supremacy of the Constitution is recognized by the Constitution itself:

The state authority shall be exercised within the framework established by the Constitution.

The Constitution of Georgia, Article 5.1

The Constitution of Georgia shall be the supreme law of the state. All other legal acts shall correspond to the Constitution.

The Constitution of Georgia, Article 6.1

After the enforcement of the Constitution, only the legal act or a part thereof, which is not in contradiction with the Constitution, shall have the legal force.

The Constitution of Georgia, Article 106.1

To provide the supremacy of the Constitution, in addition to rights, it establishes certain responsibilities to all physical and legal entities. These requirements cover both the citizens of Georgia and foreign citizens:

The Parliament shall decide about the issue of the recognition or pre-term termination of the office of a member of the Parliament. The decision of the Parliament may be appealed to the Constitutional Court.

The Constitution of Georgia, Article 54.1

Georgian state officials and public individuals bear the responsibility to protect the Constitution. Violating the Constitution can be one of the grounds for impeaching the president, members of government, the head of the Supreme Court, the prosecutor general, the head of the Chamber of Control, and members of the board of the National Bank of Georgia, if they are found responsible for violating the Constitution, by bringing up the issue in the appropriate governing body for the purpose of impeachment.

Constitution as an Important Political Document

The political nature of the Constitution of Georgia lies in the fact that it recognizes political pluralism, establishes and secures the freedom of political activities, sets boundaries for such activities and recognizes the supremacy of the Constitution.

The Constitution provides equal opportunities to all political powers in the socialization process. In addition, the Constitution prohibits creation and activity of political associations aimed at:

- Overthrowing the constitutional order of Georgia;
- Encroachment of state independence by means of violence;
- Violating territorial integrity;
- Propaganda of war and/or violence;
- Rousing national, regional, religious and social discord.

The Constitution of Georgia provides for political pluralism and freedom, though, at the same time, restricts them by reasonable legal boundaries. For example, according to Paragraph two of Article 26 of the Constitution of Georgia, *“Citizens of Georgia shall*

have the right to form a political party or other political association and participate in its activity in accordance with the Organic Law." However, in instances of any abovementioned activity being present, citizens may be denied the ability to exercise this right.

During the last twenty years of the recent history of Georgia, there have been two cases of a negative decision made regarding the registration of a political association.

In 2001, the organization "Mkhedrioni" ("The Union of Patriots") was denied registration. However, it was registered as a military organization in 1989. "Mkhedrioni" had played a crucial role in the *coup d'état* of 1992. Subsequently, it played an active part in persecuting and oppressing representatives of the overthrown government, as well as in repressing the protest movement of its supporters. In 1995, the activity of the organization was prohibited. It should be mentioned that the organization was initially established for patriotic purposes and incorporated many individuals striving for democratic ideals. During his visit to Georgia, Secretary of the US State Department, James Baker himself became an honorable member of the organization.

The Constitution of Georgia answers the main question of who holds state authority in Georgia. According to the Constitution, people are the source of government, therefore, they hold it.

The people shall be the source of state authority in Georgia. The state authority shall be exercised within the framework established by the Constitution.

The Constitution of Georgia, Article 5.1

The manner of people's participation in exercising political authority, including by means of direct democracy, when citizens solve important political, state and public issues not through the agency – the Parliament, but directly, by themselves, is established by the Constitution. The forms of direct democracy are elections and referendum.

Chapter Four

FORMS OF GOVERNMENT

This chapter provides a review of the major types of government, as well as of certain lesser known types of government. There will be a discussion of modern forms of the unions of states as well. The general legal description of Georgia will be presented. This part will introduce a number of tools and methods of government. We will find a description of the constitutional and the legal status of Georgia. Additionally, we will reveal the essence and the peculiarities of Georgia's state sovereignty. Lastly, we will discuss democracy as a basis for a political regime.

Having studied Part Four, you will be able to discuss the following issues:

- The notion and the content of the state;
- The meaning and the types of monarchical government;
- The particulars and types of republican government;
- Territorial arrangement of the government;
- A federal state;
- A unitary state;
- Mixed forms that occur in a republican government;
- The reason behind the creation of state commonwealths: a confederation, the European Union, the Commonwealth of Independent States, and the forms of cooperation within the states of the commonwealths;
- A political regime and its categories;
- The reason of theoretical and practical significance of a government form for our country.

CHAPTER 4.1

State Form – Notion and Content

A state's form and composition is a strategic issue of theory and practice of a constitution and law. The study of states' structures dates back to ancient times. It had been discussed by Plato and Aristotle and debated by the lawyers of antiquity. The issues of the state and its structure are still thoroughly studied nowadays.

With regard to its composition, a state's structure is a combination of internal signs indicating how a government is organized within a state, who owns it, and how and by means of which agencies and methods state authority is exercised. These questions are important for our state too.

It is not an exaggeration to say that the issue of government organization is vital for the state. A conflict between the Government of Georgia and the separatist regime of Abkhazia – an issue on territorial arrangement of the state left unresolved in the Constitution is evidence of the above. The issue of state organization has been considered as one of the conditions for problem-solving. A currently popular view on state form includes a synthesis of three interrelated phenomena:

1. The structure of government;
2. The type of territorial organization of a government; and
3. The political regime⁴².

CHAPTER 4.2

The Form of a Government

A form of government implies the manner of formation and the structure of the supreme government of a state. Historically, the form of government has been determined by the existing mutual relations and confrontation of appropriate social and political powers. Therefore, in general, the given issue is of vital practical political significance, particularly for our society and state. Content-wise, the form of government is a combination of internal signs indicating how a government is organized in a state, who owns it and by which agencies and methods its authority is exercised.

⁴² Zaza Rukhadze, *Constitutional Law of Georgia* (Batumi, 1999).

The issues associated with forming a government, or the superior government bodies, answers the following questions:

- To what extent is the formation of government based on the abovementioned principle of separation of powers?
- What are the interrelations of the government and the population?
- What are some forms authorities exercised by the people?
- What is the rule for establishing government bodies and what is the tenure of their authority?

According to the form of government, the categories of **monarchy** and **republic** are distinguished.

Monarchial Government

Monarchy is a form of government where the supreme state authority is held by a sole person, a monarch, who exercises authority at his/her own discretion⁴³. The will of a monarch is supreme within a state. It is noteworthy that in a mechanism of state, the role of a monarch and his/her attitude towards the state has varied throughout different periods of history. The historical status of a monarch essentially differs from that of the modern monarchial state. A monarch's position within the modern mechanism of state is relatively different. The main reason is the source of modern monarchial authority, the arsenal of his/her authorities, and the role and place of a monarch within the mechanism of state.

Among the existing models of monarchies, various types thereof have been developed in various stages of history:

1. Absolute, or unlimited monarchy;
2. Elective and hereditary monarchy; and
3. Limited (constitutional) monarchy.

Absolute Monarchy

A distinguishable feature of an absolute monarchy is the concentration of authority around a single person – the monarch. It is the monarch who issues laws and is

⁴³ "Monarchy," *Civil Encyclopedia Dictionary*, <http://www.nplg.gov.ge>.

empowered to execute these laws, i.e. execute the administrative authority and assign government. An absolute monarch is the supreme judge. He/she unconditionally enjoys the above privileges. His/her power is limited by nobody and by nothing. His/her authority within an absolute monarchy is sometimes enhanced by the fact that he/she is at the same time the supreme clergyman. This form of government was typical of the early stage of states development. It was also widespread in government organization in the Middle Ages. A classic example of this type of monarchy was the reign of Louis XIV of France, mentioned above. This type of monarchy, though somewhat rare, still exists today (for example, in Saudi Arabia and Oman).

Elective and Hereditary Monarchy

A monarchy can be either hereditary or elective. In a hereditary monarchy, a monarch, according to the rule of heredity of the throne established by the constitution, is selected from a royal family or dynasty. In the case of elective monarchy, a throne is passed on from one person to another based on elections – a certain legal act. An example of a modern elective monarchy is Malaysia, where the governing term of a monarch is 5 years. A monarch is elected by the representatives of monarchial member states of the federation.

Limited Monarchy

A limited monarchy is a form of government that is limited by elected bodies whose opinions and interests it has to take into consideration. Limited monarchy is classified into class representative and constitutional.

Class Representative Monarchy

In a class representative monarchy, a monarch's authority is limited by a privileged class and representatives of the class.

Constitutional Monarchy

One feature of a constitutional monarchy is the limiting of a monarch's authority on both the legislative and executive levels. The isolation of authorities is also a typical characteristic of this form of monarchy. Although it is the monarch who assigns the government, the latter is only accountable to parliament. A countersigning⁴⁴ institution

⁴⁴ Countersignature or countersigning (Lat. "contra" – against and "signo" – sign) – a minister's signature on an act issued by chief of state; it means that the minister, due to the given act, is legally and politically liable.

is applied to the monarch's acts, which means that they are implemented only if it is supported by an appropriate minister.

Judicial authority is totally independent. Of course, this does not mean that a monarch is merely a democratic figure within a state. As visual evidence to the above, a view of Levan Surguladze is presented, who states that “without the monarch's consent, it is impossible to make any changes to a state's constitutional system. This aspect is by all means implied in the notion of a monarchy, since whenever a state's main law has changed without the monarch's consent, there is no monarchy⁴⁵.” A monarch is the symbol of a nation, and of a state.

Modern monarchies are constitutional. Dependent on the extent to which a monarch's authority is limited, the latter is classified into **dualistic** and **parliamentary** monarchies. In a **dualistic monarchy**, the authority of a monarch, however limited by a constitution, still maintains real power due to the weakness of democratic institutions. Modern monarchies of this type are: Jordan, Thailand, Malaysia and Nepal. On the contrary, in **parliamentary monarchies**, the monarch's role in government is nominal. In this case, government is accountable only to parliament.

Republican Government

A republic is a form of government providing for the election of state government agencies for a certain term. In contrast to a monarchial government, a republican government is collegial. In this type of government, decision-making process is conducted according to a predefined procedure – through a vote. A resolution is deemed legitimate if it is supported by the majority, as defined by law. The source of state authority in a republic is the people. The latter grants the state a governing mandate in order to achieve general welfare.

A republican government is based on the principle of separation of powers, and mainly includes three separate branches: legislative, executive and judicial authorities. Besides, in a democratic republican government, a system of “mutual balance and control” is in effect within the separation of powers. Although each branch of authority is independent in its action, their functioning is based on mutual effect and cooperation. None of them has the right or opportunity to interfere or misappropriate the other's right.

The history of state development, as well as constitutional and legal practice classifies the republican government form into a number of other types:

⁴⁵ Ivane Surguladze, *Sources of History of the Georgian Law* (Tbilisi, 1984), 143.

A **Parliamentary Republic** is characterized by a preferential role of a parliament in a state government. Within this form of a government, the superiority of a parliament is reflected in a major peculiarity of a parliamentary republic, such as, a parliamentary way of government formation and a political responsibility of a government to the parliament. Therewith, another noteworthy feature is a joint responsibility of a government, when distrust towards one of the members of government, especially towards the head of government, results in resignation of the entire government. Government is formed by the parties who have gained the majority of mandates in a parliament as a result of elections. Such form of government provides a post of a prime minister who is elected or assigned by the parliament. Although, formally, the president is granted significant powers, his/her role in government formation is nominal. Normally, presidential acts gain legal power only after they have been approved by the parliament or government. The latter also assumes responsibility on the above acts of the president.

A **Presidential Republic** is characterized by the leading role of a president within the state mechanism. Thus, the president occupies the foremost place in the state mechanism, and is simultaneously the head of both the state and executive authorities. In a presidential republic, a non-parliamentary rule of election of a president and formation of a government is effective. According to this rule, the president is elected by the country's population by means of general public elections. Government is formed by the president, often with the consent of the parliament.

Occasionally, in a presidential republic, it is possible and often applied in practice to have maximum concentration of power in the hands of a president, which gives grounds for critics to compare it to a monarchy. Supporters of the idea of concentrating power in the hands of a sole person refer to the efficiency and economy of such forms of government as an argument to support their point of view. In their opinion, government should be based on democratic methods. In this case, it would be unreasonable to compare a president to a monarch.

It is this type of circumstance that Alexander Hamilton was emphasizing:

The first thing which strikes our attention is that the executive authority, with few exceptions, is to be vested in a single magistrate. This will scarcely, however, be considered as a point upon which any comparison can be grounded; for if, in this particular, there be a resemblance to the King of Great Britain, there is no less a resemblance to the Grand Seignior, to the Khan of Tartary, to the Man of the Seven Mountains, or to the Governor of New York.⁴⁶

⁴⁶ Alexander Hamilton. "Federalist #69: To the People of the State of New York" *Federalist Papers* (14 March 1788).

If a presidential government does not recognize and rule out the democratic principles of government institutions, it could be considered an example of a non-democratic government and, as such, the above comparison would be rather suitable.

In a recent literature, the above type of government has been referred to as a “super-presidential republic.” The states of Latin America had been initially characterized in such a manner, though, lately, this type of government became a characteristic feature of many developing countries in Eurasia.

A classic example of a super-presidential government is Russia, especially in the period of Putin’s rule (2000-2008). Although the preceding president had not experienced any lack of power, Putin undoubtedly outdid him by creating a new model of government whose specific trait was minimization of an even formal collective government. Putin’s presidential government followed two main principles: concentration of power in the hands of a single person, and the active participation of secret services in the government.

The Parliament of Russia practically consists entirely of the members of the majoritarian party of “United Russia” which is subject to the president’s influence, and sets as its sole purpose to merely provide formal support to presidential decisions. On 25 March 2005, the Russian Duma, with the support of 340 deputies, passed a resolution prohibiting the creation of any committees investigating the activity of the president and of judicial and special agencies⁴⁷.

On the contrary, United States President, Barack Obama assigned members of the Republican Party to work in his Cabinet, though that had no influence on refusal of representatives of the Republican Party in the Congress to support the President’s proposals.

Let us compare the above example of the start of Putin’s presidency to the “honeymoon” of President Barack Obama.

According to a writer, Mathew Stephenson, Obama’s presidential “honeymoon” was tough, since he had to face the resistance of the Republicans in Congress regarding reforms. The President even assigned some Republicans to his Cabinet, however, the Republican members of Congress do not subscribe to the idea of joining the “Obama-mania” because they assume responsibility for their electoral future, and for the failure of the President’s foreign and economic policy. None of the representatives of the

⁴⁷ “Modern Russia’s Power Model Peculiarities” girs.org.ge/425.

Republican Party voted for the policies developed by the Democrats on credit issuance, as well as on economic rescue. As for President Obama's individual decisions:

In some of the Republicans' opinion, when the President made a unilateral decision closing down the Guantanamo jail, whether he wanted that or not, he assumed the responsibility that no more terrorist attacks would take place anywhere in the world. But if in the nearest future a vehicle is exploded, say in an Algerian market or elsewhere, Obama's political opponents will for certain blame these acts of violence on the former prisoners released from Guantanamo or any other camps located abroad.⁴⁸

Mixed Form of Republican Government

The aforementioned forms of government create a whole range of issues of legal and political nature during their practical implementation. Quite often, these issues become the subject of debates between politicians and experts over the positive and negative aspects of a given governmental system. In reality, the above forms of government include both positive and negative factors containing a certain amount of risk. The necessity of a mixed form of government is associated with an effort to eradicate the deficiencies of the negative sides of the parliamentary and presidential forms of government.

Both presidential and parliamentary forms of government are typical of the mixed form of government: a president assigns the government which is accountable to the parliament. The president has the right to dissolve the parliament ahead of time. The main purposes of creating hybrid models of this type are: securing the stability of government, reducing and preventing political and governmental crises, and facilitating the coordinated functioning of state mechanism. According to constitutional and legal practice, the following forms of mixed government can be distinguished: presidential-parliamentary, parliamentary-presidential, and half-presidential.

It should be also noted that no one has yet achieved complete deliverance from the disadvantages of presidential and parliamentary governments by means of mixed government.

⁴⁸ Ketii Tabatadze and Tako Poladashvili, "What Russia Likes and Dislikes about Obama's Politics – A Month Later," February 20, 2009, mediacubgeo.wordpress.com/2009/02/20.

CHAPTER 4.3

The Territorial Arrangement of a Government (Territorial Arrangement of a State)

The notion of a state's territorial arrangement implies the territorial and administrative organization of a government, and the relation among state constituents and between central and local agencies. Usually, the territory of a state is divided into parts creating a geographical basis for its territorial arrangement. Additionally, within each territorial entity, apart from a single state authority, a local governing body or framework may be empowered. Therefore, territorial entities may have supreme governing bodies, their own constitutions, legislations, etc. Such territorial entities resemble sovereign states and enjoy high quality self-government. In some cases, they only constitute administrative territorial entities with no signs of statehood. All entities enjoy a single and equal legal status, while their bodies form the structural part of a state machine.

Accordingly, the theory of modern constitutional law distinguishes two main forms of a state's territorial organization: **a unitary** and **a federal** form. The main difference between the two is that a unitary state is divided and consists of administrative and political administrative entities only, while entities of a federal state constitute formations of a state type with no sovereignty.

A **unitary state** is united and indivisible with a jurisdiction of a sole supreme state authority.

Normally, in a unitary state, territorial division serves the purpose of effective implementation of municipal administration. These territorial entities have no attributes of statehood. Therefore, they have no political independence.

The determinant of the legal status of a unitary state's citizen is a citizenship of a unified state.

In a unitary state, it is necessary to have an administrative division to implement an administrative function. In present-day unitary states, some entities may have different legal statuses, while others may enjoy wider autonomy. Such entities are known as autonomous territories.

Unitary states are distinguished according to whether the public administration is organized as a decentralized or a centralized authority.

A federal state is organized in a complex manner and consists of formations that have the attributes of statehood, known as the federal subjects. These subjects have the main attributes of statehood: legislative, executive and judicial authorities. Despite these attributes, it should be emphasized that these subjects are not the states, as they do not possess the main feature of statehood – sovereignty. Therefore, a federal state is a strongly unified state. The principle of federal arrangement provides for existence as a unified and sovereign state. Due to the unity of a federal state, the integrative function of territorial entities within it is rather important. Compliance with this function conditions general state competencies within a federation, implemented by federal agencies by means of a unified system.

A federal state recognizes two types of citizenship: that of a federal subject and of a unified federation. The latter defines an ultimate legal status of each citizen. A federal subject has a territory which cannot be normally amended without the agreement of the subject. However, from the point of view of international law, it is not the territory of a single subject that serves as a baseline, but rather a territory of a unified federal state.

For a federal state and its unity, the denial of the right to secession⁴⁹ is of utmost importance, which means the lack of the right to break away from a federal union freely and unconditionally. Historically, there are two main ways federal states have been created and developed: contractual and constitutional.

Based on the organizational characteristics of a federal government, there may be either a **national state** or an **administrative-territorial** federation. The first type is characteristic of multinational states, where the given nations have voluntarily transferred their rights to joint state agencies. The basis for the second type of federation may be economic, cultural, language-based, geographical and other factors.

Symmetrical and **asymmetrical** federations – In symmetrical federal country models, federal subjects enjoy equal authority. In an asymmetrical federal model, the constituents of a state have different constitutional and legal statuses. In addition to the subjects enjoying equal rights, there are also some other federal territorial entities in such countries.

⁴⁹ "Secession" Civil Encyclopedia Dictionary, <http://www.mplg.gov.ge>.

CHAPTER 4.4

The Constitutional and Legal Status of the Unified State of Georgia

Independence

In a referendum held in Georgia on 31 March 1991, the people of Georgia unanimously supported the restoration of state independence. Based on the referendum, on 9 March 1991, the Supreme Council of the Republic of Georgia issued the Declaration of Independence. Thus the Georgian State started its independent life.

The constitutional and legal status of the independent and sovereign Georgian State have been documented by the Constitution of August 24, 1995, which contain the foundations of its state sovereignty. The constitutional status of Georgia is first of all based on the constitutional principle of state sovereignty.

The sovereign, independent and unified Georgian State is recognized and confirmed by the very first article of the Constitution of Georgia.

Georgia shall be an independent, unified and indivisible state, as confirmed by the Referendum of 31 March 1991, held throughout the territory of the country, including the Autonomous Soviet Socialist Republic of Abkhazia and the Former Autonomous Region of South Ossetia and by the Act of Restoration of the State Independence of Georgia of 9 April 1991.

The Constitution of Georgia, Article 1

Based on the constitutional status of Georgia, the legal attributes of its government are:

- 1. The superiority of the government** of Georgia is expressed in the fact that no other extrinsic powers and structures interfere with state government (excluding the existing situation in Abkhazia). According to regulations established by the Constitution of Georgia, the Government of Georgia determines the state and legal development of our society, the entire system of public relations, regulates organizational issues thereof, and creates favorable conditions throughout the country.
- 2. The independence of state government** is expressed in the fact that it acts solely based on its own interests and views, with no interference of other states, and defines and implements its internal and external functions.
- 3. The principle of differentiation of government** is crucial and implies the separation of competencies between the state and its territorial entities in Georgia. The above issue shall be regulated by the Constitution by means of a constitutional

law. The solution of the issue is associated with the definition of territorial and state arrangement of Georgia, with a corresponding principle already established by the Constitution. It implies separation of powers between separate branches of authority. The complete resolution of the issue is linked with the restoration of Georgian jurisdiction over the entire territory of the country.

The Guarantees of State Independence

Before the state's jurisdiction has been fully restored over the whole country, and taking into account some of the bitter lessons learned from our recent history, the authors of the Constitution have considered a number of guarantees of unity and indivisibility of Georgia as a sovereign state. Legislators deem the Constitution itself as one of the guarantors – on the one hand, and the international society and international law – on the other hand.

The territory of the state of Georgia shall be determined as of 21 December 1991. The territorial integrity of Georgia and the inviolability of the state frontiers, being recognized by the world community of nations and international organizations, shall be confirmed by the Constitution and laws of Georgia. The alienation of the territory of Georgia shall be prohibited. The state frontiers shall be changed only by a bilateral agreement concluded with the neighboring State.

The Constitution of Georgia, Article 2

A single citizenship is established in Georgia, according to which every citizen's legal status is defined regardless of the territorial entity he/she is a resident of. The above issue of Georgia's state status will be subject to no essential changes even in if the state is organized through a federal arrangement. Should an institute of citizenship be established in any of the territorial entities, it should only bear a formal character.

Georgia has some general state bodies. These are the heads of state – the President, a general national supreme legislative body – the Parliament, the Supreme Court, and the Constitutional Court of Georgia. The supreme legislative and executive bodies of Abkhazia and Adjara report to central governmental bodies, whereas there is a single judicial system throughout the country.

The Constitution commissions the regulation of issues on a local scale to local self-government bodies. In spite of this, the Constitution states that citizens of Georgia shall regulate the matters of local importance through local self-government “without the prejudice to the state sovereignty” (The Constitution of Georgia, Article 2.4).

An integrated monetary, credit, control and defense systems are effective in Georgia. The functioning of monetary and credit systems is provided by the National Bank of Georgia. The name and the monetary unit of the currency shall only be defined by Georgian law, while issues⁵⁰ of money shall be the right of National Bank only. The usage and expenditure of state assets shall be supervised by the Chamber of Control, which is independent in its activities. It is accountable only to the Parliament.

In order to protect the independence, sovereignty and territorial integrity of the country, Georgia has the Armed Forces.

Territorial arrangement by a constitutional law shall be further determined based on the principle of separation of powers among the authorities. Throughout the whole territory of Georgia, and till the complete restoration of Georgia's jurisdiction, Paragraph I of Article III shall provide the whole list of issues falling within the exclusive competence of the higher state bodies of Georgia. It is the right of the higher state bodies only, to resolve the above issues. It is mentioned in Paragraph I of Article III that, "issues falling within the joint competence shall be determined separately."

CHAPTER 4.5

The Categories of State Competencies

Due to a number of domestic or external factors, Georgia has to solve some constitutional problems and issues it is facing on the road to state building. The successful resolution of the above issues is in the interests of every citizen of Georgia and, to a great extent, depends on their active and sound attitudes.

Given that the constitutional status of the country as a whole state was defined, the guarantees of its unity were established by the Constitution. In addition, principles of unity were pre-defined for the future. These principles would serve as a basis for state organization and power distribution in a multi-level government. One of the principles recognized by the Constitution is the separation of powers. Namely, Paragraph III of Article II of the Constitution reads as follows: "The territorial state structure of Georgia shall be determined by a Constitutional Law on the basis of the principle of circumscription of authorization after the complete restoration of the jurisdiction of Georgia over the whole territory of the country." Also, Article III of the General Provisions de-

⁵⁰ "Issue of securities and banknotes," *Civil Encyclopedia Dictionary*, <http://www.nplg.gov.ge/gwdict/index.php?a=term&d=5&t=1013>.

finds that some issues are to fall within the exclusive competence of the higher state bodies of Georgia. Therefore, by the authorities listed in the abovementioned article, constitutional and legal statuses have been defined by legislation. According to the above authorities, several groups of competencies can be distinguished:

- a. Authorities in state creation and lawmaking;
- b. Authorities in economic, social and cultural development;
- c. Authorities in defense, state security and protection of law and order;
- d. Authorities in foreign relations;
- e. Authorities in human and citizen rights and protection of freedom.

All spheres and corresponding authorities listed above are included in the competency of Georgia as a whole state. However, political and legal regulation of the above issues may call for some changes to the current provisions.

CHAPTER 4.6

Sovereignty

In a section of a television advertisement of MAGTI, a mobile communications company, occupied territories of Abkhazia and South Ossetia were denoted by different colors/patterns. All of us probably saw this advertisement quite often and recall that it illustrated the coverage area of MAGTI.

This is not a political advertisement, though some parts of Georgia shown in it are cross-hatched. These parts show areas not covered by the activity of MAGTI, an economical subject of Georgia. The cross-hatched territories indicate the locations of Abkhazia and the so-called “South Ossetia” occupied by Russia. Therefore, MAGTI cannot conduct its economic activities on these territories, since jurisdiction of the Georgian government does not currently extend to the above-mentioned territories. This means that its territorial **sovereignty** is limited.

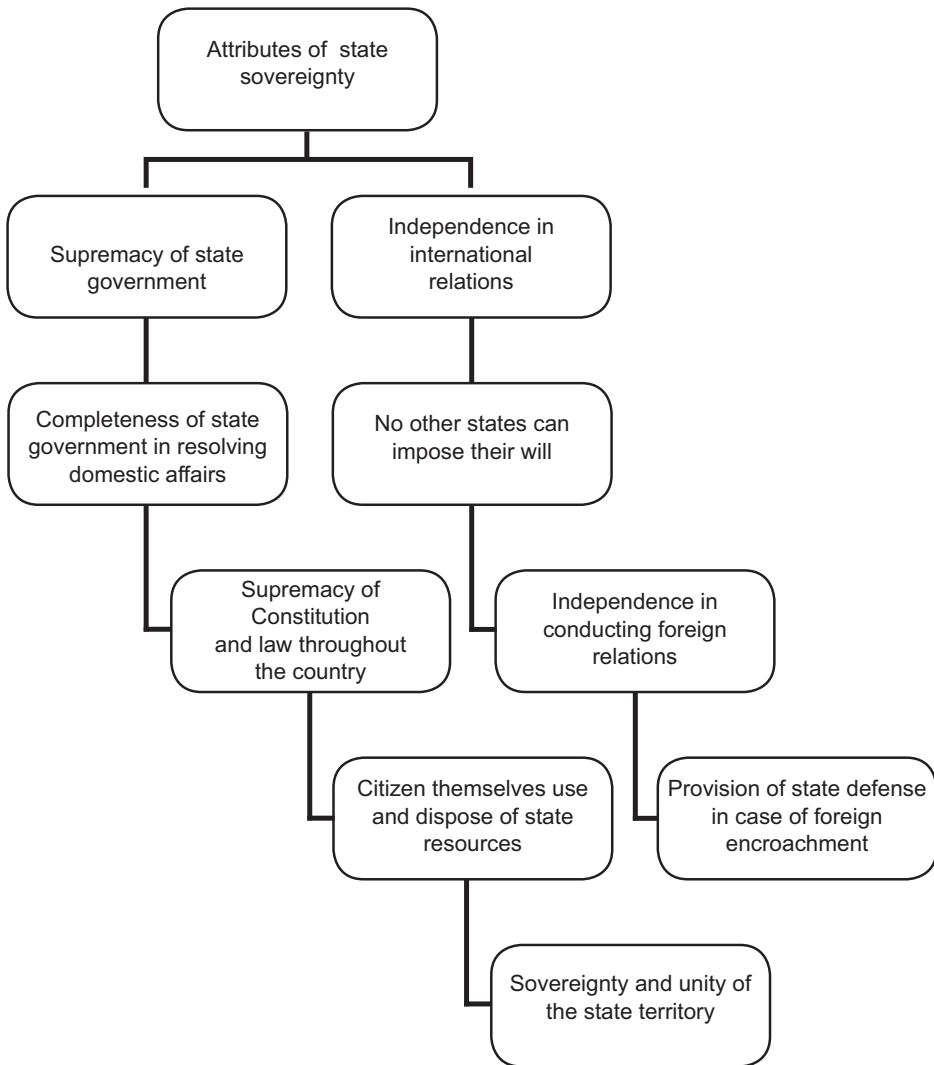


Diagram: *State Sovereignty of Georgia*

Sovereignty is the attribute of a state that has gained a special significance nowadays, especially concerning one's territory and when a state's integrity is considered from this perspective. The territorial problem of Georgia, expressed in the breach of state unity, naturally breaches its state sovereignty. Besides, the constitutional and legal correlation of a state and its sovereignty implies not only a territory, inasmuch as sovereignty does not concern not just a territory, but also all aspects of political life within the frames of which the Government of Georgia has been deprived of its supremacy as an essential attribute of sovereignty in certain parts of its territory.

CHAPTER 4.7

Other Forms of Commonwealth of States

This chapter will cover other forms of modern state commonwealth. Certain forms of state commonwealths are often erroneously deemed as forms of government. A number of recently created international organizations or state alliances include confederative and at times even state features. In view of Georgia's integration and development of international links, it is worth paying attention to the present topic.

Confederation

Understanding the essence of a confederation and its specifics is best achievable by comparing it to federations. A federation, in its essence, is a union state where the relation of a center and its subject has been consolidated by the constitution. An alliance of member states is based on a constitutional agreement. In a federation, sovereignty belongs to the union state whose members are not independent in conducting international relations. Member states of a confederation maintain full state sovereignty. Therefore, subjects of a federation, in contrast to member states of a confederation, have no right to unilateral and unconditional withdrawal.

Member states of a confederation enjoy the right of nullification, which provides them with an opportunity to suspend the action of an undesirable decision made by any agency of a confederation on their territories. Member states of a federation do not enjoy the above right.

When discussing territory, the difference between the two types of commonwealths is that a federation has a united federal and state territory, whereas a confederation has no unity of territory. All member states have their own territories. A federation provides citizenship of a federation and its subject, though the latter, as we have mentioned above, has only a formal significance, and a legal status of each citizen is defined by a sole citizenship of a federal state.

In a federation, there are common federal governmental and administrative agencies, whereas in a confederation, only agencies essential for achieving the confederation's objectives can be established. Also, agencies acting within a confederation on a permanent basis lack governmental authorities⁵¹.

⁵¹ Zaza Rukhadze, *Constitutional Law of Georgia* (Batumi, Publishing House of Young Lawyers' Association of Georgia, 1999), 39.

Currently, only the attributes of confederations can be discerned, though there have not been a lot of confederations in the past either. Examples include the United Provinces of the Netherlands, which lasted for a comparatively long period of time (1579-1795), the Confederation of the United States of America prior to the adoption of a federal constitution (1776-1787), and the Confederation of Switzerland (1291-1798). Nowadays, despite Switzerland's official title [Swiss Confederation], constitutional and legal analyses of the country testify that in terms of state organization, it is a conventional federal state.

The Commonwealth of Independent States (CIS)

In contrast to a confederation, a commonwealth is an organized union of states featuring homogenous attributes. The cooperation of states is based on bilateral and unilateral agreement.

Cooperation between the states of a commonwealth is largely in the fields of economy and defense, regulated by relevant agreements. The Commonwealth of Independent States, from its very first day of existence has been an amorphous association whose main purpose has become to revive the hegemony of Russia over the former Soviet republics.

In this unsophisticated effort, the goal of Russia, so obvious from the start, has been the domination over other member states. In this respect, it would be relevant to cite Brenda Shaffer, head of Harvard's Kennedy Research Institute of Government Issues, whose words are an accurate reiteration of the above view:

“Since throughout its existence, CIS has been serving the goal of revival of the Soviet Union, it lost its importance of an effective regional economic model long ago. Therefore, I doubt any functionality of this organization, other than aspirations of its inspirer, Russia, who still uses its frameworks in an unsuccessful effort to in achieve the so-called integration of the former republics.⁵²”

Due to recent developments in relations between Russia and Georgia and the amorphous nature of the organization, the Parliament of Georgia made a unanimous decision to officially withdraw from the Interparliamentary Assembly of Member Nations of the CIS.

⁵² www.voanews.com.

The European Union (EU)

The knowledge of political, legal and institutional development of the European Union has been gaining a special importance. The goal of European integration, specifically integration into the EU, fully meets our state and social interests. In cooperation with the EU, regulations recognized by it will impact the everyday lives of citizens, their rights and their freedoms. At airports of EU countries, it is common to see two registration windows: one saying "EU and Schengen only," the other saying "All Nationalities." Certainly, beyond these inscriptions, there are a number of regulations concerning the movement and other rights of the Georgian citizens. Therefore, presently, the study of the European Union is an important issue.

The European Union is a unique international association of European states which cooperates on matters of security and peace among the states and seeks to contribute to social and economic progress. Initially, there was an emphasis on economy, though later cooperation developed in the field of politics as well.

Formally, the date of origin of a European community is April 18, 1951, when an agreement signed in Paris laid the foundation for a European Coal and Steel Community (ECSC). It affiliated six nations: Belgium, Italy, Luxemburg, the Netherlands, the Federal Republic of Germany and France. On March 25, 1957, these very states signed two other agreements, thus founding two other European communities: the European Economic Community (EEC) and the European Atomic Energy Community (EUROATOM). It is worth mentioning that both of the above communities were economic and sectoral in nature.

However, the foundation of a European community was more important, the goal of which was to establish a customs union among its member states. Negotiations that were held included the implementation of a common agricultural and trade policy⁵³. According to its present-day organizational, legal and political structure, it is viewed as single organization as a whole. Therefore, the EU essentially differs from other international organizations and very much resembles a state. The mentioned difference is first of all conditioned by its competency, which is not designed for the EU to achieve separate, technical goals of specific states. Rather, the EU has some independent fields of activity, the unity of which gives us grounds to point out the attributes of statehood.

⁵³ "History of Creation of the European Union," <http://www.parliament.ge>.

In this respect, it would be enough to recall the effort of the European community to create a common market that would provide a cover for the unification and cooperation of its member states. The competency of the EU is more than that. It regulates the free exchange of goods, manpower, services and capital, agriculture, skills social politics, etc. To note, the European community has no right within its competency to increase the field of its activity independently, which implies that without such an opportunity, it is not deemed a state. Therefore, the European community is currently, rightly defined as a “new form of cooperation among states, holding an interim position between a state and an international organization.” With regard to its organization and structure, the EU consists of the following key institutions:

1) **The Council of Ministers** is an agency that makes the final decision on conducting community activities; it consists of several councils incorporating ministers of different sectors of various member states. The General Affairs Council and the European Council have a special status. The former consists of foreign ministers and performs coordinating functions; the latter is composed of the heads of member states and discusses major economic and political issues. The ratio of influence of each member state in the Council of Ministers is based on its economic potential and is defined by an indicator varying from two to ten. The Council is located in Brussels. It assembles in Luxemburg or the capital city of the country whose representative serves as the Head of Council.

2) **The European Commission** consists of representatives of the states – members of the Commission, each assigned for a five-year term. The Commission develops and implements the activities of the community. Within its functions, the Commission controls prices for coal and steel, fights monopolism and subsidies undermining competence, supervises nuclear plants, etc. The Commission holds negotiations with third parties on behalf of member states. Its headquarters is located in Luxemburg.

3) **The European Parliament** members are elected throughout the member countries, based on the general right of election. The Parliament is presided over by the President of the Parliament and his/her deputies. The European Parliament is the leading political force of the community: it performs the legislative function, makes decisions on assignment and dismissal of Commission members; performs controlling measures with regard to the Commission; convenes political forums. Its competencies also include approval of EU budgets, resolutions, directives and decisions.

4) **The European Court** or the European Court of Justice consists of fifteen Judges and nine Advocate-Generals selected for six-year terms, based on the agreement of all member states.

The European Court may be appealed in the following cases:

1. An institution or Member State of the EU, or, in individual cases, a private individual claims cessation of acts adopted by an institution of the EU;
2. A member state of the EU or European Commission has performed an action that does not comply or contradicts with the agreements and secondary legislations adopted by the European institutions;
3. An action of a European institution or a member state has been directed against the Council of the EU or against the European Commission, which violates the legislation of the EU and
4. There are disputable issues between the EU and its apparatuses.

During a case hearing, the European Court is divided into two houses, but when the Court investigates cases of special importance, there is a joint process. A judgment is passed by the majority of votes. In instances of collision between the resolutions of the European Court and those of member states, preference is given to resolutions of the European Court. According to Maastricht Negotiations⁵⁴, in instances of a failure to comply with the resolution, the Court is empowered to impose a fine on a member state. The European Court is located in Luxembourg.

A vital condition and public goal of Georgia is expediting the processes of integration into the European community and eventually, EU integration. This kind of agreement would regulate all kinds of relations between Georgia and the EU, including issues of trade and politics. It would contribute towards the perfection of the existing standards and values to speed up EU integration. For its part, in 1997, the Government of Georgia made a decision to bring Georgia closer to European legislative standards. The end goal of the agreement is to bring the parties closer in the cause of EU integration.

⁵⁴ The agreement on creation of the European Union was signed by representatives of 13 states of the European community – Belgium, Denmark, Germany, Spain, Ireland, Italy, Luxembourg, Netherlands, Portugal, Greece, France, Great Britain and Northern Ireland on February 7, 1992 in Maastricht (the Netherlands). The agreement provides for: adoption of a single citizenship for all nations living in a European country, i.e. citizenship of the EU; free movement of people on the territory of the EU; implementation of a single foreign, security and defense policies for the European countries. Towards the aim of reinforcing and bringing closer the economies of the European countries, a single European currency was created by the decision of the Members of the EU. The agreement also provides for close cooperation on domestic policy and legal issues. According to the agreement, any European country can become a member state of the EU. To this effect, it should apply to the European Council with the proper request. Based on consultation with the European Commission and on approval of the European Parliament, the decision on affiliation of a new member is made based on the majority of votes. <http://www.nplg.gov.ge>.

CHAPTER 4.8

Political Regime

The Notion of a Political Regime

In previous chapters, we discussed the issue of balancing values in a government administration. Specifically, the issue is expressed in the techniques and methods of the administration. Their unity is considered in the notions of certain political ideologies and is expressed through a political regime.

A political regime implies the unity of techniques and methods employed by state agencies to administer state authority. Also, a political regime is an organizational measure to fulfill certain state and general public goals. In other words, a political regime is a unity of techniques and methods aimed at the implementation of policies of state authority. In a broad sense, it includes the whole political life, the entire political system of a society with its separate elements (political parties, public organizations, trade unions, religious institutions (i.e. the church), etc.).

These elements of a political system and a state influence one another. This is one side, a narrow definition of a political regime. In this respect, there is an effort to identify state structures, sorts and elements, and to give a concrete definition to forms of government and order, state functions and methods. In the 1960s, when discussing a political regime, some [political] scientists considered it to be simply a synonym for a form of government. It was only after this discussion that “broad” and “narrow” senses of a political regime were developed.

The influence of political organizations, especially of political parties on the government is expressed in the fact that they compete most actively, and, what most importantly, they do so for political power. By means of government capacities, political associations will gain the possibility to implement state authority. This is the source of active participation by political parties in the political process where they are evidently trying to maintain or change the existing authority. This kind of activeness becomes especially noticeable during elections and formation of state bodies. After a political party has achieved success in elections, it has a mandate at affect governmental and administrative bodies. This mandate creates an increased responsibility for making and implementing state and public decisions.

The Role of Public Organizations

The level of social development depends on the ratio of a person's needs to their satisfaction. Discussion of this ratio will always remain real for social interests. Modern political experience shows that the sole efforts of a state and other political organizations are not enough to satisfy social interests. Non-governmental and non-profit organizations have been developing for a long time in many foreign countries, and only started to develop recently in our country. Though gradually, their role and importance for our state and social life, is increasing. In contrast to political organizations, they are not aiming at involvement in a political activity. A direct goal of non-governmental and non-profit organizations is satisfaction of their own members' and the society's needs. To achieve this aim, they actively influence the implementation of state policies. The influence is often evident from the role they perform in a society. In a state, they are often viewed as alternative structures.

Wherever there is a democratic political regime and wherever there is true socio-political and economic pluralism, the role of public organizations in the development of social policies is unique. Through cooperation with state bodies they contribute towards the actual implementation of policies, thus creating conditions for the effective functioning of social institutions of the state itself. In countries whose political regime is not democratic, the activities and the capacities of public organizations to bring up issues from the citizen level are limited. Such limitations eventually encroach upon the rights and freedoms of a person, a citizen and other parties concerned.

The above influences over the form of a state (both government and order) and affects the state (political) regime through the state's functioning. In the following paragraph we will discuss the political regime from this perspective. The above-mentioned must imply that both approaches towards a political regime (of broad and narrow senses) are of equal importance. Only under such circumstances it is possible to get a clear insight into the modern political processes, state and general political and social spheres.

Categories of a Political Regime

A political regime⁵⁵ is associated with the form of a state; therefore, there are various kinds of state (political) regimes. This diversity is caused by the fact that for each historical stage/timeframe there is a corresponding political regime. Political regimes within states of similar history are fundamentally different from one another. By the most general classification, we could distinguish between democratic and non-democratic political regimes.

The following features are characteristic of a democratic political regime: actual involvement of people in the formation of government, legislative regulation of broad socio-economic and political rights and freedoms, existence of constitutional guarantees for their implementation; also, political pluralism and recognition of the need for a broad stratum. Democratic development of a state's public system provides for completely different models of a democratic political regime at different stages of history. A non-democratic political regime produces a radically different picture. First of all, its feature is the existence of a sole political party. The ideology of this party is the only official and acceptable ideology. There are no political rights and freedoms, nor political guarantees for their implementation. Violence plays a decisive role in the provision of justice, law and order. Both democratic and non-democratic political regimes are notable for their diversity. Political regimes could also be classified in a different, also general way: a democratic regime means a type of state regime meeting at least the following requirements:

1. Government is organized based on the principle of separation of powers;
2. Government is limited by human rights and freedoms;
3. Government's activity is transparent and information is accessible;
4. Private and public interests are intertwined;
5. True political pluralism;
6. Tolerance and
7. Dynamic, increasing economic development.

⁵⁵ A system of government forms, methods and techniques defined by active politicians in charge of government to exercise political authority (including state authority) in a society. A regime is characterized by special procedures and institutions of public affairs management. This notion is a functional description of a government. There is no single typology of it. According to Constitutional Law, democratic, liberal, authoritarian and totalitarian political regimes are most frequently distinguished. Though the nature of these regimes is never directly referred to in their respective constitutions (with the exclusion of the most popular references to the democratic nature of a regime), it always expresses itself in the contents thereof. A regime is defined by five main criteria: 1. Who governs (a single person vs. a group; civil control vs. military control over the executive authorities)? 2. Within what limits and to what extent (quality of reaction to public influence, the authority of exercising power)? 3. To achieve what goals (ideological orientation)? 4. By direct or individual means (are people the source of government regime or do they submit to the will of the ruler)? 5. In what conditions and within what limitations (to what extent is the form of a regime conditioned by economic and geopolitical factors)?

A **liberal** political regime is based on the ideology of the 20th century, striving to bring freedom and equality closer to each other. The main goal of this ideology is the protection of personal freedom, establishment of a market economy and minimum interference from the state in terms of economic regulation. The mission of liberalism is to endeavor for the common good and to construct a state that upholds its citizens' general welfare.

An **authoritarian** political regime implies unlimited power based on an actual or potential power. A prominent feature of this kind of regime is the ceremonial nature of elections and pluralism; ostentatious non-interference in matters related to economy to promote the image of the government, while people are actually controlled by it. This form of regime requires people's complete and silent obedience, particularly in the political sphere. However, as already mentioned, this kind of regime provides for a certain area for freedom in the economic sphere – it does not limit private entrepreneurship.

A **totalitarian** state regime is a type of anti-democratic regime, which means total control over a society and a person by the government. This type of regime is characterized by the absence of political pluralism. In global political practice, totalitarianism has expressed itself in fascism, Nazism, state socialism, and Islamic fundamentalism. The constitutional and legal characterization of a state is an important guarantee for the development of a democratic political regime in Georgia. This means that the government provides all citizens and associations with opportunities to satisfy their lawful social interests. They can participate in and influence the administrative decision-making process. The above constitutional and legal characterization of Georgia is adequately expressed in such contexts as basic human and citizen's rights and freedoms, government organization, self-government, etc.

Democracy as the Foundation of a Political Regime

Being a democratic state, Georgia, along with its government had to make a difficult and responsible choice from the very first day its independence was restored. First of all, it was associated with the establishment legislative boundaries that defined a democratic political regime. This implies legitimizing methods and measures for achieving goals that are in compliance with the modern trend of a global democratic political development. The origin of this trend towards new and more democratic values is related to the collapse of a socialist system.

In contrast, unfair speculation of various separatist powers towards the government gave birth to conflicts between both practical and democratic values. Despite the dif-

difficulties, it was essential (nowadays we are facing the same goal) to recognize democracy as an unconditional basis for the development of a state regime in the state. It is impossible to dilute the implementation of democratic principles to its simplest meaning – democracy, simply as a rule of people. The origin of the theory of democracy dates back to ancient Greek philosophy. The word “democracy” itself is of Greek origin and consists of two derivatives: “demos” (people) and “kratos” (power). The meaning of the word implies power of the people. This definition, however, does not fully reflect the modern scale of the notion of democracy with all its variables.

The theory of democracy has traveled through a long and interesting journey of development. It had been a point of interest for Plato, Aristotle, Herodotus, Aeschylus and others. Democracy played an important role in the state and social lives of Greece and Rome. It was construed and used, though in a peculiar way, in the Middle Ages. The quintessence of scientific study on democracy was expressed through the thoughts and writings of John Locke and Jean-Jacques Rousseau (1712-1778). The concept of democracy was looked upon as an interesting development, and was enriched through the works of its interpreters, as well as in the later stages of legal and philosophical thinking. At certain periods of time, democracy was even feared in its birthplace, Greece, which was expressed by a term “demagogue” that Greeks had invented.

Nowadays, study of democracy is implemented from completely different positions. Generalization has mostly concerned its two models: democracy as a **method** and as a **value**. Two schools of study of democracy are distinguished. The first school views democracy as a **form of government**. The concept of democracy implies a procedure providing full rights to people for participating in public administration.

The second school discerns a **state policy** in the essence of democracy. It defines democracy as the result of people exercising their right and capacity to govern. Therefore, **majoritarian** and pluralistic models are distinguished. According to the **majoritarian model**, the concept of democracy implies terms and rules that set the following requirements to people’s rule: universality, equality, expression of and accountability to the majority’s will.

Pluralistic democracy prefers individual organized groups over the majority of voters. The pluralistic model defines democracy as people’s rule with the government functioning by means of competing interest groups. Democracy may be a measure of a political regime only in a society based on a representative government system, where the representatives, i.e. the source of government – the people, have the opportunity to periodically renew the representation. Apart from that, the rights of a person and various groups of within a society are guaranteed by the supremacy of law. To establish a democratic regime, democracy as a principle should be effective

in every field of social life. However, this could be viewed as an end goal; to achieve this in our present social and state life conditions we can target several strategic lines. These are:

- Political pluralism;
- Organization and implementation of fair elections;
- Public policy and information;
- Strengthening the role and the importance of legislative bodies;
- Supremacy of law;
- Implementation of democratic control over the armed forces.

SECTION TWO

HUMAN RIGHTS

This section studies the notion of human rights, how ideas on human rights have been developed and reflected in various international or national legislative acts. This section will also refer to effective mechanisms of human rights protection on national and international levels.

At the end of this section, you will be able to discuss the following issues:

- What are human rights?
- What are the obligations of the state?
- Where and how are human rights reflected?
- How were human rights developed?
- What do initial treaties in the sphere of human rights provide for?
- Which international pacts exist on human rights?
- How are human rights classified?

Chapter One

The Essence and Nature of Human Rights

This chapter of the second section examines human rights and freedoms from two different perspectives: as a philosophical value and as a universal legal concept. In this part, we will discuss the formation and development of the idea of human rights and freedoms. We will be introduced to the three levels of state responsibility towards an individual. We will also analyze the fundamental values, which are based on the concept of human rights. At the end of this section, you will be able to discuss the following topics:

- Dignity
- Freedom
- Equality
- Tolerance
- Democracy
- Justice

The relationship between an individual and a state may develop within political, economic, social and other forms. An individual has a different status in each of these forms of relationships: a citizen of the same state, a citizen of another state and a stateless person, “bipatrid⁵⁶,” “apatrid⁵⁷,” honorary citizen, revoked citizen or a person who has lost citizenship, refugee, internally displaced person⁵⁸, repatriate⁵⁹, emigrant⁶⁰, migrant, etc. In all of these relationships a person enjoys the benefits of universal and inalienable rights. The quality and protection mechanisms vary across different states, but the essence stays the same everywhere.

⁵⁶ Bipatrid – a person holding dual (or more) citizenship.

⁵⁷ Apatrid – a person holding no citizenship of any country.

⁵⁸ Repatriate – a person who returns back to his or her own country with the right of repatriation.

⁵⁹ Emigrant – a person who leaves one’s country and moves to another; a person who emigrated is referred as an emigrant.

⁶⁰ Migrant – a person who leaves one place of residence for another.

CHAPTER 1.1

What are Human Rights?

Human rights somehow recapitulate historical and socio-cultural development of humankind. They date back centuries and from the very outset represent a central focus of political, legal, ethnic, religious and philosophical thoughts. Although human rights has always maintained a political and legal meaning, in different periods of time, influenced by social forces, culture and tradition, human rights also obtained religious and philosophical significance.

An individual is endowed with certain rights upon birth. An individual is a free, and at the same time, a social being. Existence within the society is crucial for him/her. For existence, one needs to coexist with other individuals, but relations are not achievable without order. Every individual has to yield some rights for the sake of achieving a lasting order, and protect his/her life, security and property through the order established by the state. For example, "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others⁶¹."

However, an individual strives towards individuality, distinctiveness and uniqueness. The quality of rights and freedoms is the indication of the dignified existence of a person. Therefore, Article 7 of the 1995 Constitution states that "the state shall recognize and protect universally recognized human rights and freedoms as eternal and supreme human values."⁶²

The concept of "human rights" and the overall system (civil, political, social, economic and cultural rights) dates back to the Bourgeois Revolution. During that time, the issues of natural and unalienable individual rights were raised to the highest levels. The issue of the free and effective exercise of these rights has to this date been maintained as a fundamental reference of civil society and a law-abiding state.

The essence and scope of human rights and freedoms have varied over different historical periods. Human rights have been gradually developing as a result of humankind's struggle.

⁶¹ *Convention for Protection of Human Rights and Fundamental Freedoms*. Article 9.2

⁶² *Political Theory Blog*. <http://polittheory.wordpress.com/2010/02/08>.

The idea of human rights has its origin in the antique ages and was based on the concept of equality of rights. Human rights based on formal equality evolved into a cornerstone of the bourgeois-democratic revolutions, and with that the overall system of human rights was established. With the storming of the Bastille on July 14, 1789, the French Revolution sent a signal to the world about the collapse of the obsolete monarchy and declared “Liberty, Equality, Fraternity” as universal principles. Humanity entered a new era, however, as it chose a bloody and intricate way to this purpose.



Liberté • Égalité • Fraternité

RÉPUBLIQUE FRANÇAISE



The emblem of France with the depiction of Marianne (Marianne in French) – a national symbol. Marianne is the French nickname of the French Republic of 1792. It is depicted as a woman wearing a Phrygian cap. Marianne is an expression of the French national maxim “Liberty, Equality, Fraternity” (Liberté, égalité, fraternité).

Further development of human rights had a particular impact on the advancement of society and the state. Legal restrictions on government came as an outcome of human rights that pre-conditioned the establishment of democratic relations between a state and an individual, and emancipated an individual from excessive patronizing on the part of the government.

All these had been preceded by a long and complicated process expressed through the search for means of affiliation of an individual with a state. The process was not limited to the legal scope. It is important to remember while examining human rights that this idea initially had an ethical, moral, spiritual, cultural and religious character.

Human rights has emerged and developed within different regions, diverse cultures and philosophical beliefs, and divergent ethical and religious environments. It is not particularly difficult to interpret the Ten Commandments from the Old Testament within the modern human rights system. “*You shall not murder*” is an equivalent of the right to life; “*You shall not steal*” is perceived as a protection of property rights; the notion of Judaism “*Don’t treat others the way you don’t want to be treated*”; The passage in

the New Testament: “do unto others what you would have them do unto you”⁶³; or the Muslim dogma : “None of you is a true believer until you wish for your brother what you wish for yourself” – points to the respect of human dignity, which in itself is a cornerstone of human rights.

World religious doctrines are based on principles of equality and justice. For every monotheistic religion, God is one and the universe is holistic. Within the latter, individuals are not differentiated by race, skin color and social status⁶⁴. Human rights have always expressed the ideas of humanism, justice, freedom, equality and tolerance. Therefore, there is an array of fundamental values in human rights that are stipulated in the religious postulates.

Each consecutive era of human development led to the formation of intrinsically new rights and criteria, and gradually widened the number of individuals under its area of coverage. It was not happening in a chaotic way, but instead, developments were preceded by the struggles for rights and freedoms. In the process of pursuit for protection of individual rights and full-fledged freedoms, and at every stage of development, humankind was moving to qualitatively higher levels of accomplishment. Historical experience demonstrates the need for struggle for maintaining freedom by all generations, and confirms that the challenges of history in protecting values of human rights and freedoms are adequately addressed by all generations.

Human rights are a universal legal category and therefore, are applied to every individual. Human rights consist of three aspects:

1. Government enjoys power that is limited by human rights;
2. Every individual is at the certain level of independence;
3. Every individual is entitled to protect his or her own rights⁶⁵

Moreover, fundamental rights restrict legislative, executive branches and even judicial authority.

Being a human being is a necessary and sufficient pre-requisite for being entitled to human rights. Thus, it is a universal category. Human rights and freedoms are primarily doctrinal views of the philosophical system about the mission, place in the society and the role of an individual. Human rights are a social regulations system consisting

⁶³ Mthw 7:12.

⁶⁴ *Implementation of International Treaties in Georgian Court Decisions*, UNDP, RWI Publication Tbilisi, Volume 2.

⁶⁵ Levan Izoria, et al. *Commentary of the Constitution of Georgia* (Fundamental Human rights and Freedoms) (Tbilisi, 2005), 15-17.

of moral-ethical principles and norms. Such a relationship is otherwise referred to as **horizontal relations**. For example, deprivation of one's property by another person is a violation of another's rights - in this case, the two parties are equal.

Human rights fall under a legal category. Rights are affirmed by legal norms and they regulate the relations of individuals with a government and state. This is called a **vertical relationship**. For example, the legal relationship established between a state and physical person has a vertical character.

Human rights are indispensable rights and freedoms endowed to an individual upon birth⁶⁶. They are the means of protection for individuals from the state. "In other words, government enjoys as many rights as is allowed by the law (*the principle of limited power*), and an individual enjoys all rights that are not restricted by law⁶⁷." Everything is allowed that is not restricted by law.

Human rights constitute a relationship between an individual and a government (does not matter whether it is a democratically elected president, monarch or a dictator), and when we discuss human rights, it is implied that we talk about the relations between "an individual and the government."

CHAPTER 1.2

What are State Obligations?

On the one hand, an individual enjoys certain rights, and on the other hand, a state has an obligation to protect its own rights and meet certain requirements. Consequently, a citizen and a government are accountable to each other. It is the function and an obligation of the state to protect human rights and liberties regardless of whether an individual meets his/her responsibilities or not.

There are three levels of state obligation:

Obligation to respect – The state is responsible for respecting individual values.

Obligation to protect – The state has an obligation to recognize individual rights at the legislative level.

Obligation to fulfill – The state has an obligation to establish certain mechanisms for the protection of the legally declared human rights. The obligation to fulfill incorporates two types of obligations: **an obligation to facilitate and an obligation to provide**⁶⁸.

⁶⁶ *Dictionary-Directory of Social and Political Terms*, (Tbilisi, 2004), 13.

⁶⁷ Pridon Sakvarelidze, *Human Rights Directory*, ed. Ana Chabaashvili (Tbilisi, 1999), 9-10.

⁶⁸ 1999 General Comments N:12 of the UN Committee of Economic, Social and Cultural Rights; § 15, UN doc. E/2000/22/, 102-110.

Our rights are an obligation for a state. The state shall take all necessary measures to protect rights: protect human life, dignity, and personal inviolability; provide for the right to free movement; facilitate the right to education under equal conditions and establish an environment to realize these rights without discrimination; create affordable health system, etc. Such obligations of a state are called positive obligation (status positivus). Its essence is defined by state's rigorous efforts to protect human rights.

Freedom is exercised when, in the absence of legal foundation, the state does not violate it: refraining from looking into private correspondences, tapping phone conversations, interfering in private life, infringing freedom of speech, etc. These types of state obligations are referred to as negative obligations (status negativus). Its essence implies that the law, based on which human rights are limited, has to be based on legitimate public purpose and it has to be the only and necessary means to achieve the latter. For instance, during ecological disasters, it is permissible to impose temporary restrictions on the freedom of movement in hazardous zones for the purpose of providing public safety.

CHAPTER 1.3

Human Rights Characteristics

Human rights have the following characteristics:

- **General** – Human rights are the same for any individual living in any place of the world. It makes no difference which state's citizenship or no citizenship at all is held by an individual. An individual is endowed with this right upon birth until death.
- **Inviolable** – Terminations, deprivation or unlawful rejection of human rights by an individual is impermissible.
- **Indivisible** - No right can be deprived under the motive that it is "insignificant."
- **Universal** – All men and women are born free only for the reason of being humans. The latter is inherently the source of human rights. Its universality also implies that it unrestrictedly applies to any time and space in the world. The rights of all individuals are protected irrespective of any distinctions such as: race, skin color, sex, language, religion, political and other opinions, national or social origin, property, title, etc. Universality of human rights does not threaten individuality or cultural differences within the society. Diversity is possible in a society in which all are equal.
- **Inalienable** – It is illegal to lose, alienate or deprive human rights. Imposing certain restrictions on human rights in some occasions is allowed only by law, and

only temporarily: restrictions imposed on the free movement of the prisoner for certain periods, for instance, during emergency situations, limitations on protest and demonstration, etc. **Interrelated and interconnected** – All rights as a whole lead to facilitating system balance. Various rights of individuals - political, social, and economic - are closely interconnected. They are not taken separately and independently. Exercising one's right depends on the existence of other rights. Let's take the right to participate in elections, which on its part constitutes the basis for individuals' participation in the state governance. Second example: the right to life is closely linked to the right to health and personal inviolability. There is no one right that in its significance stands above any other right and vice versa, that stands below them. All human rights are invaluable and all of them need to be protected.

The human rights characteristics listed above are recognized by and reflected in the supreme law - the constitution of every democratic state.

The civilized world realizes that no state is perceived as free and democratic unless individuals under the country's jurisdiction (citizens, stateless persons and foreigners) exercise all rights and freedoms.

The human rights concept is based on certain values. They are the following:

- Dignity
- Freedom
- Equality
- Tolerance
- Democracy
- Justice

Human dignity is exercised by others, and also by the society and state through the respect of an individual. The essence of human rights is the recognition of human dignity. Dignity is an inherent character which derives from the fundamental nature of an individual. The Constitution of Georgia shares this philosophy and maintains that "honor and dignity of an individual is inviolable."⁶⁹

Every individual has dignity. It is unacceptable to differentiate people on any grounds. The state shall not violate human dignity, nor "intervene" in these rights⁷⁰. The protection of dignity by the state requires the assurance of the legal equality of individuals

⁶⁹ *Constitution of Georgia*, Article 17.1.

⁷⁰ Kote Kublashvili, 2005, 88.

(for example, violation of dignity is slavery, any form of discrimination, torture). The state is obligated to create basic conditions for the protection of human dignity.

The significance of the right to human dignity is well conveyed in criminal law, which defines the framework for state functioning. For instance, the punishment has to be fair and shall comply with the gravity of the offense and the guilt of an offender⁷¹. The system of punishment should not incorporate types of punishments that humiliate individual dignity. The violation of presumption of innocence violates human dignity. Both, the International Act on Civil and Political Rights (point two of Article 14), and the European Convention on Human Rights (Article 6) state that everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law.

Recognition and respect of human dignity is properly reflected in the overall human rights system. The text of the Universal Declaration of Human Rights begins with the recognition of human dignity: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood⁷²”.

The 1966 International Covenant on Civil and Political Rights also emphasizes human dignity: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person” (Article 10.1).

Human Freedoms are defined by law in the following way:

1. The ability to act by own resolve and will. Freedom is a human ability to act in his/her own will free of any restrictions imposed by someone or on behalf of that someone⁷³.
2. Individual freedoms imply that a person is able to perform or refrain from undertaking a certain action (freedom of conscience, freedom of belief, freedom of speech).

Three main characteristics of freedom are the following: choice, independence and responsibility. The exercise of the individual right of choice is linked to two issues: the existence of more than two options and knowledge and ability needed for analytical and synthetic review of processes and events. The negative counterpoint of the term “choice” is “compulsion.” The latter does not leave any room for choice; independence

⁷¹ Ibid., 89.

⁷² *The Universal Declaration of Human Rights*, Article 1.

⁷³ Sakvarelidze. *Human Rights Dictionary*, 41-42.

implies subordination and domination over one's own will. Individuals are prone to explain their actions with the influence of their customs, traditions, financial-economic condition, subjective or objective fears. Every time an individual acts this way, he/she is no longer independent. Responsibility is a trait that develops along with age and intellectual maturity, and fully occupies all corners in the space of life. Most human rights are about liberty. "Human freedom" does not imply the existence of any restrictions, and includes a wide range of individual actions. State intervention is restricted, and if it still interferes, it should only be in instances of a special occasion, identified circumstances, and in accordance with the law and appropriate rules to achieve a legitimate goal. However, there is no freedom without responsibility and vice versa.

Human rights imply patience towards other people, restraint and tolerance. Liberty and independence guarantee the right of human self-determination. This means that an individual has the ability to act in one's own will without someone else's interference.

"Everyone has the right to life, liberty and security of person"-

Universal Declaration of Human Rights, Article 3

The value of equality is expressed through equality before the law, equality of cultural and religious diversity and other rights. Equality gives an opportunity to any person to be in equal conditions with other people, but the appliance of this opportunity depends on the individual. The rights of these values guarantee that the state treats all individuals equally. Giving groundless privileges to someone at the other persons' expense is not permissible.

Equality is associated with the concept of the prohibition of discrimination, which implies limitation or the violation of human rights by social, racial, national, language, sex and political, religious or other grounds⁷⁴.

Equality before the law constitutes the cornerstone of human rights. Equality of all men and women before the law envisages the individual's right to equally use the endowed rights and liberties, but in case of legal violations, equally held responsible before the law.

The only case in which the state is allowed to treat a person "unequally" and impose different rights and responsibilities to different categories of individuals is the occasion when there is a special reason for such an action. For instance, blind people are not

⁷⁴ *International Human Rights Law, Dictionary-Directory* (2005), 283.

entitled to receive driving licenses; performing difficult work or working overtime by pregnant women is prohibited by law.

Foreign citizens and stateless persons residing in Georgia shall have the rights and obligations equal to the rights and obligations of citizens of Georgia with exceptions envisaged by the Constitution and law.

The Constitution of Georgia, Article 47

The state shall endeavor to establish social justice and social equality among the members of the society. It has to develop initial equality foundations and provide equal opportunities for the development of all its citizens. This implies that a state should be responsible for creating equal basic conditions for exercising the right to receiving education, choosing and mastering a profession⁷⁵.

Tolerance is a special value of human rights. Tolerance implies a relationship towards individuals of different nationality, ethnicity, language or religious origin, race, color, citizenship and/or other features, which excludes racism, racial discrimination, and hatred and is characterized by benevolence, and does not violate the rights and liberties of the above groups in the social and political life⁷⁶.

Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human⁷⁷.

Tolerance establishes respect towards other viewpoints, various forms of expression and development of personal individualism. Tolerance implies the respect of various rights. It maintains that every individual has his/her own opinion and right to criticize views held by others, criticize the government, specific person or idea, etc. Tolerance also envisages listening to other viewpoints and opinions, even if they are not acceptable to the listener. Expression of tolerant attitude towards other religious beliefs and nationalities constitutes the foundation for human rights protection. "Religious diversity does not frighten us. Georgians, who sacrificed for their own faith, have respect towards other religions⁷⁸."

It takes meeting certain obligations and responsibilities to respect, protect and fulfill human rights. **Obligation** is a framework and a measure of necessary action. By im-

⁷⁵ N. Talakhadze, et al. *Civic Education* (Tbilisi: The Center for Economic Education and Development, 2008), 15.

⁷⁶ *International Human Rights Law*, Dictionary-Directory, 2005.

⁷⁷ *Declaration of Principles on Tolerance*, 1995.

⁷⁸ Iliia Chavchavadze, *Letters* (Tbilisi, 2010), 41.

posing obligations, the state defines for all persons residing within the state territory, requirements to undertake certain necessary actions.

Obligations may derive from not only legal requirements, but also from moral, ethical norms, or professional activities. The same applies to **responsibilities**. Every one of us has certain responsibilities before the state. Individuals are also held responsible at ethical and legislative level. According to Article 44 of the Constitution of Georgia, “Every individual living in Georgia is obliged to obey the constitution and legislation of Georgia,” therefore, noncompliance to the Constitution and the Law will lead to legal repercussions (criminal, administrative, civil or disciplinary). Individuals shall comply with certain rules stipulated in national legal acts to ensure that the interests of an individual, society and the state are not infringed while exercising individual rights and liberties.

The most rational form of exercising human rights is democracy. Democracy effectively protects individual rights and interests through cooperation, compromise and consideration of different viewpoints⁷⁹. In a democratic system, every member of society is fully entitled to participate in the election of a government agency in a passive and/or active way, criticize the government, freely argue about the organization of a state, be involved in state government, etc.

Democracy promotes the introduction of civil and human rights culture that is a prerequisite to enable citizens to acquire political competences. Democracy establishes a culture of respect for the law and abiding with the law, and helps to reach a peaceful resolution to any disagreement among various social groups through compromise.

Democracy, as a regime of political rule, means government of the people under which, the rights of not only the majority, but also the rights of the minorities are effectively protected. This does not imply unlimited authority for the minority, but it is a majority government limited by certain values and human rights. Since these values are stipulated in the Constitution and the laws, it equally applies to minorities and the majority, and shall not be breached by either.

As noted above, in certain circumstances, the government is allowed to limit some rights (for example, freedom of movement during emergencies and wars, restrictions imposed on property in exchange for compensating public needs, etc.).

⁷⁹ We discussed democracy in more detail in the first section of the book.

However, there are also individual natural rights that shall not be restricted in any circumstances . These are the right to life, freedom from torture, dignity, presumption of innocence, freedom from slavery, right to a fair trial, and legal personality⁸⁰.

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.⁸¹

Article 30 no derogation from articles 6 (right to life), 7 (prohibition of torture), 8 (paragraphs 1 and 2: prohibition of slavery), 11 (prohibition of imprisoning a person merely on the ground of inability to fulfill a contractual obligation), 15 (retrospective action of the law), 16 (recognition as a person before the law) and 18 (freedom of thought, conscience and religion) may be made under this provision⁸².

⁸⁰ Please find more on natural rights in the first section of the book.

⁸¹ *International Covenant on Civil and Political Rights*, Article 4.1.

⁸² *International Covenant on Civil and Political Rights*, Article 4.1-2.

Chapter Two

Development of the Concept of Human Rights

In this chapter, we will review the historical and socio-cultural phases of human rights development. We will recall initial normative acts and constitutions that led to the transformation of the dream of humankind into the cornerstone of state government. We will examine the significance of the creation of the international humanitarian law in the era of wars and revolutions. We will classify human rights and touch upon the development of human rights in Georgia. At the end of this chapter, it will be possible to make arguments on subjects, such as:

- The development of the concept of human rights in the antique and medieval ages;
- The role of the bourgeois revolutions in the development of the concept of human rights;
- The development of human rights in Georgia;
- Earliest treaties in human rights field;
- Path to the creation of Universal Declaration of Human Rights, and International Covenants on Human Rights;
- Human rights classifications: civil and political rights;
- Social, economic and cultural rights.

The cultural development of the society is unimaginable unless it contributes to major changes in the development of an individual and if a person does not obtain at least a minimum level of independence at every stage of the societal development. This significant aspect of the cultural progress has been embodied in ethics, laws, religions and philosophies.

The origins of “formal equality,” the foundation of human rights can be traced back to the primeval societies, which were embodied in “mononorms⁸³.” Mononorms are the rules of conduct that cannot be classified or differentiated as it is with the case of classification of religions, ethics, and common norms. These are the rules expressing sustainable customs. Mononorms establish views about bad and good, acceptable and unacceptable rules for a household or a tribe. The purpose of mononorms is to maintain the tribal system. However, they did not clearly define the moral and ethical criteria. The tribal system was socially managed and it was regulated by the mononorms. Nevertheless, mononorms did not give advantage to one tribe member over another. This is a demonstration of “primeval equality.” If we delve deeper, it is possible to understand the essence of this form of equality: individual interests are given up at the expense of public interests. The life of an individual is strictly regulated, thus depriving him/her of the freedom of choice, independence and opportunity to develop. Despite this, the introduction of mononorms into the process of the development of humankind is in itself a step forward. Subsequently, the abolishment of the primeval tribal system, the creation of the state system, and the emergence of state attributed characteristics (state features: public government, tax system, etc.) led to the development of legal norms.

⁸³. A Pershits, 1979, 214.

CHAPTER 2.1

The Development of the Concept of Human Rights – Antique Era

In written sources, the word “freedom” was first used in XVIII B.C. The oldest deciphered writing “The Code of Hammurabi” contained information on how King Hammurabi (b. 1810- d. 1750 B.C.) granted “andurarum” (liberation from debt) for the purpose of providing incentives to the governed: i.e., those who faithfully fulfilled their obligations (paid taxes or participated in religious services) would exercise the right to “andurarum.” But, those who failed to faithfully meet the responsibilities, tended to lose the opportunity for “andurarum.” The loss of freedom was a sanction “to protect widows and orphans and prevent these people from unfair treatment of the people with authority⁸⁴.”

The origins of human rights date back to VI-V centuries B.C. in Athens, and later in ancient Rome. The statement by the ancient Greek sophist and rhetorician, Alcidas – “God has left all men free; nature has made no man a slave⁸⁵,” conveys the attitude of the Greek philosophy towards an individual, dignity and natural inalienable rights.

Back in the 6th century B.C. Greek lawmakers and Archon Solon (638-558 BC) carried out legislative reforms that included some elements of democracy. More specifically, if a public servant was found guilty, this legislation legitimized his/her conviction. This idea was further developed in ancient Rome and reinforced by the introduction of the citizenship principle. Moreover, people in the ancient world did not apply the principle of equality in conceding rights. For example, it was universally accepted that slaves were deprived of any rights.

City-States – “Polises⁸⁶,” which have often been regarded as a form of a slaveholding-democracy, somehow strengthened the development of human rights. Freedom oasis areas emerged that enabled the establishment of equal political rights for individuals that held citizenship status. Views held in those times on human rights and citizenship, participation of all the governed in the Polis government, and efforts towards achieving prosperity in the Polis had been incorporated in a unified doctrine, which underlined the importance of the rule of law (Pericles, Socrates, Plato and Demosthenes). These doctrines have been reflected in the correlation between “human rights” and the “rule of law.” The search for justice, freedom and truth remains to be the highlight of the Greek philosophical works.

⁸⁴ Zurad Kiknadze, trans, *The Code of Hammurabi* (Tbilisi, 1998).

⁸⁵ “The Political and Legal Doctrines in Ancient Greece”, <http://uquq.net>.

⁸⁶ Since the 6th century B.C. similar Greek Polis type political entities on the territory of Georgia were Pazisi, Dioscuria and other city-type settlements. Liberties start with the Great Charter. Tsetskhladze, V, ed 2005, 9.

Each new step in the development of the society made adjustments to the nature of human rights and added another dimension to it.

Throughout the VI-V centuries B.C., the establishment of civil institutions in ancient Athens and Rome was a step forward; however, the process of the formation of legal norms and human rights did not coincide. At the initial stage of the formation of legal norms, the measure of freedom was low. Notwithstanding, civil liberties were developing in ancient Rome too, in which the principle of the separation of power within the government and the idea of the natural law was formed.

CHAPTER 2.2

Development of the Concept of Human Rights – Medieval Period

During the era of feudalism, the volume of rights increased. Throughout this period, despite the rank hierarchy and servitude of slaves (peasants subject to landowners rule), the land owners strove to limit the power of the monarch. In the medieval ages, human freedom was more limited, but enslavers enjoyed more freedom than slaves. During the feudal system, the basis matured for developing civil and political rights that subsequently evolved into various Acts. For example, the rights of the monarch were limited in England. Attempts to control the mechanisms by the tribal section of the society over the monarch culminated in the 1215 Great Charter on Liberties (Magna Carta Libertatum). It was precisely this document that became the basis of the development of legislation on human rights. Values declared herein were expressed in other Acts as well:

Men in our kingdom shall have and keep all these previously determined liberties, rights, and concessions, completely and in peace, freely and quietly, in their fullness and integrity, for themselves and their heirs, from us and our heirs, in all things and in all places forever.⁸⁷

Articles in the Magna Carta included mechanisms for protection from the defiance of the king and the royalty. The Magna Carta also contained a clause prohibiting the appointment of individuals to the positions of sheriff⁸⁸ and constable⁸⁹ without the proper knowledge of the laws, or if they were reluctant, to fulfill these laws. The great accomplishment of the Charter is the provision in accordance to which, it is prohibited to convict a free person without a court ruling.

⁸⁷ Vladimer Tsetskhladze, ed. *Liberties Start with the Great Charter* (Batumi, 2005), 21.

⁸⁸ Sheriff – an official performing administrative and judicial function.

⁸⁹ Constable – one of the highest ranks among the Royal family.

The Declaration of Arbroath adopted in 1320 in Scotland claims for the absolute right of freedom that stands above glory, fame and wealth⁹⁰

In 1628, in England, the Petition of Rights was adopted and defined the obligations of a monarch, namely, the obligation to protect the governed from the injustices of the monarchy. According to this Act, if a person suspected of a crime addressed the monarch with the petition, and this person was arrested before being sentenced, the Act would be considered to be illegal.

In 1679, the Habeas Corpus Act was developed, in which, individual inviolability guarantees, presumption of innocence and other important provisions of human rights protection, were first mentioned. Rights declared in 1679 are still valid to this day and they are incorporated into international Acts and national legislation. The Habeas Corpus Act guarantees that an individual is not unjustly arrested, and if an act of arrest is illegal, the concerned person shall be released. The Habeas Corpus Act is an order that is submitted to appointed court officials responsible for providing justice to the convict, to avert restrictions imposed on the detained person's freedom, as well as to immediately release the concerned individual if unlawfully convicted, or, if possible, release on bail. The same act established the principle which does not allow for convicting the same person twice on the same charges (the principle of "non bis in idem").

The Bill of Rights adopted in England in 1689, was yet another step forward in advancing the concept of human rights. To be precise, it made it possible to terminate laws that benefited the monarchy, such as, imposition of taxes without a parliamentary decision, and mobilization of the army in peacetime. This Act established the rules for freedom of speech, the right to elections to Parliament and the right to petition the monarch. The Bill also included protection guarantees against the imposition of high taxes without a court judgment. The Bill of Rights first declared the right of individuals to demand and protect their rights.

They seek and demand and are devoted to the Bill altogether and each separately⁹¹.

The notion of human rights and liberties also penetrated the American continent, which was deeply reinforced by the enlighteners, "the school of natural law" and various Acts adopted in England.

⁹⁰ Rona Smith, *International Human Rights* (Tbilisi, 2005), 45.

⁹¹ *Ibid.*, 23.

CHAPTER 2.3

The Role of Bourgeois Revolutions in the Development of the Concept of Human Rights

The notion of “natural law” was spread in the United States by Thomas Paine (1737-1809) and Thomas Jefferson (1743-1826) during the American Revolution. Their ideas served the purpose of not only building a democratic state, but also protecting an individual’s unalienable rights. The finest demonstration of this was the 1776 Declaration of Independence which stated that “all men are created equal, that they are endowed by their Creator with certain unalienable Rights.”

The U.S. Constitution of 1789 does not include a list of individual rights. However, the Preamble to the Constitution clearly introduced human rights, and highlights the increasing influence of human rights on the state:

We the People of the United States, in order to form a more perfect Union, establish Justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

The first ten Articles – the “Bill of Rights” – were added to the U.S. Constitution on December 15, 1791. However, some states initiated the ratification process on September 19, 1789. Since the adoption of the “Bill of Rights” only 17 amendments have been added to the Constitution.

The theory of “Natural Law” on unalienable individual rights widely spread during the French Revolution. These ideas were based on the thoughts of Hugo Grotius (1583-1645), Charles Montesquieu (1689-1755), John Locke (1632-1704), Jean Jacques Rousseau (1712-1778) and other philosophers during the enlightenment. The French Declaration of the Rights of Man and of the Citizen was adopted on August 26, 1789. It stated, “Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.” The Declaration prohibits:

- The retrospective nature of the law;
- Violation of the presumption of innocence;
- Arrest or detention without being legally charged according to the law;
- Arrest or detention for expressing one’s views unless the explicitly stated views violates public order defined by the law;
- The declaration ruled for the citizens’ right to property.

As paradoxical as it may sound, the bloody French Revolution presented the world with the Declaration of Human Rights, the basic provisions of which, are to this day an integral part of several international human rights acts. The Declaration establishes and affirms the fundamental human rights principles: equality, freedom, rule of law, personal inviolability, etc.

The theory of natural law was developed in the XVII-XVIII centuries. According to the theory, all individuals are endowed by God with natural rights. These rights are not granted by the state, and therefore, the government does not have the right to take them away. According to the theory of natural law⁹², if a regular law is in contradiction with the natural law, the former will never be enforced and never considered to be legal.

After getting familiar with the Acts, it becomes clear that an individual who used to be fully dependent on the state gradually acquires independence and individual liberties become realized.

CHAPTER 2.4

Development of Human Rights in Georgia

The notion of human rights is not unfamiliar to Georgian culture. During the reign of King Pharnavaz (2nd century B.C.), the first King of Georgia, several religions were being practiced, which indicates religious tolerance. In the 11th century, an individual was referred to as Georgian if that person served the purpose of developing Georgian language and culture, and shared the pursuit to prosperity of the Georgian people⁹³. During this period, ethnic origins were not. Political and cultural aspects were crucial factors in determining national identity. The 12th century was also marked by the abolishment of capital punishment in Georgia.

Georgian legal documents include a number of norms that legally ensure the protection of individual inviolability, property and the right to inheritance, as well as women's rights. Georgian belles-lettres writings are rich with the thoughts of human rights and liberties. The history of war with the invaders, and the annexation of Georgia into the Russian Empire in 1801 had its impact on the development of human rights. Ever since then, until regaining independence, the fight for human rights was closely intertwined with the national liberation movement.

⁹² Refer to Section One for more detail.

⁹³ Giorgi Nozadze, et. al. *Transitional Period towards Democracy and Active Citizenship*, 2007, 41.

The fight against the colonial power of Tsarist Russia evolved the political thought into human rights protection. In this route, the peasants' movement was one of the pioneers. The armed protests led by the rural farmers were based on the well-thought out and pre-arranged ideas of human rights and freedoms. This was explicitly articulated in the passionate speech delivered by the leader of the peasant revolt in Samegrelo, Utu Mikava (referred as Danton of the peasant rebellion in Samegrelo) on May 20, 1857:

A year ago, the Ottoman Army invaded our country. The enemy destroyed everything it laid its hand upon. We have not received any help from anywhere; The Russian Army abandoned us, and our masters [landowners] instead of protecting us started kidnapping and selling our young girls and boys to the Ottomans.

The Ottomans left and the landowners treated us worse than before. Needless to say, the fruits of our labor were taken away by them. If asked, they would respond that peasants should not own anything, and everything owned by the peasants are taken away through their cunningness or by force.

We grew used to such existence. The point is that, they did not consider us humans. In their view, even the cattle are better than us. Say, if a nobleman likes a neighbor's sparrow-hawk, he/she can buy the bird in exchange for one peasant's household. A landowner is ready to purchase a greyhound or a hunter dog in exchange for several peasant households. In other words, animals are worth more than us.

When we gave our masters what they demanded, in exchange we merely asked for the treatment established by the customs of our ancestors. However, our masters have long neglected this sacred custom. Moreover, their cruelty since the end of the war has surpassed all limits.

- Should we have asked for justice?

Where could we? The Queen is too far from here, and her envoys are on the side of the nobles. We failed to remember anything more than compulsion from them.

When the landowners started persecuting and dog-hunting us, we decided to unite and confront their power with our force.

Meanwhile, spring came, cornfields were not sown, our masters did not make concessions and we did not compromise either. Finally, they removed Khajaluris and Dadianuris from us, and through the use of which, they have tortured us for years.⁹⁴

Subsequently, Mikava submitted the list of demands, which consisted of eight points, to the military governor of Kutsai, Col. Kolubyakin.

1. One person should not be a slave to another.
2. Abolish slave trade;
3. Prohibit unlawful increase of taxes;
4. Peasants should be granted all individual rights;

⁹⁴ Korneli Borozdin, 1934 (Tbilisi, 1934), 114-116.

5. Establish the rule of law instead of unjust rule of landowners;
6. Eradicate methods of torture which existed previously;
7. Legalize the right to inviolability of property for peasants;
8. Strengthen the respect of landowners and authorities towards the customs and traditions of the people⁹⁵.

The 1921 Constitution of the First Georgian Republic was the principal guarantor of protection and inviolability of human rights. It fully met international norms recognized in the first half of the 20th century.

The Helsinki Treaty Executive Team has been working in Georgia since 1976. On April 9, 1991, with the leadership of this group, Georgia publicly declared its independence and the supremacy of the values upheld by the Universal Declaration of Human Rights.

The above records support the argument that human rights protection was not a strange phenomenon for the Georgian culture, and that there was no conflict between Georgian national values and human rights. Some of these values have been maintained as unalienable in Georgia since ancient times⁹⁶.

CHAPTER 2.5

Earliest Treaties in the Field of Human Rights

After a lengthy historical process, human rights defined in international legal acts have evolved into certain standards, which acquired a mandatory nature and form of a legal norm. Along with the societal progress and the development of democratic institutions, the desire to restrict government and protect each individual from the influence of government structures has strengthened.

Human rights protection is one of the fundamental principles of modern international law and an obligation of each state. Human rights protection is not merely an intra-state issue, but also a matter of concern for the international community.

Even at the beginning of the 20th century, human rights were regulated by intrastate legal norms. Actors of international relations associated human rights with intrastate competence. In accordance to the prevailing view, “old” international law was not interfering with this field.

⁹⁵ D. Lemonjava, *Peasant Revolt in Samegrelo in 1856-1857* (Tbilisi, 1957), 107.

⁹⁶ Levan Berdzenishvili, et al. *Human Rights and Georgian Culture* (Tbilisi, 2004).

By entering into an international treaty, a state undertook obligations. Today, it is of general knowledge that human rights situations in many countries are observed by highly competent organizations.

The signing of the first slave trade treaty gave rise to the internationalization of human rights. In this regard, the part of the March 30, 1856 Paris Peace Agreement, referring to the protection of the minority population residing in the Ottoman Empire, and the July 13 1878 Agreement concluded in Berlin, are also important agreements. These agreements secured the right to diplomatic and, in some cases, military intervention with the purpose of protecting Christians residing in the Ottoman Empire. The 1878 Berlin Agreement was also important due to the fact that it granted certain religious groups special legal status. Such agreements were in one way or another used as a model within the “League of Nations” in developing the minority protection system.

Although the Charter of the League of Nations⁹⁷ does not include any provisions on human rights, it establishes the foundation for the development of the international human rights law, the establishment of minority protection, and the introduction of the mandate system. The participating states undertook a commitment to periodically report to the League of Nations on the progress of meeting obligations in terms of protecting the human rights on the mandated territories. Prior to its dissolution, the League of Nations reviewed the case of state responsibility for compensation for the inflicted damage to foreign citizens⁹⁸.

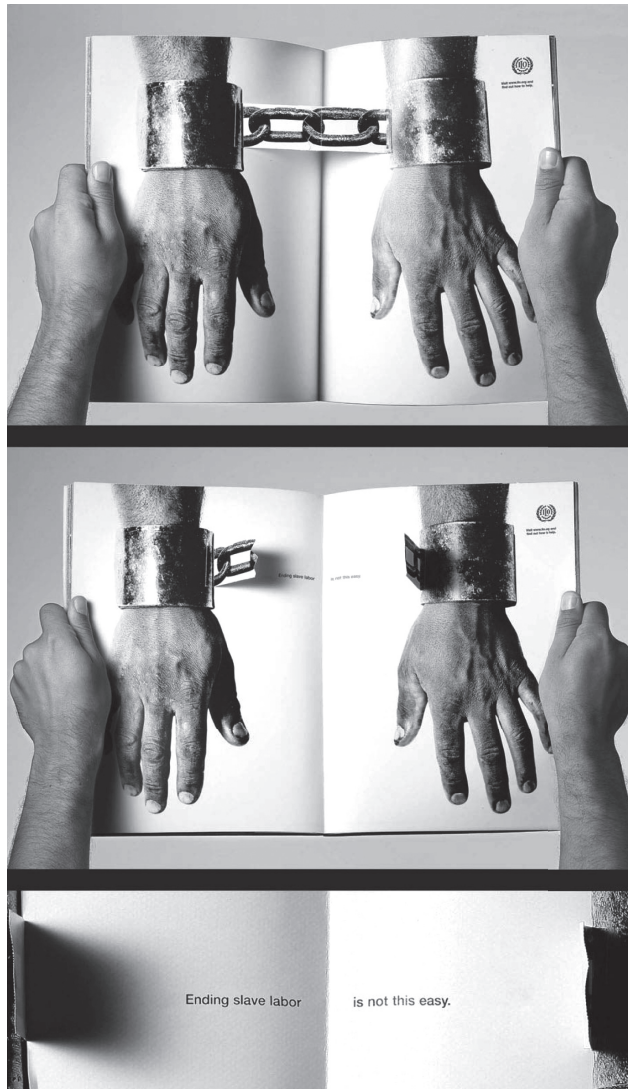
Despite the development of international human rights law, the case of compensation for inflicting damage to foreign citizens and the state responsibility is still valid, and plays a significant role in modern diplomatic relations. States support the lawsuits of their own citizens and legal persons (for example, Georgia supports the lawsuits of the Georgian citizens and ethnic Georgians deported from Russia, and the Government of Georgia lodged an application before European Court of Human Rights. As of his writing, the Strasbourg Court is considering the case “Georgia v. Russia”).

The development of human rights has been significantly strengthened by the formation of international labor standards. The International Labor Organization, founded together with the League of Nations in 1919, established international labor standards that are binding to the member states if these states recognize and are signatory to these standards. The League of Nations no longer exists, but the International Labor

⁹⁷ The League of Nations was an international organization founded under the 1919-1920, Versailles Treaty. The main purpose of the League of Nations was peaceful resolution of conflicts and the worldwide support to peace.

⁹⁸ Later, the UN used this system and experience to refine the system of the Economic and Social Council operation, which is well reflected in the periodical reports drafted by the Council.

Organization is functional to this day⁹⁹ and currently is a special UN organization. It can be argued that the control system developed by the League of Nations on the basis of international labor standards established the foundation for the further development of international law on human social and economic rights.



International Labor Organization Poster: "Ending slave labor is not this easy."

⁹⁹ Georgia is a member of the International Labor Organization, and is a party to a number of conventions developed within this organization.

The development of the minority rights protection system contributed immensely towards the overall development of human rights protection.

The map of Europe changed considerably after World War II, resulting in the formation of new states – Czechoslovakia, Poland, Hungary, Yugoslavia, Bulgaria, Albania, and Romania. Minorities of various ethnicity, religion, and language also became citizens of these states. These minorities had sufficient reason to fear that the new political establishment would put threaten their existence. The victorious nations of World War II categorically requested the new states to conclude special agreements for the protection of the ethnic, religious and language minorities. The first of such agreement was concluded with Poland in 1919, which was further applied as a model agreement. The idea of these agreements was that the participating states took the obligation to create a minority protection system, and not allow discrimination of individuals representing a state's minority, as well as to grant them special rights with the purpose of assisting these groups in maintaining their ethnic, religious and language identity. The guarantor of these obligations was the League of Nations.

International Humanitarian Law – International Humanitarian Law is the law on armed conflicts, and often referred to as the “laws of war.” It is older than international human rights law, which started its development in 1859, and is an effective instrument in human rights development¹⁰⁰. The purpose of humanitarian law is to protect a person during armed conflicts irrespective of whether the conflict is international or domestic. From its very development, the goal of international humanitarian law was to protect human rights and dignity during armed conflicts. The central object of human rights protection is an individual, and in this regard “human rights law” and “international humanitarian law” complement each other. However, humanitarian law regulates the conduct in extraordinary and specific situations, and therefore, it regulates military actions during wars and armed conflicts (the Hague Law regulates the rules and methods to conduct wars) to ensure protection and fair treatment of certain categories of individuals (the wounded, sick, women, children, prisoners of war, etc.) during conflict situations.

¹⁰⁰ In 1864, the Swiss Government commenced a diplomatic conference headed by the Founder of the International Committee of the Red Cross - Henry Dunant. The member parties adopted the Geneva Convention “On the treatment of Prisoners, Sick and Wounded, and Civilians during War.” 1949, Geneva Convention was the International Humanitarian Law Code.

CHAPTER 2.6

The Way to the Universal Declaration of Human Rights

On December 10, 1948, the UN General Assembly Resolution N217 adopted the Universal Declaration of Human Rights. This was the first occasion in the history of humankind that the international organization agreed on the unified concept on human rights.

The Universal Declaration of Human Rights is a non-legally binding international act, and fulfillment of its provisions is recommended for the signatory states. Currently all UN Member States are signatories to the Declaration. The Declaration institutes human rights standards that are included in the constitutions of almost every nation. This document serves as a basis for the development of other human rights international legal acts¹⁰¹.

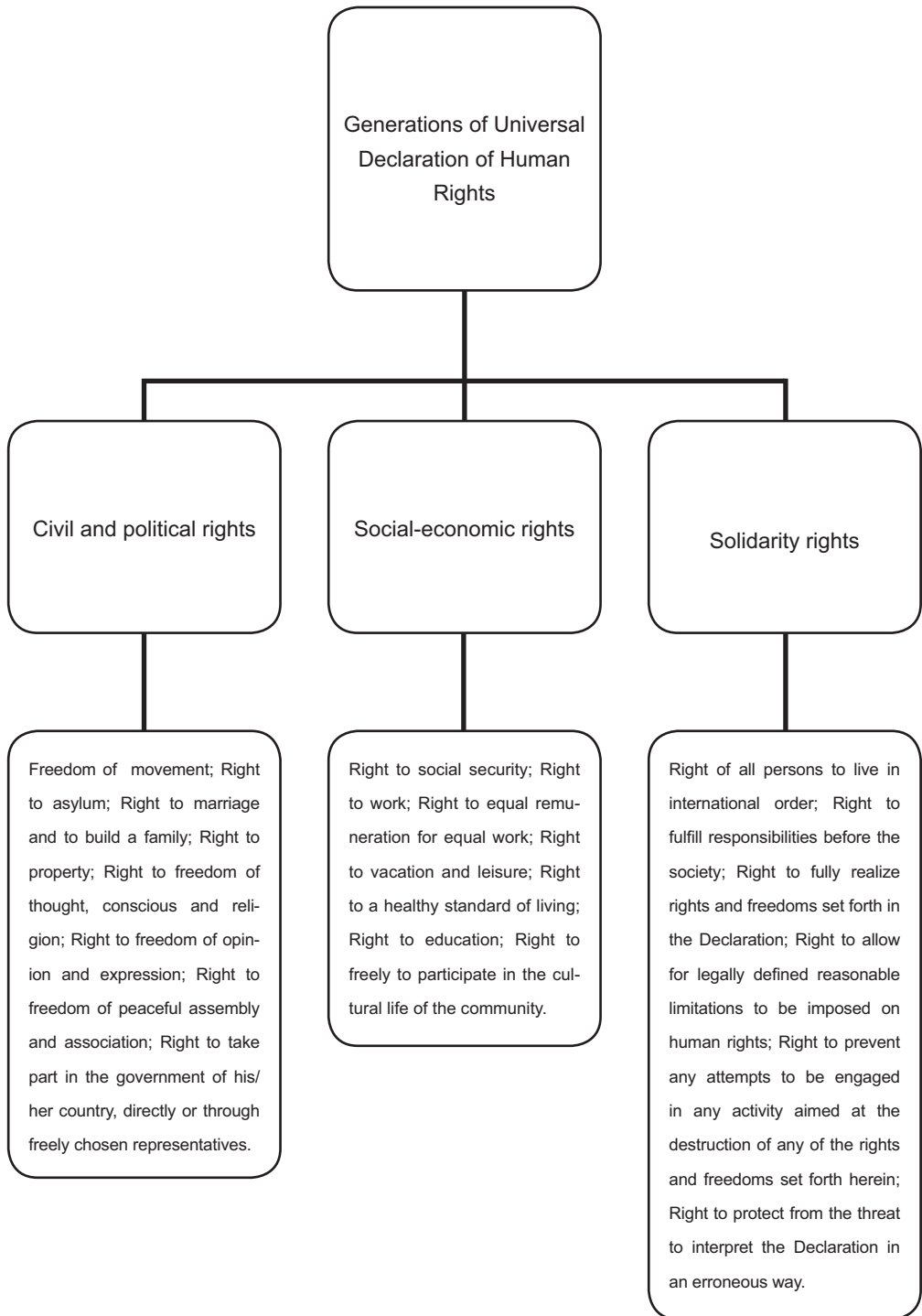
The Universal Declaration was adopted by the General Assembly on December 10th, 1948 by a vote of 48 countries in favor, zero against with eight abstentions. It was the first time the UN Member States jointly adopted the first UN document – Universal Declaration of Human Rights. It is a document which encompasses human rights standards of all generations. Since the adoption of the Declaration, every citizen is entitled to universal protection of his/her own and other country's human rights based on this document.

The Universal Declaration of Human Rights turned into a guiding document. Later on, states applied the Universal Declaration of Human Rights in their own constitutions and legal acts that helped it evolve into a customary norm. The international court and national courts apply the Universal Declaration of Human Rights in the decision-making process.

The Declaration is aimed at reinforcing respect towards all individual rights and liberties and their universal and effective recognition.

The Declaration consists of a preamble and 30 articles. The text of the declaration is organized in accordance with various generations of human rights.

¹⁰¹ In contrast to other human rights act, the drafting of the Declaration lasted over two years. A number of famous scientists, public and political figures worked on it. The Human Rights Commission was headed by the wife of the U.S. President Franklin Delano Roosevelt (1882-1945), Eleanor Roosevelt.



Articles 3 to Article 21 lists civil and political rights, which include:

- Freedom of movement;
- Right to asylum;
- Right to citizenship;
- Right to marriage and to build a family;
- Right to property;
- Right to freedom of thought, conscious and religion;
- Right to freedom of opinion and expression;
- Right to freedom of peaceful assembly and association; and
- Right to take part in the government of his country, directly or through freely chosen representatives.

Articles 22 to 27 include the following social-economic aspects:

- Right to social security;
- Right to work;
- Right to equal remuneration for equal work;
- Right to vacation and leisure;
- Right to a standard of living adequate for health;
- Right to education and
- Right to freely participate in the cultural life of the community.

According to Article 28 and Article 30 of the Declaration, everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. Furthermore, it is declared that in a democratic society, limitations on human rights are allowed by law solely in cases where rights and freedoms are threatened. The Declaration also upholds the right to the protection of the public order and the general welfare. According to the Declaration, everyone has duties towards the community in which an individual lives. "Every human has responsibilities in front of society, because only within society can a man reach free and full development of his personality"

Article 29 declares the right of all persons to international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 30 declares that nothing in this Declaration may be interpreted as implying that any state have any right to engage in any activity aimed at the destruction of any of the rights and freedoms set forth herein.

CHAPTER 2.7

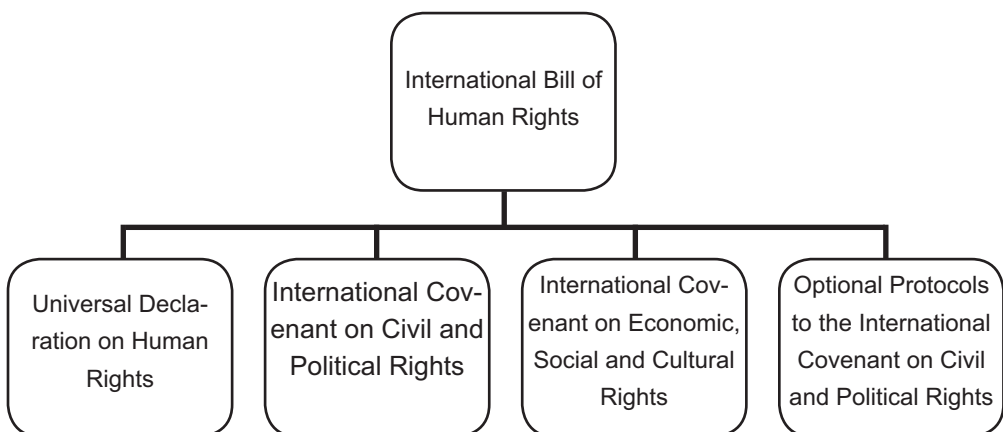
International Covenants on Human Rights

After a 10-year waiting period, in 1976, 35 states ratified significant documents that were open for signature by the UN General Assembly:

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic, Social and Cultural Rights.

It took 10 years for the international community to ratify and enforce these Covenants. These Covenants are international treaties by virtue of which the member states undertake the obligation to protect fundamental rights and freedoms ensured by the Covenant. By signing and ratifying the Covenant, the protection of human rights goes beyond the state's internal competence and acquires international significance.

Therefore, the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights with its two Optional Protocols: a) Optional Protocol to the International Covenant on Civil and Political Rights b) second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, and International Covenant on Economic, Social and Cultural Rights create a unified system, informally called the **International Bill of Human Rights**.



It can be argued that international covenants protect the rights of “Two Generations.” It should be noted that the Article 1 of both Covenants starts with “Rights of the people” or “collective rights: “All people have the right to self-determination. By virtue of

that right they freely determine their political status and freely pursue their economic, social and cultural development.” These Covenants are legally binding documents. The International Covenant on Economic, Social and Cultural Rights, which encompasses “Second Generation” rights are referred to as “Program” rights and include social, economic and cultural rights.

These Covenants created UN human rights oversight mechanisms:

Main UN Conventions on Human Rights	
Name of the Document	Year of Adoption
Convention on the Prevention and Punishment of the Crime of Genocide	1948
Convention Relating to the Status of Refugees	1951
Slavery Convention ¹⁰²	1926
International Covenant on Civil and Political Rights	1966
International Convention on the Elimination of All Forms of Racial Discrimination	1966
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity	1968
Convention on the Elimination of All Forms of Discrimination against Women	1979
The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1984
Conventions on the Rights of the Child	1989
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	1990
Convention on the Rights of Persons with Disabilities	2006

CHAPTER 2.8

Human Rights Classifications

Human rights classifications and general characteristics help to better familiarize with the essence of human rights. In this chapter, we will discuss classifications of human rights by various features and explain human rights to help develop a better understanding of which rights and liberties we are entitled to.

¹⁰² Based on the revised Facultative Protocol, 1953.

Right – Legally defined and state guaranteed ability of physical and legal persons to act in a certain way, and request, a certain action or, to refrain from this action from others. For example, an owner who is entitled to property also has a right to demand from others to refrain from taking away his/her own property¹⁰³.

Freedom – Freedom is an individual or collective status, which implies an ability to choose among various options. Freedom is a human ability to act on his/her own will, by someone or on behalf of another person free of state imposed restrictions (for example, to be free from torture, unlawful detention or arrest, and from deportation and slavery)¹⁰⁴.

Different principles of classification apply in the human rights theory. Each of them differentiates human rights in different groups. There is a distinction between human rights and citizen rights. Human rights implies the system of rights and liberties possessed by not only a citizen of a certain state, but by all humans; rights such as the right to life and personal security, as well as freedom of speech, freedom from torture, etc.

Human Rights and Citizens' Rights

Human Rights and citizens' rights are similar concepts. Human rights are broader in content and scope and are not defined in terms of an individual's citizenship. By contrast, citizens' rights demonstrate a political link of an individual to a state. Since there is a legal relationship established between a citizen and a state, they guarantee that a state grants to a citizen rights that are not given to other country's citizens and stateless persons (for instance, the right to participate in elections).

Human Rights and citizens' rights differ in the Georgian Constitution as well. For illustration, the legislator adheres to citations. According to the Georgian Constitution, human rights are the following: "Everyone has the right to free development of his/her personality¹⁰⁵," "Everyone has the right to freely receive and impart information;¹⁰⁶" With regards to citizens' rights – "Every citizen of Georgia who has attained the age of 18 shall have the right to participate in referenda or elections of state and self-government bodies." "Free expression of the will of electors shall be guaranteed¹⁰⁷". Rights and freedoms declared in international documents apply to all individuals ir-

¹⁰³ *Legal Encyclopedia*, (Tbilisi, 2008), 610.

¹⁰⁴ Pridon Sakvarelidze, *Human Rights Dictionary* (Tbilisi, 1999), 128.

¹⁰⁵ *The Constitution of Georgia*, Article 16.

¹⁰⁶ *The Constitution of Georgia*, Article 24.1.

¹⁰⁷ *The Constitution of Georgia*, Article 28.1

respective of citizenship, especially, if a state has undertaken the obligation to protect these rights by ratifying this act.

Ratification is an endorsement of an international agreement by the state's highest legislative body and signing of the agreement by the full-fledged representative of the state, following which, the act becomes legally binding.¹⁰⁸

Article 45 of the Georgian Constitution declares the rights of not only physical persons, but also the rights of legal entities. Legal entities similar to physical persons possess rights. However, based on their specifics, not all basic rights and freedoms can apply to legal entities. For example, the right to freedom only applies to physical persons. Fundamental rights only apply to the legal person of private law. A legal person of public law (apart from exceptions) is not a subject of fundamental rights.

A physical person in legal terms is a person who possesses civil rights and obligations, is able to own property (economic assets), conclude contracts, and fulfill obligations.

A legal entity is an entrepreneurial (for example, LTD "MZE", joint-stock company "Cristal", etc.) or non-entrepreneurial organization (for example, non-governmental (noncommercial) legal person (non-commercial legal entity) – "Young Lawyers Association," "Center for Human Constitutional Rights", etc.), which is established for a defined purpose, owns property, has an administrative structure and mechanism, undertakes responsibility independently and acquires rights and obligations on its own behalf, concludes contracts, and is able to act as a plaintiff and a respondent before the court.

Every individual possesses personal, individual rights and freedoms irrespective of citizenship. This is a combination of natural (fundamental) unalienable rights and freedoms and they are also referred to as "civil rights." They include the rights to life, personal inviolability, inviolability of personal life, free movement and freedom to choose a place of residence; to leave and return to a country without impediment; freedom of thought, belief and religion; presumption of innocence; right to protection from torture and other cruel, inhuman or degrading treatment; access to personal information maintained by any government agency; recognition of a right of an individual in any country; and right to fair trial.

Political rights are another group of human rights (constitutional rights and freedoms) that encompass the rights to participation in social-political government of a state; participation in the elections; association; right to freely receive and disseminate information; assembly and manifestation; free expression, and petition.

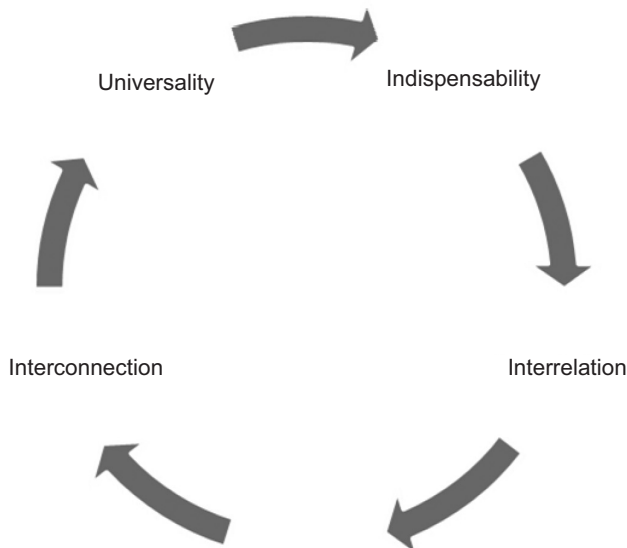
¹⁰⁸ *Dictionary of Contemporary International Law*, 2003, 54.

The group of social, economic and cultural rights includes the interconnected right to property, labor; education; protection of health; social security; join trade unions; vacation and leisure.

Generations of Human Rights

Human rights theory is classified into several generations. Civil and political rights belong to the “First Generation”. These are the oldest rights. The “Second Generation” encompasses social, economic and cultural rights. Their significance was exposed at the end of the 19th century. The “Third Generation” is collective rights which have developed since the 1960s.

All three generations of rights are universal, interrelated, unalienable, and interconnected. “Three Generation Theories” do not imply their hierarchical character. However, this type of classification perfectly demonstrates the path of development of world political ideologies, directions of national constitutionalism, and the record of introducing human dimension in the area of international law.

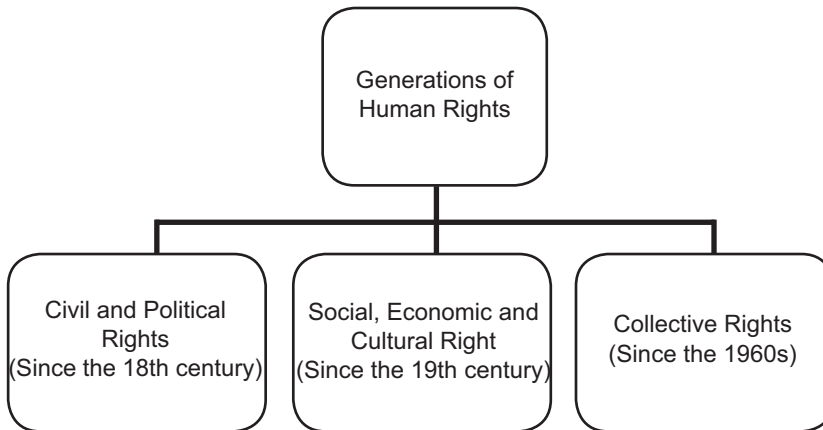


The interrelated character of human rights was approved at the 1993 Vienna Conference.

CHAPTER 2.9

“First Generation” Human Rights – Civil and Political Rights

“First Generation” human rights cover civil and political rights. The principle of dividing rights into generations is reflected in every international document and acting constitution.



Civil and Political Rights

Civil and political rights are “First Generation” human rights. These are: right to life; personal security; prohibition of torture; freedom of speech; freedom of thought; conscience and religion; security of private life; freedom of movement and free choice of residence; freedom of conscience; presumption of innocence; confidentiality of private information; right to receive and get familiar with information; protection by the court; right to fair trial, and membership in association¹⁰⁹.

First Generation rights were formed in the wake of the Bourgeois Revolution, and it was first reflected in the US Bill of Rights, as well as in the French Declaration of the Rights of Man and of the Citizen.

Civil rights and freedoms:¹¹⁰

- Right to life
- Right to dignity

¹⁰⁹ *International Human Rights Dictionary*, 199.

¹¹⁰ Zaza Rukhadze, *Georgian Constitutional Law* (Tbilisi, 1999)

- Prohibition of torture
- Prohibition of discrimination
- Right to personal security
- Right to fair trial
- Right to security of private life
- Presumption of innocence
- Freedom of speech, opinion, conscience, confession and religion
- Freedom of movement.

Right to Life

The Right to Life is a fundamental right of an individual. Right to life starts from the moment of birth and ends at the time of death, i.e. termination of the operation of brain cells. Right to life, on the one hand, forbids the state to infringe upon the right of an individual (negative obligation) and, on the other hand, obliges the state to secure effective protection of the right to life (positive obligations of states). Right to life is protected in any circumstances and guaranteed in international acts, as well as in national constitutions and legislation.

Article 25 of the Georgian Constitution states that “everyone has an inviolable right to life.” This right is protected by the legislation of Georgia, which means that the state shall adopt such legal acts that shall declare murder as a punishable action and hold the offender accountable for this crime. According to the Criminal Code of Georgia, violation of the right to life is deemed as a criminal offence¹¹¹.

Protection of the right to life means invalidation of capital punishment as a criminal sanction. Under the Law of November 11, 1997¹¹², “On Abolition of Death Penalty as a Special Form of Punishment,” the death penalty was abolished in Georgia and it was substituted with life imprisonment.

The right to life is a “natural right.” There are rights which cannot be deprived, however, in certain cases deprivation of life is not punishable by law (e.g. killing of the enemy forces during an armed conflict; killing of the aggressor in defense, if the action is not beyond necessary and reasonable).

¹¹¹ Criminal Code of Georgia, Article 108 (Premeditated murder), Article 109 (Premeditated murder under aggravating circumstance), Article 110 (Mercy-killing), Article 111 (Premeditated murder under sudden heat of passion), Article 112 (Infanticide with malice aforethought/premeditated murder of an infant by the mother), Article 113 (Manslaughter beyond necessary defense), Article 114 (Manslaughter beyond measure necessary for catching criminal), Article 115 (Bringing to the point of suicide), Article 116 (Manslaughter without due caution and circumspection).

¹¹² Kote Kublashvili, *Basic Rights* (Tbilisi, 2003), 123-126.

Inviolability of Honor and Dignity

Rights and freedoms recognized by the Universal Declaration of Human Rights begin with the acknowledgement of honor and dignity of an individual.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood

Universal Declaration of Human Rights, Article 1

All international documents and national constitutions refer to human dignity and respect. For example, on a national level, the notion of the dignity of an individual was first reflected in the 1949 Constitution of the Federal Republic of Germany:

The dignity of man is inviolable. To respect and protect it is the duty of all state authority

Article 1

Dignity is possessed by everyone regardless of whether an individual is the citizen of a particular state, a stateless person or an alien.

“Being an individual, all men have dignity regardless of the society’s opinion on him/her or his/her subjective self-appraisal. Respect of a man’s dignity implies personal dignity of all people, the deprivation and restriction of which is prohibited. Dignity is the right and simultaneously fundamental constitutional principle, which serves as a ground for human rights. Infringement upon dignity always entails violation of others’ rights. Dignity is not an exclusive right of separate groups. Dignity is possessed by every person and any kind of differentiation in this respect is prohibited¹¹³. Dignity of a person is extended to unborn human beings (still in the womb)¹¹⁴, deceased persons, and memories of the deceased.

Dignity and honor differ from each other. “Honor” means an objective assessment of a person’s features and capabilities by the society, i.e. society’s attitude towards a person. “Dignity” means subjected self-assessment by a person. Dignity and honor are indissoluble notions. For this reason, the Constitution of Georgia refers to them as to one separate notion.

¹¹³ The right to life is protected from the moment of conception by American Convention on Human Rights, Article 4.

¹¹⁴ “Inviolability of Honor and Dignity of an Individual”, <http://legalportal.ge>.

Prohibition of Torture

The Constitution of Georgia relates torture to the infringement of dignity:

1. Honor and dignity of an individual is inviolable. 2. Torture, inhuman, cruel treatment and punishment or treatment and punishment infringing upon honor and dignity shall be impermissible. Physical and physiological compulsion of a person deprived of liberty or other restrictions of liberty shall be impermissible.

Article 17, Constitution of Georgia

Torture is prohibited by a number of international documents (Universal Declaration of Human Right, Article 5; International Covenant on Civil and Political Rights, Article 7; European Convention for Protection of Human Rights and Fundamental Freedoms, Article 3).

- According to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, adopted under the aegis of the United Nations, torture is considered to be any act which is aimed at: intentional infliction of severe pain or suffering, whether physical or mental, on a person for obtaining from him, or a third person, information or a confession;
- Punishing him for an act he or a third person has not committed or is suspected of having committed;
- Intimidating or coercing a third person;
- Torturing for any reason based on discrimination;
- Inflicting pain or suffering by or at the instigation of or with the consent or acquiescence of a public official;
- Inflicting pain or suffering by other person acting in an official capacity.

In this context, “cruel and degrading treatment” and “punishment” are legal terms. They fall under the term – inhuman treatment, which has a particular aim and purpose: subjecting a person to such conditions, the result of which is an inhuman treatment. Under the Criminal Code of Georgia, the following acts are punishable: torture, intimidation of torture, degrading and inhuman treatment¹¹⁵.

The number of victims subjected to torture and the extent of torture facts is higher in the society where the rule of law is not operating. Torture, cruel, inhumane or degrading treatment is primarily found in places of restriction of liberty – closed institutions, such as: police custodies, detention facilities and punishment cell. Torture frequently takes place in elderly care houses, orphanages, and psychiatric institutions.

¹¹⁵ *Criminal Code of Georgia*, articles 144¹, 144² and 144³.

All international documents provide for absolute prohibition of torture, inhumane or degrading treatment in any complicated circumstances, whether it is an organized terrorism or fight against crime.

Prohibition of Discrimination

*"I am so tired of polemics, privileges, fanaticisms!
... You just see the Human in me.
You respect me as an envoy of beliefs, manners, personal loves.
You are not offended by my otherness, whereas it augments you."*

Antoine de Saint-Exupéry, 1994

Numerous international documents cover the issue of discrimination:

- Universal Declaration of Human Rights (1948);
- International Covenant on Civil and Political Rights (1966);
- International Convention on the Elimination of All Forms of Racial Discrimination (1969);
- European Convention for Protection of Human Rights and Fundamental Freedoms (1950), with additional Protocols;
- Convention on the Elimination of All Forms of Discrimination against Women (1979);
- Convention on the Rights of the Child (1989);
- Additional Protocol N12 to the European Convention for Protection of Human Rights and Fundamental Freedoms¹¹⁶;
- Convention on the Suppression and Punishment of the Crime of Apartheid (1973);
- Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War (1978);
- International Labor Organization (ILO) Convention on Discrimination (Employment and Occupation) (1958);
- United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education (1960) and other international legal documents which prohibit all forms of discrimination.

According to the Constitution of Georgia of 1995: everyone is free by birth and is equal before law regardless of race, color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence¹¹⁷.

¹¹⁶ Georgia ratified Protocol N12 on March 30, 2001.

¹¹⁷ *Constitution of Georgia*, Article 14.

Discrimination means any restriction to human rights based on social, racial, national, language, sex, political, religious or other opinions, as well as property, age, social and other conditions. For example, we can apply the Convention on the Elimination of All Forms of Discrimination against Women according to which: “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

International and national mechanisms for the protection of human rights are mainly focused on the protection of an individual from discrimination by the state.

The principle that all men are equal by birth and enjoy equal rights is a cornerstone for human rights. The notion of equality stems from each person and is reflected in every international or national document.

Citizens of Georgia shall be equal in social, economic, cultural and political life irrespective of their national, ethnic, religious or linguistic belonging. In accordance with universally recognized principles and rules of international law, they shall have the right to develop freely, without any discrimination and interference, their culture, to use their mother tongue in private and in public¹¹⁸.

Discrimination May be Expressed by Different Actions:

- Giving preference to somebody in equal conditions (e.g. giving preference to men over women while employing a person);
- Selecting on the basis of race, sex, ethnic features (e.g. differentiation of students by color);
- Restricting some action (e.g. restriction of public rituals by representatives of religious minorities).

Grounds for discrimination: race, ethnic and national origin, sex, religious, political and other opinions, age, color, language, property, physical or mental condition. Recently, differentiation on the basis of genetic features is seen as the grounds of discrimination. There are divergences between direct and indirect, as well as - “positive” and “institutional” discriminations.

¹¹⁸ *Constitution of Georgia*, Article 38.1.

Discrimination may be manifested by intolerance, racism, racial discrimination, xenophobia, and apartheid, statements on instilling of hatred, allowing the existence of zones of segregation and prejudice, as well as homophobia.

Intolerance (person and group of persons) – negative attitude by a state, non-governmental organization, enterprise management, etc. towards another person or their groups based on factors, such as: race, color, language, religious, citizenship, and national or ethnic origin.

Racism – belief of a person or group of persons that race, color language, religious, national or ethnic origin can be a ground for disrespect, hatred and discrimination towards other groups. A person justifies its group's (members') claim in their advantage over the rest of the people or groups¹¹⁹. Nazism is an expression of racism.

Racial Discrimination – any distinction, exclusion or restriction or giving preference on the basis of race, color, national or ethnic origin with the aim of recognition and refusal, or lack of abilities to exercise the principles of equality, human rights and fundamental freedoms in the fields of political, economic, social, cultural, civil or any other field of social life.

Xenophobia (Greek word, meaning “fear of foreigners”) - anxiety characterized by negative stereotypical attitude and predisposition of all strangers; in other words, hatred of foreigners. Social and cultural phenomena for xenophobic perceptions are the division of the world by “Ingroups/Us” (good) and “Outgroups/Others” (bad/strangers). This fear is manifested by not accepting and having a hostile attitude towards dissimilar people.

Apartheid – form of discrimination expressed by isolation of national or ethnic, religious or linguistic groups and their members from the society.

Statement instilling hatred - any statement (oral or written) aimed at instilling hatred towards a group of people based on particular features of these people - race, color, religion, citizenship, national or ethnic origin. Statements instilling hatred do not fall within the framework of freedom of speech and are prohibited both under international law and national legislation.

Segregation – isolation of a certain ethnic or racial group from society, imposing or obstructing factual restrictions over this group or its members, placing them in special

¹¹⁹ *International Human Rights Law*, 2005, 158-159.

settlements, restricting their freedom of movement, or introducing separation in the field of education. Segregation is a component of racial discrimination and apartheid.

Prejudice – antipathy of others originating from incorrect and strict generalization and negative pre-judgments¹²⁰.

Homophobia – fear or hatred of homosexual minorities, their life-style or, generally, people of different sexual orientation¹²¹.

Right to Personal Inviolability

Right to Personal Inviolability - Liberty of an individual is inviolable (Constitution of Georgia, Article 18). “Everyone has the right to liberty and security of person” (European Convention for Protection of Human Rights and Fundamental Freedoms, Article 5.1). The said right means that the state shall refrain from and not allow such actions that infringe upon the liberty of a person. Everyone shall have the right to liberty, which may be limited only in exceptional cases. It is obvious that this right is not absolute and it may be subject to restrictions by the state. In the course of restricting the right to personal liberty, the state shall meet procedural guarantees: restriction of liberty is impermissible without a court judgment.

The above right provides for the protection of persons against unlawful detention and arrest. Everyone has the right to liberty and security of person. “No one shall be subjected to arbitrary arrest or detention (International Covenant on Civil and Political Rights, Article 9.1). A state that deprives a person of his/her liberty undertakes an obligation to protect his/her security and welfare and not inflict more torture on him/her than that has already resulted from the restriction of liberty itself.

Rules and procedural guarantees for the restriction of the right to personal inviolability are secured in the Constitution of Georgia and Criminal Procedure Code.

Restriction of liberty does not solely cover detention or arrest of a person (e.g. putting on handcuffs). It may be manifested in the form of coercion of a person not to leave a certain place or territory (e.g. room, city).

The Law of Georgia on Psychiatric Assistance provides for restriction of liberty. It stipulates for putting a person in a psychiatric hospital in case of mental disorder.

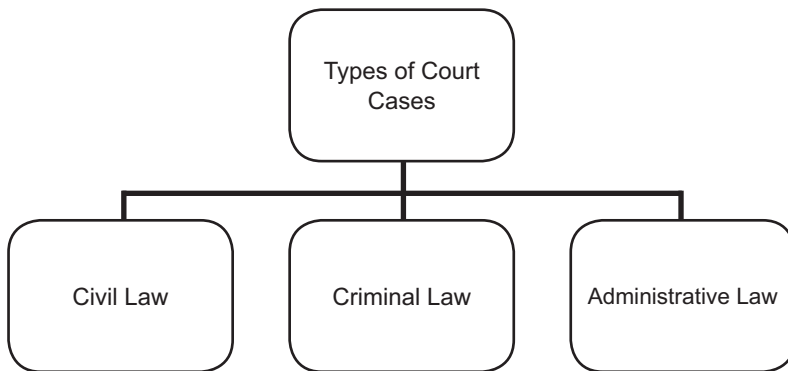
¹²⁰ M. Mitagvaria, *Grounds for Diverse Management* (Tbilisi, 2010), 7.

¹²¹ While defining the terms, we were guided by Civil Encyclopedic Dictionary web-site of the Parliament of Georgia (<http://nlpg.gov.ge>).

Right to Apply to a Court

Right to apply to a court implies the ability of a person to appeal to court against the actions or omissions of state authorities, social organizations, public officials, and other physical legal persons. The court is obligated to examine cases under its jurisdiction. This right is guaranteed by Article 42 of the Constitution of Georgia, as well as by the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and European Convention for Protection of Human Rights and Fundamental Freedoms.

Justice is administered by general courts in Georgia.



Fair trial is an indispensable part of rule of law. The latter is based on respect for law, and adoption of indiscriminate laws. For realization of the right to fair trial, existence of such system of court, police and prosecutor is necessary, which is based on democratic principles, and guarantees protection of society's interest. It is vital that these bodies are monitored by the society for the protection of human rights. The said right also implies the principle of equality and competence of the court. All parties are equal in the proceeding, which means that parties of the proceedings shall possess equal opportunities to present their positions¹²².

Everyone has the right to apply to an independent, fair and impartial court for the protection of his/her rights and freedoms. Justice shall always be accessible. Guaranteed equality is one of the key principles of the rule of law.

The right to a fair trial is an inviolable right, not subject to restriction and equal for every kind of court whether national, international or a military tribunal.

¹²² Equality does not mean similar treatment. When the facts are different, principle of equality requires diverse treatment. *Human Rights*, 72.

Right to fair trial covers the following issues:

- Civil rights and obligations;
- Criminal charges;
- Right to public hearing;
- Independence and impartiality of a court;
- Fair examination of the case;
- Participation of a party in the examination of the case;
- Right of a person not to give an evidence against him/herself (“Right to Silence”);
- Equality and competition of parties;
- Right to receive a well-founded court judgment;
- Presumption of innocence;
- Detailed information on charges;
- Adequate time and means for preparation of defense;
- Right to legal assistance;
- Right to call upon witnesses and question, and
- Right to use a translator.

The above right applies to the entire proceedings. “Guaranteed right to fair trial on the accessibility of justice would be illusory if the domestic legal system allowed a final, binding judicial decision to remain inoperative¹²³.”

A number of issues are related to the right to a fair trial:

- **Principle of rationality of punishment and its correspondence with the offense.** Punishment shall be lawful, shall not imply torture, cruel, inhumane treatment and abuse of dignity and respect. It shall comply with the severity of crime and the charges of the offender;
- **There is no crime without conviction** (*nulla poena sine culpa*). Every person shall only be accused for the crime which he/she has committed intentionally or by circumsppection;
- **Presumption of innocence** - An individual shall be presumed innocent until the commission of an offense by him/her is proven in accordance with the procedure prescribed by law and under a final judgment of conviction;
- **No one shall be convicted twice for the same crime** (*ne bis in idem*);
- **No one shall be held responsible on account of an action, which did not constitute a criminal offence at the time it was committed** (*nulla poena sine lege*).

¹²³ *Hornsby v. Greece*. 19.03 (1997).

Jury

While talking about the right to fair trial, it is essential to refer to the institute of the jury, which is currently being established in Georgia. Setting up the institute of the jury involves citizens in the implementation of justice.

The new Criminal Procedural Code of Georgia (09.10.2009) provides for 12 jurors. They listen to the opinions of a prosecutor and defense lawyers; study case files in the course of the proceedings and listen to the explanation of the judge. After the examination of the case, the jury renders a verdict stating whether the person is guilty or not. Based on the verdict, the judge delivers a judgment in accordance with the law.

Any person over the age of 18, and registered in the database of the Civil Registry of Georgia, can become a juror. The juror should know the language of the criminal proceeding; reside in the territory under the court's jurisdiction; and not have restricted physical and mental abilities which prevent him or her from performing jury obligations.

The following persons may not act as jurors:

- Public officials;
- Investigators;
- Policemen/women;
- Member of the Georgian armed forces;
- Ecclesiastics;
- Participants of the concerned criminal proceeding;
- Convicted persons;
- Persons who have received administrative penalty for the use of narcotics in small quantities;
- If the participation of a person in the case as a juror is clearly unfair based on the opinion and personal experience of this person;
- Psychologists;
- Psychiatrist; and
- Lawyers.

Performance of juror responsibilities is an obligation of every citizen, and non-fulfillment of these obligations without any rational excuse results in liability. A person is entitled to reject the performance of juror responsibility if he/she:

- a. Acted as a juror in the preceding year;
- b. Performs such duties, where his/her substitution may cause significant damage;
- c. Suffers from health problems;

- d. Permanently resides or is abroad;
- e. Is over the age of 70.

Initially, the institute of the jury will operate only in the capital city and merely examine crimes committed under aggravating circumstances.

Right to Inviolability of Private Life

Right to inviolability of private life covers a wide spectrum of various other rights. Private life is a diverse concept, which is not subject to wide definition.

Inviolability of private life implies the following issues:

- Private life of a person, as well as the lives of his/her family members, protection of personal rights of each family member (origin, birth data, change of a name or sex, sexual life, permission of abortion, problem of euthanasia, medical records, marriage, divorce, adoption, etc.); issuance of private information;
- Private life that goes beyond the boundaries of family life (relationship between adopters and adoptees, relations of married persons, relationship between unmarried parents and their children);
- Life without illegal supervision;
- Freedom, secrecy of phone conversations, inviolability of correspondence;
- Collection of information by a state authority on a person without his/her consent;
- Immigration, deportation, expulsion issues;
- Respect for private life of convicts, and
- Confidentiality of convicts and lawyers.

Documents containing information on private life cannot be shared without one's consent. This includes information such as sex of the person, his/her marital status, place of birth, physical appearance, as well as other official data of private nature. Dissemination of this type of information about him/her without the prior consent of the concerned person is an infringement of his/her private life. The following acts are punishable by the Criminal Code of Georgia:

Disclosure of personal or family secrets - Illegally obtaining, withholding or spreading personal or family secrets (Article 157);

Disclosure of secret of private conversation - Illegally recording through technical means or spreading this information (Article 158);

Disclosure of privacy of personal correspondence, telephone conversations or other messages - Illegal disclosure of confidential personal correspondence or post conversation received or transmitted over the telephone or other technical means, or messages received or transmitted via telegraph, fax or other technical means;

Encroachment upon inviolability of house or other possessions - Illegal intrusion into, search or any other actions upon the house or other possessions against the will of the owner, encroaches upon the inviolability of the house or other possessions (Article 160).

Illegal collection of fingerprints, photos or other types of private information by the police shall be considered as infringement upon private life, regardless of whether the dossier of the police is classified¹²⁴. Furthermore, private expenditures and information containing income tax returns, as well as issues related to health of an individual are deemed to be within the context of private life.

Non-accessibility to state records (information) concerning oneself is considered a violation of private life. In the proceeding of the European Court of Human Rights – “Gaskin v. the United Kingdom,” the court held that information on the applicant concerned personal aspects of his childhood, development and history. Consequently, the lack of access thereto was a violation of his private life.

Infringement of one’s private life may occur in every field of life. It may be in the form of the publication of private information of a person without his/her consent; e.g. information on the health of an individual. A healthcare provider is obliged to protect the confidentiality of a patient’s information possessed by the provider during the patient’s life and also after his/her death (Law of Georgia on the Rights of a Patient, Article 27).

The refusal of the state to disclose to a person, his/her private information collected by the state, is a violation of the said right (if this information does not contain state secret). Rules on disclosure of information are regulated by the General Administrative Code of Georgia.

The right to private life is stipulated by Article 20 of the Constitution of Georgia, which refers to inviolability of correspondence and residence. Right to private life is not an absolute right. The state is authorized to interfere in the exercising of this right under a court decision or even without it, in instances of urgent necessity as determined by the law (e.g. fighting against terrorism, interception of telephone conversations, lustration and surveillance of correspondence of a suspected terrorist). Search of residence is

¹²⁴ B. Bokhashvili cited work, 262-263.

interference in private life. In order to consider this procedural action lawful, it shall be carried out under the judge's order. In case of pressing necessity¹²⁵, a search might be conducted without the judge's order under the decision of the prosecutor. However, the judge shall be notified about the search within 24 hours. The judge, after studying the case files shall render a decision on the lawfulness or unlawfulness of the search, as well as decide on the admissibility or inadmissibility of the obtained evidence.

Presumption of Innocence

Presumption of innocence is a fundamental right of an individual and means a person is to be presumed innocent until he/she is proven guilty in accordance with the final judgment of the court. The burden of proof shall fully rest with the prosecutor, i.e. the state. "Presumption of innocence requires that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused¹²⁶."

Freedom of Thought, Conscience, Religion and Belief

Freedom of thought, conscience, religion and belief are often discussed in the same context, and they are deemed as integral elements of freedom of expression. These rights fall within the circle of the intellectual and mental life of an individual. In addition, these rights are not limited by citizenship, sex, or age (the latter is enshrined in the Convention on the Rights of the Child).

Freedom of conscience protects decisions taken by a person on the basis of his/her conscience, i.e. moral decisions, focused on "good" and "bad." Freedom of conscience covers, on the one hand, inner emotions of an individual and, on the other hand, external expression of conscience, which is revealed in his/her behavior.

Freedom of speech is closely linked with freedom of thought. "Thought" means any evaluative expression which consists of elements of judgment, attitude, assess-

¹²⁵ **Urgent Necessity** - traces of a crime, existence of a real threat of destruction or loss of material evidence, also such cases, when a person is caught *flagrante delicto* (when a criminal has been caught in the act of committing an offence), or detection of material evidences and objects necessary for opening the case in the course of investigation and inspection of the place where the crime was committed and it is impossible to obtain judge's order immediately.

¹²⁶ Barbera, Messegue and Jabardo v.Spain, 6.12.1988. See, K korkelia, I. Qurdadze, *International Law on Human Right under the European Convention on Human Rights, Tbilisi*, 2004, 168.

ment, accuracy, and inappropriateness of which is entirely founded on personal impressions¹²⁷. Freedom of thought protects not only an opinion prepared in advance and supported with arguments, but also controversial, sensitive, hasty, absurd, and rude expressions.

Freedom of thought covers the rights of every individual to possess his/her own opinion with respect to certain matters, decide him/herself what to think, what to believe in and what to say, or refrain from expressing anything. Freedom of thought means freedom of an individual to express his/her opinion without censorship. There are various ways to express opinions: orally, in a written form, demonstrations, rallies, means of media, art works, any gathering (e.g. silent walking in protest of something).

Freedom of Speech is an essential part of freedom of expression. The latter is a “framework right,” which consists of components, such as, the freedom of information and media. These rights cover freedom of speech. The latter is a fundamental universal value which serves as a ground for human rights and determines the dignity of a person.

As a medium for expression of thoughts, freedom of speech is significant in the formation of state policy and control, and as to how the state fulfills its obligations undertaken before the people.

Freedom of speech is not an absolute right and thus it may become subject to restrictions. Limitation of this right may take place:

- In accordance with law;
- If it threatens democratic society;
- If it is aimed at protection of legal welfare; and
- In case it violates the rights of others.

Moreover, freedom of speech will be restricted in the following circumstances:

- There is a threat against national security and territorial integrity of the state;
- There is a threat against social welfare and peace;
- Society faces unrest or there is a need for immediate suppression of crime;
- Citizen or health of a citizen and/or society ethics is in danger; and
- Rights or reputation of others are infringed or are at stake.

¹²⁷ Kote Kublashvili, *Fundamental Rights* (Tbilisi, 2005), 213.

Realization of freedom of speech is carried out mostly through press and media. The level of democracy in the society is determined by the quality of the freedom of media. This right is related to receiving and spreading information. In addition, this right covers the right of a society to be adequately informed on important issues for the society.

Freedom of religion and belief implies the right of an individual to follow the religion he/she chooses. Freedom of religion refers to the inner freedom of a person as well. This right also covers those people who do not believe in any religion (atheists). An individual has a right to publicly express, or not to express his/her religious beliefs. As it is understood, freedom of belief means an inner world of an individual, as well as external expressions of his/her beliefs – perform religious rituals, publicly manifest and disseminate his/her beliefs, live in accordance with his/her beliefs, and spread decisions taken on the basis of his/her religion. Hence, freedom of religion is the rights of an individual to live, act, and lead his/her activities pursuant to his/her religion and inner beliefs.

Protection of freedom of religion is provided not only by recognized and traditional religious groups, but by the followers of any other religious associations. An individual and society shall respect other religious beliefs; in addition, the state is obliged to protect any beliefs and confessions of any person. Consequently, freedom of religion and belief is founded upon the principle of tolerance.

Freedom of religion is subject to restrictions by the state. If a religious belief endangers or infringes upon the rights of others, restrictions are imposed by law in accordance with the interests of public security and for the purpose of protection of public order, health and ethics.

Confession is a public manifestation of an action performed in accordance with a person's own belief, as well as decisions taken on its basis.

Liberty of Movement and Freedom to Choice of Residence

Liberty of movement and freedom to choice of residence is the ability of a person to freely move and choose his/her place of residence, as well as to leave and enter the state territory in accordance with the law (e.g. a citizen of Georgia having French visa is entitled to enter the territory of France).

This right is exercised by the citizen of a state, as well as by an alien, stateless persons and persons possessing dual citizenship.

These rights may be restricted by the state. Grounds for restrictions are the following:

- It is necessary for the democratic society;
- It is important for securing national security or public safety; and
- It stems from the interests of protection of health and prevention of crime or administration of justice.

The state may require special permission, a visa, for crossing state boundaries. In addition, freedom of movement may be restricted for the purpose of security of a person. For instance, movement may be limited in the zone of natural disaster or the territory where military exercises take place.

CHAPTER 2.10

Political Rights

Political rights and freedoms, as well as civil rights, represent “First Generation” human rights and they are an outcome of extended struggle. Political rights were initiated in Bourgeois Revolution and have been mainly drawn up during the course of the revolutions and civil wars. The bloody French Revolution gave birth to the creation of the French Declaration of the Rights of Man and of the Citizen. Similarly, the U.S. Declaration of Independence was achieved through the fight for independence in America and subsequent civil war.

Realization of political rights is an opportunity for a citizen to participate in political life of a society and exercise authority directly or through the representative body. Through these rights citizens are able to influence the execution of authority.

Political rights are:

- Right to participate in the government of the state;
- Right to vote;
- Right to establish unions and associations; and
- Freedom of assembly and manifestation.

Right to Participate in Government

The right to participate in government means ample participation of citizens in the government of the state, as well as in the process of decision-making directly (by means of referendum) or through representatives (through election of representatives in central and local bodies)¹²⁸. Exercising of his/her freedoms by a citizen is an indication of the level of civil knowledge and skills of ideals of a democratic society, as well as of the loyalty to the principles of morals and ethics, and participation in public life. The state shall assist the citizen to express his/her position to its maximum extent.

Citizens of Georgia enjoy equal rights to participate in the government of the state. Only Georgian citizens are entitled to participate in this process. According to Article 29 of the Constitution of Georgia, every citizen of Georgia shall have the right to hold any state position if he/she meets the requirements established by legislation. The same right is guaranteed by international instruments.

Right to Vote

Participation of a citizen in the government of the state is carried out through elections. Elections are not held for the sake of elections, its aim is to provide people the opportunity to exercise their rights and participate in the government of the state. The right to vote means the right of an individual to vote and be voted in the representative body of the state. These bodies are established through elections. In order to be elected in state governmental bodies, a person shall meet certain requirements: age, citizenship, etc. (Law of Georgia on Public Service, 1997).

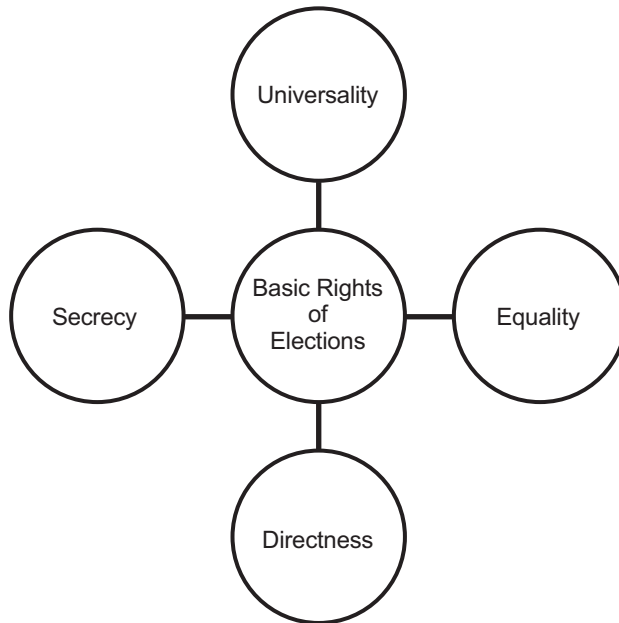
The right to vote is classified into: active right to vote and passive right to vote.

The active right to vote is the right of a citizen to participate in general elections and referenda held for the election of representatives of people in the legislative body of the state, as well as election of public officials in public authority. Under the Georgian legislation, every citizen of Georgia, who has attained the age of 18, recognized as legally capable by a court or not detained in a penitentiary institution following a conviction by a court, has an active right to vote.

The passive right to vote is the right of a citizen to be run for office in the legislative body of the state and be elected as a public official in public authority.

¹²⁸ See Section One.

A citizen can become a member of the Parliament of Georgia after reaching the age of 25; similarly, a citizen can be elected president upon reaching the age of 35. Furthermore, presidential candidates must have lived in Georgia for at least five years, and for the previous three years preceding the elections.



Election Code of Georgia (As amended March 12, 2010), Article 4.

Immediate participation in the government of the state is possible through referendum ¹²⁹, i.e. by means of popular ballot.

Freedom of Association

Freedom of Association means to establish public associations, trade unions, and political parties, freely join them and participate in their activities. It also implies the right of a person not to join and participate in any of the public associations, trade unions and political parties ("negative freedom of association").

The aforesaid right is enshrined in Article 26 of the Constitution of Georgia, and Organic Law on Political Associations of Citizens (1997). It is obvious from the Constitution's

¹²⁹ Referendum – popular ballot for taking final decision on highly important state matters.

article and the title of the Law that the above right is solely the right of the citizens of Georgia. The state is entitled to impose restriction on the political activity of citizens of a foreign country and stateless persons (Constitution of Georgia, Article 27).

The Civil Code of Georgia stipulates the rules for establishing public associations and for their activities (Article 24-40). A public association may exist in organizational-legal form of non-commercial legal entity of private law.

Political party is one of the forms of public association. Political party is a voluntary political association of citizens based on mutual ideology and organization (Law of Georgia on Political Association of Citizens, Article 1).

Freedom of association is not an absolute right. It provides for some restrictions for certain categories of citizens. Political party membership shall be taken away from an individual, who is:

- Enrolled in armed forces;
- Serving in the personal units of state security agencies;
- Serving in the personal units of the bodies of internal affairs;
- Designated as a judge; or
- Appointed as a prosecutor.

Freedom of Assembly

Freedom of assembly means the right to public assembly without arms either indoors or outdoors without prior permission. This right is linked with the freedom of expression. Freedom of assembly is ensured by international documents, Article 25 of the Constitution of Georgian, and Law of Georgia on Assembly and Manifestations (1997).

The right to assembly is protected in both forms: public or private, political or non-political. Sudden and spontaneous assembly of people does not fall under the protection of the said right.

'Assembly' means a gathering of a group of citizens indoors or outdoors or a public meeting to express solidarity or protest; "manifestation" means a public demonstration, mass public uprising, or a march in the street to express solidarity or protest, as well as a march using posters, slogans, transparencies, and other visible tools.

Law of Georgia on Assembly and Manifestations, Article 3

According to Article 25 of the Constitution of Georgia, the right to freedom of assembly is exercised by physical persons, regardless their citizenship, as well as legal entities, which are expressed in the following words: “Everyone has a right.”

In spite of the fact that assembly does not require prior notification of state authorities, it is necessary in instances when manifestations are held in crowded places. The Law of Georgia on Assembly and Manifestations stipulates for only break up and not prior prohibition of assembly and manifestation. The latter is a last resort action and is applied in circumstances, when there is a “call for subversion or forced change of the constitutional order of Georgia, infringement on independence or violation of territorial integrity of the country, or such a public statement, which constitute propaganda of war and violence and trigger national, ethnical, religious or social confrontation (Law of Georgia on Assembly and Manifestations, Article 4.2).

State authorities shall ensure adequate conditions for organizing and holding an assembly or manifestation. Government institutions, officials and citizens may not obstruct an organization and holding of an assembly held in observance of this Law as a public expression by citizens of their views. Infringement upon the right of mass media to obtain and distribute information on an assembly is punishable by law (Law of Georgia on Assembly and Manifestations, Article 12).

Contrary to the freedom of assembly, which might carry political or nonpolitical nature, the right to strike is the right of social character. **Right to strike** means the labor right of persons employed in the same job, as well as their particular set requirements with regards to the administration (e.g. increase of vacation and leisure time, raising of salaries, etc.).

CHAPTER 2.11

Social, Economic and Cultural Rights

Only since recent times, social, economic and cultural rights have been reflected in state legislation and international documents. From the 17th to 19th centuries human rights documents referred to merely civil and political rights.

In 1941, the President of the United State of America, Franklin Delano Roosevelt in his presidential speech stated that “True individual freedom cannot exist without economic security and independence. Necessitous men are not free men. People who are hungry and out of a job are the stuff of which dictatorships are made.”

Contrary to civil and political rights, realization of social and economic rights consumes a certain period of time. States undertake an obligation to take measures by rules within the framework of international assistance and available resources of cooperation to gradually secure complete exercising of rights envisaged in the Covenant through all appropriate measures, including taking legislative measures. Civil rights do not entail any expenditure from the state and these rights shall be exercised immediately within a reasonable time. For instance, a state shall take immediate measures against the torture of a person. While social and economic rights may be exercised gradually, their protection requires certain expenses.

Unresolved social problems and economic poverty hinder enjoyment of civil and political rights.

The package of social rights contains three fundamental directions:

- **Adequate standard of living**¹³⁰. Exercise of this right requires that every person shall have necessary living standards: food, clothing, housing and medical care, as well as the right of the family to receive assistance¹³¹.
- **Right to property**¹³² is the right of an owner to freely possess and use the property (object) within the framework of the law and conventional obligations, not to permit the use of this property by other people. Its disposal is not an abuse of this right if it does not infringe upon rights of neighbors and third parties. Every physical and legal person has the right to peacefully own his/her own property. No one shall be deprived of property, except for those circumstances when it is carried out for public well-being and in accordance with law. The right to property is based on the right to labor.
- **Labor rights**¹³³ cover various rights and obligations related to it. It is not a separate right. The word "labor" is considered as a provision of service to other people and receiving remuneration under the supervision of those people and for this service.
- **Right to social care**¹³⁴ is the right to healthcare.

¹³⁰ *Universal Declaration of Human Rights, Article 25; International Covenant on Social, Economic and Cultural Rights, Article 11; Convention on the Rights of the Child, Article 27.*

¹³¹ Asborn Eide, et al. *Economic, Social and Cultural Rights* (RWI, 2003).

¹³² *Universal Declaration of Human Rights, Article 17; I Additional Protocol to the European Convention for Protection of Human Rights and Fundamental Freedoms, Article 1; Neither International Covenant on Civil and Political Rights, nor International Covenant on Social, Economic and Cultural Rights contain this right.*

¹³³ *Universal Declaration of Human Rights, Article 23; International Covenant on Social, Economic and Cultural Rights, Article 6*

¹³⁴ *Universal Declaration of Human Rights, Articles 22 and 25; International Covenant on Social, Economic and Cultural Rights, Article 9; Convention on the Rights of the Child, Article 26.*

Right to property has a dual meaning, on the one hand, this is an economic right that ensures adequate living standards; on the other hand, this right is based on independence and freedom and is deemed as a civil right. A similar position is reaffirmed in the European Convention for Protection of Human Rights and Fundamental Freedoms (Additional Protocol No. I. Article 1).

Labor rights are recognized by the International Covenant on Social, Economic and Cultural Rights, the Convention of International Labor Organization, and the Convention on Abolition of Forced Labor. According to the European Social Charter, for efficient exercise of the labor right, discrimination in the fields of labor and employment is prohibited.

The right to labor is recognized by Article 30 of the Constitution of Georgia, and is a cornerstone of social rights. It is also closely linked with the right to property. The state does not ensure employment of every citizen; however, it does not mean that the state is not under positive obligations in the field of labor. The state is obliged to take effective measures to eliminate unemployment and create favorable working conditions.

During the Soviet era, the state was under the obligation to create jobs and ensure employment of its citizens. Accordingly, labor had a mandatory character during those times. Pursuant to the Constitution of Georgia of 1995, "Labor shall be free." This means that every person has the right to work and that he/she is entitled to choose freely. It determines the right of a citizen to choose the sphere of activity and profession, and enjoy state guarantees during unemployment. Unified statistical data shall be created in order to decrease poverty in the country, and for the purpose of advancement of social protection of the population.

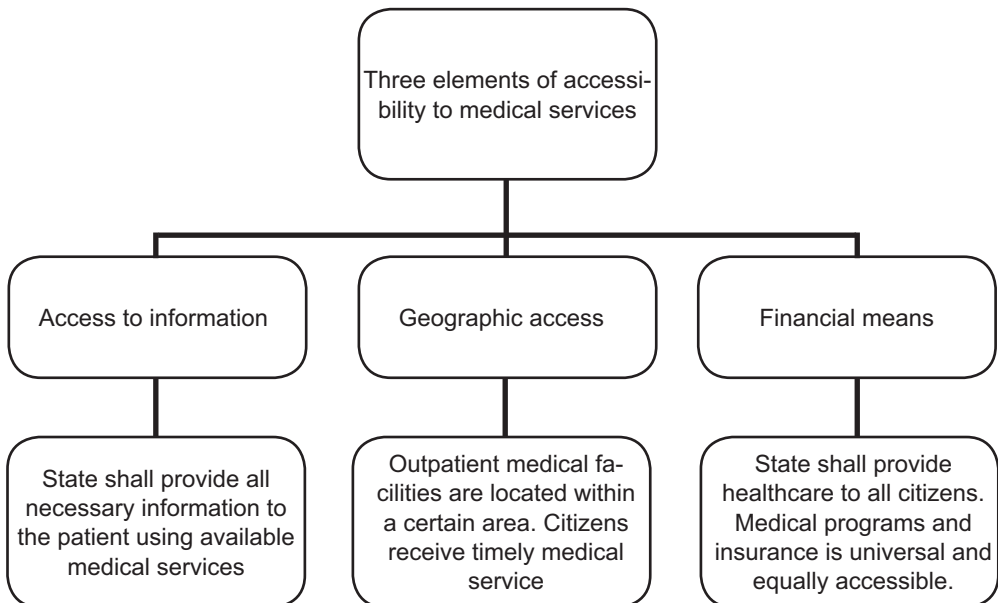
The right to health protection is incorporated in the documents adopted within the Universal Mechanism of Human Rights (UN), and also within the Regional Mechanisms (European Council, Inter-American system, African system). Nations recognize the right of every individual to the highest level of physical and psychological healthcare. To this end, states shall undertake efforts that are needed to:

- Ensure the reduction of the number of prenatal deaths, child mortality rates, and support healthy development of children;
- Create conditions for a hygienic environment and hygienic conditions of the industrial labor;
- Prevent and fight against epidemic, endemic, industrial related and other diseases;
- Create conditions to ensure medical aid to all and treatment in case of illness.

The individual right to health protection is the precondition of human welfare and dignity. No state can undertake a responsibility to ensure the health of all people; however, it is a state's positive obligation to create an adequate healthcare system. Furthermore, healthcare as a social right, together with other social rights, and depending on the state resources, implies phased and gradual realization of these rights. The right to health protection is a right enforceable by the court. The state provides accessibility of healthcare services. Healthcare services shall be accessible for all. Equal access to healthcare services is ensured through government programs, which implies that a patient receives specific services within the relevant program in accordance to his/her social status, diagnosis of a disease, age-specific program, or in forms of services (hospital, outpatient). The customer's level of satisfaction defines the standards of health services¹³⁵.

Georgian citizens are entitled to receive all medical services existing in the country, which meets all established professional and customer standards. That is, medical service should be provided to everyone within the state funded programs in accordance with customer standards.

Medical health service is defined by its informational¹³⁶, geographic and financial affordability.



¹³⁵ Marina Kvachadze and Irma Manjavidze, *Human Right to Health Protection and Access to Medical Service* (Tbilisi, 2010), 147.

¹³⁶ Posting relevant information on visible places in medical facilities, disseminating information in the media, providing clarifications by the medical facility administration members, and displaying of special brochures, posters as well as other materials in publicly visible places, etc.

The right to health protection is declared by Article 37 of the Constitution of Georgia. Various aspects of these rights, including the rights of physicians and patients are defined by different laws (for example, Law on Rights of a Patients, Law on Health Protection, Law on Rights of the Activities of Doctors, etc.).

The right to education is declared by the Human Rights Declaration, International Covenant on Civil and Political Rights, Convention on the Right of the Child, and the constitutions of every state.

Education may be defined as a process and also as a specific phase of the process. Prior to the enlightenment, education in Europe was mostly the prerogative of parents and church. State education only becomes a subject of particular attention in a society after the formation of a state. The state's obligation to provide education was first stipulated in the 19th century, in the 1849 Constitution of the German Empire. Since then, the right to education has been declared by the constitutions of all countries and international acts.

A state sponsored education system shall enable a person to freely realize his/her personality, exercise dignity, actively participate in the life of a free society, and support tolerance and respect of human rights.

According to Article 35 of the Georgian Constitution:

1. Everyone shall have the right to receive education and the right to freely choose the form of education;
2. The state shall ensure the compatibility of educational programs with international rules and standards;
3. Pre-school education shall be guaranteed by the state. Primary education shall be compulsory. The state shall provide basic education at its own expense. Citizens shall have the right to receive free secondary, professional and higher education at state educational institutions in accordance with a procedure and within the framework established by law.
4. The state shall support educational institutions in accordance with the procedure established by law.

Chapter Three

Human Rights Protection Mechanisms

This chapter refers to the issue of state obligations, and responsibilities of the society with respect to human rights protection. Special attention should be laid on the human rights institutional guarantee – the court. The role of the Ombudsman shall also be discussed. Furthermore, this part will touch upon the issue of other human rights protection systems on the national, as well as the international plane. Universal and European systems of human rights protection will also be explored. At the end of this part, you should be able to discuss the following issues:

- Guarantees for human rights protection on national, regional and international level;
- United Nations universal system of human rights protection;
- Mechanisms and procedures for the protection of human rights;
- National systems for the protection of human rights; and
- Human rights protection system under the Council of Europe (COE).

It has been demonstrated that countries around the world have different situations with regards to human rights protection. Protection of human rights is an essential part of our life and of vital importance for democracy. Contrary to the dictatorship regime, democratic society establishes civil control over the protection of human rights.

Restoration of infringed rights requires desire and effort from an individual. Moreover, fighting for human rights triggers the advancement and perfection of legal mechanisms, as well as the modification of judicial and administrative practices. As a result, every generation enjoys more rights than the previous ones.

A person who is unable to identify his/her rights and how to request their protection-restoration is more likely to become a victim of human rights violations than one who is both aware of the essence of the infringed rights and knows how to restore them: to whom, where and when to apply to oppose injustice.

Understanding human rights also implies freedom of choice. In particular, every person decides whether the restoration of infringed rights is worth fighting for. A refusal to fight for one's own rights does not mean that this right has been deprived of a person or he/she does not possess it anymore.

CHAPTER 3.1

Which Mechanisms Protect Human Rights on a National Level?

The mere existence of legislative acts, by which human rights are declared, is not sufficient. The Soviet Constitution of 1937 may serve as a best example when rights and freedoms of citizens were recognized. However, the 1930s was the very period when terror and repression was carried out severely.

For efficient protection of human rights it is necessary that the state establish special national level mechanisms through which human rights shall be protected. However, it is essential to create a mechanism for social control from the grassroots level of society. Any administrative system (whether it is state bodies or others) inclines towards ignoring human rights. Human rights may be ignored to the extent admissible by the opinion of the society, and till these violations are tolerable by the citizens and the society. Recent events in the Middle East (Egypt, Libya, etc.) illustrate that the citizens are not able to endure grave and systematic violations of human rights by the government.

There are **judicial** and **non-judicial mechanisms** of human rights protection within national-level institutions. Nevertheless, judicial guarantees are the most important. The Constitution confers judicial protection guarantees to citizens. Everyone has the right to apply to a court for the protection of his/her rights and freedoms (Constitution of Georgia, Article 42). Acceptance of such lawsuits by the court is the basis for recognition of their legitimacy as a guarantee, and initiation of the rule of law concept and the law-abiding state. Constitutional rights may be protected by the individual whose right is violated (e.g. claim submitted to the administrative body, constitutional claim submitted to the Constitutional Court). Protection of infringed rights may be requested by citizens' unions, social organizations (trade unions), as well as various state organs (e.g. prosecutor).

First and foremost, the court is the institutional guarantor of human rights protection. Everybody is entitled to apply to the court directly in person or through his/her representative. The right of a person that his/her case should be examined by competent, independent and impartial court is also implied in this context. Everyone shall be tried only by a court under the jurisdiction in which his/her case is registered (Constitution of Georgia, Article 42.2). The common court system provides an opportunity to appeal against the ruling of a court in the courts of appeal and cassation. A person has a right and is able to appeal against acts of state bodies, social organizations and officials.

Notwithstanding the fact that mechanisms for the protection of human rights and freedoms are present within the state bodies on a national level (e.g. court, organs of constitutional control, public defender), the rules of protection differ in these organs.

The Constitutional Court ensures the unity of legislative and judicial practice in the field of protection of human rights and freedoms. This function of dual constitutional review – observance of the Constitution and protection of human rights and freedoms – is indivisible.

Constitutional claims may be submitted where constitutional courts are operational, for protection of an individual's constitutional right. For instance, the Organic Law of Georgian on the Constitutional Court stipulates that:

1. The Constitutional Court of Georgia is a judicial body of constitutional review, which shall guarantee the supremacy of the Constitution of Georgia, constitutional legality and the protection of constitutional rights and freedoms of individuals. (Article 1.1.);

2. The Constitutional Court shall be authorized to consider and adjudicate upon the constitutionality of normative acts adopted with regards to Chapter Two of the Constitution of Georgia (Georgian Citizenship; Basic Rights and Freedoms of Individual) (Article 19.2.e);
3. Citizens of Georgia, whose rights have been infringed, shall apply to the Constitutional Court in person; and
4. The Public Defender shall have the right to lodge a constitutional claim with the Constitutional Court if he/she considers that normative acts or other legislative norms violate the constitutional rights and freedoms of an individual.

Public Defender: The Ombudsman is one of the mechanisms for protection of rights and freedoms. “Ombudsman” is a Swedish word that means the representative of another person’s interests. It has different names in different countries: Ombudsman - in Scandinavian Countries, Public Defender – in Georgia, Mediator – in France, Public Defender – in Spain, Bundestag Military Attorney - in Germany, etc.

Ombudsman or public defender is an official, who is elected (e.g. in Sweden, Denmark, Finland, Portugal, Spain, Georgia and other countries) or appointed (e.g. in France, the Mediator is appointed by the Decree of the Council of Ministers; in the UK, Human Rights Parliamentary Attorney is appointed by the Queen under the recommendation of the Prime-Minister), and whose responsibility is to act as an arbiter between citizens and the government in order to investigate complaints of citizens against state bodies and officials in cases when citizens allege that the government has violated his or her rights and freedoms. He is a public official, who reviews the facts of violations and protection of rights by various administrative bodies.

In accordance with the Georgian Constitution, protection of human rights and fundamental freedoms within the territory of Georgia shall be supervised by the Public Defender of Georgia, who shall be elected for a term of five years by the majority vote of the Georgian Parliament.

Under the Georgian Constitution, the Public Defender shall be authorized to reveal facts of violation of human rights and freedoms, and report them to corresponding bodies and officials. Creating obstructions in the activity of the Public Defender shall be punishable by law (Constitution of Georgia, Article 43).

The activities of the Public Defender are regulated by the Organic Law of Georgia on Public Defender, dated May 16, 1996. For the purpose of securing state guarantees for rights and freedoms of individuals, the Public Defender carries out the following

activities: (1) supervises protection and respect for state recognized human rights and freedoms of every individual residing within the territory of Georgia and under its jurisdiction by the state authorities and the local government bodies, irrespective of race, color, sex, language, religion, political or other opinion, national, ethnic and social belonging, origin, property and title, place of residence or other circumstances; (2) the Public Defender of Georgia elicits the facts of violation of human rights and assists in the restoration of the infringed rights; and (3) the Public Defender also conducts educational activities in the field of human rights.

In accordance with the amendments made to the Organic Law of Georgia on Public Defender on July 16, 2009, the public defender of Georgia carries out the functions of a National Preventive Mechanism envisioned by the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which includes the following: the Public Defender of Georgia or a member of a Special Preventive Group shall examine the situation concerning the protection of human rights and freedoms in prisons and pre-trial detention facilities, as well as in other places of restricted liberty.

The public defender independently verifies the situation related to the protection of human rights and freedoms and reviews the alleged facts of their violation, on the basis of applications and complaints lodged with him, as well as on his own initiative where he is informed of those infringements.

The Public Defender examines complaints and applications of citizens of Georgia and those of aliens and stateless persons, as well as of private legal entities, political and religious organizations dealing with the violation of human rights and freedoms, provided by the Constitution and legislation of Georgia, by international treaties and agreements to which Georgia is a party, caused by actions or decisions of public authorities, local government bodies and public officials.

Applications, complaints or communications lodged with the public defender by persons in police custody, pre-trial detention facilities or in any other places of restricted liberty shall be confidential. It is prohibited to unseal them or subject them to censorship, and they shall be delivered to the public defender without delay.

Complaints and applications shall be exempt from state taxes. The assistance rendered by the public defender to persons concerned shall be free of charge. After receiving a complaint or application, the Public Defender decides independently to start examination. The latter should be notified to the claimant. The Public Defender is

obliged to inform the claimant on the results of his/her examination of the complaint, as established by law.

While carrying out examination, the Public Defender of Georgia shall enjoy the following rights:

- a. To have an unimpeded access to any body of public authorities and local government, enterprise, organization and institution, including military units, police custody and pre-trial detention facilities, as well as other places of restricted liberty;
- b. To demand and receive, no later than in 10 days from the bodies of public authorities and local government, public institutions, as well as from public officials, any information, document or other material required for the purpose of examination;
- c. To obtain and receive written explanation on issues to be examined from any public official or a delegated person on an equal position;
- d. To carry out expert examinations and/or prepare findings through state and/or non-state organizations; to invite specialists/experts to conduct expert and/or consultation; and
- e. To have access to criminal, civil and administrative cases, and related decisions.

In March of every calendar year, the Public Defender of Georgia shall submit to the Parliament an annual report on the human rights situation in Georgia.

The annual report of the Public Defender shall list those public authorities, bodies of local government and public officials that systematically violate human rights and freedoms, and those who do not adopt the recommendations of the Public Defender concerning measures for the restoration of the infringed rights.

The Public Defender of Georgia addresses and presents the annual report on the existing situation in the field of human rights to the Georgian Parliament during its spring session.

All public authorities, bodies of the local government, public officials or legal persons shall be obliged to assist the Public Defender of Georgia through all possible means, and to submit him or her without delay, all materials, documents and other information as may be required by him/her while exercising his/her duties.

Any state body, public official or a legal person whose action or decision is under examination, or has been appealed, shall, in the process of examination, or upon the request of the Public Defender, be obliged to submit to the Public Defender of Georgia, the explanation on the issues under examination.

Parliament: Activities of the legislative body – the Parliament - play a significant role in the proper accomplishment of human rights, since a constitutional norm sometimes has a general nature and requires specification by law in its realization process. Furthermore, the Parliament is the body, which by itself establishes human rights protection mechanisms and institutions through legislative order. Monitoring the function of the Parliament should also be tackled in this respect. Parliament, through its committees and commissions, studies to what extent the laws are being observed by the executive branch in the field of human rights protection, and whether the aim set by the law is achieved in this field. Individuals, whose rights have been violated, or for whom there is a real threat that these rights are likely to be violated, may refer to the Parliament or Members of the Parliament to assist in avoiding these violations. Besides, Members of the Parliament, if they come to learn the facts of human rights violations, may become involved on their own initiative and request the elimination of those facts.

Executive Branch: Individuals, whose rights have been violated by administrative bodies, may apply to the protection mechanisms envisaged by the administrative law. This rule operates differently in individual countries. Nevertheless, state administrative bodies are empowered to modify not only their own actions, but also the activities of their subordinate institutions.

CHAPTER 3.2

How are Human Rights Protected at the International Level?

In a contemporary world, protection of an individual's rights and freedoms goes beyond the state's internal affairs.

Citizens, whose rights have been violated on a national level, have ample opportunities to apply to international courts for the protection of their rights.

A state that signs an international treaty (which may take various names – convention, additional protocol, pact, etc.), undertakes an obligation in the field of human rights to observe, in good faith, rights and freedoms stipulated by the treaty. It may not invoke state legislation as a justification in that it provides for different regulation of issues established in the treaty. For example, a state neither prohibits trafficking, nor punishes slavery, if its legislation does not contain such provisions.

State signatories to international treaties implement standards set by these treaties in their own internal legislation. On a national level, the draft law is considered in the parliament in terms of its compliance with human rights standards. In addition, the parliament shall examine whether the draft law corresponds to the commitments undertaken at the international level, as well as to other domestic normative acts of the state. Application of the law is possible only if it complies with international standards of human rights.

The Georgian Constitution of 1995 sets a clear message with respect to this issue:

The legislation of Georgia shall correspond to universally recognized principles and rules of international law. An international treaty or agreement of Georgia, unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts" (Article 6); The state shall recognize and protect universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the state shall be bound by these rights and freedoms as directly acting law

Article 7

A person who believes that his/her rights have been violated on a national level may apply to an international body for the restoration of his/her rights. International law offers a diverse and range of choices.

International organizations have elaborated a number of state supervision mechanisms, which makes state activities transparent in the field of human rights protection. Every state is monitored by international organizations, and the state's attitude towards human rights issues is the focus of the international community. A state that violates the right of an individual suffers from political and economic pressure by the international community.



There are universal and regional systems of human rights. The Universal System embraces the United Nations system, and the Regional System is established according to specific region: the European System of human rights operates in Europe, the Inter-American System functions in the countries of North and South America and the African System covers African states.

CHAPTER 3.3

Universal System of Human Rights and United Nations System of Human Rights

The United Nations established a wide range of bodies and procedures in the course of its existence through which the UN supervises the protection, respect and guarantees for human rights in the entire world. The role of treaty bodies is fundamental. Treaty bodies are established on the basis of international normative acts, and their function is to oversee the states parties to the treaty in the field of human rights.

There are nine international treaty bodies operating within the UN.¹³⁷

Treaty Committee within UN Responsible for the Protection of Human Rights and its Supervision Worldwide				
Logo of the Office of the High Commissioner for Human Rights	Abbreviation	Name	Treaty (Abbreviation)	Date
 	UNHRC	United Nations Human Rights Committee	International Covenant on Civil and Political Rights (ICCPR)	1966
	CESCR	Committee on Economic, Social and Cultural Rights	International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966
	CERD	Committee on the Elimination of Racial Discrimination	Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	1965
	CEDAW	Committee on the Elimination of Discrimination against Women	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	1979
	CPT	Committee for the Prevention of Torture	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984
	SPT	Subcommittee on the Prevention of Torture	Optional Protocol to the United Nations Convention against Torture (OPCAT)	2002
	CRC	Committee on the Rights of the Child	<u>Convention on the Rights of the Child</u>	1989
	CMW	Committee on Protection of the Rights of all Migrant Workers and Members of their Families	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	1990
	CRPD	Committee on the Rights of Persons with Disabilities	Convention on the Rights of Persons with Disabilities (CPRD)	2006

¹³⁷ Some conventions have optional protocols, which supplement the list of human rights or provide for supervision procedures over the states parties. For example, Optional Protocols to the International Covenant on Civil and Political Rights to which Georgia is a party; Optional Protocol on Submission of Individual Communications to the Human Rights Committee; Optional Protocol on the Abolition of the Death Penalty; Optional Protocols to the International Convention on the Rights of the Child to which Georgia is the party; Optional Protocol on the Involvement of Children in Armed Conflicts; and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

Any person is entitled to apply to the UN or its bodies concerning the violation of his/her rights. Out of nine UN treaty bodies, seven bodies examine disputes concerning human rights violations. Georgian citizens also have a right to lodge individual complaints. In 1994, Georgia acceded to the International Covenant on Civil and Political Rights and its First Optional Protocol by which, it recognized the jurisdiction of the Human Rights Committee.

By submission of individual applications (complaints) in the field of human rights, the latter gains significant importance, and the rules of international law (which are somewhat general and abstract) become dynamicon the basis of decisions of the committees, and of the court.

Individual complaints may be lodged by a citizen of the state party against his/her own state, as well as by a person who is not the citizen of the respondent state, if his/her rights were violated in this state (e.g. the citizen of China was unlawfully detained in Australia. The citizen of China has a right to submit a complaint against Australia, since his/her rights were violated while being under the jurisdiction of Australia).

The Committee considers the complaints only if the applicant and the respondent states have recognized the competence of the Committee by means of a special declaration.

States that become the party to the international treaty through ratification or accession commit themselves not only to observe treaty obligations, but also to meet the procedures set forth by treaty bodies. One of the key procedures established by the treaty bodies are periodic reports to be submitted by state parties. In these periodic reports, the state parties refer to legal, administrative and other measures undertaken by the state for carrying out treaty obligations. Various reports speak about obstacles a state faces in the course of protecting human rights. These reports are reviewed and considered by committee experts, official representatives of the state parties and accredited NGOs. The Human Rights Committee makes recommendations based on the reports submitted by the state, and state parties inform the Committee on the implementation of these recommendations.

UN treaty bodies (Committees) receive information on human rights not only from the state, but from alternative sources as well, such as: UN specialized bodies (e.g. World Health Organization - WHO); UN Funds (e.g. United Nations International Children's Emergency Fund - UNICEF); various programs (e.g. projects of the UN Development Program - UNDP); various international intergovernmental (e.g. Council of Europe - COE); Organization for Security and Cooperation in Europe - OSCE);

nongovernmental organizations (e.g. Human Rights Watch, Amnesty International, etc.); civil society; professional associations; national nongovernmental organizations (NGOs); mass media; and academic institutions. A number of agencies and organizations make significant contributions to the enforcement of human rights. To mention a few others not names above:

- United Nations High Commissioner for Refugees – UNHCR;
- United Nations Educational, Scientific and Cultural Organization – UNESCO;
- International Committee of the Red Cross – ICRC;

In 2006, the United Nations Human Rights Council was established. The primary function of the Council is to support and advance the protection of human rights worldwide.

Under the UN Resolution N60/251 of March 15, 2006, the UN General Assembly adopted a new state reporting system elaborated by the Human Rights Council. This was a new reporting procedure – Universal Periodic Review (UPR). UPR has been in force since 2008. Georgia initially went through this procedure in 2011. The ultimate aim of the procedure is to review the human rights situation in all countries. Every state is under the obligation to undergo this procedure once every four years, and report to the Human Rights Council on human rights issues. The following institutions shall participate in the UPR process: international and national NGOs; academics, and representatives of civil society. They are entitled to submit an alternative “shadow” review¹³⁸, where they shall describe human rights violations, assess the existing situation in the state and give recommendations to the state parties on the issues of human rights.

Office of the High Commissioner for Human Rights

In order to improve coordination of activities in the field of human rights, a position of High Commissioner for Human Rights was created based on recommendations adopted at the World Conference on Human Rights, held in Vienna on December 20, 1993 by the UN General Assembly Resolution N48/141. The activity of the High Commissioner includes promotion of international cooperation and support for popularization of human rights protection. Efforts of the High Commissioner are directed towards protection of human rights, emphasizing the importance of human rights within the United Nations system and their coordination, and elaboration of new standards in the

¹³⁸ In 2010, in parallel with Georgian Official Report within the framework of UPR, the “Shadow” Review was prepared by 23 NGOs operating in the field of protection of women’s rights.

field of human rights and consequent ratification of concerned treaties. The mandate of the Commissioner also implies the following actions: he/she responds to serious violations of human rights and undertakes preventive actions. He/she also provides advisory services and technical assistance to the governments of states parties.

The High Commissioner for Human Rights is appointed by the UN General-Secretary and approved by the General Assembly for a four year term. This position is equivalent to the post of UN Deputy General-Secretary.

CHAPTER 3.4

How are Human Rights protected on a Regional Level?

In this chapter, the European System of Human Rights will be reviewed. The ground for the latter system is the Council of Europe (COE) consisting of 47 Member States. Contrary to the Universal, and the UN System, the Regional System is more flexible in the field of human rights. Furthermore, mechanisms applied by the European System hold major significance in the protection of the rights of Georgian citizens.

Human rights are protected within the frameworks of the COE, European Union (EU)¹³⁹ and OSCE¹⁴⁰.

However, only the COE mechanisms for human rights protection will be discussed.

¹³⁹ The Charter of Fundamental Rights of the European Union, signed in Nice (France) on November 7, 2000, was the first time in the history of the EU, where a single document covered a whole range of civil, political, economic and social rights of EU citizens and persons residing in its territory. This document was included in the second part of the Draft European Constitution adopted on June 18, 2004. Following the refusal of the Draft European Constitution, the Charter was adapted and declared legally binding on December 12, 2007, prior to the signature of Treaty of Lisbon in Istanbul. The overall functioning of the Charter for the EU Member States is still dubious. However, it is a key guideline for EU non-member states, especially for those countries that are on the path of EU integration. See *Human Rights in the Field of Healthcare, Tbilisi, 2011*.

¹⁴⁰ The Organization for Security and Cooperation in Europe (OSCE) consists of several organizations that are primarily working on human rights protection. Georgia is a member of the OSCE, but not a member of the EU.

CHAPTER 3.5

Georgia and the Council of Europe

In 1999, Georgia became a full-fledged member of the Council of Europe. In 2000, one of the key documents of the COE – European Convention for Protection of Human Rights and Fundamental Freedoms - entered into force in Georgia. Through this action, Georgia publicly declared that it agrees with the requirement set forth by the Statute of the Council of Europe of 1949:

“Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council as specified in Chapter I” (Article 3, Statute of the Council of Europe).

Upon entering the COE, Georgia undertook a number of commitments. These include the accession to the Convention on Human Rights and its additional protocols as well as the ratification of similar key documents adopted within the COE, such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its additional Protocols; European Framework Convention for the Protection of National Minorities; European Social Charter; and European Convention on Extradition. Georgia was obliged to: (1) harmonize its national legislation with the legislation of the COE; (2) carry out reforms in the fields of judiciary, prosecutor and police, as well as in the penitentiary system; (3) return Meskhs deported from Georgia; (4) adopt the law on minorities; (5) take administrative measures for the restoration of the property and family rights of those who have lost their property during the conflict in 1990-1994; (6) establish terms for the protection of the rights of those whose liberty has been restricted for the purpose of carrying out reforms in the penitentiary system; (7) revise the cases of those detained in the political unrest during 1991-1992, etc. Stemming from these obligations, the COE stated in its resolution that it has monitored the existing situation in Georgia since its membership in the Council of Europe¹⁴¹.

COE membership presents citizens of Georgia with the opportunity to appeal to the mechanisms of the European Court of Human Rights and makes it possible to protect their own rights and freedoms through Council of Europe structures. Consequently, Georgian citizens are under the protection of the Convention for Protection of Human Rights and Fundamental Freedoms.

¹⁴¹ www.coe.ge

The Convention for Protection of Human Rights and Fundamental Freedoms is the first and the oldest document of the Council of Europe. It protects civil and political rights and simultaneously creates functional mechanisms for the protection of individual rights. As a supervisory organ, the decisions taken by the European Court of Human Rights are binding upon Member States.

The European Convention was adopted in 1950. This document is based on the typical European standards created by democratic states free of communist doctrine and ideology.

The European Convention on Human Rights consists of a Preamble and 59 Articles. The Convention applies to everyone falling "within the jurisdiction of the High Contracting Parties" (Article 1), regardless of their nationality, which means that the European Convention on Human Rights concurrently protects the rights of those who are the citizens of member states, stateless persons, dual citizens and aliens under the jurisdiction of COE Member States. The Convention covers physical and legal persons falling under the jurisdiction of member states.

The European Convention on Human Rights refers to specific rights. These are: right to life; prohibition of torture; prohibition of slavery and compulsory labor; right to liberty and security; right to fair trial; prohibition of retrospective use of punishment; right to respect private and family life; right to freedom of thought, conscience and religion; right to freedom of expression; right to freedom of peaceful assembly and to freedom of association; right to marriage; right to effective remedies; and prohibition of discrimination.

Part Three of the Convention covers the issues concerning the European Court.

The Convention has 14 additional protocols. I, II, IV, VI, VII and XII protocols are in force. These protocols specify the rights secured by the Convention. In particular:

- Protocol I provides for the right to peaceful enjoyment of one's possessions, and the right to education and free elections;
- Protocol IV stipulates the right to free movement and choice of residence within a country for everyone lawfully residing on a state territory; Protocol VI prohibits the application of the death penalty in times of peace, which later became one of the preconditions for COE membership; Protocol VII provides for the right to appeal in criminal matters and compensation for the victims of miscarriages of The protocol also prohibits re-trial of an individual who has already been acquitted or convicted of a particular offence under the jurisdiction of one and the same state (double jeopardy principle);
- Protocol XII prohibits all kinds of discrimination;

- Protocol XIII prohibits use of the death penalty in any circumstances.
- Protocols XI and XIV imply procedural issues and discuss a reorganization of the European Court.

The Convention is the first document to establish an effective mechanism for enforcement of human rights protection. The Court examines state-to-state applications (e.g. *Georgia v. Russia*¹⁴² pending before the European Court), and individual applications of those who have appealed against their own state or other COE Member States for the alleged violation of their rights (e.g. *Gurgenidze v. Georgia*¹⁴³). Applications may be lodged against several states (e.g. *Shamaev and 12 others v. Russia and Georgia*¹⁴⁴).

Only the concerned state shall be held responsible for, and respond to, the violations of rights and freedoms of physical and legal persons enshrined in the European Convention on Human Rights. Therefore, merely the state acts as a respondent with respect to individual application.

Jurisdiction of the Court shall extend to all cases concerning the interpretation and application of the present Convention and its protocols, which are submitted to it for consideration. Disputes arising with respect to jurisdiction shall be settled by the Court. Final decisions of the Court shall be binding for the contracting parties. The Committee of Ministers supervises the execution of the court judgments.

The European Convention operates directly in Georgia, as an inseparable part of the Georgian legislation, and unless it does not contradict the Constitution of Georgia and the Constitutional Agreement, the Convention takes precedence over domestic normative acts., In instances where the rights and freedoms provided for by it are infringed, the European Convention on Human Rights gives ample opportunity to the citizens of Georgia to appeal to the European Court of Human Rights, which is located in Strasbourg.

The European Convention establishes a supervisory body to oversee the execution of judgments by the Member States. "The judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

¹⁴² "Georgia v. Russia – "versus" means "against" in Latin. European Court of Human Rights (Strasbourg Court) considers application of citizens of Georgian affected by Russia-Georgia conflict in 2008.

¹⁴³ *Gurgenidze v. Georgia*, N71678/01 (January 17, 2007).

¹⁴⁴ *Shamaev and 12 others v. Russia and Georgia*, N36378/02 (April 25, 2005).

The European Convention on Human Rights lays down effective mechanisms for the protection of human rights. The judgments of the Court are clear illustration of the level and severity of the need for human rights protection in various Member States.

Affirmative judgments of the European Court, as well as prevention of similar human rights violations in the future are key points for the Strasbourg mechanism.

In the course of its existence, the practices of the European Court have been refined and developed; moreover, new standards were established in the field of human rights protection. Precedential law of the European Convention and the European Court establishes European standards for human rights on which the legal systems of the European States are founded. The latter elevates the reputation and the level of popularization of the European Court of Human Rights. The amount of applications submitted to the Court is the proof of the above-mentioned.

By signing and ratifying international treaties under the aegis of the Council of Europe, Georgia undertook an obligation to recognize, protect, strengthen and respect human rights and fundamental freedoms. Implementation of the same vastly depends on the incorporation of norms of international law in the national legislation, and the application of international treaties and international court practices by the national courts. An essential part of the above obligations is the precedent of the European Court of Human Rights and its judgments. Georgian courts, while deciding on a particular case, refer to the European Convention on Human Rights and the precedential law of the European Court.

The large amount of applications lodged by Georgia demonstrates the level of popularity of the European Court in Georgia. These applications do not make a decisive impact on the total number of applications submitted to the Court, however, every judgment has a fundamental significance for Georgia, its citizens, and people falling under its jurisdiction (it is meant both the cases won in the European Court, as well as cases lost by the citizens in the European Court¹⁴⁵).

Cases examined against Georgia by the Strasbourg Court cover a fairly wide spectrum and diverse rights. They pertain to the right to life, prohibition of torture, right to liberty and security, fair trial, property, elections, freedom of speech, etc.

¹⁴⁵ Judgments of the European Court of Human Rights and cases against Georgia at the are available at official web-site of the Ministry of Justice of Georgia: http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=103, and the case "Enuqidze and Girgvliani v. Georgia" at the official web-site of Georgian Bar Association: http://gba.ge/new/admin/editor/uploads/files/newsebis/Girgvliani_ECHR_GEO_Final.pdf.

The European Convention declares an application admissible if it meets the following criteria:

- The application shall deal with the violation of the rights ensured by the European Convention;
- The violation of the rights shall take place following the ratification of the European Convention by the Member State;
- All available domestic remedies shall be exhausted;
- The application shall be submitted within six months after the date on which the final decision was taken by the national court;
- The application shall not be manifestly ill-founded;
- The application shall not be anonymous;
- It is prohibited to abuse the right of petition; and
- The application shall not be under examination of another international body.

What are the outcomes a citizen should expect in case his/her application is accepted? Once the Court considers that the Convention was violated, it may take a decision on “Just Satisfaction,” as a pecuniary compensation. Compensation is paid by the state violating the right. For instance, in the case “*Asanidze v. Georgia*¹⁴⁶” the Court established the violation of rights of Mr. Asanidze and ruled that the respondent state, Georgia, was to pay the applicant EUR 150,000 (one hundred and fifty thousand) converted into Georgian Lari (GEL) at the rate applicable on the date of settlement, and pay an additional EUR 5,000 (five thousand) towards of costs and expenses.

The Court is not authorized to annul judgments taken by state courts or laws, and the Court is not responsible for enforcement of its judgments. The Committee of Ministers of the Council of Europe supervises the execution of the Court judgments, whose aim is to oversee the implementation of judgments and ensure the payment of any compensation.

More than 200 conventions have been adopted in different periods and various protection mechanisms have been established in the field of human rights under the aegis of the Council of Europe. Let us discuss some of them:

European Social Charter: For the protection of social and economic rights, the Council of Europe adopted the European Social Charter in 1961, which underwent certain modifications several times. The Charter recognized rights such as: equal labor rights, social care, social, legal and economic protection of youth, social protection

¹⁴⁶ *Asanidze v. Georgia*, N71503/01, (April 8, 2004). <http://www.justice.gov.ge/files/Documents/adam/asanidze%5B1%5D.pdf>.

of the elderly, etc. In 2005, the Georgian Parliament ratified the Social Charter, and in 2006, the said document entered into force.

European Charter for Regional or Minority Languages: The Charter was adopted in 1992 and ensures education in languages representing minority and regional languages. Other rights laid down in the Charter refer to the languages used in court proceedings, in media, as well as in administrative and state structures.

Framework Convention for the Protection of Minorities: The Convention was adopted by the Council of Europe in 1995. According to the Convention, the state is obliged to protect the rights of national minorities, equality before the law, cultural self-determination, and the right to use minority languages, among other rights. Georgia acceded to this Convention in 2005.

Chapter Four

Protection of Rights of Particular Groups

This chapter will discuss the rights of persons who deserve more attention from the society and state because of their physical, mental, or other abilities. They enjoy the same rights as other citizens, but protection of their rights, bearing in mind their circumstances, require more effort on behalf of the state. Moreover, persons belonging to this category are often subjected to discrimination, their rights are less protected, and they are subjected to stigma. These persons are often not able to protect their own rights and are dependent on the support of others.

At the end of this section you will be able to discuss the following issues:

- How are the rights of national and ethnic minority groups protected?
- Who is considered a refugee and how are the rights of refugees protected?
- Who protects, and how are the rights of children protected?
- What does gender equality mean?

At every stage of historical development, society passes a certain test on tolerance. The words of American Pastor Ralph W. Sockman "*The test of courage comes when we are in the minority. The test of tolerance comes when we are in the majority,*" clearly expresses the essence of different national, religious, or other types of tolerance.

CHAPTER 4.1

Rights of Persons with Disabilities

There are many individuals who by virtue of their physical or mental condition, require special care and treatment. Based on their abilities, these persons are referred to as persons with limited abilities¹⁴⁷.

First, we have to define who can be considered a person with limited abilities. This is a person who, as a result of illness, injury, mental or physical defect, certain health dysfunction such as a misbalance of vital functions of the body causing full or partial loss of professional working ability, or major complications with independent living, resulting in temporary or permanent need for social protection¹⁴⁸.

The lives of persons with limited abilities are affected by societal attitude, social institutions, and material surroundings. Persons with various physical, psychological-emotional, mental, or sensomotor problems often do not have equal opportunities for personal development and self-realization.

Previously, problems connected to persons with limited abilities were considered only as health-related issues and were taken as medical problems, the identification of which created a basis for providing social protection benefits, in particular, disability pensions and financial support, as well as the possibility to receive medical services. More recently, rehabilitation and social inclusion/ mainstreaming have become a more prominent practice. Rehabilitation allows disabled persons to better adapt in the existing surroundings, and by altering their physical and social environment, in a way that

¹⁴⁷ When protecting the rights of persons with disabilities, the absence of precise statistical data creates an obstacle. Presently, the number of persons with disabilities is counted from the existing database on pension beneficiaries which is not exhaustive since state social assistance is granted only to persons having a status of experiencing visible and specific serious disabilities, as well as to a limited number of persons with the status of experiencing moderately visible disabilities. The total number of such persons according to 2010 data is 138,614. Data from Social Service Agency: <http://ssa.gov.ge/uploads/Pension%20122010%20ge/Book1.xls>; Periodic Report of Public Defender, 2010 p.497

¹⁴⁸ *Law of Georgia on Medical-Social Expertise*, Article 3b.

creates more opportunities for fostering their social inclusion, as well as for them to utilize all opportunities and services available to other citizens of the state.

The rights of persons with limited abilities should first of all be considered in the prism of human rights, with a view on eradicating discrimination, fostering social inclusion, and equality of opportunities, which require not only legal protection of their rights, but also goal-oriented policy, and, in case of need, giving effect to the “principle of positive action.”

Human rights and interests are protected irrespective of the person’s health condition, i.e. whether or not he/she is healthy or has limited abilities.

Persons with limited abilities have the same rights as those without disabilities, but there are some spheres where the law grants additional guarantees to persons with limited abilities for realization of their rights, in particular, through legal representative or a family member. Often the mere fact that persons with limited abilities have rights does not mean they have the possibility of realizing these rights. For instance, a person having the right of free movement might not be able to realize this right in practice due to inaccessible buildings or public transportation. Similarly, a blind person wishing to receive education cannot realize his/her right without textbooks printed in Braille script and use of special teaching methodology.

These persons, because of their circumstances, are often times disadvantaged by the lack of adequate resources and a proper enabling environment. They experience discrimination in spheres of education and healthcare, and in the process of exercising their civic, political, and social rights.

The state is obliged to provide and foster full realization of all human rights and basic freedoms by persons with limited abilities without any discrimination based on limited abilities. In order to fulfill this aim, the state should:

- Adopt new legislative, administrative and enforcement measures for the protection of the rights of persons with limited abilities;
- Modify legislation, in order to change or invalidate existing laws, regulations, customs, and state practices discriminating against persons with limited abilities;
- Provide mainstream protection and support for the rights of persons with limited abilities in all socio-economic public programs;
- Employ all necessary measures to eradicate discrimination by any person, organization, or private entity targeting those with disabilities.

In order for persons with limited abilities to be able to live independently and participate fully in all spheres of public life, the state has to employ all appropriate measures for these persons to have equal access to public buildings; transport; information and communication, including information and communication technologies, as well as other means and services accessible for public, both, in urban and rural settings. This includes equipping buildings, roads, transportation, as well as other indoor or outdoor facilities, including schools, living homes, medical institutions, and workplaces with access ramps and other facilities enabling unhindered movement of persons with limited abilities.

This very spirit is reflected in the 2006 UN Convention and its Additional Protocols.

While the country's executive branch has signed the Convention and the Additional Protocol (establishing a body to address complaints of violation of the rights of persons with limited abilities and the commitment to submit national progress reports), nevertheless, the Georgian Parliament has not yet ratified either the Convention or its Additional Protocol¹⁴⁹.

In 2011, the Georgian Public Defender, submitted a recommendation to the Georgian Parliament which stated: "The rights of persons with limited abilities are protected under the Constitution of Georgia, which recognizes basic rights of all citizens including: Law on Medical-Social Expertise, which determines the degree of disability; Law of Georgia on Psychiatric Assistance, which regulates the rights of persons with mental illness, terms of their medical and legal assistance, duties of legal representative, medical institution, and the state responsibilities towards person with limited mental abilities; Criminal Code of Georgia establishing criminal liability for infringement of rights of person with limited abilities; Civil Code of Georgia, which defines the procedure for assigning a guardian to person with legal incapacity; Election Code, which grants persons with limited abilities, in particular, blind persons, the right to read in Brail while casting their vote."

¹⁴⁹ "Government Action Plan for Social Integration of Persons With Limited Abilities 2010-2012" approved by the Decree N 978 of Government of Georgia on 15 December, 2009, reflects practically all duties envisaged by the Convention on Persons With Limited Abilities. 2010 Annual Report of Public Defender, 2010, 498-499.

CHAPTER 4.2

Rights of National and Ethnic Minorities

Georgia is a multiethnic country and strives for tolerance and equal treatment under the law for all citizens.

The test for tolerance is also exercised in relation to national and ethnic minorities. Georgia requires a state policy to address issues of national minorities and the mechanisms of policy implementation. According to the Constitution of Georgia:

Citizens of Georgia shall be equal in social, economic, cultural and political life irrespective of their national, ethnic, religious or linguistic belonging. In accordance with universally recognized principles and rules of international law, they shall have the right to develop freely, without any discrimination and interference, their culture, to use their mother tongue in private and in public

Constitution of Georgia, Article 38.1

What defines a national minority? Despite the fact that contemporary international law offers no agreed definition of national minority, based on efforts of international experts and bodies, a widely accepted definition of the term has been established: National minority is a group of citizens living within a state, which is fewer in number than the majority of the population, and differs from the latter in language, religion, and ethnic identity¹⁵⁰. “Religious minorities” are “ancestors” of national minorities.

In the feudal world, national identities were not well developed but religious and ethnic groups in one state often protected persons sharing the same ethnicity or faith residing in other states. Due to these cross border skirmishes, a number of relevant inter-state agreements were signed such as the Treaties of Westphalia and Innsbruck of 1648, Vienna 1815 Congress Acts, etc.

By the start of the 20th century, protection of the interests of “national minorities” was well established. The treaties signed with Poland, Czechoslovakia, Yugoslavia, Hungary, Bulgaria, Romania, Greece and Turkey England and France, included special clauses “on the protection of national minorities.” The same term was used by the League of Nations charged with the responsibility to protect the interests of national minorities among its members. The United Nations doesn’t allow national minorities to address the body directly with petition, but requires member states to respect individual human dignity, rights and freedoms. State encroachment on these values is

¹⁵⁰ M. Mitagvaria, “Basics of Managing Diversity,” (Tbilisi,2010).

subject to sanctions from the international community. The UN Charter does not refer to the term “national minority,” nevertheless, through various instruments and mechanisms, creates a solid basis for their protection.

In 1992, the UN adopted a Declaration on “The Right of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.” According to the Declaration, national minorities should be granted the right to freely express their culture, religion, and language in public and private life; to actively participate in state cultural, religious, social, economic and public life; and become involved in the decision making of central or local state organs on issues affecting the fate of national minority: “States shall take measures to create favorable conditions to enable persons belonging to minorities to express their distinctiveness, and to develop their culture, language, religion, traditions and customs, barring specific practices which violates national law and contrary to international standards” (Articles 4.2). Minorities, on the other hand, should give due respect to the fact that it is forbidden to undertake “any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States” (Article 8.4).

The same sentiment is enshrined in the Constitution of Georgia:

In accordance with universally recognized principles and rules of international law, the exercise of minority rights shall not oppose the sovereignty, state structure, territorial integrity and political independence of Georgia

Article 38.2

The question of national minorities was a burning issue during the breakup of the USSR. Pursuant to April 1990, Law of the USSR, autonomous republics and other autonomies which planned to break away from the USSR, were granted the right to decide their own fate and secede from the Republic. This affected Georgia, Azerbaijan, and Moldova, where so called “ethnic conflict” was taking place. The conflicts were driven by both internal and external factors. The international community attempted to mitigate the conflict and violence by recognizing the right of the national minority on unilateral secession from the parent state.

The issue of national minorities is given special attention by the “European Framework Convention for the Protection of National Minorities¹⁵¹” and “European Charter on Regional or Minority Languages” approved in 1992 by the Council of Ministers of the Council of Europe. Parties to the agreement undertake the duty to protect ethnic, religious, linguistic traditions and customs of persons belonging to national,

¹⁵¹ Entered into force on 1.02.1998.

religious and linguistic minorities, to maintain and develop their culture, and protect them against discrimination in any sphere of public and political life¹⁵².

*Persons belonging to a national minority, in community with other members of the group, have the right to enjoy their own culture, to use their own language, to establish schools, and to receive teaching in the language of their choice, as well as to practice their own religion.*¹⁵³

The concept of national minority is closely linked to the concept of national identity, which has several notions subject to the context: Pure understanding of ethnicity (language, customs, etc.) - expressing belonging to a nation. The Universal Declaration of Human Rights notes that enumerated rights should be enjoyed by all persons “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin,” European Convention for the Protection of Human Rights and Fundamental Freedoms further specifies:

- a. Discrimination on the ground of national or social origin, association with a national minority is prohibited (Article 14);
- b. Terms “citizenship” and “nationality” are used to denote state-person, which was a result of formation of nations and so called nation-states within Europe (e.g. Italy, France, etc.).

Therefore, when filling in the nationality section of the visa application document at any foreign consulate, one has to mention citizenship (e.g. citizen of UK, France, Italy, etc.) but not ethnicity (Georgia, Armenian, Azeri). According to Georgian legislation, visa applicants should write “[citizen] of Georgia” which denotes citizenship and not national identity.

The European Commission against Racism and Intolerance, based on existing international legal instruments, concludes that: “discrimination against a person or group of persons of any type is forbidden, irrespective of race, color, sex, language, religion, nationality, national and ethnic origin.” Here, the Commission notes that the term “nationality” is understood as defined in the “European Convention on Citizenship,” which declares that “nationality is a legal bond or social contract between a person and the state, and does not point to the ethnic origin of that person.” The Law “On Citizenship” of France, as well as of other foreign states uses the term “nationality” as denoting citizenship¹⁵⁴.

¹⁵² *International Dictionary-Guide of Human Rights*, 91.

¹⁵³ *European Framework Convention on National Minorities*

¹⁵⁴ *International Dictionary-Directory of Human Rights*, (2005), 92.

According to the “European Framework Convention for the Protection of National Minorities,” to which Georgia is a state-party, every person belonging to a national minority has the freedom to decide whether or not he wants to be treated as such. Subject to this provision, all persons belonging to national minorities can freely decide whether to utilize the protection guarantees offered by the Framework Convention.

A nation is defined as a community of people who have undergone self-determination, and have common history, language, culture, and administrative state. A nation is governed by one independent government, has independent state, territory, shared customs and traditions, and common heritage¹⁵⁵.

In contrast to national minorities, an ethnic group’s identity is a historically established stable social and public community, sharing the same language, customs and traditions, myths, culture, and religion. Ethnic community is made up of a centuries old ethnic formation which at one point may have or may still constitute a majority population of a nation-state, or is governing the state together with another nation. Ethnic groups are communities relatively smaller in size that have historically existed on the territory of the state and differ from the rest of the population in customs, traditions, language, and religion. An ethnic group is a community of persons sharing one or several of characteristics such as: language, kinship, origin, race, culture, religion, history, or physical appearance.

It is not uncommon for different ethnic groups to accentuate differences and resist assimilation in the nation they reside. Some merge with the majority population, but retain their natural characteristics, i.e. language or dialect. Modern international legal instruments ban any kind of discrimination on “national or ethnic grounds.” Aggressive separatism uses ethnic differences for engaging members of an ethnic group in the realization of its political aims, which is prohibited by international law.

Notions of national and ethnic minorities are linked with the issue of prohibition of racial discrimination. The prohibition of racial discrimination is included in all international human rights protection instruments, such as, the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, European Convention, European Convention on Human Rights, UN Convention on Eliminating All forms of Racial Discrimination, and European Framework Convention for the Protection of National Minorities.

¹⁵⁵ Jana Javakhishvili and Nodar Sarjveladze, eds. *Managing Interethnic Relations* (Tbilisi, Publishing House “Nekeri.” 2007).

A number of norms prohibiting racial discrimination¹⁵⁶ can be found in various legal Acts of Georgia, such as: Labor Code, and Law on Public Service. Infringement of equal rights of persons based on race, skin color, language, sex, attitude to religion, religious faith, political or other beliefs, national, ethnic, social or class origin, membership of a voluntary association, origin, place of residence or property status, as a consequence of which human rights have been substantively violated, is criminalized under Article 142 of Criminal Code of Georgia. The same legal act defines:

Racial discrimination, [as], an act committed with the intention of inciting ethnic or racial hatred or conflict, injuring national dignity, or directly or indirectly restricting human rights or granting advantages on the grounds of race, skin color, social status or national or ethnic affiliation

Criminal Code of Georgia Article 142.1

CHAPTER 4.3

Rights of Internally Displaced Persons

Terms such as “refugee” and “internally displaced person” (IDP) are frequently confused. We have to remember that these are two different statuses that a person might possess. According to Georgian law, a refugee is a person who entered the territory of Georgia and who is not a Georgian national, for whom Georgia is not the country of his/her origin and who was forced to flee his/her country of origin or country of permanent residency, on the grounds of persecution for reasons of race, religion, ethnicity or membership of particular social group. Whereas, an internally displaced person is a person who is a Georgian national or a person whose country of permanent residency is Georgia, and who was forced to leave their place of permanent residency and was forced to be displaced (within the territory of Georgia) due to the threat to his/her life or the life of his/her family members, health or freedom due to the aggression of a foreign State, internal conflicts or mass violations of human rights” (Law of Georgia on Internally Displaced Persons). Currently there are 573 refugees in Georgia. As for the internally displaced, according to the government and the UN data, there are an estimated 130,000 (from occupied South Ossetia and adjacent regions). Despite the subsequent return of many internally displaced persons to their former homes, according to the 2008 data, more than 35,000 (mostly from the occupied South Ossetia) are still displaced and the majority of them will not be able to return to their homes in the near future¹⁵⁷.

¹⁵⁶ See definition in the present work, *supra*, 148.

¹⁵⁷ Data of the Ministry of Internally Displaced Persons From Occupied Georgian Territories, Accommodation and Refugees of Georgia: See, <http://www.mra.gov.ge>

The rights of IDPs in Georgia are regulated by the Law of Georgia on Internally Displaced Persons. According to the “guidelines on internal displacement,” internally displaced persons or group of persons who were forced to leave their homes or places of residence in order to escape armed conflicts, mass violence, violations of human rights, natural disasters or man-made disasters, and who have not crossed the state’s internationally recognized border.

The explanations above differ from one another as the Georgian law states that persons who are the victims of natural or man-made catastrophes and disasters are not considered as internally displaced. Explanation to this inconsistency could be based on following: Georgia’s migration and housing committee (currently the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia), when consulted by the UNHCR, was told that its mandate does not envisage such category, including the 1996 internally displaced persons that suffered the gravest hardships due to the armed conflict.

Pursuant to the “Guiding Principles on Internal Displacement,” the “Internally displaced persons shall have the same rights and freedoms, under international and domestic law as other persons in the country. They shall not be discriminated against in the provision of any rights and freedoms on the grounds that they are internally displaced.” Those who are internally displaced, exercise the same rights and freedoms as other nationals of Georgia. Albeit, the special circumstance of internally displaced persons necessitate the creation of additional legal and social protection guarantees. Hence, the country, where internally displaced persons are residing, should develop a system with such guarantees and protection. During the development process of the system, it is important that the state concerned takes into consideration the international practice in this sphere¹⁵⁸.

Georgia’s internally displaced person’s legal and social issues are mainly handled by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereafter “Ministry”).

The internally displaced persons, in order to obtain official IDP status, must apply for recognition with the Ministry. If the person was forced to leave the territory of Georgia and is in a foreign country, then he/she can address the Georgian Diplomatic Representation or Consulate. In order to obtain official IDP status, the person has to fill in and submit a notice form to the Ministry of Refugees and Settlement or the territorial organs of this ministry. If the applicant is granted IDP status, he/she is issued a special

¹⁵⁸ The strategy and strategy implementation agenda on internal displaced persons in Georgia is adopted (2009-2012).

card, which is valid along with the person's identification card (Article 2, § 8-10). The internally displaced persons status will not be revoked when the person decides to marry, change residency or moves to Georgia's other regions, provided these facts are duly notified and registered by the person. The status of an IDP can be granted to the child of an internally displaced person if one or both of the parents are internally displaced.

CHAPTER 4.4

Children's Rights

There are certain groups within the society that require special protection. The state has a duty to create mechanisms for the effective protection of these populations. Children and youth are perhaps among those most important to require special protection from the state.

The 1989 UN "Convention of the Rights of the Child," states that "a child means all human beings under the age of 18 unless the relevant national law recognizes an earlier age of maturity". (CRC, article 1) Based on the Convention, children have the right to have their basic needs satisfied, such as: life, security, healthcare, and access to food and water. They also have the right to develop their potential fully in: education, recreation, sports, as well as the freedom to express one's own opinion and participate in the decision-making on issues affecting them.

According to the CRC, all children enjoy equal rights, and all rights are interlinked and equally important. The Convention also lays out the responsibilities of a child, to respect other persons' rights, in particular, rights of their parents.

UN CRC consists of 54 Articles, each defining a separate right. These rights are divided into four groups: life, protection, development, and participation.

Rights Related to Life recognize a child's inherent right to life and to have their most basic needs met, such as, an adequate standard of living, shelter, nutrition, and access to medical treatment.

Development Rights define rights enabling children to reach their fullest potential. These are: education, play and leisure, cultural activities, access to information and freedom of thought, conscience and religion.

Protection Rights oblige the state to protect children from all forms of abuse, neglect and exploitation. These rights are linked to issues, such as: special care for refugee children, protection against involvement in armed conflict, child labor, sexual exploitation, and torture and drug abuse.

Participation Rights recognize the right of every child to participate actively in his/her own community and society. These rights include the freedom to express one's opinion, as well as the right of the child to be heard, and his/her opinion to be taken into account in matters affecting the fate of the child.

From among the basic Articles of the Convention, four are given particular attention. These four rights are recognized as "General Principles" of the Convention and include:

- Article II - State parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind.
- Article III - In all actions concerning children, the best interests of the child shall be a primary consideration.
- Article VI - State parties shall recognize that every child has the inherent right to life, survival and development.
- Article XII - States Parties shall ensure the rights of the child to express his/her views freely in all matters affecting the child.

The Convention on the Rights of the Child (CRC) has two additional protocols:

1. Optional Protocol to the Convention on the Rights of the Child prohibiting the sale of children, child prostitution and child pornography (2000);
2. Optional Protocol to the Convention on the Rights of the Child on ending the involvement of children in armed conflict (2000).

CRC reflects a new vision of the child and childhood. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and possess their own inherent rights. By recognizing children's rights in this form, the Convention is fully focused on the rights of the individual child¹⁵⁹.

Whenever a state ratifies international human rights instruments, such as, the CRC, it either directly enacts provisions of the Convention into its national legislation, or otherwise undertakes the duty to protect the agreed upon human rights. "Often the mere fact that a law for the protection of certain rights exists is not sufficient if this

¹⁵⁹ *Child Rights and Journalism: Textbook for Students*, 2011, 32.

law does not entail all legal rights and institutions for the effective implementation of the rights embedded in the law¹⁶⁰.” For the protection of children’s rights, the state is obligated to provide the establishment of effective national enforcement mechanisms and proper budgetary allocations.

Georgia acceded to the CRC in 1994. According to the requirements set forth by the Convention, Georgia is undertaking the implementation of CRC provisions into its national legislation.

A child (minor) has the same rights and freedoms as an adult, save for few exceptions (e.g. voting rights). Protection of human rights, including the child rights are guaranteed under Chapter II of the Constitution of Georgia. All basic rights provided under Chapter II of the Constitution equally relate to the protection of the rights of the child.

Pursuant to Civil Code of Georgia (1997), a minor has legal capacity, i.e. from the age of seven, he/she is considered as a person having limited legal capacity. Georgian legislation stipulates full legal capacity upon reaching the age of 18. Legal capacity is the ability of a natural person to acquire and exercise his/her civil rights and duties in full and by his will. A person is granted legal capacity at the time of birth and until his/her death. An exception to this rule is the right to inheritance which the fetus is entitled, but realization of which is conditional, subject to the birth of the child. Limited legal capacity means that a person cannot fully enjoy and realize civil rights and obligations (e.g. conclude a contract). Children under the age of seven are considered infants, and consequently, have no legal capacity; their rights are realized through their guardians.

Guardianship is established over a child who has not yet attained the age of seven. Curatorship is established over a child between the ages of seven to 18.

The Civil Code of Georgia (1997), envisages two situations under which, given the existence of specific circumstances, a person can be considered as emancipated, which makes him/her equal in status with that of an adult having full legal capacity. These are:

1. Marriage of a person who has attained the age of 16;
2. Granting the right to independently manage an enterprise to a person who has attained the age of 16 by his/her statutory representative.

¹⁶⁰ Ibid., 33.

Georgian legislation defines the minimum age requirement for marriage as 18 years. However, there are exceptions to this rule; a marriage is permitted from the age of 16 with the prior written consent of parents or other statutory representatives. In the event of refusal of such consent by a parent/statutory representative and on the petition of the prospective spouses, the court may grant the permission to marry provided it is substantiated with legitimate reasons.

According to the Civil Code of Georgia and Law of Georgia “On Citizenship,” a child is given a name, surname, and citizenship at the time of birth. Change in citizenship of a minor aged 14-18 can only take place with his/her consent.

According to Article 19 of the CRC, all children have a right to be raised within a family, and a child shall not be separated from his or her parents against their will. This requirement is reflected in the Civil Code of Georgia. All issues related to the upbringing of a child are decided by parents based on mutual agreement. In case of conflict, the dispute is settled by the court, with the participation of the parents and the minor.

Children’s rights are also protected in the event of parental divorce. If, as a result of divorce or any other reason, parents of the child live separately, the minor will stay with one of the parents based on their mutual agreement. If the parents cannot agree, the court will settle the dispute in the best interests of the child.

A minor has the right to be protected against abuse by a guardian. Whenever the rights and legal interests of a child are infringed upon, a minor older than 14 years old has the right to independently address guardianship and curatorship agencies as well as the court. Situations precipitating such circumstances include inadequate or non-fulfillment of parental duties by one or both parents in the sphere of education.

In the event there is court-ordered interrogation of a minor witness under the age of 18, a teacher must be invited to attend the questioning. The court also may decide to permit the attendance of parents, adoptive parents, guardians, or other individuals.

Georgian legislation provides for the protection of a child’s interests in the process of adoption. According to the “Law of Georgia on Adoption and Foster Care”, (2010) the adoption of a child who has attained the age of 10 without the child’s consent is prohibited. The Law strictly protects the right to confidentiality of adoption. The Criminal Code of Georgia criminalizes disclosing the information about adoptions.

Right to protection of child’s health and respect for his/her will in this sphere is reflected in various legal Acts of Georgia, such as the Laws of Georgia on Protection of Health, in the Rights of the Patient, in Transplantation of Bodily Organs, etc. Rights

of minor patients are best reflected in the Law of Georgia on the Rights of the Patient (2000), which grants minor patients the same right to informed consent as adults, barring special circumstances when minor patients require special care due to their age.

The Law pays special attention to the protection of information related to the health of a minor. Parents or statutory representatives are not to be given information related to the health of a minor if it is contrary to the will of a legally capable minor patient. The same principle applies to minors aged 14-18, who in the opinion of medical service provider are well able to assess his/her own health condition and who have addressed the doctor for the treatment of a Sexually Transmitted Disease (STD) or drug abuse, for contraception, or for termination of pregnancy. Protection of the rights of children is further guaranteed by the Law of Georgia "On General Education" (2005), according to which the child has a right to:

- Enjoy all rights and freedoms outlined in this chapter and recognized by the school in equal settings and without discrimination, in accordance with the set rules during school hours or on the territory of the school, including school resources;
- The state protects parent's and child's freedom of educational choice;
- A student has to be protected from abuse, neglect, or maltreatment;
- A student has the right to know about his/her rights and freedoms;
- Students have the right to have information about their rights and freedoms, as well as the basis for their limitation;
- The school has a duty to give information to each new student about his/her rights and freedoms;
- Whenever limiting the rights and freedoms of a student, the school has a duty to explain the grounds for such decisions;
- A student has the right to participate in the governing of the school directly or through elected representatives;
- A student has the right to receive all information existing at school, except information of personal confidentiality;
- A student has the right to request and receive school decisions relating to himself/herself; and
- A student has the right to request to be heard and participate in reviews or hearings of one's own case directly or through representatives.

The Law of Georgia on State Support of Children and Youth Unions (1999) provides for the protection various bodies created by children, such as child associations.

The Law of Georgia on Advertisement (1998) protects minority rights, in particular, it protects against misuse of the naivety and inexperience of minors in the process

of production, placement or distribution of commercials. The Law of Georgia on Protecting Minors from Harmful Influence (2001) entails protection from such harmful influences, which are linked to the use and distribution of alcoholic beverages and tobacco, gambling, screening obscene films, and the use and distribution of printed materials which may have a harmful influence on the psyche and/or the physical health of a minor and can negatively impact his/her moral and social development.

Similar restrictions are applied by the Law of Georgia on Broadcasting (2004), according to which, it is prohibited to broadcast programs that may have harmful effect on physical, mental, and moral development of children and minors during hours when there is a high probability that minors may see or hear them.

Guarantees for the protection of minor workers are laid down by the Labor Code of Georgia (2006). In general, Georgian legislation reflects the resolutions and standards of International Labor Organization (ILO) and other international bodies.

According to the legislation of Georgia, the minimum employment age is 16. It is not forbidden to employ a minor under the age of 16, provided the parents, statutory representative or guardianship/curatorship agency concur that: the employment does not contradict the interests of the minor, the employment does not have a harmful influence on the minor's moral, physical, and mental development, and it does not interfere with the minor's right and opportunity to receive mandatory elementary and general education.

An employment contract with a minor under the age of 14 can only be concluded for activities in the spheres of sports, arts and culture, or advertisement.

It is prohibited to employ a minor for work related to gambling, night entertainment, or the production and sale of erotic or pornographic items, pharmaceutical and toxic substances. The Labor Code of Georgia also forbids entering into a work contract with a minor for undertaking heavy, harmful, and hazardous tasks. The Labor Code also restricts the employment of a minor from 12:00am to 6:00am.

Mechanisms for protecting the rights of children are envisaged under the Law of Georgia on Elimination of Domestic Violence, Protection of and Support to Its Victims (2006).

The Law defines domestic violence as a violation of constitutional rights and freedoms of one family member by another in conjunction with physical, psychological or sexual violence, coercion or threat.

According to the Law, evidence of physical abuse shall become an unconditional basis for initiating proceedings to separate the child from violent parents as established by law. Until a final decision is taken, the court shall deal with order a temporary separation. The court decides on the terms of visitation of a child by violent parents. In this situation, the Law strictly protects the safety of a child. Parent(s) shall be given the right to visit the child only if all safety measures are taken related to the visit such as establishing the duration and persons responsible for the protection of safety measures. In instances where a parent does not observe the safety measures, the right of the violent parent to visit the child is restricted.

In cases of parental child abduction or real and present danger to the child by a parent, the court may decide to prohibit the parent from visiting the child until the situation has been ameliorated¹⁶¹.

For immediate protection of a child from imminent danger, the relevant bodies may issue a protective or restrictive order as a temporary measure.

Article 32 of the CRC prohibits economic exploitation of a child. The same prohibition is mentioned in the UN Convention on Transnational Organized Crime and its supplementary Protocols as well as expressed in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children¹⁶².

Trafficking (sale of persons) – The selling or buying of persons or subjecting them to other illegal deals. Trafficking involves recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion. Forms of coercion may include fraud, deception, the abuse of power or the giving or receiving of payments or benefits to in exchange for the consent of a person having control over another person.

Trafficking in minors – The selling or buying of persons or subjecting them to other illegal deals. Trafficking includes the recruitment, transport, harbor, transfer, or receipt of a minor for the purpose of exploitation.

Protection of child victims of trafficking is implemented through the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,” and other child protection mechanisms and guidelines envisaged by the Council of Europe Convention on Action against Trafficking in Human Beings. Based on these instruments, the Criminal Code of Georgia includes articles related to trafficking in persons; trafficking in minors; use of services of a victim of trafficking in persons.

¹⁶¹ *Hague Convention on Civil Aspects of Child Abduction* (The Hague, October 25, 1980).

¹⁶² Georgia acceded in 2006.

Georgia has specific Law on Combating Human Trafficking (2006), which protects the rights of the child.

Georgian legislation pays attention to effective, just, and humane attitudes towards all minors in conflict with the law. The state is currently working on applying international standards in the field of juvenile justice into domestic legislation, institutions, and practices.

According to the Georgian Code of Administrative Offences, persons subject to administrative liability include minors having attained the age of 16 at the time of commission of administrative offences, such as violating the rules of using underground transport, petty hooliganism or hooliganism committed by a minor aged 14-16, petty theft, etc. Persons below majority age cannot be subjected to administrative detention.

The Criminal Code of Georgia provides for a range of norms for the protection of minors. A complete chapter of the CCG is dedicated to crimes against the family and minors. These include involving a minor into any anti-public action; carrying out any other illegal activities for the purpose of adopting; improperly identifying pregnant women with the aim transporting them to give birth abroad as a means of facilitating adoption;; violating the rules on adoption or foster care; involving a minor in prostitution, particularly through the use of force, blackmail or deception; producing pornographic items involving images of a minor, or advertising such items, and advertising such items.

According to the Criminal Code of Georgia, crimes against minors are considered aggravating offenses.

When assigning criminal responsibility or removing criminal charges, a person is considered to be a minor (juvenile), if at the time of commission of the crime he/she has already attained the age of 14 but is below the age of 18.

Based on the age of the criminal offender and the gravity of the offense, a juvenile is sanctioned either to criminal sentence or an alternative rehabilitative measure. The Criminal Code of Georgia envisages the grounds for liability and release from sentence. The court may use a rehabilitative measure in relation to a minor provided the following conditions exist: the crime must be committed by a juvenile; the crime must be categorized as misdemeanor; the court must consider the rehabilitative sentencing of a juvenile offender. The state, through its new Code of Procedure, is trying to liberate its policy towards juvenile offenders by introducing new innovations in the form of juvenile mediation and diversion institutes.

Georgian legislation provides procedural guarantees for both juveniles in custody and juvenile convicts. Juveniles in custody enjoy the rights and freedoms guaranteed by the Constitution, such as presumption of innocence, right to a lawyer, right to a fair trial, the right to a speedy trial, etc.

Parents or other statutory representatives of a minor are required to attend the summoning of a minor to the investigator, prosecutor, or court with the minor. In case of the minor's absence, the Criminal Code of Procedure of Georgia outlines different approaches for considering the age of the minor, and states that it is possible to require the juvenile aged 14-18 to comply with a summons.

In legal proceedings related to juvenile delinquents, a juvenile's legal representative or a teacher shall have the right to attend the first interrogation of the juvenile defendant. A parent, close relative, guardian, or curator, can be the legal representative of the juvenile shall also attend to provide psychological and emotional support to the juvenile.

Participation of the defense lawyer is mandatory throughout the process of criminal prosecution and criminal procedure is the duty of a defense attorney to explain to the child in detail, in the language which he/she understands, his/her rights and their appropriate use. The defense attorney is to also ensure that the questions addressed to the child are fair and just. Participation of a legal representative provides psychological and moral support for minors in comparison with participation of the defense lawyers, which provides legislative assistance.

The Criminal Code of Procedure of Georgia envisages attendance of the legal representative or teacher in parallel to the defense attorney at the interrogation of the juvenile/minor. For minors under the age of seven, interrogation can only be held with prior consent from the parent(s) or in its absence - with the consent of the legal representative.

It is not permitted to interrogate a juvenile defendant beyond two hours without a break. The total time for interrogation should not exceed four hours. However, if it is evident that the juvenile is tired, interrogation should cease even before the permitted timeframe has elapsed.

Juvenile custody is possible if the following conditions are met:

- a. The person is caught in the act of committing a crime or immediately thereafter;
- b. An eyewitness, including the victim, identifies the person as a perpetrator;

- c. Clear evidence of the committed crime was found on the person, with the person, or on his/her clothes;
- d. The person fled but was later identified by the victim;
- e. There is a ruling of the court on search of the person.

According to the Criminal Code of Procedure of Georgia, a police officer is bound to explain the grounds for arrest and his or her rights in language he or she understands. Pursuant to the Criminal Code of Procedure of Georgia, the court may rule full or partial closure of a hearing on cases involving juveniles and minors below the age of 16. Generally, cases of juveniles aged 14-18 are subjected to open court hearings.

A Victim is a natural person or a legal entity who has suffered a direct moral, physical or property damage as a result of a crime.

The Georgian Code of Imprisonment (2010) generally provides for all UN minimal standards for the treatment of prisoners. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), the United Nations Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines"), the CRC, and the European Prison Rules Standards, define the confinement of juveniles in custody. Juvenile convicts aged 14-18 are to serve their sentences in specialized juvenile institutions. Convicts for grave crimes are housed separately from other offenders. The Code of Imprisonment defines the rights of juvenile convicts.

The UN Committee on the Rights of the Child monitors protection of the Convention of the Rights of the Child (CRC). State governments submit periodic reports to the committee which are supplemented by parallel reports from non-governmental organizations.

The UN Committee on the Rights of the Child considered the third periodic report of the Republic of Georgia submitted in accordance with Article 44 of the Convention of the Rights of the Child (CRC/C/GEO/3) at its 1316th and 1317th meetings (CRC/C/SR.1316 and 1317), held on 20 May 2008, and adopted a number of concluding remarks at the 1342nd meeting (CRC/C/SR.1342), held on 6 June 2008.

Concluding remarks issued with regard to the Government of Georgia's Child Care Action Plan for 2008-2011 noted that the Action Plan does not embrace all of the areas envisaged by the convention. The state budget is not capable to fully finance it. The recommendations for consideration concerned areas including banning discrimination, healthcare issues, and juvenile/minor labor, among others.

CHAPTER 4.5

Gender Equality

Gender is a social aspect of relations between men and women which is manifested in all spheres of life. Gender equality is a human right covering all rights and obligations, responsibility and equal participation of both genders in every segment of social life¹⁶³. The Law of Georgia on Gender Equality (2006) considers the differentiation according to the sex, marginalization and/or restriction which results in unequal recognition of rights and freedoms, and unequal opportunities, as discrimination can be direct or indirect. Direct discrimination occurs if a person treats, or proposes to treat, someone unfavorably because of a personal characteristic protected by law. Whereas, indirect discrimination occurs when a person imposes, or proposes to impose, a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging people with a protected attribute, and that is not reasonable.

Georgian legislation recognizes gender equality. However, it is not always *de facto* accepted. The equality of women and men is declared by Article XIV of Georgia's Constitution: "Everyone is free by birth and is equal before law regardless of race, color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence." This constitutional norm illustrates the obligation to protect men and women independent of their gender¹⁶⁴. However, this is not sufficient to fully exercise these rights, as the inequality of the men and women is often seen in remuneration rights, family formation, insurance, etc. The rights of a mother are mentioned twice in the constitution- under the realm of labor rights (Article 30 of the Constitution) and the protection of the rights of the mother and the child (Article 36 of the Constitution). Pursuant to the recommendations issued to Georgia by the treaty contracting organs, in order to fully exercise these rights, the state needs to act to remedy inequalities.

Although the section on equality of the Constitution does not mention the term "women," Article 14 on the prohibition of discrimination, mentions the word "sex" alongside other categories, such as, ethnicity, age, etc. In the Constitution, terms, such as "human", "citizen", or "all the other people" are used. These underline the rights of both sexes, and there is therefore no need to differentiate between the sexes. According to the Constitution, women have the same rights as men in healthcare (Article 37), labor (Article 30), education (Article 36), etc.

¹⁶³ "The Law on Gender Equality", *The Guidance*, (Tbilisi, 2009).

¹⁶⁴ Tamar Sabedashvili, *Gender and Democratization: The Case of Georgia 1991-2006*(Tbilisi, 2007).

A similar situation is encountered in the laws of Georgia. The legislation recognizes the impermissibility of discrimination and the principle of gender equality. While legislation provides for universally recognized principles, not every act is enriched with the concrete mechanisms and schemes for protecting equality. For instance, the Election Code of Georgia recognizes equal passive and active voting rights of men and women for elections, but the non-existence of mechanisms ensuring such rights causes imbalance in realizing passive election rights.

In Georgian legislation, the term “violence on gender grounds” is not employed. But the Law on Prevention of Domestic Violence, Protection and Assistance of Victims of Family Violence and the Law on Combating Human Trafficking regulate issues of violence on gender grounds. The term is not found in the Law on Gender Equality, adopted on 26 March, 2010. Article 142 of the Criminal Code of Georgia criminalizes “the violation of human equality.”

Although some changes have been made in recent years, not enough attention has been paid to women’s rights and gender equality in politics on the road to democratic development. Women’s rights and gender inequality not only surfaced in politics (the evidence is generated from the election results), but also in the social and economic sectors. The urgency of this problem is clearly visible in villages where women are largely unemployed and there is a lack of accessibility to healthcare and professional development programs).

The Human Rights Committee and Committee on Elimination of Discrimination against Women (CEDAW) called upon the state to continue working to eliminate gender stereotypes and promote gender equality in school curricula. For this reason, on September, 26, 2007, following Decree N211 on Gender Equality, the State Interagency Committee was established. Government Order N539 on “The Gender Equality Policy Activity Plan in Georgia for the Years 2007-2009” was prepared and adopted as well. The law adopted by the Parliament of Georgia on Gender Equality and an “Action Plan for Ensuring Gender Equality Implementation for the Years 2011-2013,” can be considered positive aspects of the Action Plan.

The Law on Gender Equality, despite having positive aspects, fails to fully cover the standards set by the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) convention for eradicating all forms of gender inequality. Nevertheless, the adoption of the law itself is an important step forward and an instrument for raising awareness.

In order to effectively carry out and implement the goals/mechanisms set out by the law, it is important to take into consideration the recommendations of non-governmental organizations working on women's rights, specifically to set up an institution in a state executive branch which would focus particularly on gender issues.

The Law on Gender Inequality is certainly a step forward. However, there are some shortcomings: the law is of declarative nature; it only sets out the principles; most norms are mentioned in labor, family and other branches of law. It also does not set forth implementation mechanisms of such principles:

1. It is not clear in whose hands the decision making power is vested and what are their obligations;
2. There are no procedural actions mentioned for protecting victims of direct or indirect discrimination;
3. In case an act of discrimination is proven, neither the exact amount of compensation is specified, nor the procedure for its payment; and
4. No concrete list of forms of discrimination is given; for instance, according to the spheres of labor, social care, healthcare, education.

Despite the aforementioned deficits in the laws, it must be noted that ameliorating gender inequality is a gradual process. Georgia is making incremental progress and shall continue to do so by perfecting the laws and their ensuring mechanisms.

SECTION THREE

CIVIL SOCIETY

Members of a democratic society have the right to cooperate in an organized way in order to establish goals, define needs, influence public policy and demand accountability from government. This is achieved through a civil society. Civil society is quite a powerful tool for demanding government accountability and advocating changes. In the present section, you will become acquainted with the history of civil society and its significance as a counterbalance to government. You will also receive information on the actions of civil society in modern Georgia.

By the end of the section, you will be able to answer the following key questions:

- What are the main principles associated with the development of civil society?
- What are the essential conditions for the functioning of civil society?
- What are the relations between government and civil society?
- What is the role of a civil society and the place it occupies within democratic processes?
- What are the relations between civil society and electoral process?
- What is the history of civil society in Georgia?
- What challenges does civil society face in contemporary Georgia?

Chapter One

The History of Civil Society; its Development and Essence

Chapter one will analyze various examples of the government's relations with ethnic minorities and political opponents. When there is an absence of civil society, even in newly democratic states, not to mention totalitarian regimes, human rights are endangered. Section three we will discuss a citizen's place in a democratic society and explore the necessary conditions for civil society to function. We will list a number of features important for a civil society based on the principle of personal liberty. A lack of personal liberty and freedom makes it nearly impossible for a nation's civil society to maintain efficacy. By the end of this section, you will be able to answer the following questions:

- What are ethnic and civic identities; who is a citizen?
- What place does a citizen occupy in a totalitarian society?
- What place does a citizen occupy in a democratic society?
- What are the basic preconditions for a civil society to exist and function?
- What are the basic characteristics of a civil society and what is the function it performs in a state?

Who is a Citizen and What is Civil Society?

The majority of people living in Georgia identify themselves with a nationality. That means, through the phrase, “I am Georgian,” he/she implies an ethnic Georgian identity rather than a civic identity – a part of the Georgian State, or a subject responsible for the state’s ongoing processes. Therefore, he/she views other ethnicities as “foreigners.” Correspondingly, representatives of other ethnicities living in Georgia prefer to consider themselves as ethnic Armenians, Azerbaijanis, Kurds, etc., and are less inclined to have a civic identity.

In order for a person residing in the territory of Georgia to identify him/herself with the Georgian State, he/she should feel him/herself as a part of the state. Achieving this would be impossible without his/her participation in state building and democratization processes. This process contributes to the formation of a civic identity and acknowledgement of the fact that ethnic Georgians, Armenians, Azerbaijanis, Kurds, Russians, Lezgins, Romas, Jews, etc. are full-fledged members of the state, and as such, equally responsible for the state’s development.

The history of Georgia has witnessed cases where some Georgian citizens of ethnicities other than Georgian, who had made significant contribution to the Georgian culture, complained about their second-rate status within the State. Debates on the above issue were held even in the period of the First Republic of Georgia (1918-1921), following the first election held, and the summoning of the first parliament – the Constituent Assembly of Georgia.

The Case of Anastasia Tumanyants

Anastasia Tumanyants (1849-1932) was an ethnic Armenian and an eminent representative of the enlightenment movement. She was a founder of the children’s journal “Jejili” (1893-1904), an editor of a scientific-political journal, “Kvali” (1884-1906), as well as a teacher and a chairwoman of the “Society of Educationalist Ladies” (1884-1906).

During Georgia’s First Republic (1918-1921) and the formation of an elected constituent assembly, Anastasia expressed her discontent with the fact that she and other Armenians living in Georgia appeared to be isolated from the process. A similar dissatisfaction was expressed concerning the election of sakrebulo (City Council) officials. Her indignation was especially aggravated by a letter written by a doctor, Ivane Gomarteli

(journal “Leila”, 1920), where the author accuses Armenians of not being loyal to their homeland, Georgia, and reminds them of [the revered poet and musician of Armenian decent] Sayat-Nova (1712-1795) who regarded Tbilisi as his homeland. The author advised contemporary Armenians to follow the example of Sayat-Nova and the citizens of Switzerland, where the French, Italians and Germans view themselves as the children of Switzerland. Anastasia Tumanyants sent her reply to Ivane Gomarteli, and to the editor of “People’s Cause,” which was published on March 11, 1920, titled “The Voice of the Georgian Armenian.”

“The Voice of the Georgian Armenian”

To Mr. Ivane Gomarteli

Dear Editor! Please allow me, by means of your respected newspaper, to address in a few words a Georgian public figure, Mr. Ivane Gomarteli, who, in his critical letter concerning a book by Grishashvili – ‘Sayat-Nova,’ published in the collection of a famous poet, Grishashvili – ‘Leila’, touches upon a major issue that should be granted a distinguished place in the lives of the new-born South Caucasus states and in the relations of ethnic minorities living in those states.

As Mr. Gomarteli discusses the relationship between ethnic minorities living in Georgia and Georgia itself, he compares Georgia to Switzerland in his letter. He asserts that the ethnic minorities living in Georgia should love Georgia just like their homeland and finally says:

The height of spiritual development achieved by the Georgian people can be compared to that of Switzerland; they have strongly reached out their hand to all those living in Georgia and addressed them all. We have a single homeland; let us become loyal citizens of the homeland we share. Unfortunately, no other nations have maintained this kind of consciousness, this kind of spiritual height at times of trial. Some of our Ossetians and Armenians have not yet accepted the idea that their homeland is Georgia, and they need to protect this common homeland from all enemies, together with the Georgian people.

Mr. Gomarteli starts his letter with a statement from a Frenchman from Switzerland who says that if France attacked Switzerland, he would defend Switzerland. When in astonishment, Gomarteli asks the Frenchman: ‘How could you ever shed the blood of a Frenchman?’ The Frenchman replies that it would never happen, and if it ever happened, he would defend his homeland just like a Swiss Italian and a Swiss German.

‘If the Swiss French, Italians and Germans say they are the people of Switzerland, then why is it that the citizens of Georgia, disregarding their nationality, cannot acknowledge that we are all the people of Georgia?’

They will acknowledge that and our recent past bears testimony. It was our past that created the citizen of Tbilisi – a Karachogheli (a representative of a certain social stratum of the Old Tbilisi, literally meaning: ‘one wearing a black chokha – a long-waisted outer garment’). Some think that Karachogheli and Kinto (a representative

of a social stratum of peddlers in Old Tbilisi) is one and the same! That is because they do not know our past. A Karachogheli is first of all a citizen of Tbilisi. He may be a Georgian, an Armenian, or of any of other nationality. The only thing that matters is that he is the child of Georgia, his homeland which he loves and would never exchange for a paradise of a foreign land and would never betray or sell.

This kind of Karachogheli spirit and sentiment is conveyed by the poet, Sayat-Nova, who sang: 'My homeland is Tbilisi, the heart of Georgia.' Even though a large number of the Karachoghelis were Armenians, they stood united with Georgians in their love towards their country. Georgian and Armenian Karachoghelis shared a single homeland, lifestyle, joy and misfortune.

The welfare of our Republic requires that the Karachoghelis, like in the old times, share joy and misfortune, and the motherland. 'Do not abandon an old way, or an old friend.'

Unfortunately, the bonds of brotherhood and unity among the nations of Georgia are not yet strong. Nevertheless, we should try to strengthen them through a joint effort, by united force.

What do Armenians lack nowadays? They should get back to Sayat-Nova's way and honestly admit once and for all that their motherland is Tbilisi, the heart of Georgia.

What should we, Georgians, remember, especially nowadays, as the call for brotherhood and unity is somewhat covered with soot?

Sayat-Nova!

We should not forget that the Armenian nation gave us Sayat-Nova – the bridge of brotherhood and unity between us.

The Ararat Government has nearly destroyed this bridge. However, a new Sayat-Nova will come and reconstruct it...

Gomarteli is grateful to Grishashvili, 'the master of the harem of words dancing in the sunbeams,' who has revived Sayat-Nova for our society.

Finally, he expresses a hope for a new Sayat-Nova reconstructing the bridge nearly destroyed by the Ararat Government.

Mr. Gomarteli, I am an Armenian residing in Georgia. My grandfather, as well as I, was born in Tbilisi. I experienced my youth and childhood in Tbilisi and live here today. I have treasured both, Georgia, and its heart, Tbilisi, as my own parent. I have a lot of Georgian peers, friends and relatives. I have been raised among them, learned their beautiful language, worked in their People's Party, and have taken an interest in their literature, poetry and theatre. In short, the socio-political life of Georgia is no less close to me than that of Armenia, so when I, an Armenian loyal to Georgia, read the part of the letter where you criticize the Armenians of Georgia, a question came to my mind:

Why? What is the reason?

What is the reason for a Georgian public figure to mistrust Armenians living in Georgia, who should indeed love their homeland with their heart?

Indeed, how come two neighbors, citizens living side by side, who are supposed to be treating each other like brothers, regard each other with suspicion?

Dear Doctor! You are not the first one to raise the question. I have been writing a lot to answer this question, so I will tell you once again: the relations of the Armenians – the working Armenians and Georgian democracy have hardly ever been ideal. Let us not conceal the fact of mutual resentment between the two brothers.

Your letter has made me want to share with you some of my ideas, and, as a Georgian Armenian, to tell you a few sincere words about the unfavorable relations presently existing between the two neighbors.

Dear Doctor! Let us open up the pages of recent history, in all sincerity. Those who have been keeping track of the political life of Georgia in the past two years, who have observed the relations between Georgians and other ethnic minorities, especially the attitude of Georgians towards Armenians, will surely find out the reasons for the existing environment. They will frankly say that Georgia is not the homeland you have been talking about in your letter. While executing its parental duties, Georgia has not had the same attitude to all of its children and has not treated all equally. Georgia does not deem its two children, a Georgian and an Armenian in an equal way. It has a step child and an own child, a first-class and a second-class citizen.

The governing circles of Georgia, due to some unilateral, or, to be more precise, due to narrow national politics, are always making us, Armenians residing in Georgia, feel that by being Armenians, we should never hope for any parental attitude from our mother Georgia, which you Georgians feel. I have had the same feeling back in the times of autocracy, and I expected that a democratic Georgia, led by those who struggled for equality would treat each citizen equally, regardless of one's nationality. However, the bitter reality has led me to the above conclusion, and I have no doubt at all about the correctness of my words.

In the independent Republic of Georgia, we were not allowed to exercise our electoral rights – the great achievement of the Russian Revolution, and just like step-children, we were not given the right to participate in state-building processes. We were omitted from the lists, whereas people who arrived from Chiatura just two weeks earlier were given the right to participate.

We were also left out of the Constituent Assembly. The Armenian community, which occupies no less important a place than any other population in Georgia, was left out of the large assembly which laid the foundation of the homeland we considered as ours.

Now, what about the great persecution suffered by the bulk of Armenian workers, which was witnessed by every citizen? They were left hungry only because they were Armenians.

Or, what about the persecution and closure of the Armenian schools in a democratic republic, which would surprise even those who had witnessed the old times?

What about all the institutions, starting from a small office and ending with a ministry, closing their doors to local Armenians at all times? The great internationalist slogans were trampled down and Georgianized just like Veshapeli (the author, Lela Gaprindashvili (henceforth L.G.) implied Revaz Gabashvili, one of the leaders of the National-Democratic Party, a founder of the Constituent Assembly opposing the social democrats) and his peers had been craving – something that the Georgian Social democrats had been struggling with so persistently.

What about the provinces? What about the atmosphere there? Or, what about the lawlessness in the administration? It is enough to stay there for two days to find the evidence of the rude treatment towards Armenians, which these truly second-rate citizens experience.

To put it shortly, we feel that equality is nothing but a sheer word, just like Gvazava and Gavashvili (L.G.: Members of the National-Democratic Party) had dreamt. It seems that Georgia is for Georgians only.

All of this would be understandable if the national democrats had applied their illiberal nationalist policy, and thank God they are not in power! (L.G.: She says their comrades and social democrats had isolated them. She also talks about the Armenian nationalist party 'Dashnaksutyun' and says that the struggle of Georgian politicians against this party has become the struggle against the Armenian society and Armenian workers.)

Is it not time to end all this? Is it not time to create a neighborly atmosphere, so that Georgian and Armenian working people, as well as Georgian and Armenian citizens can equally enjoy the sweet endearment of a common motherland?

Today, when Georgia is celebrating a great day and is becoming an equal member of the family of European States, is it not time for the two neighbors to get closer in this joyful era?

I believe that the time has come for Georgia to become a real and common motherland for all of its citizens.

Let us not look back. Mistakes are possible on the road to building a new state. We hope that the things that happened while the foundation was being laid will not happen again during the construction of the building. Only then, the bridge will be restored, which was broken due to many reasons.

If present day Armenians miss Sayat-Nova, then we should also consider it true that the present Georgia, dear doctor, is missing of that own native treatment, to which the Armenians living in times of Sayat-Nova in old Georgia were so accustomed.¹⁶⁵

Editorial office of the 'People's Affair' newspaper replied to Anastasia Tumanyants with this letter:

¹⁶⁵ Voice of Georgian Armenia, *Sakhalkho Sakme*, (March 11.1920).

In Response To Tumanyants

A letter of Georgian Armenian Anastasia Tumanyants was printed in yesterday's issue of our newspaper. The letter was sincere and extremely important. We think that the kind of tone set throughout this letter should be the only one between the representatives of two neighboring nations. Unfortunately, we are not used to this kind of calm discussion from Dashnaks, who are rulers of today's Armenian nation. That is why we wish to express some thoughts about the ideas stated in the above letter.

Tumanyants is sincerely worried about the hostility which exists today between Georgians and Armenians, and she thinks it is useless to conceal this fact. She thinks that the main reason for the spoiled relationship is that the Republic is not treating all of its subjects equally. She refers to Armenians as stepchildren who were expecting better treatment. Armenians were not allowed to participate in the Tbilisi elections or in the Constituent Assembly. There is more oppression in the provinces than in the center. All that was mentioned irritates Armenians and explains the deterioration in relations.

I should say that portraying facts in this manner is not close to reality at all. Everyone knows that our internal politics had nothing to do with that horrible war, which was started by Dashnaks against Georgia, and dragged the whole Armenian nation into this military adventure. Add to this, the propaganda that was waged against Georgian independence by various Armenian circles. Even that demonstrative whoop about restoring Russia (at the early stage), was clearly against our freedom. Considering the abovementioned, a lot of things will become clear to us. There were countless rumors about Georgia in Europe spread by Armenian political circles. All this was happening at the early stages of the declaration of independence when our Republic had not waged any kind of aggressive politics against Armenians. What is the reason behind today's degraded relationship? The reason is the abovementioned policies that were practiced by Armenian political circles.

The author also points out that Armenians were not allowed to take part in elections. In response, I should also say that this has nothing to do with the truth. Maybe in Tbilisi, some locals were accidentally left out of the voters list, but this was not done intentionally, because the law was not calling for this at all. Do all Armenians live only in Tbilisi? Why does Tumanyants not consider the Armenians living in the provinces? The entire population of Armenians in villages took part in the elections, just like Georgians and other nationalities. This happened for example in Qartli and Kakheti – regions where Armenians generally reside. So to conclude, Armenian nationals were not excluded from the election process, if we do not take into consideration some circles of Armenians living in Tbilisi, which neither wished nor sought to be a subject of the Georgian State.

Now about the oppression of Armenians in the provinces – we talked with 'Ashkhatavor' on this matter once already. Our provinces are not well regulated and there is a problem of violence, but this violence and disorder does not affect only Armenians. We cannot link this to nationalist disorder. Disorders were also taking place in provinces which were populated only by Georgians, e.g. Okriba, Tskaltubo as well as other places. That is why in this case Tumanyants is mistaken. There may be some cases, but Armenian nationals as a whole, are not subject to constant oppression. This is a fact.

At this given moment, the constitutional committee is working on issues concerning minority rights. This work has to be concluded soon and interested nationals should also take part in the process. Consequently, good relationships will develop. The local Armenian population will be sincerely involved in state building and will protect state interests and freedom.

The only way to achieve a normal relationship is through cooperation and the building of a trusting relationship that is equally desirable for both, Georgian and Armenian true democrats¹⁶⁶.

In 1921, following the annexation of Georgia, all debates concerning national minorities was stopped. The Soviet regime needed obedient people, whose motherland was the Soviet Union and who identified themselves with the Soviet Union and not with a certain nation. The regime required humans as a material, as a tool, for achieving its goals. In a totalitarian state, a person is evaluated by his devotion to the government. In a democratic society, the main responsibility of the government is to serve its people. In a totalitarian state, a human is a subordinate, whereas in a democratic state a human is a citizen. A subordinate does not consider himself/herself as an active, or a participant citizen, but blindly, without any hesitation obeys the dominant ideology and decisions of a leader or a party. He/she never questions his/her economic, social status and does not connect it with the policy conducted by the government. He/she is always ready to sacrifice himself/herself for a leader, for a state, and does nothing to improve his/her life.

It is not easy to overcome the “subordinate” mentality. Especially, when speaking up for your rights, protesting, and civil boldness is brutally punished by the government. In the 1930s, people who were considered untrustworthy and critical were hunted. In 1937, one of the outstanding commanders of the Red Army, Iona Emanuel Iakir (1896-1937), was sentenced to death. His last words were: “Long Live Stalin!”

The regime was punishing and exterminating everyone who was skeptical and critical of the Soviet Union. Georgian writers, actors and people of different walks of life were forced to turn on their colleagues in order to save their own lives. For this reason, 1920-30s repressions took the lives of so many honest and brave people who could not go along with this regime and those who would not assist in the extermination of their compatriots.

¹⁶⁶ Voice of Georgian Armenia, *Sakhalkho Sakme*, (March 11.1920).

Case of Grigol Robaqidze

Georgian writer Grigol Robaqidze escaped the wrath of the Bolsheviks and fled to Germany in 1930. In 1934, writer Gigol Mushishvili published a book titled “In Snake’s Skin,” in which he calls Grigol Robaqidze a propagandist of symbolism, racism and man-eating chauvinism, and it is obvious that he is expecting the answer from the Writers’ Union. On April 19, 1935, the presidium of Soviet writers held a meeting with the goal of reaching a verdict. The presidium heard the statements of Paolo Iashvili, Titsian Tabidze, Valerian Gaprindashvili and Nikoloz Mitsishvili (Grigol Robaqidze’s compatriots and friends) on the traitor fascist Grigol Robaqidze.

The presidium of Georgian Soviet writers examined the statements of P. Iashvili, T. Tabidze, V. Gaprindashvili and N. Mitsishvili on the fascist Grigol Robaqidze’s treacherous activities. This statement was unanimously supported by all members of the Writers’ Union and they concluded: ‘We urge the central committee of the Soviet Union to denounce Grigol Robaqidze as an open enemy of the working class of our country and proclaim him a traitor of his homeland and deprive him of Soviet citizenship by implementing all the results concerning this matter.’¹⁶⁷

In 1937, the Soviet regime arrested and executed Titsian Tabidze, Nikoloz Mitsishvili and Grigol Mushishvili. Paolo Iashvili expressed his protest by shooting himself at a meeting of the Writers’ Union.

We cannot consider the Writers’ Union as an organization that was fighting to protect writers’ rights and freedoms; instead, it was serving the regime. This was natural, because during totalitarian rule, these types of unions cannot control the conduct of the government but rather become objects of control and supervision by the state itself.

This example clearly demonstrates how unsafe a citizen is in a totalitarian state, where people who think differently are considered guilty. This system oppressed and exterminated everyone who did not cooperate, and everyone for whom freedom of thought and expression and humanity was of the highest value.

Now, let us try to show the place of a citizen in a democratic society and describe conditions required for civil society to function.

Civil society is a unity of citizens, activity of which is free from direct involvement and regulation of the state. It is composed of groups with different interests (economic, cultural, social, civil), which monitors the state, government actions by protecting human rights and freedoms, involving citizens in social and state life and encouraging their participation.

¹⁶⁷ “The Case of Grigol Robakidze”, Georgian National Archives.

Civil society and government have different goals and functions which draw a line between them, but for a state, the effective functioning of the government (legislative, executive and judicial) civic control and supervision is essential.

The goal of civil society is to satisfy citizens' individual needs and protect their rights. It does not have legislative, executive or judicial functions. Its activity is based on mutual consent and voluntariness of citizens. Civil society is formed by citizens independent of the government, on the basis of free choice and individual initiative. But there is a stark contrast between democratic and totalitarian societies in their treatment civil society. The former creates foundations for the formation and normal functioning of the civil society, whereas the latter prohibits and opposes its existence.

Antagonism of the totalitarian regime towards civil society is natural because civil society is against the concept of totalitarianism. Totalitarianism embraces the idea of a government's absolute and unlimited authority. It allows only the existence of governmental organizations and strictly forbids non-governmental organizations. That is why it cannot tolerate unions created by citizens on a voluntary basis. There were artistic and cultural unions, scientific and non-scientific societies, youth and veteran unions in the former Soviet Union, but all of them were governmental organizations. They were financed and managed by the government. Besides, only one organization was allowed in any particular sphere, and creation of different organizations in the same sphere was forbidden. For example, there was only one political party – the Communist Party, and no other political parties existed. Youth Communist League and Writers' Union were the only ones functioning in their respective areas and the creation of similar organizations was forbidden.

Democratic government creates favorable conditions for civil society to exist and function, and it is legitimate because it is protected by law. It is true that government is not creating or interfering in the activities of civil society organizations, but it establishes the legislative basis, within which these organizations freely and independently function. The government does not control, but regulates the activity of civil society. The Constitution and other equivalent legislative acts form the basis for these regulations.

One of the important missions of civil society is to control the activities of a government. It is a fact that government quite often exceeds its powers, and as a result, we end up with the misuse of authority. Government fully uses its rights, but cares less about fulfilling its obligations. The government forgets that with rights come responsibilities. For example, government is supposed to protect human rights, but very often breaks them, it is supposed to protect the rule of law, but commits unlawful things, and it is supposed to fight corruption, but there are many bribe takers in its institutions.

Civil society cannot interfere in government activities. It cannot assume the functions of the government, it has no right to issue laws, put them into practice or execute judicial power. All these are the prerogative of the government. None of the civil society organizations have the right to arrest a bribe taker and try him/her. His/her arrest is under the mandate of the police, and the court is the institution which conducts the trial. However, civil society has the right to uncover the facts of bribery in mass media. It can also do the same in various cases of abuse by the authority, for example: it can uncover instances of the law being broken, violations of human rights, personal freedom and dignity.

It is true that civil society cannot change the government, nor can it assume its functions, but it does have the right to control and influence government activities. Unmasking and criticizing, making recommendations and offering constructive cooperation, protesting statements and catalyzing peaceful manifestations – these are some of the means by which civil society is capable of forcing the government to protect social justice and human rights. These means cannot ensure a perfect atmosphere in the country, but they will limit the state, as a mechanism of coercion to some extent.

According to all of the things mentioned above, we can outline several characteristics important for a civil society to function:

- 1. Independence from the government or autonomy.** Civil society is the unity of different interest groups, which are formed by the initiative of the citizens without government involvement. In the formation process, it is important for the members of the initiative group to clearly define and envision the goals, missions and ways of achieving results for their activity;
- 2. Agreement and contract.** Common interests are the basis for citizen unions, and their interests are designed in the form of a statute of a union. The key methods for realizing their goals are laid out in the focus and objectives of these unions. They unify around a common interest. For any kind of civilian union, agreement on a common interest/goal is considered to be an essential condition, and subsequently this agreement takes the form of an official contract between the union members.
- 3. Self-governance.** The functioning of a civil society is based on the principle of self-governance. Their activities are guided by their own statutes and missions and not by the government-made and established laws.
- 4. Consciousness and purposefulness.** Citizen unions are not formed spontaneously and unconsciously, but rather consciously and purposefully. They acknowledge common interests and effectiveness of the means needed for achieving common interests. The acknowledgement and consideration of the above men-

tioned encourages them to make a decision on unification. This is the result of a choice made by individuals, and not through coercion but on a voluntary basis.

5. **Non-similarity and diversity.** Within civil society, there are many groups and organizations that are different from one another, which blanket the broad spectrum of human activities; political parties and professional unions, economic firms and enterprises, scientific and cultural unions, artistic creativity circles and groups in the neighborhood serving communal interests, sports or leisure unions, human rights or environment protection organizations, and many more. In one given sphere of activity, several different and independent organizations may be operating. For example, there can be many political parties, several organizations of writers, and so on, which differ from each other by their statute and mission. They have different structures and goals. The monopolization of any sphere of activity only by one organization is considered unacceptable.
6. **Free of Ideology.** Citizen unions do not have any particular ideology that is the basis for their consolidation. It is deprived of ideological unity, which would rely on one plan and one goal. On the contrary, civil society expresses individual and not common interests of individuals. It is actually impossible to unite individual interests under one ideology.

The characteristics listed above clearly demonstrate the peculiarity of civil society. It encompasses the sphere of individual interests and rests upon personal freedom and initiative.

Chapter Two

Civil Society and Democracy

Chapter two will recall the essence of democracy and discuss its importance for a civil society. We will once again specify the features of a democratic government. By the end of part two, you will be able to answer the following questions:

- What is democracy?
- What are the characteristics of a democratic government?
- What tools do people use to participate in a democratic process?
- Why is citizen participation important for democracy?

As we have already clarified, only an engaged and responsible person can be a citizen. So, what are the conditions and tools enabling him/her to get involved and influence the civil process? To answer this question, we need to understand the concept of “democracy,” the specifics of the democratic process and the essence of functioning democratic institutions.

The word “democracy” has been adopted by all languages from a Greek word that means “people’s (*dêmos*) power (*kratos*).” The modern meaning of the word is similarly defined: democracy is a form of government where the highest authority belongs to the people and whose goal is to implement the idea of equality of people, and to provide its citizen with freedom limited only by adopted laws based on a consensus. It was in Greece, namely in fifth century BC Athens, where democracy was first introduced. In Athens, which was an independent city state (*polis*) in the mentioned period, legislative and executive authority was exercised by a people’s assembly. All adult male citizens of Athens, which made up for approximately 5,000 - 6,000 people, had the right to participate. At this assembly, issues were decided through the majority of votes. The higher bodies of executive power were the administrative council, consisting of 501 citizens, and the jury courts, which were responsible for making final decisions on the laws adopted at the general assembly as well. The officials of the executive authority were assigned by voting, and only some, specifically the heads of military and financial affairs were elected at the general assembly. Work on any position, as well as participation at judicial bodies was compensated monetarily, which provided not only theoretical, but also a practical opportunity for the poor strata of society to take part in the government process. A different, though nevertheless important, type of democratic system was created in the Republic of Rome in the third century BC.

Despite its shortcomings, the democracies of Athens and Rome were the gleam of light on the map of the world of those times. Although after their collapse, an authoritarian power based on class inequality and often not limited by law, belonging to a single person, a monarch (king, pharaoh, tyrant, emperor, shah, sultan, etc.) or of a small group of people, of an oligarchy, became deeply enrooted elsewhere, to the entire world, the experience of the polis of Athens and the Republic of Rome remained for all in the memories of every age of the advanced people of each generation, as a specimen, as an ideal and a hope that sooner or later it would be revived.

Between the 16-18th centuries, new trends originated in the lives of the European states. Development of industry, trade and free commodity relations evidently demonstrated that a societal structure based on class inequality was outdated and required

radical changes. This trend is clearly expressed by the idea of a democratic organization of a state and of people's sovereignty that appeared to be popular in that period of time. According to the idea, the only source of state authority is the population of the country – the people. This implies the rejection of an absolute authority beyond the control of people, privileged classes and classes without rights, inequality of people before the law and illegitimacy, and the rejection of all theories according to which a king, leader or a small circle of the chosen ones gains power by God's will or by historical necessity. These ideas, which had already developed through the minds of philosophers, were most vividly manifested in the end of the 18th century, during the French Revolution, namely, in the Declaration of the Rights of Man and of the Citizen of 1789. The idea individual sovereignty and implementation of the results thereof had begun in Europe. The process appeared to be by no means peaceful and was expressed through bloody wars. However, the process did not cease, and has been propelled forward ever since. At the same time, nowadays, there are already some countries with stable democratic systems, and even more countries sharing the idea of people's sovereignty, which is reflected in their governments; it implies that people's will is the only basis of state authority and its legality. This is publicly proclaimed in the Universal Declaration of Human Rights (Article 21) as well as in other international documents.

Democracy establishes a form of state authority which bears the following characteristics:

- 1. Legitimacy of government.** The government is legitimate or lawful if it is elected by the people in accordance with the rules and norms established by law. Elections take place regularly. Its terms and forms are strictly defined. In the case of unlawful elections, the results of the election are considered void. The legitimacy of government is defined by the people, though, only when people's will is exercised in accordance with an established law.
- 2. Limitation of government by law.** The law establishes not only the process of government formation, but also its rights and responsibilities. The government does not have the right to do everything. It is allowed to do some things but restricted to do some other things. For instance, the government has the right to use force within the law, but it is prohibited to use force illegally. Also, a government has certain responsibilities, such as protecting and ensuring the inviolability of human rights. If a government has exceeded its rights and has not fulfilled its responsibilities, the law empowers people to alter and dismiss the government. Therefore, the law limits the government's authority.

3. **Separation and isolation of powers.** It is within the authority of a government to issue and execute laws and implement jurisdiction. Consequently, it has three types of functions – legislative, executive and judicial. These functions are not concentrated within one body or person, but distributed among three separate bodies: legislative function belongs to the parliament, executive –to the president and government, judicial – to the court. They are independent of one another. One cannot interfere in another’s competency, though they limit and control one another.
4. **Freedom and pluralism.** Personal freedom is recognized and guaranteed. People have the right to express their views, freely choose religion, assemble and move to any part of the country and beyond its boundaries. Any different, opposing idea is legitimate. It is not only the government’s officially accepted view, but also those views that differ from it are lawful. There is no single absolute truth. Criticism of government is acceptable and is not punishable by law. Pluralism is a standard in all spheres of life and thinking, since it is the concept that reflects a social life where people differ from one another by their economic, social, political and cultural statuses and opinions.
5. **Inviolability of human rights.** It is the government’s duty to protect human rights and freedoms. To achieve this aim, it brings its national legislation in conformity with international laws. Violation of human rights and freedom is inadmissible. Citizens possess their human rights not as a good deed or a gift from their government, but by act of law. Citizens’ rights are legitimate and protected by law.
6. **Guarantee of minority rights.** Minorities are not only political opposition, but also ethnic, religious, sexual and other groups constituting a smaller section of the population. Democracy is based on the will of the majority, though it should not limit and oppress the minority. It creates the guarantees that allow the minority to freely and fully exercise its will.

Democracy, the Citizen and Participation

How should people express their will? How should their will become the source of authority in a state? As done by smaller groups of people seeking to define their future collective actions or to decide on which of the group members will be assigned the duty to perform a certain task – it can be achieved through a consensus, based on a preliminary discussion. The term “consensus” means a choice made by group members as a whole in favor of a certain decision. How, and by what means do people do that? They put alternative proposals to the vote and agree on the rule of vote, as well as on the minimum number of votes required to make a decision, and whether

it requires the consent of all (full consensus), nearly all (for instance, of the qualified majority, two thirds or of three quarters of the total number of voters), more than half (an absolute or a simple majority) or the most (relative majority). Voting is the tool used by people to express their will.

The expression (the vote) of people's views on any issue can be done in two ways, and accordingly, there are two forms of democracy: **direct** and **representative**. In the first case, it is the citizens who resolve issues of social life that are of direct interest to them by means of voting, rather than elected or assigned officials. An essential condition for using this tool is a comparatively small number of voters and issues submitted to the agenda that do not require a lot of the voters' time and energy. Direct democracy could be implemented, for example, at village meetings or at general meetings of local organizations of trade unions or political parties, etc. Modern democracy is mostly representative: citizens directly elect their representatives who, in turn, makes political decisions, create laws, programs and contributes towards their implementation. A citizen, by taking into consideration the view of another citizen, accepts him/her as his/her representative, and thus transfers his/her right to participate in discussion and decision of issues of social life, to the representative. Therefore, the selected representatives make decisions on behalf of the people. The procedure of selecting the representatives may vary from case to case, though in all instances, elected representatives occupy positions and make decisions on behalf of people and are accountable to people.

The election of representatives is a procedure through which each individual can exercise one their fundamental rights – the right to participate in the governing of his/her country and to assign state authority and influence policy together with his/her fellow citizens. Article 21 of the Universal Declaration of Human Rights reads as follows:

- Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- Everyone has the right of equal access to public service in his country.
- The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

In any state, elections are a tool for expressing the will of the people and gauging the quality of the state's democracy. Indeed, through elections, the composition of the legislative, executive and judicial authorities, and the main provisions of their actions

and programs, both locally and nationally, is based solely on the mutual agreement of those who are to be governed – the people, the citizens. Elections are the mechanism for transforming this agreement/consensus into the rights and responsibilities of government bodies. Such a mechanism, which is the practical implementation of a theory on public agreement within a state, was created in the early modern period by several exceptional European thinkers – Thomas Hobbes (1588-1679), Baruch de Spinoza (1632-1677), John Locke (1632-1704), Samuel von Pufendorf (1632- 1694), Jean-Jacques Rousseau (1712-1778) and Denis Diderot, (1713-1784) among others, who also brought to light the theoretical basis for the concept of people's sovereignty. An election is the mechanism for agreement, whereas, the result of an election is an agreement (contract) between members of a society on matters relating to the government, its policy and implementation of this policy.

Chapter Three

Civil Society and Elections

In chapter three, we will discuss the significance of expressing the will of the voter. We will have an overview of the conditions of democratic elections and reflect on the essence of the election-monitoring process. We will assess the nature of influence of executive authorities and the employees of law enforcement agencies on the electoral processes. We will discuss the importance of competency and consciousness of journalists while covering elections. We will recall and analyze a number of cases connected to elections, and will be introduced to the opinions of international observers with regard to elections held in our country.

By the end of this chapter, you will be able to answer the following questions:

- What is an election and what is its purpose in the democratization process?
- What major requirements should a democratic, fair election meet?
- What is the role of civil society in the electoral process?

When we talk about elections in a modern state, we are implying direct elections of a country's higher government body (the parliament), and high-ranking officials of executive authority (a president or a prime-minister) by the citizens, as well as election by a parliament of high-ranking officials of executive and judicial authorities and the election of local government bodies.

Nowadays, elections are held in almost every country and at almost all levels, though they do not always serve their purpose, as in cases when their results do not express the voters' will. A typical example of the above was the elections held in the Soviet Union. For the elections to be democratic and for its results to really express the voters' will, a fair amount of conditions should be fulfilled. Some of the most important conditions were skillfully and vividly expressed by American scientist and political figure, Jeane J. Kirkpatrick. Specifically, according to J. Kirkpatrick, democratic elections should be:

- Competitive
- Periodic
- Representative
- Definitive

CHAPTER 3.1

A Competitive Environment and Pluralism

In democratic elections, the voter should have different options, as the voter indeed faces a lot of alternatives. This is possible only when a position/seat of power, be it that of the president, a legislative body or any other elected position, is contested by candidates from different parties and of varying action plans. Each candidate supported by the official government should have a competitor and, in general, opposition candidates should enjoy the freedom of speech, organization of meetings and movement, as well as equal air time for radio or television speeches. These conditions are essential for the introduction and popularization of a candidate's plans and views and for conveying them to the electorate and to the government.

Examples of not providing enough radio and television air time for opposition candidates, limiting or restricting their public assemblies and pre-election meetings, censoring their newspapers/printed materials, and creating unequal conditions for rival candidates, deprive elections of their competitive nature. In any case, the governing

party holds the advantage, which it has gained from being in power. Given the position of the incumbent party's candidate, he/she has a more links to the establishment and more opportunities to maintain direct contact with the electorate. Enjoying any additional advantages would be unfair. Elections should be fair in a democratic state.

Periodic in Nature

The people, who are the basic subject of a government, are not a substance that remains constant or something that is given for good.

In the course of time, their composition changes, both in terms of quantity and quality. The change in peoples'/citizens' perceptions, goals and wishes bring about changes in peoples' wills, which should be reflected in the essence of the state, the nature of state authority and state policy. For this reason, the agreement made between citizens need to be renewed from time to time. In a democratic state, all kinds of elections should be held regularly and periodically which acts to define the rhythm of the state's political life – amendments and changes in politics, or, in general, updating state policy.

Therefore, a ruler, a chairman or a president elected for life contradicts the principles of a state's democratic structure. No election and no elected authority can have a permanent mandate. Every official is accountable to the people, and after having taken up a position for a certain period of time, he/she should request a new mandate to stay at his/her current position from electorate. He/she might not be able to receive this mandate; therefore, the officials in a democratic state should get accustomed to the possibility that they might not be selected for a new term.

Inclusive

Election results express the will of those who have the right to participate in elections. In a democratic state, elections should express the will of people. Consequently, for the above reason, it is necessary for the definition of the law on "the citizen entitled to vote" to include a substantial part of the population. Whether or not an election for legislative officials or other bodies is fair, a voting process and the interpretation of results thereof that denies the participation of a portion of the electorate will not be deemed democratic. The lack of inclusivity was one of the main shortcomings of the ancient democratic states, which ruled out the participation of slaves and women. In Rome, not only slaves and women, but also free citizens of low income were denied the right to participate in elections.

To create the illusion of a natural decline in the number of voters, lawfulness and the democratic nature of elections, a government often applies the system of electoral qualification. An electoral qualification is a condition for gaining the right to participate in elections, established by law. According to the qualification, a section of the population possessing or lacking a certain feature are deprived of the right to participate in elections, the right to participate in defining what the state policy of his/her country should be, and who should implement it. There are electoral requirements based on property, place of residence, education, race, ethnicity, gender, religion, class, age, health, etc. Requirements not only limit eligible citizens in their active right to vote, but also eligible citizens in their passive right to get elected for certain positions at certain agencies. Each requirement is a legal expression of popular or dominating social, political, ethical and other dogmas whose majority unreasonably restricts human rights. However, all requirements cannot be similarly assessed. For instance, establishing a lower age limit seems reasonable, since children do not have the ability to make political decisions, therefore, their participation in elections would mean granting the right of an additional vote to those who the children obey.

Candidates have even stricter age requirements. In most countries, the lower age limit for citizens eligible for being elected, i.e. for using their passive electoral right is 21-25 years (in Georgia, a person can be elected as a Member of Parliament at the age of 25). In some countries this limit is even higher. In order to be elected for a position requiring systematic, stressful work, independent decision-making on some issues important for the country or a specialized knowledge in a certain field, establishing the requirement of a higher age limit, health and education should also be deemed expedient.

Presently, the building of a democratic society is a publicly declared objective in the post-Soviet countries, including Georgia. For this reason, limiting the representation of elections is ruled out by normative acts. However, there are some "hidden" methods not formulated by law, such as, handing out ballots without any identification documents on the day of elections, thus creating the possibility for one person to vote on behalf of another. Electoral fraud can also be committed through the issuing of pre-filled or extra ballots to the electors (ballot stuffing) or directly dropping them into the ballot box by an administrative clerk, entering fictitious indicators in protocols, etc.

Definitive Election Results

This criterion includes two points:

1. Democratic elections provide the elected persons with real power, a real and not a symbolic authority. They should govern the state in accordance with the existing constitution and other laws.
2. There should be a mutual respect and loyalty among parties standing for election. In a democratic state, protection of democratic norms and values should be common for all parties standing for election. Therefore, a party defeated in the election, which thereafter becomes the opposition, should accept the results of the election as a lawful decision of electors and live in the conditions created by the results of the election: the struggle with the government is now over and will be resumed no earlier than the next election. A fundamental principle of democracy includes the provision of the minority's (defeated parties) rights just like the majority's rights. On the other hand, it is the responsibility of the winning party not to oppress the defeated parties and not to deprive them of the appropriate conditions for participating in social life. The history of the Soviet Union provides us with vivid examples of non-loyalty.

CHAPTER 3.2

The Functioning of Electoral Systems and Election-Monitoring Processes

Merely having an active electoral system is not enough for guaranteeing democratic elections in a state. Transparency in the implementation of a system and electoral legislation for interested persons and organizations is also essential. Specifically, it should be possible to observe, verify and manage the election process at all stages by the methods permitted by international acts and the country's own legislation. According to Article Eight of the main document of the 1990 Conference on Security and Co-operation in Europe (presently OSCE) held in Copenhagen, monitoring the election process by internal and external observers is an essential condition for the trustworthiness of election results. Therefore, the document calls for all countries where elections take place to invite (admit) observers from OSCE Member States, as well as from private institutions and organizations willing to participate in the observation. In

a democratic state, the importance and the rights of international and local observers should be guaranteed by electoral legislation.

The primary goal of such supervisory activity is to assess the integrity and fairness of elections. This is very important for all countries, especially for those whose democracy building processes are ongoing. Georgia is one of those countries.

It can be assumed, based on past experiences, that supervising every stage of an election, such as the: creation of a voters list, nomination and registration of candidates, pre-election campaign and procedures of voting, vote counting, etc. at the polling stations and the announcement (e.g. publishing) of the results will make those who are partaking in the election refrain from fraud, deceit and voter intimidation, as well as other forms of violations and unintentional mistakes.

All the above has its results which are expressed in the commitment of the monitoring. Many people in post-communist countries know from their own negative experience, the deceptive nature of official events, including the roguish nature of elections, the neglect of human rights and the autocracy of government. Therefore, they are skeptical about the significance of the election process. The monitoring and publicizing of election results assists these people in overcoming their skepticism and in acknowledging the importance of civic responsibility, which enhances the trust of citizens and their activity during elections. Monitoring and publicizing elections also results in influencing politicians, political parties, and government officials to make certain changes in their activity. The influence does not interrupt the election's aftermath. The winner and loser continue to debate over the entire election process and its lawfulness. If it happens so that facts and arguments are in favor of one of the parties, this may critically influence the results of an election.

Elections are observed and controlled by internal observers of four different categories. These are: electoral administration (central and regional election commissions, etc.), political parties, local media (print media, radio, television) and interested neutral organizations. International observers, whose sole purpose is to complete the work done by internal observers, should also be allowed to take part in the monitoring process.

Apart from pure organizational work, which is the main responsibility of the electoral administration, its other duty is to make sure the elections process is in compliance with the country's electoral legislation and international standards. Therefore, a conscientious and professional electoral administration can play a very positive role in

democratic elections, and consequently, decrease the need for broad supervisory activity.

In assessing the fairness of elections, the electoral administration may not be completely reliable, especially in countries where democratic norms are only being implemented in a certain way; a way which benefits the ruling party. This presents a problem for two reasons. The first reason is that verifying the fairness of an election is at the same time scrutinizing the administration's activity. The second reason is that generally, employees of an electoral administration are appointed from among the employees of executive authority and law enforcement agencies. As such, there is doubt that is often reasonably well-grounded, on the commission's partiality which is based on their excessive support to candidates of the ruling party, as well as their efforts in trying to create favorable conditions for them, even at the expense of violations. Observers from various political parties could also play a positive role, especially on Election Day itself, as long as the presence of representatives of various political parties at different polling stations at one and the same time creates an atmosphere of mutual control. Besides, they provide interesting insights on the electoral process as a whole, as well as on the level of voter turnout and the results of the elections directly after voting. However, they are also interested parties and there is a probability of them being bias and giving preference to positions and candidates of their own party as well as concealing violations made by them.

Local media (magazines, newspapers, radio and television) also observes the elections process. However, their main activity is to provide coverage of the electoral campaign and information on the results of elections. The independence and professionalism of journalists makes it possible for them to identify violations and offer improved methods of information collection, summarization and dissemination to the electoral administration. However, when media is restricted or when its professionalism or monitoring activity is low, information is one-sided and unreliable.

Acknowledging the probability that electoral administrations, representatives of political parties and local media will have biased attitudes while observing the electoral process and attempt to act in favor of one of the parties has called for the involvement of neutral civil organizations and individuals in the monitoring process, whose interest lies not in the outcome, but rather the electoral process itself, its integrity, lawfulness and conformity with democratic norms. If neutral observers perform their work effectively, their evaluation of the electoral process and the results of the elections should be considered more objective and reliable than that of electoral administrations and media outlets that are controlled by the state or affiliates of any political parties.

An organization of this type (neutral) providing its own independent observers for elections in Georgia is the International Society for Fair Elections and Democracy (ISFED). Apart from this organization, the Georgian Young Lawyers' Association (GYLA) also actively participates in the elections monitoring process. Local independent groups of observers are also politically neutral bodies providing opportunity and hope for people who are skeptical of the importance of elections, to become more active and more involved in political life, and those who otherwise would not participate in elections or, out of fear, support the candidate of the current government. Therefore, involvement of neutral civil organizations in the monitoring process creates more opportunities for fair elections and at the same time strengthens the democratization process.

The level of reliability will increase even more in case the work of internal observers is duly filled in the international observers' data. The advantages of having neutral observers for evaluating elections was apparent for the first time during the 1984 presidential elections in the Philippines, followed by African and South American countries, as well as eastern European countries after the breakup of the socialist camp. Those observers demonstrated that despite their personal preferences and previous experience, they could perform their duties conscientiously, reliably and impartially.

Whether the election will be conscientious and fair mostly depends on the electoral legislation. Hence, it is the principal objective of all categories of observers to influence the development of the electoral law. Democratic elections start with a democratic electoral law. One of its essential components is defining the observation framework and observers' rights. This issue has always been subject to passionate debate between interested parties, though it is evident that any attempts of the government to curb overseeing activities demonstrate their inclination towards autocracy. What else should be overseen? Everything that constitutes the electoral process: appointment of electoral administration, registration of political parties (blocs), protocol of pre-election campaigns, voting and counting of votes, interpretation of results and identification of the winner, consideration of complaints, election related activity of government, security services and their state-run media. Also, observers should work to publicize monitoring results and increase access to this information for the entire electorate.

The Case of Europe

Struggle for universal suffrage has been one of the most important and remarkable processes in Europe for the past two or three centuries. Even nowadays, it remains to be a part of the struggle for implementing democratic norms in the political life of a society. The struggle which started in England in the 17th century, developed in the

period of the 18th century French Revolution, and gained extraordinary strength in 19th century. The election of the States-General (états généraux) that took place just before the French Revolution was direct for clergy and nobility, two-step for the third class and three and four-step for peasantry (class qualification). There also had been property, tax and servant requirements (the latter deprived servants of suffrage) for participation. The Constitution of 1793 cancelled all kinds of property requirements, established the age of 21 as the age limit for active electoral right and made elections direct. The Constitution of 1795 “yields” its positions in every aspect: property and tax requirements were restored, and the age requirement was increased. Additionally, as a result of Napoleon’s reform of 1799, elections became a three-step open process. After restoration of the Bourbon rule in 1814, suffrage limitations increased. Electoral reforms spanning 1830-1831 improved the situation to some extent. In 1848, France underwent another revolution which began with the claim of reforming the election system, a new Constitution restoring and building on the achievements of 1793. Elections became universal, direct and anonymous. This kind of fluctuation continued almost through the end of the century.

The struggle to democratize the electoral system in other countries was no less dramatic. One of the main goals of the Chartism Movement of 19th century England was radical reform of the electoral system, specifically, the abolition of all kinds of requirements, and the establishment of the secret ballot, etc. The electoral reforms of 1832, 1867 and 1884 undergone in England, minimized property requirements, and by the beginning of the 20th century, after the end of World War I, universal active suffrage was adopted. In the United States of America, by the time the Constitution of 1787 was adopted, the right to vote and to be elected was enjoyed only by adult white men possessing a certain minimum amount of property. The main features of this struggle were: abolishing property requirements (the beginning of the 19th century), granting suffrage to women (1920), full abolishment of race qualification (1960s), and lowering the age requirement from the 21 to 18 (1971).

In the beginning of 20th century, after World War I, European countries like Germany, France, Switzerland, Greece, Spain, Belgium and partially England started to adopt what could be called a universal suffrage, but only to some extent, since, although property qualification was abolished everywhere, certain limitations still remained, such as gender discrimination.

Unreasonable requirements violate the necessity of equal protection of the law for all citizens, which is one of the main characteristics of a democratic society. Equal protection of the law is violated in instances when all have the right to vote, though not everyone’s votes are of the same “weight,” to be precise, when citizens differ in the

number of times they can vote during a ballot, or when in the conditions of universal suffrage allow some citizens to either have no right at all, or have fewer opportunities within the law to get elected as a member of a representative body, or to any other elective post. The limitation of passive electoral rights may be not directly stipulated by law; however, it may stem from other limitations. One of such mechanisms is the establishment of election districts – defined territories where an equal number of deputies are elected. If election districts vastly differ in quantity of voters, the equality of elections is violated, since a smaller number of the electorate elects the same number of deputies in one district as a larger proportion of the electorate in a different district. In this case, it appears that votes of citizens residing in different districts have different “weight.” In the beginning of 19th century, one of the political claims of the Chartism Movement in Great Britain was the abolishment of these types of electoral districts. A parliamentary reform of 1832 cancelled many small electoral districts and thus made a major step forward in the process of democratization of elections.

The Case of the USSR (Union of Soviet Socialist Republics)

Elections in the Soviet Union were nothing but a show with the scenario and all other details formed behind the closed doors of party bureaus and the Politburo, with all the participants obediently doing whatever was prescribed to him/her according to the scenario. The only purpose of this was to give a legal appearance to the Communist regime and prove its legitimacy to the international community and its intimidated population. According to the official data, nearly one hundred percent of the USSR’s massive population took part in elections and voted for the candidates of the “Bloc of Communists and Nonpartisans.” Though, as soon as people were given the possibility to express their own will and act differently, both, the Communist Party, and the state acting under its leadership disintegrated. This is a vivid proof of the fraudulence and lack of democracy associable with elections held in the Soviet Union.

The requirement for a **competitive environment and pluralism** was not met in the Soviet Union, as the sole participant in the elections was the so-called “Bloc of Communists and Nonpartisans” and all candidates were the representatives of the above bloc. A subscription on the Soviet ballot paper read: “Cross out all candidates except one” and beneath the instruction was the name of the only candidate. The bloc itself was just a fiction. The electoral bloc was made by an agreement between legal bodies (political parties and associations). There was no political association of nonpartisans in the Soviet Union. Official Soviet propaganda declared that competitive elections confused and disoriented the electorate. Soviet elections with the participation of the “Bloc of Communists and Nonpartisans” cannot be deemed as democratic, as it ruled

out pre-election campaigns and allowed the electorate to approve an offered candidate only, in other words – obliged them to elect the candidate. Although theoretically the probability of failure still existed, all possible surprises were eliminated beforehand. No cases of defeat of any candidate are known in the elections held, either at the state, or the republic level. Moreover, providing for several names to be included on a ballot paper, all selected by the official government, cannot be deemed as a democratic environment.

There was an absurd situation in terms of periodicity of elections as well. Elections were held formally and in a strictly periodic manner, though this kind of periodicity never played any role in the reformation of the political life of the state. Although there were alterations of state policy, it was not associated with the results of elections. Political programs changed according to a different rhythm. One and the same persons remained at the highest public positions until the end of their lives. Looking back at Soviet history, it quickly becomes apparent that departure from an occupied position, with a few exceptions, was associated with either a natural or a forced death. So what was it that featured periodicity? The electoral show was periodic. This day was always accompanied by a celebration sanctioned from above. Festivities, concerts and dances were organized in the streets and on the squares, high-flown words were heard on the radio and television. Every election district was filled with portraits of those who at that moment held, and would be holding higher public positions in the future; those who were supposed to win the “elections.” The fictitiousness of periodicity in regards to Soviet elections was attested by the fact that their results played no essential role in reality. There were frequent cases of people being elected in a solemn way the day before rejecting his political program, resigning from the position, deserting home and even life.

Elections in Soviet Union had never been **representative**. Initially, before adopting the Constitution of 1936, this fact was declared by the government as an advantage and a positive factor. Isolating the section of population that was hostile towards socialism was declared as the main goal of elections. A number of requirements for voting were used to achieve this aim, such as the requiring of labor, organization of election districts on the basis of industry, multi-step elections of assemblies for deputies representing the labor class, peasants, the Red Army servicemen, open ballots at all steps, and the mandatory presence of the proletarian majority within elective bodies. As a result, the following categories of people were deprived of suffrage: leaseholders and owners of factories, tradesmen, big and medium landowners and anyone employing hired labor or receiving interest from capital, clergymen (former and current), anyone who had cooperated with the overthrown government or worked within its administrative bodies or had been enlisted in its military service. The above

restrictions were annulled by the Constitution of 1936. Following which, a nationwide propaganda campaign ensued, i.e. the representative nature of election, though actually non-democratic, through modified methods of specially organized elections, willful acts of authorities, intimidation of the population, punishment of the disobedient, secret surveillance of individuals' behavior using at times rough and at times refined methods still remained, which made elections in the Soviet Union absurd in terms of representation after 1936 as well. Moreover, tens of millions of ballot papers were stuffed into ballot boxes (ballot stuffing), while in reality, only a small portion of the electorate participated in the elections.

The definitiveness of election results and the **awarding of actual authority to the elected persons** was completely alien to Soviet elections, as, according to the Communist political doctrine, elections for proletariat were only a way propagandizing its position, while acquisition or possession of state authority is only possible by means of weapons, armed struggle, physical compulsion or destruction of opponents. The actual face of the doctrine manifested itself very much in Stalin's period of Soviet rule. For example, according to the table of ranks of those times, the head of the legislative authority and the state – formerly head of the Central Executive Committee, and later – chairman of the Presidium of the Higher Council was merely a senior official who would not even be able to acquire information on their imprisoned family without permission from above.

Mutual loyalty of election parties was also unthinkable in the Soviet Union. For the entire year of 1917, Bolsheviks under Lenin's leadership requested the summoning of a constituent assembly which would determine the new type of organization of the state. After they gained power as a result of a military coup in November of 1917, the Bolsheviks fulfilled their demand, hoping that the constituent assembly would deem their act of gaining power as legal. Bolsheviks participated in the election with great enthusiasm. The assembly was summoned on January 18, 1917, but it appeared that a majority of its members did not support them. The following day, the assembly was dismissed under the threat of force/violence and the majority of its members became victims to repression.

Another example: The main concern of every assembly of the Communist party in the Soviet Union has been the election of the central committee which, in its turn, elected the higher body of the party and, therefore, of the state. At the 27th Assembly, Stalin received votes against him. He won, though not unanimously. Shortly after the assembly, a large percentage of the delegates of the assembly were dealt with directly.

The requirement for mutual loyalty, which is typical of democratic elections, is especially hard to realize for those whose psyche was developing within the totalitarian regime. A totalitarian atmosphere deeply embeds anti-pluralistic thinking and intolerable trends in the minds of people. For people of this type of mindset, monism, the belief that among all competing concepts, election program and people, there is only one that is true and therefore, worthy of victory, is the starting point in everything and everywhere. Thus, since the truth is on your side and if you have lost the battle in one way, continue it in a different way. The Georgian Civil War of 1991-1993 is an example of the above. It was responsive to neglected democratic norms within the state's composition.

The Case of Georgia

On the day of parliamentary and presidential elections in 1995, almost none of the polling stations met the essential requirements for conducting fair elections: there were cases of unpreparedness of polling stations, lack of procedure for the accurate registration of ballots, violations of rules in the preparation and specification of the voters' list, failure to comply with polling start and end times, and agitation at the polling stations, etc. It is especially noteworthy that in many of the polling stations, there were individuals present who interfered in the voting process, vote counting, as well as in the preparation protocols without the legal right to do so. Those individuals were mostly representatives of local governments and the police.

In September 1996, elections of the Supreme Council of the Autonomous Republic of Adjara were held. In the pre-election period, almost three-quarters of every issue of the government-subsidized newspaper Achari (In the mentioned period no other newspapers apart from Achari and its Russian-language edition were issued regularly in Batumi) was dedicated to a campaign in favor of a bloc participating in the election – “Revival and the Citizens' Union” and its leader, Aslan Abashidze. For instance, in the issue of September 6, 1996, the bloc was mentioned 41 times, and in the issue of September 13, 1996 – 31 times. At the same time, opposition parties – Republicans and Social democrats were denied the opportunity to publish even the pre-election platform of their regional organization. Films accusing the opposition of terrorism were aired several times for the population of Adjara to see. At the same time, no critical stories were aired on television dealing with official activities of high-ranking public officials of the ruling government when they included the candidates of “Revival and the Citizen's Union.” Opposition candidates were not given the opportunity to effectively use the television airtime that was officially allocated to them: the speech of one of the

opposition representatives was broadcasted at 1:00 am, and the speech of another was constantly interrupted by electricity cutoffs, whereas, the speech of the third one was partially aired with no voice. Representatives of the ruling government prevented opposition party members from meeting with the electorate. The secret services of Adjara intimidated opposition parties by means of threatening and blackmailing. As a result, many of them withdrew their candidacies.

During the same elections, the government of Adjara did not allow international observers to monitor the elections, which prejudiced the legitimacy of the elected body. Even if its activity is in compliance with the local law, this would only be an indicator of deficiency of the law, as in this case, it would contradict the electoral legislation of Georgia and international standards. Even when the government officially permitted neutral [internal] observers to monitoring the elections, the representatives of this very government could hardly put up with their presence. They prevented the observers' work, did not allow them to attend vote counting procedures, banished them from polling stations with threats and at times use of physical force and beatings. There have been many cases of such acts during the parliamentary and presidential elections of November 1995.

There are reports from the non-governmental organization the "International Society for Fair Elections and Democracy" on all elections (presidential, parliamentary, and local governmental) that have taken place in Georgia since 1992. Also, there are reports and evaluations by international organizations. Here is how the Organization for Security and Co-operation in Europe (OSCE) representatives and observers, assigned by the Parliamentary Assembly of the Council of Europe, evaluated Georgia's 2003 parliamentary elections:

"Unfortunately, these elections did not facilitate the growth of trust in the democratic processes of Georgia," said Special Coordinator of the Acting Chairman of OSCE, head of a short-term observation mission, George Bruce.

"We think that the people of Georgia deserve better organized elections, which unfortunately did not take place on November 2," said Tom Cocks, the director of a delegation from the Parliamentary Assembly of the Council of Europe.

"The majority of administrative representatives were trying to perform their duties conscientiously. However, the Central Election Commission (CEC) had not trained them appropriately. The main reason for that was belated staffing of the electoral administrations," said the head of a long-term observation mission, Julian Peel Yates.

“Mass confusion and chaos was observed not only during the opening of polling stations, but also during the whole day. In addition, there was a multi-step process of registration of ballot. Inexperience in the above process resulted in long lines of electors at the polling stations.” – George Folsom.

“These elections are viewed in light of presidential elections, when the country elects its future president. The pre-election preparation process should not be halted; a lot of effort is needed for future elections to be conducted in compliance with international democratic standards.” – Julian Peel Yates.

“We call upon the Government of Georgia and upon the political parties to do all they can to improve the elections process in order to be able to timely prepare for the Presidential Elections of 2005. Here, the main responsibility lies upon the government.” – George Folsom.

“Our mission has been visiting Georgia for the longest period of time as compared to other countries, in order to observe the elections procedure. In all, the procedure has been observed by 34 observers, 12 of them located in Tbilisi and the other 22 – in different Regions of Georgia.” – Julian Peel Yates.

“The structures participating in international observers’ mission at the elections are ready to assist the Government of Georgia in solving the issues related to the elections procedure. In its turn, enabling a democratic elections process will eventually depend on the political will,” declared representatives of the OSCE and the EU.

Chapter Four

Civil Society in Georgia: Past Experiences and Future Challenges

This chapter focuses on civil organizations of the 19th century and the people, societies and servants to ideals that have given us a unique experience and heritage. Patriots living under colonialism found countless remedies to the ever-present challenges. Establishing societies, publishing printed media, opening schools, performing acts of charity and sponsorship were the initiatives of citizens of those times where women made their contribution alongside men. In this part, we will become acquainted with the Constitution of the First Republic of Georgia along with some legislative acts reflecting the concerns about civil society development. Finally, we will analyze a number of challenges that civil society faces today.

By the end of this chapter you will be able to answer the following questions:

- What is the history of civil society in Georgia?
- What was the destiny of civil society in the age of Soviet totalitarianism?
- What is the post-Soviet experience of civil society?
- What are the challenges that civil society faces in a modern Georgia?

The Society for the Spreading of Literacy Among Georgians (May 15, 1879 – April 23, 1927) is the most distinguished and significant example of a civil organization in the history of civil society in Georgia. This was the first-ever civil society organization and movement in Georgia aimed at achieving two critical goals:

1. Resist and stop the “Russification” of Georgia planned by the Russian Empire;
2. Promote the development of education and of Georgian Statehood.

The situation of those days in Georgia is well described in the memoirs of a public figure of the period, Nino Kipiani:

The decision to ‘Russify’ Georgia, made by autocratic Russia was loyally and delightfully executed by its officials... This process of ‘Russification’ and degeneration was started from the educational institutions. It was prohibited to speak Georgian, which was nicknamed ‘the dog’s language.

If a teacher found a student reading a Georgian newspaper, he/she would snatch it out of the student’s hands saying, ‘Don’t get this stupid thing into your head.’ Who knows how many deplorable facts like this have occurred in connection with the Georgian language?!

The sixth lesson dedicated to Georgian was simply for an outward show, so that a child’s brain, exhausted after five lessons, would not be able to acquire the language, which he/she would not bother to study at all, since not knowing the native language would not prevent him to move up to the next grade. Just on the contrary, there have been cases of parents themselves asking the school administrators not to teach their children Georgian, since otherwise they would fail to make progress in other classes. That was exactly what the administrators had wanted.

However, there had been cases of student protests against the persecution of their language, which must have been deemed as a really heroic deed in that period of time.

I have often heard the following story told at my family’s house: Some ladies had organized a private dancing party. The party was attended by a high-ranking official, who immensely liked an already mature student, Babo Kherkheulidze, indeed very beautiful, who later became an artist and wife of Avalishvili, and began a conversation with her. Babo took advantage of the opportunity to express her concern about the persecution of the Georgian language. The official pretended to be genuinely indignant and promised to put an end to the persecution. However, not only did the persecution of the language remain, but it was only due to her parents’ effort that Babo barely escaped expulsion from school by school administrators angry at her behavior. It was not only schools that persecuted the Georgian language. It was persecuted at every institution basically staffed by corrupt drunkard officials sent from autocratic Russia. To resist this kind of policy, there existed the Society for the Spreading of Literacy Among Georgians, founded in 1879, which fought by establishing Georgian schools, publishing manuals and books in Georgian, however, it could not do much because of material difficulties and the restriction of its rights by the government.

Great Georgians like Ilia Chavchvadze, Iakob Gogebashvili and Dimitri Kipiani, among others, debated with the head of students' district by means of printed media, though their polemics were rather of a **loyal character and tone**. Instead of getting involved into a dangerous battle they tried to please the officials who had the authority to do much harm...

In a certain period of time, Russian poet Vasily Velichko was very popular in Georgia. He dedicated a poem full of admiration of Georgia while he was still in Russia before he arrived in Georgia as he was being appointed to the position of editor of the government newspaper 'Kavkaz.' So, it was from Russia that he sent to us that charming poem, and maybe even aimed at deluding Georgians.

Georgians knew that the editor of 'Kavkaz' had the power to do a lot, and powerless as they were, tried to do whatever they could, so they arranged a feast to celebrate his arrival.

The feast was attended by selected intellectuals. Meaningful speeches were proposed by Ilia Chavchvadze and Giorgi Tsereteli. The main idea of these speeches of course was to tell him how badly the Russian officials were treating Georgians, even though Georgians did not deserve it. They hoped that being an Ukrainian, Velichko would be able to easily understand the concerns of Georgians.

Velichko's allegorically answered that he was just one 'swallow' that would not be able to bring spring into Georgia. Spring would only come after the current officials left and new officials like him, i.e. 'swallows', 'flew in.' However, this 'one swallow' Velichko joined the other officials and waged the same policy as they had done throughout his time in Georgia.

His apparent loyalty was expressed by praising Georgians and criticizing Russians, and even writing a book called 'The Catch,' where he described Georgians as knights loyal to Russia, as honest people and claimed Russians had failed to see the spiritual virtues and inclinations of those people: they were warriors whose spirit grew in a fight and fell when in peace. The European culture and civilization was harmful for that nation. They needed a military school, military service and military life like Kazaks had. Neither a gymnasium, nor a university was of any use for them.

In one thing he was sincere: he really liked Georgia and its people, though not for Georgia itself, but as an 'orphan gem' in the crown of the Russian Tzar, as they used to call Georgia.

Word has it that when he was dying, his last words were 'May God give power to the Romanovs!' and a person of such credo could not wish any good for the Georgians.

Of course, I could distinguish his chauvinist intentions when once, being a guest at our place and hearing a pleasant Georgian folksong, 'I and my nabadi (a felt cloak),' when all of a sudden, with his eyes lit as he turned to me and asked in delight: 'Oho, can you hear this motif? Whose tune is this? Is it yours?'

I had often heard this song since my childhood and adapting it was so natural to me that I had never paid attention to whose tune it actually was, ours or others', and, caught off guard by the question, answered with a somewhat confused smile: 'it is

ours, I think they've been singing it in Georgia for many years.' 'Yes, for many, many years,' he continued with joy, 'It must be hundred years old, no more than a hundred years old! Now it is yours, both ours and yours – it's common!'

Thus he expressed his joy due to what he considered as a fact – that the tune of 'I and my nabadi' was Russian and since we had been singing this song as ours, which, in his opinion was one of the steps of our 'Russification.'

Then, I couldn't fully realize what had happened, but something was very unpleasant for me. And even if I could realize the truth, what then? He already received his tribute from Georgians – he was having a grand feast on a wide balcony in the heart of beautiful nature!

What could we have done! We were so miserable under their authority! One fake word was enough to gain our trust and to charm us. So, feasts remained to be nothing but feasts, while the policy was still waged in the way that they had done before, and quite fruitfully.¹⁶⁸

In such unbearable conditions the “Society for the Spreading of Literacy Among Georgians” was founded in 1879, and it spent many years spreading its educational activities throughout Georgia, establishing branches in all regions in the following sequence:

Batumi Baku Kavkavi Sokhumi Kutaisi Kvirila (2) Khoni	1909
Borjomi Poti	1910
Gori Gudauta Zugdidi Likhauri Ochamchire Samtredia Sighnaghi	1912
Akhalgori Ganja Guria(2) Erevani Vani Qvemo Machkhaani	1913
Alagiri Oni Sochi Tskhinvali	1914
Senaki Tuapse	1919

¹⁶⁸ Memories of Nino Kipiani, Giorgi Lominadze, State Museum on Georgian Literature.

The establishment of branches helped spread and deepen the activities of the Society, as well as the self and cultural awareness of the Georgian people. A significant contribution to this endeavor was the creation of Georgian school textbooks (Deda Ena, Bunebus Kari), the opening of schools in the regions and the introduction of periodical Georgian newspapers and journals:

Tsiskari (1852-1875)

Droebe (1866-1885)

Mnatobi (1869-1872)

Iveria (1877-1906)

Meurne (1888-1898)

Jejili (1890-1923)

Kvali (1893-1904)

Tsnobis purtseli (1896-1906)

These editions covered all of the important issues, such as the role and importance of education for society, human rights, women's rights, and current events in Russia, Europe, and America.

Georgian sponsors – the Zubalashvili Brothers and Davit Sarajishvili, supported the activities of the society and through their financial support, talented Georgian youths were sent to Russia and Europe to obtain an education.

A year prior to his death, Davit Sarajishvili (1848-1911) bequeathed a significant portion of his property to public organizations:

- 500 thousand rubles – for the Society for Spreading Literacy Among Georgians;
- 150 thousand rubles – for the construction of the Kutaisi Theatre;
- 200 thousand rubles – for the Historical and Ethnographical Society;
- 25 thousand rubles – for the Drama Society of Kutaisi;
- 50 thousand rubles – for the foundation of Polytechnic and other universities and institutes in Tbilisi;
- 30 thousand rubles – for poor students of Vladikavkaz (Ordjonikidze), regardless of their nationality, to cover their study fees;
- 25 thousand rubles – for the Ethnographic Society of Georgia for publications;
- 100 thousand rubles – for the Drama Society of Tbilisi;
- 10 thousand rubles – for the agrarian workshop of the Society of Improved Settlements and Asylums;
- 171 thousand rubles – for the workers and employees of the Sarajishvili Company;
- 5 thousand rubles – for the Georgian Philharmonic Society;

- 20 thousand rubles – for the Society of Georgian Writers to assign premiums (prizes and awards) for new and original belletristic works;
- 50 thousand rubles – for the foundation and maintenance of a professional school in Avlabari;
- 10 thousand rubles – for the Georgian Society in Moscow;
- 10 thousand rubles – for Didube Church;
- 5 thousand rubles – for a warehouse of the Society of Winemakers of Russia in Odessa;
- 200 thousand rubles – for the construction of a surgery clinic in Tbilisi.

The Society for Spreading Literacy Among Georgians, and Georgian public figures (Ilia Chavchavadze, Ivane Machabeli, Rafiel Eristavi, Niko Nikoladze, Sergei Meskhi, Giorgi Tsereteli, Ekaterine Gabashvili, Ivane Kereselidze and Dimitri Kipiani, among others), were promoting “Western” thinkers and writers in Georgia and introducing their works to Georgian readers. In this period, the works of Shakespeare, Balzac, Ibsen, Defoe, Swift, Dickens, Cervantes, Voltaire, Hugo, and Daudet, were translated and published.

Close association with Western culture facilitated the introduction of democratic and liberal values, and initiated debates on these issues in Georgia. One such topic was equity and women’s rights, the first wave of which dates back to the 1870s, which focused on women’s right to education.

CHAPTER 4.1

The Issue of Women’s Education and Civil Movement

In those times, Georgian women were expressing their dissatisfaction with the fact that the efforts of the Society for Spreading Literacy Among Georgians were focused on schools for boys and no funds were allocated for the education of girls. Ekaterine Gabashvili (1851-1933), a member of the Society who fought for women’s rights wrote:

The only thing that surprised me was that over the period of excited debates lasting for five hours regarding the allocation of funds for spreading literacy, no one even mentioned the issue of whether these funds would be exclusively used for boys’ school or girls would also be entitled to it.

Indeed, it is truly surprising that it never occurred to any of the members of the Society or of the Board to think of women’s fate. While discussing about the schools in Batumi and Tbilisi, would it do any harm to determine that all schools should be for both boys and girls?

It is true that at village schools, girls are studying alongside boys, but it still depends on the disposition of the teacher. If they wish to, they will teach girls too, if not – they won't. Why is it so? Why aren't all schools required to admit girls willing to study just as they admit boys? Why shouldn't women be admitted to pedagogical courses? There are lots of women who would gladly become teachers at village schools if they are properly trained. Don't you know that in Europe and especially in America, women make up an increasing number of best teachers? Why shouldn't we try it as well? Don't you keep saying it is hard to find a good teacher among our men? Does that mean that our society deems women's education as inappropriate for the good of Georgia? My personal view is that knowledge of the Georgian language is even more important for a woman, given that she is the first teacher of her children; if a youth has no affection towards studies and his/her mother tongue, it will be difficult for him/her to master it later. If the Society ignores the issue of teaching women how to read, and to write to institutes and establishments where women have no opportunity at all to study Georgian due to a lack of practice, we will soon witness the fact that our children, owing to their mothers, will be ashamed to speak their native language. We have seen a lot of examples of the above, and many will attest to that.

I and a few other ladies attended a meeting last week and none of us were able to say a word in the defense of women. Why? Simply because we were scared and didn't dare to voice our opinions, as we, women, are not accustomed to participating in public activities.

We do hope that Society for Spreading Literacy Among Georgians will consider this opinion, and in the future, will give Georgian women the opportunity to study their mother tongue. We think that such an effort of the Society will bear fruit and will not prove useless.¹⁶⁹

Ekaterine Gabashvili, Droeba, 1880

After many years of futile attempts, the Women's Craftsman School (1895-1926) was founded by the initiative of Ekaterine Gabashvili. The school was self-sufficient and provided women with education. In addition to cognitive subjects, girls studied dressmaking. The teachers offered their handicrafts to the citizens of Tbilisi and were rewarded for that. Their earnings were used for acquiring supplies and books. The school was popular throughout Georgia. Its graduates opened similar schools in the regions. In 1925, the school was shut down during the period of the Soviet regime.

The second wave of Georgia's women's movement is associated with the emergence of a social democratic idea in the beginning of 20th century, which was aimed at social fairness and equality. The civil rights of women became the most urgent issue: women suffrage was promoted, works by August Bebel - "Woman and Socialism" and "Voter Woman" were translated into the Georgian language. Georgian suffragists and their associations, such as the "Georgian Union of Woman Equality," the "Society of

¹⁶⁹ "The Issue of Women's Education and Civil Movement." Materials on Implementation CEDAW in Georgia.

Georgian Women,” the “Society of Women of the Caucasus,” and many participants of the first wave took part in the movement.

The second wave of the women’s movement was led by Kato Mikeladze (1878-1943).

She had graduated from the Department of Social Sciences in Brussels, lived in Paris from 1910-1913, and was well acquainted with the women’s movement of Europe. On her return to Georgia in 1917, she initiated an active movement to implement the idea of women’s participation in politics. She organized groups in the cities of western Georgia (Kutaisi, Zestafoni, Abasha, and Tbilisi) and started publishing a newspaper – “Voice of the Georgian Woman.” The newspaper was meant for information and educational purposes and was distributed among the population.

A sweeping movement for gaining civil and political rights of women eventually achieved a result. As a result of general elections held in February of 1919, 130 individuals became deputies of the Constituent Assembly, among them four (3 percent) were women: E. Cholokashvili, E. Makhviladze, A. Sologhashvili and Q. Sharashidze (26 places were defined for representatives of national minorities! L. G.). On February 21, 1921 the following was incorporated into the Constitution:

Citizens of both genders are equal in their political, civil, economical and family rights.

Article 39

Marriage is based on equality and free will; form of the marriage is defined by law. A person born out of wedlock is equal in his/her rights and obligations to a person born in wedlock. Mother has the right to investigate and prove the identity of the father of a child born out of wedlock; the person born out of wedlock also has right to find out who his/her father is.

Article 40

The representative body of Georgia is “the Parliament of Georgia” consisting of deputies elected in a universal, equal, direct, secret and proportional way. Every competent citizen of at least 20 years of age has the right to participate in elections.

The Parliament shall be elected by a 3-year term.

Article 46

A special law shall protect women laborers in an industry. It is prohibited to have a woman work in an industry harmful to motherhood; at the time of delivery, the woman employee shall be released from work with remuneration kept. The employer shall ensure working conditions relevant for a woman employee to take care of an infant.”

Article 46

The government undertook the responsibility of implementing the right to education: primary, secondary and higher education schools became public.

Based on the law on September 6, 1918, Queen Tamar Women's Master Seminary (belonging to the organization, Ganatleba ("Education")) was transferred to government management and became subject to its patronage.

According to the regulation of Tbilisi State University of September 3, 1918 (adopted by the National Council and Government of Georgia), availability of higher education to both genders is guaranteed:

Individuals of both genders having graduated from a secondary school may be students of Tbilisi University. Each faculty has the right to require knowledge of an additional subject of an applicant to a University at its own discretion.

Article 15

Other than students, there are also hearers of both genders at Tbilisi University.

Article 15

On August 16, 1920, the Constituent Assembly adopted a special regulation which read:

In order to prepare necessary personnel to develop agriculture, agricultural schools and institutions are founded for students of both genders...

After 1921, when Georgia was occupied and the Bolshevik regime was established, the women's movement, as well as any other civil activity, was prohibited. Women's participation at the Central Committee of the Communist Party was very low and only symbolic.

In the Soviet era, efficient subordination of an individual was the only purpose civil associations served. This was best expressed by the work of creative and trade unions.

CHAPTER 4.2

The Case of the Soviet Union

Soviet Writers' Federation was founded in 1929. It incorporated 4 independent autonomous associations of writers:

- Association of Academic Writers, founded in 1922-1923, issued journals; Khomli, Kartuli Sitkva ("The Georgian Word"), Ilioni and Kavkasioni;
- Association Tsisferkantselebi, founded after World War I by the name of Tsisferi Kantsebi ("Blue Horns"), and Meotsnebe niamorebi ("Dreamer Wild Goats"), published newspapers; Barikadi, Rubikoni, Bakhtrioni and Figaro;
- Leftists Association issued journals; Arifioni, H2SO4, Memartskheneoba ("Leftism") and newspaper; Drouli;
- Association of Proletarian Writers founded in 1922, issued newspapers; Qura, Prolemafi, i.e. new frontline of the proletariat literature and Dariali.

However, by 1931, the Association of Proletarian Writers declared war against all other associations as they were perceived as nonpolitical, rightist and reactive organizations and, in compliance with the policy waged by the Communist party, started repressions against those writers. In 1931, as it started to purge its own lines, it elaborated a document which read as follows:

The Writers' Federation, including its constituent groups and organizations, should be producing writers protecting and fighting for the general interests of Soviet reality.

At the current stage of building socialism, the goals of writers are huge and, its healthy body should be visible in the federation.

The above provision obliges us to scrutinize the members of the Federation and their public activities.

As a result of the scrutiny, we see inert life and non-political trends (which are basically reactionary attitudes) and finally the 'specimen of red negligence.'

Although a strong organization of proletarian writers is prepared and coordinating with them, their followers are increasing and strengthening, seemingly non-political writers who have joined the federation creating a relaxed atmosphere and thus hindering the revival of literature so needed for the period of rebuilding. The best expression of contra revolutionary tendencies is excessive aesthetics, non-political motifs contradictory to the interests of everyday issues and thus losing political vigilance of literature so important to us.

There is no guarantee of these writers transforming in the near future into active participants of proletariat activities. 'The changing of skin,' which the above-mentioned individuals have experienced many times, doesn't change their inner nature and

quite often they use 'passive resistance' to fight from the position of contemporary literature.

Of all the affiliate organizations of our federation, the Association of Academic Writers is most loaded with such forces whose board is presented by rightist and reactionary writers. It is followed by other groups supporting and maintaining close relations with them.

There is a need to clarify this kind of atmosphere and to filter the composition of the Federation, to get rid of those people hindering general activity of writers and broadening the reactionary atmosphere. It is essential to promote new forces in the Federation and encourage them to transcend the academic and cabinet activities of Writers' Federation.

In order to avoid leaving the existence and importance of the Writers' Federation under question, it needs to clear itself of harmful elements and intensify its work by moving to towards the masses.

The Writers' Federation should become an essential and direct participant in the building of socialism.

Nowadays, the Federation of Writers is a relaxed organism and it is necessary to start its medical cleansing in order to prevent the eventual development of the disease.¹⁷⁰

From 1935-1940, 55 members of the Writers' Union (in that period known as the Writers' Federation) were arrested and a large number of them were executed. The cases of the repressed show that their persecution, oppression and imprisonment took place as a result of their colleagues' efforts and assistance.

The Soviet regime itself created and funded public, professional, artistic associations serving the Soviet ideology. Existence of organizations independent from government, free of, and opposing Soviet ideology was absolutely impossible.

CHAPTER 4.3

Post-Soviet Period and Civil Society

In post-Soviet Georgia, the formation of civil society takes its origin in the second half of the 1990s. This was the period when, after the collapse of the Soviet Union, Georgia declared its independence and started building a new state free of Soviet ideology. The biggest thrust during this process came from international organizations. They encouraged the democratization of the country and facilitated the creation

¹⁷⁰ Association of Proletariat Writers. Georgian National Archives.

of associations of citizens (by providing financial and technical support), particularly, non-government organizations whose initiatives were aimed at popularizing and introducing democratic and liberal values.

A large number of citizens had no idea about civil society and about the way each individual could take part in the process of state building, as well as about the importance of the process. The main obstacle to the new process was Soviet experience, where a citizen was a passive subordinate with no initiative and who unreservedly obeyed the state.

Civil activeness was primarily introduced by non-governmental organizations, which turned into the main force initiating the process of democratization. There is no significant quantitative and qualitative research on the non-governmental (NGO) sector. According to data provided by the Department of Statistics, presently there are around 9,000 registered NGOs in Georgia, but, hypothetically, 90 percent of them are not active. The statistics of NGO development in Georgia is as follows: in 1992-1998, around 1,500 NGOs were founded, in 1999-2002 – 1,500, and in 2003-2008 – 6,000. The increasing number of new organizations is, in fact, an indicator of the chaotic process rather than of a well-considered activity based on a consideration of the society's needs.

The regional distribution of the 9,000 registered NGOs is as shown below.

Table: *Civil Society Organizations Registered in Georgia According to Regions*

Region	Number of organizations
Tbilisi	4326
Samegrelo	739
Imereti	691
Adjara	450
Kakheti	364
Samtskhe-Javakheti	348
Shida Kartli	311
Other	1771

In 2005 the Consultation and Training Center (CTC) conducted research on the level of development of civil society (the research was conducted through methodology

elaborated by the international organization, Civicum). In civil organizations, the following groups were identified:

Table

N	Types of researched civil society organizations
1	Religion-based organizations
2	Trade unions
3	Advocacy organizations (for instance: civil activeness, social justice, peace, human rights and consumer groups)
4	Service providers (community development support, education, health care and social service)
5	Groups working on education, training and research (analytical groups, resource centers, non-commercial schools and public education organizations)
6	Media
7	Associations founded by various groups: women, students and youth
8	Associations of marginalized socio-economical groups (poor, homeless, emigrants, refugees and IDPs)
9	Professional and business associations (Trade, professional associations)
10	Community groups and associations (funeral bureaus, self-assistance groups and parental associations)
11	Stakeholders (cooperatives, credit groups and mutual savings associations)
12	Ethnic, traditional, and local associations/groups
13	Environmental organizations
14	Cultural and fine arts organizations
15	Social entertainment and sports clubs
16	Charitable organizations (funds functioning on grants) and fundraising entities
17	Political parties and organizations
18	Civil society networks / federations / supporting organizations
19	Civil movements (protecting earthquake-affected individuals, supporting peace, etc.)

In terms of influence, civil society groups are lined up in the following order: media (TV), professional associations, analytical groups, human rights and service providing NGOs. Opposition political parties are more or less influential. Community organizations and organizations representing the poorest section of society, for instance IDPs, belong to the less influential groups.

Trade Unions – the majority of them are incorporated into the United Trade Union of Georgia. This organization has limited authority, as it is perceived as the successor to the Soviet Trade Union. Due to permanent conflicts within the Union, many members have left. After 2003, when the Trade Union opposed the Government, it gave away a large portion of its property to the government.

The main source of funding of non-governmental organizations is grants received from donors. 80 percent of the annual budgets of the organizations consist of grants received from donors. Only one-third of Georgia's NGOs have membership fees, and in most cases, the total amount of membership fees collected by an NGO does not exceed 5 percent of its budget. Budgets of organizations working in Tbilisi are much larger than those of regional NGOs. However, in general, the financial conditions of the NGOs are not stable, given that to a great extent, it is dependent on international donors.

Only 18 percent of business sector representatives have the experience of cooperation with NGOs and charitable activities. This is due to a lack of confidence on the side of business groups who are uncertain whether their donations will reach the target groups.

For a large part of the civil sector, the sphere of education: trainings, seminars, and publishing are the main priority. The spheres of educational services are as follows: issues of education, women, civic education, health care, socially vulnerable groups, psychological rehabilitation, youth, economic development and small business development.

Unfortunately, the civil sector does not have a significant impact on the government. Growth of accountability towards the civil sector and a fairly wide area of intervention in civic education are evident from the government's part. However, with regards to direct satisfaction of citizen's needs and impact on the formation of public policy, the effect of its activity is very weak.

In general, organizations work most actively on the promotion of democracy, human rights and the supremacy of law. Based on the above, civil society faces important challenges, which could be put together as follows:

1. Despite the fact that the organizations working on the same issues cooperate with one another, the rate of citizen participation in Georgia is very low. This fact indicates that representatives of the NGO sector are not interested in the mobilization of citizens and their involvement in civic activities;
2. Members of Georgian civil society unite most frequently and effectively in campaigns dealing with rights protection, fighting violence and introducing a culture

of tolerance, and very rarely in activities aimed at social security and fighting poverty. This is rather paradoxical, since poverty and problems in civil service are the main concern of a large portion of the citizens. Consequently, the needs of the active part of civil sector do not coincide with the needs of citizens. Therefore, the Georgian civil society should by all means adjust its agenda to the most urgent requirements of the broader sections of the society;

3. The following factors hinder development of civil society: violation of fundamental human rights, the general political and social-economic environment, and weak connections with the private sector;
4. Despite the fact that inter-sector relations of the civil sector are more or less developed, citizen participation is rather low. Therefore, it could be stated that the civil sector is standing apart from society and thus feeling more comfortable. However, in order to increase its influence, the civil sector should strive to establish close relations with government, as well as with the broader sections of society.

The Case of “Imedi”

In 2000, five ladies investigating health issues among children decided to establish the non-governmental organization Imedi. They elaborated the existing Charter by defining the following goals for their activities:

- Monitor children’s health conditions in Georgia;
- Prepare annual reports on children’s health conditions;
- Monitor governmental programs and state policy on child healthcare protection;
- Provide recommendations on improvement of children’s health conditions for governmental, non-governmental and international organizations.

According to the active legislation, the ladies included these goals in the Charter of association of Imedi and in 2000, were registered through the Ministry of Justice as a legal person of public law.

In 2001, *Imedi* developed the project: “Monitoring Children’s Health Conditions in the Mountainous Regions of Georgia” and received funds from UNICEF. In the course of project implementation, it appeared that the majority of children in these regions had pathologies of thyroid glands caused by an iodine deficit. Moreover, the members of organization found out there were no state programs dealing with this problem. Members of Imedi submitted a special report to the Ministry of Health, NGOs working on children’s rights and international organizations, pushed the Government to carry out measures to supply the mountainous regions with iodized salt.

The recommendations of Imedi resulted in special state programs which supplied a major part of the mountainous regions with iodized salt. Owing to the efforts of NGOs, international organizations implemented a humanitarian mission in the regions where state efforts were proven to be insufficient.

In 2002, the association Imedi contacted and offered collaboration to an organization called “Woman and Health” for the purpose of conducting research women’s reproductive health conditions in the same regions. The research showed that a deficit of iodine in the mountainous regions had a negative impact not only on children, but on the health of women as well, as pathologies of thyroid problems were correlated with vaginal cancer.

Despite the efforts of NGOs for many years, they failed to persuade the state to create programs directed at the reproductive health of women and the prevention of cancerous diseases¹⁷¹.

CHAPTER 4.4

The Issues of Fair Elections and Civil Protest

On November 2, 2003, during parliamentary elections, a non-governmental organization, the “International Society for Fair Elections and Democracy” carried out a parallel poll, which showed that the officially announced results (victory of Shevardnadze’s and Abashidze’s team via elections) contradicted the existing data. The organization appealed to the Constitutional Court with the request to annul the election results. After coming to the conclusion that the materials presented by the International Society for Fair Elections and Democracy as evidence of electoral fraud was convincing, the Court satisfied the request. In parallel with the above process, the television media provided airtime to representatives of both the civil sector and opposition parties, who criticized the regime of Shevardnadze. This caused mass civil protest and resulted in Shevardnadze’s resignation from the post of president.

After the “Rose Revolution,” a portion of civil society joined the government. The new government amended the Constitution: the president was granted the right to dismiss the parliament, and the number of parliamentary members decreased from 235 to 150.

¹⁷¹ It should be mentioned that National Screening Center started its activities from May 1, 2008. Screening program is funded by the Municipality of Tbilisi and United Nations Population Fund on the basis of a special memorandum.

Also, the Government of Georgia put the strengthening of state institutions as a higher priority than the strengthening of democratic institutions and the protection of human rights. The implemented policies and struggle against corruption and organized crimes was accompanied by crude violations of human rights and legislative norms. Instances of influence on mass media became increasingly frequent.

Despite the above, representatives of the civil sector continue to criticize reforms conducted by the government which resulted in the peaceful protests of November 7, 2007 and May 2009 that were opposed by the government through the use of force (breakup of demonstrations and forced entry into Imedi TV's studio). On May 26, 2011, the violent breakup of protest demonstrations resulted in the death of 3 people. Many participants of the demonstration received severe physical damages. Despite repeated demands of representatives from the civil sector, no legal suits have yet commenced. Moreover, the case has not even been tried in a court.

SECTION FOUR

Democracy and Citizen Participation

In this section, you will be introduced to the rights and responsibilities of civic participation in a democratic society. We will discuss reforms recently carried out in Georgia. Attention will be drawn to the effect of the reforms, as well as the role of the citizen in this process. We will also refer to the necessary arrangements for the development of society and citizen participation in public life as a means of advancing democratic ideals. Furthermore, this section shall consider actions that the citizen can carry out both independent of state authorities and in cooperation with them. Examples examined in this section will assist you in better understanding how to become more active in society as well as how to influence the decision-making process with respect to essential issues of social significance.

At the end of this section, you will be able to discuss the following issues:

- What is required for the realization of human rights?
- What are the challenges “representative democracy” faces?
- What is meant by “participation” and “cooperation”?
- What are the best forms and means of participation?
- Which factors encourage and impede our active participation?
- What are the prerequisites necessary for the provision of higher level of democracy?
- What does student self-government mean and how is it best experienced?

Chapter One

Citizen Participation in Solving Community Problems

Democracy is not confined to merely participation of citizens in the elections, but depends upon everyday activities of a citizen. The latter may be manifested in two ways: first, when a citizen participates in resolving issues of public importance under his/her initiative, as well as in the process of protection of his/her own and fellow citizens' rights; second, when his/her activities are expressed by participation in the process of the government of the state and implies close cooperation with public authority. Both aspects of citizens' activity will be covered in this part. To this effect, consideration will be given to such forms of civic activity that are initiated by citizen or a community group itself. Additionally, the forms of citizen participation in state supported projects will be extensively discussed.

- Why does a citizen participate in solving community problems?
- Why is the activity of a citizen essential for democracy?
- How is civic activity described in Georgia?
- What are the impediments for setting up civil society in Georgia?
- How is it possible to engage the younger generation in civic activities?
- What are the factors that promote civic activity of the younger generation?

CHAPTER 1.1

Social Responsibility of the Citizen

It is vital for a democratic society that the citizen has a responsibility towards society and his/her fellow citizens. A citizen should not be focused only on his/her egotistic interests, but he/she should realize the importance of taking a fair share of responsibility in creating a common good for the society. Creating a common good means engagement of the citizen on a voluntary basis in almost every sphere of public life, which is not oriented on obtaining financial benefits, but aim at resolving certain social problems by applying one's abilities and skills. Time wise, these problems differ in various fields of life. These fields imply aspects of everyday life, such as: relations with youth, neighborhood union, sports union, relation with people with disabilities, social assistance, environmental protection, human rights protection, supervision of political process, etc. In accordance with the above fields, unions of active citizens are established, which is a key component of civil society.

Civic activity initiated by the citizen or a community group, requires prerequisites to a certain extent. In this regard, fundamental significance is attached to the civic education of the younger generation, which shall, first and foremost, create a sense of responsibility among citizens. Moreover, civic initiatives trigger the formation of democratic abilities such as: personal opinions, formulation of ideas, readiness for compromises, and relationship with citizens. Feeling a sense of solidarity and expressing tolerance and respect towards others are key values in a democratic society. Citizens develop and attain these values during the course of community problem solving.

A citizen, participating in various fields of public life, is aware that living together in the community is not dependent solely on state regulations and trade economic relations, but on the implementation of mutual interests of citizens directed at improving the society through initiatives and ideas. A citizen is an active member, creator and initiator of the society. For realization of ideas initiated by him/her, the latter may apply not only to his/her fellow citizens, but also to public authority and business sector.

CHAPTER 1.2

Civic Activity in Georgia

For Georgia, where long-standing traditions of civic education and democratic society do not exist, raising awareness of citizens and ensuring their participation in a community life is vital. Basically, it is the various non-governmental organizations that

carry out these activities in Georgia. With the support of donor organizations, they implement projects, such as: promoting joint activities of civil society organizations, deepening their cooperation with media, and supporting multiethnic dialogue. These activities often focus on improving the living standards of internally displaced persons (IDPs) promoting their integration into the society, encouraging state integration and peacefully preventing potential conflicts in multiethnic regions.

Nonetheless, Georgia still faces psychological, social and political barriers that prevents establishment of a civil society. With regards to psychological factors, the legacy of Soviet times is still deep-rooted in the society. This legacy implies that the state and the society are two different and contradicting entities, where the state stands hierarchically higher than the society. Civil society is mostly equated with non-governmental organizations, which is mainly confined to its own members. Due to social problems faced by the majority of the population, citizens do not have opportunity, time, and motivation to dedicate their energy to resolve community problems. To make matters worse, the national television is controlled by the state, under conditions which suppress the expression of divergent and critical opinions, and adequate conditions are not created for the development of civil society.

CHAPTER 1.3

The Younger Generation and Civic Activity

Civic education of the younger generation gains particular significance in terms of raising the democratic consciousness of the society. In this respect, special emphasis must be placed on students' support in the implementation of community projects. Since 2001, with the support of Bosch Foundation, 100 young people have been selected through competition in 25 countries (including Georgia) undergoing democratic transformation. Within the framework of a two-week competition, participants can present their projects on issues, such as: participating in self-governing bodies of schools and universities; assisting people with disabilities; protecting environment, etc. This format encourages the exchange of new and interesting ideas and the creation of new interesting ideas and initiatives. Some of the projects may be implemented with the support of the Foundation.

Students can participate in public life in many ways. At the onset, it is essential to identify the problem. For this purpose, the first stage of the activity shall be intended for researching reasons triggering the problem and consequently, elaborating means

for its resolution. For instance, solving the problem of women's unemployment in one of the regions may be related to the absence of their professional training. If this is true, students' activity shall be aimed at persuading local government representatives to set up professional educational institutions. Moreover, learning the Georgian language and culture more thoroughly in some regions of Georgia requires identifying the forms of intensive cooperation of schools and universities. This, in turn will raise awareness and promote the process of integration by introducing various ethnic cultures and creating a sense of citizenship.

Initiation of cooperation and dialogue amongst students holds vital importance with respect to the Abkhazia and Tskhinvali regions. Establishment of similar initiatives depends upon students' activity. They should not be engaged merely in the process of their own educational assessment, but also be interested to the extent in which they are able to resolve challenges facing the society by applying their skills and intellectual abilities.

Several examples of such civic activities can be drawn the recent past. An NGO by the name of "Young Initiators' House" (YIH) implemented a project in the Lower Qartli region entitled "Fairy of Green Life" under a grant received through competition. The aim of the project was to teach rules of the road to 13-15 old youngsters in order for them to observe public order as pedestrians. It is noteworthy that the trainers came from orphanages, who themselves were trained in the observance of rules of the road. The above activity highlights that securing public order, in this case rules of the road, is not only the responsibility of state structures, but also the responsibility of every law abiding citizen to care for his/her own, as well as others' lives. Within the framework of dialogue with ethnic minorities and support their integration in the state, Armenian children of Tsalka municipality were taken for an excursion to Tbilisi, where they visited places of attractions. For the purpose of assisting and supporting fellow citizens, the following campaign was carried out: "Donate Blood, Save Lives." The aim of this civic activity was to call upon the population to demonstrate their goodwill and donate blood for those in need. This activity was implemented to give an example to the society, as well as to spread the concerned message.

These practices are necessary to demonstrate how students' activities may be carried out in various fields of community life. Initiation of interesting projects and their implementation depends on the innovative ability and courage of every adolescent.

Chapter Two

Modern Democracy Development Trends

This chapter will introduce the meaning of the “Representative Democracy” concept. We will become familiar with the accountability of the government to the electorate. We will recall elements of representative democracy and introduce quality measures and scope of activities of state, citizen, private sector, and civil society, as well as their relationship - “good governance”. We will discuss modern challenges facing public administration and its decentralization. This part will present arguments on citizens’ engagement in administrative planning, decision-making, and implementation of joint tasks and projects.

- What are the essential features of a modern representative democracy?
- Which factors pre-determine the need for complementing a representative democracy with the so-called participatory democracy?
- What is implied in the concept of “Good Governance”?
- What is the history of formation of the concept of “Good Governance”?
- What are the essential elements and the practical applications of the concept of “Good Governance”?
- What is the meaning of citizen-oriented public administration?
- How significant is decentralization of responsibilities in public administration?
- What is the goal of invigorating citizens and civic groups by the public administration?
- What is the significance of the division of responsibilities between the state and the society?

CHAPTER 2.1

Representative Democracy

In a representative democracy, people elect their representatives and entrust them with the right to government authority. Transfer of this right is based on the principles of effectiveness and efficiency. People are not able to directly make significant decisions on a daily basis. Therefore, it is necessary to form representative bodies, which, on the one hand, maintain links with the source of authority – the people, and on the other hand, ensure speedy and effective decision-making. Maintaining constant connection with people is crucial for the functioning of a representative democracy. This can be made possible through conducting periodic elections, or applying the form of direct democracy – a referendum.

Election of a representative in power is a requisite for assuming accountability towards the electorate. However, in reality, people are not able to monitor the government and the level of accountability on a daily basis. Therefore, modern democracy declared the principle of separation of powers, which implies that different branches of government checks and balances one another. For example, it is important that the executive branch is checked and balanced by parliamentary and judicial power, and that these branches are also checked by the executive.

In modern representative democracy decision-making, the majority prevails. However, this does not mean unlimited power in the hands of the majority. Democracy should not serve only the majority, but also protect the dignity and freedom of each and every member of the society. Therefore, the majority functions under the law, which strives to balance individual rights and powers. In contrast to the ancient democracy, critical elements of the modern democracy are human rights protection and the separation of powers.

CHAPTER 2.2

Challenges of a Representative Democracy

Typical elements of a representative democracy, such as periodic elections and government checks and balances, do not fully ensure an effective relationship with the source of power – the people. For this reason, besides parliament, it is also very important to maintain vigorous forms of orderly cooperation between the state and

society. Participation of the society in solving citizens' problems and forms of relationships among them evolved into a new purpose of the state.

Implementation of citizens' interests cannot be achieved merely by means of electing representative bodies. These interests are represented not only by parliament, but also by other civic organizations. Hence, for the functioning of the modern democracy, it is important to find out how much influence these organizations have in the political decision-making, and explore the possibilities for effectively resolving problems of the society through cooperation with them.

Modern democratic societies establish new forms of expression and implementation of the will of the society, which do not resemble typical structures of a representative democracy. Modern democracy faces new challenges, which raises the necessity to intensify relations with citizens and civic organizations. In this sense, it is important that a representative democracy is complemented and reinforced by participatory democracy.

These challenges emerged from the historical reality during the 1960s, which are associated with lack of trust of the population towards political institutions in Western countries. There was a vocal critic against the elected ruling elite, referring to these forces as a "dominant class" of power mostly serving their own interests. In the 1975 "Trilateral Commission" Report, American, European and Japanese scholars emphasized the significant decline in the level of trust of the population towards the government and the representative bodies in their own countries.

Consequently, it became necessary to explore the reasons that contributed to the decrease in trust towards political institutions. Western countries in the 1970's and 80's were accomplished and law-abiding and democratic countries and their political systems were based on an independent judiciary, rule of law, separation of powers, human rights protection and other important principles. Thus, lack of trust towards the state institutions was explained not by the absence of the independent judiciary, lack of rule of law, non-functioning checks and balances or any other reason, but due to the fact that government representatives failed to encourage citizens' active participation in government.

The diminishing trend of trust and indifference towards political institutions was mostly explained by the change in the mentality of the society. Each member of the society became more independent, individualistic, critical and selfish. Obsolete forms of state institution functioning, which were based on hierarchical governing style, no longer

responded to modern developments. There was a need to establish forms of government that would provide more space for autonomy to the members of society and ensure active expression and implementation of their opinions and interests.

A society which has a hierarchical relation with a state loses incentives and interest and turns into a closed entity. In contrast, a society actively involved in government processes acquires a sense of responsibility and a feeling of being a part of a state.

CHAPTER 2.3

Creation of the Principle of “Good Governance” and its Meaning

In response to the challenges outlined above, the principle of “Good Governance” in the political life of democratic states acquires particular significance. This principle differs from the typical understanding of governance; it mostly refers to the government and public administration, and has a broader scope and encompasses the overall social-political structure of a specific state. This system describes true relationship beyond the law, such as: political decision-making and implementation styles (authoritative or democratic), character of the people involved in the governing process (corrupt or honest), type of relationship between a state and civil society (partnership oriented or hierarchical), and so on. Accordingly, the scope of this concept is not limited to assessing representatives of democratic institutions, but broadens its scope in order to fully assess the social-political realities of a state.

The concept of good governance was first formulated in 1989 by the World Bank in the document that described the social-political system within its development policy of South Saharan African countries. This document described governance of these states with the following characteristics: weak public management, unlawful decisions made by public officials, and corruption and prevalence of mafia groups. Based on this reality, the World Bank started drafting recommendations for improving governance in the developing countries, which were consolidated under the notion of “Good Governance” since 1992. It still remains as one of the fundamental principles for reforming states in the process of democratization.

This concept focuses on assessing the performance of these states in conducting free elections, quality of checks and balances, level of citizens’ participation in the state governance, etc. This in turn provides clear guidelines for improving the situation.

The concept of good governance acquired the significance of being the main path towards the development of state institutions, economies, and civil societies not just within the World Bank, but also within the UN Development Program framework. Currently, this principle not only represents the principal guideline of reforms process for democratizing nations, but it has also become a concept encompassing the essential elements of the developed democratic nations' social-political systems.

Within this concept, it is possible to assess how re the rights of citizens in the political life are protected, and their ability to elect representative institutions as well as their ability to actively engage in cooperation with the state bodies. Overall, good governance may be characterized as a measure and scope which defines the quality of activities and cooperation among the state, citizen, private sector and civil society.

CHAPTER 2.4

Basic Elements of Good Governance

In 1997, within the UNDP framework, basic elements of the concept of good governance were defined. In this sense, important elements of good governance are: principles of participation, rule of law, transparency, accountability, consensus, and development oriented governance.

Participation implies that each member of a society shall be given the opportunity to participate in important political decision-making. Each individual should have a sense of belonging to a state.

Rule of law does not only stand for the establishment of the principle of law-abiding state in which the basis for the functioning of government branches is existing legislation, and the need of a fair legislation. Specifically, it should ensure necessary guarantees for the protection of human rights, especially, minority rights.

Transparency implies that state decisions should be accessible and comprehensible to the citizens. The decision-making process and implementation methods should be made public.

Accountability is the responsibility of a state to report to all citizens and organizations on the performed work, future plans and objectives.

The focus on consensus requires decisions that are directed to considering different opinions within the society, as well as to establishing balance and integrity within the decision-making process.

Development-oriented government policy mostly implies a fight against corruption, a fight against poverty, environmental activities, gender equality, socially balanced tax system, as well as effective public administration and efficiency.

Overall, these elements provide proper conditions for pursuing good governance.

CHAPTER 2.5

Practical Application of the Concept of Good Governance

These elements carry an evaluating function in identifying the level of good governance in the country. These principles assist in detecting ways for its realization. Moreover, they serve as a basis for encouraging dialogue and healthy competition between public bodies at the national and international level, which improves the quality of public administrative work.

Besides analysis and evaluation, the purpose of this concept is to be the guiding factor in the reform process. In this sense, it plays a decisive role in modernizing state and public administration in developed countries. To illustrate the above statement, Great Britain and Scandinavian countries recently introduced “Consumer Contracts” to ensure citizens’ participation in government. According to them, public administrative bodies, both central and local, assume written obligations to ensure certain tasks with the citizens’ participation. Such initiatives support good governance. Sharing of such a practice among countries is a prerequisite for creating a unified administrative space.

It should be noted that states in the process of building democracy reveal different degrees of implementing the essential elements of good governance, which is explained by different realities and divergent frameworks of social-political systems. Therefore, while reforming government, it is important to primarily conduct analysis and develop a consistent development strategy thereafter.

CHAPTER 2.6

Challenges of Public Administration and Service Improvement

The main challenge of good governance is the improvement of its own service. Public administration free of additional barriers is supposed to become more accessible and flexible for citizens. It is supposed to run in a transparent and speedy manner as a citizen's partner.

These objectives have been reinforced by the "New Public Management" concept promoted in developed countries in the 1990s-. The main component of this concept was the focus on a citizen by public administration (as on a client), and the goal to ensure the best services for them. Public administration should run in accordance with citizens' interests.

Citizen-oriented public administration primarily denounces a bureaucratic style of government. As citizens' interests are involved, it is paramount that specific problems or issues that are addressed to public administration be resolved in a unified, expedited and flexible manner. This objective propels the "One Stop Shop" principle. Instead of involving various agencies and departments, which is typical of a bureaucratic style of doing business, public administration favors a "One Stop Shop" service. With this type of service, citizens save money, time and energy, and they no longer have to visit different government agencies at different periods of time to obtain permissions. Instead, a citizen is able to get service at one venue, at one time, and from one person.

Treating a citizen like a client in public administration leads to continuous improvement of services and innovations. The measure of the service provided is reflected in the level of client satisfaction. Therefore, public administration creates appropriate conditions to provide necessary services for citizens at a low cost and in an expeditious manner.

Apart from the creation of unified service centers for citizens, it is also important to include citizens' participation in order to refine administrative services. In this sense, citizens' surveys play an important role. Citizens' surveys should provide the evaluation and criticism of public administration's performance, and present proposals for the improvement of public administration operations.

Information Technology (IT) plays a crucial role in the simplification of relations between the public administration and a citizen in improving services. Dissemination of information and providing specific services to citizens through the internet is an important component of public administration that is oriented on a citizen (client).

CHAPTER 2.7

Decentralization

Greater citizen participation in public administration requires decentralization in the organizational system of public administration and its work culture.

Given that the main objective of public administration is to improve the quality of services provided to citizens, it is important that administration is conducted in accordance with orders and guidelines developed at the top, but through various forms of intensive cooperation with citizens. For this reason, the lower level of administration has to be granted more autonomy in initiating cooperation with citizens. These forms of cooperation consolidate knowledge, requirements and new visions of a society, which is a significant source of information for advancing public administration. They can significantly contribute to problem solving within society, especially if these problems are related to the group of individuals directly involved in various forms of cooperation with the administration.

The quest for innovation will lead to the establishment of a cooperation system, which is based on the creativity of each employed individual, its recognition and respect. There is very little possibility of innovation in a centralized, top to bottom decision-making system, in which employees are deprived of their rights to participate.

Only a creative and open-minded administrative worker is able to identify requirements of the society through direct contacts with the citizens and come up with options for an adequate solution. This kind of relationship is a self-conscious process, which helps to analyze weak and strong points of the working process and identify future directions. As a result, specific plans and projects are elaborated to ensure participation.

Granting of more independence and autonomy to the self-governed administrative units is a good way of connecting with individual citizens and civic groups and improving the quality of their involvement in public administration. Self-governed entities should have more autonomy in terms of identifying the forms and means of fulfillment of specific tasks. Ensuring this kind of independence at the local level increases the chances for strengthening cooperation with the society.

CHAPTER 2.8

Intensification of Citizen and Civic Group Activities

Public administration intensifies the role of citizens and makes it more active in adequately responding to new challenges and enables an individual to participate in state and local government. This implies citizens' engagement in administrative planning, decision-making, joint tasks and projects.

The knowledge and abilities of citizens should be mobilized in a manner which would help to decide what kind and form of administrative service best fits their interests and requirements. A citizen turns into an expert of public administration, which in the end raises quality and accountability of the administration.

It is important to involve active citizens in training programs meant for public administration personnel. This will strengthen trust between them, encourage elaboration of a mutual problem-solving vision and improve their communications skills.

It should be ensured that together with citizens, certain social groups which have strong organizational abilities participate in identifying public tasks and participating in their implementation. In the framework of cooperation with public administration, there may be a special budget for these groups. Although they will have autonomy in spending the budget, public administration maintains the right to control and reporting on spending.

All these are achievable if a state is interested in creating adequate conditions and allocating appropriate resources to ensure the active engagement of each citizen and civil society in public administration. This requires public servants to possess the kind of consciousness that is directed to obtaining public support.

The activation of social forces has become a major requirement of a modern democratic state. While in the past emphasis was laid on the analysis of internal organizational issues of public administration, at present the focal point is a society and the abilities of each member of a society. It is now clear that in order to ensure fulfillment of the main goal of a state and its administration – ensuring welfare for all members of society – is achievable only through close cooperation with the society.

In contrast to traditional views on hierarchical organization of a state and top to bottom management, modern democracy favors the least hierarchical style of government

and is based on the idea of cooperation with non-governmental bodies. A culture of dialogues and discussions is favored over the state interfering and imposing a style of governance.

In the past, state theories distinguished state and society as two independent entities, but the contemporary state performs a kind of a social state function. The modern state is part of a society. The idea of the state as a hierarchical organization with interference of a state in the affairs of society has been replaced by the idea of state persuasion, participation of society, and cooperation between state and society. Although state policy still maintains its key role, the forms of elaboration and implementation of these policies are evolving and becoming based on cooperation among various actors. For this reason, and for the sake of achieving a consensus, ensuring constant contacts with the society, reflection of their organizational interests in formulation of state policies is a major task of the modern democracy.

CHAPTER 2.9

The Principle of Division of Responsibilities

Development of modern democracy sets forth an agenda of a new division of responsibilities. It is important for the state to actively involve society in performing public tasks. While previously, the state was responsible for implementing all objectives, today, a modern state is reluctant to directly fulfill all public tasks, and is mostly limited to providing and regulating those necessary activities, which ensure normal coexistence and development of society, such as: providing international and internal security, social assistance, justice and financial functions, etc.

The state no longer stands hierarchically above civil society, but shares responsibilities with it. In this case, the state relies on its partners' ability to independently undertake responsibilities in certain areas of public relations and to self-organize (in some developed countries even the management of a penitentiary system is transferred to the private sector).

Public tasks are not always the same as state objectives. These tasks can be performed by private individuals or private organizations. Although the state grants a certain level of freedom of action to private sector, it still maintains the right to control the latter's activities. The state assigns public tasks to various entities; however, it remains committed to its responsibility of ensuring accomplishment of tasks by use of

means and forms that do not deprive a society of its interests. For example, in case of conducting the so-called eco-auditing, it is acceptable that environmental control be carried out by the private sector. The state is obliged to directly interfere in the management processes when the private sector fails to effectively fulfill the undertaken tasks. To prevent the above from happening, the state elaborates legal frameworks and regulatory mechanisms that define the scope and extent of private and government sectors.

A state, which cooperates (shares responsibilities) with the citizen, civil society and private sector in fulfilling specific tasks, creates an environment directed to strengthening actors and creating respective regulatory mechanisms for the accomplishment of public tasks.

The following chapter will demonstrate modern democratic state patterns and forms of cooperation, as well as jointly undertaken responsibilities within the modern state-citizen relationship.

Chapter Three

Forms of Citizens' Participation in Modern Democratic States

This chapter is dedicated to examining the importance of surveys and the work of focus groups. We will discuss procedures clearly formulating questions and conducting surveys. Within the context of this part, citizens shall be considered as clients of public service. Cooperation of state (one of its unit - police) with citizens will be examined within the context of orientation on the society. Furthermore, this part will refer to the practice of elaborating a joint budget.

At the end of this chapter, you will be able to answer key questions, such as:

- What is the aim of citizens' surveys and assembly?
- How are citizens' surveys and assembly carried out?
- What do "Consumer Contracts" mean and what is their importance?
- What forms do "Consumer Contracts" take?
- What are basic postulates of society-oriented police concept?
- How can society's control of the police be ensured?
- What is the aim of elaborating the so-called joint budget?
- Who elaborates the joint budget?
- Why is it vital to constantly inform and report to the population in the process of participation?

CHAPTER 3.1

Citizens' Surveys and Assembly

The best form of citizens' participation in the government of contemporary democratic countries is through their surveys and assembly. Citizens' surveys are mainly conducted in a written format and by means of applying modern technologies. Conducting surveys is also possible orally, in person or by telephone. As for the form and context of the survey, it may differ depending on the particular topic and the social group of the society it concerns.

To objectively, effectively and efficiently conduct citizens' surveys, it is essential to create qualified expert groups, whose aim is to clearly formulate questions and carry out surveys by applying relevant methodology.

At the end of 1990s, UK local government, police, rescue services and other public institutions were ordered to regularly assess their services (Local Government Act, 1999). The aim of this evaluation was to maintain constant improvement of service quality, as well as to observe everyday dialogue with the citizen, as the service client.

Evaluation was conducted by the citizens. Accordingly, the measure of successful works of public services provided should have been reflected in the level of citizens' satisfaction. Moreover, active cooperation and dialogue with citizens should have facilitated their participation in determining the priorities of public service activities.

The said form of cooperation is demonstrated through citizens' surveys and their direct engagement in various projects. Surveys are usually conducted once every three months and cover groups of persons expressing their will to participate in the survey. With regards to citizens' direct engagement, it is complementary and an additional form of survey, where particular groups assemble for discussing and deciding on a particular topic.

The number of respondents is limited to a minimum of 500 and maximum of 2500. A respondent may be any resident of the targeted local region or neighborhood over the age of 18. They are selected on the basis of random sampling, in a written form, or contacted by telephone. At the very onset, citizens are familiarized with the purpose of the survey.

Questions should be explicitly formulated. They should be:

- a. Focused on the evaluation of service quality (e.g. to what extent are the citizens satisfied with the living conditions?);
- b. Concentrated on analyzing reasons (why is the citizen disappointed with particular aspects of state service?);
- c. Oriented on specific proposals for the improvement of public services (what are specific proposals for improving the quality of public services?).

Following every survey, citizens are provided with an information sheet, which contains survey outcomes and follow-up plans. Informing citizens about the results of the survey intensifies the motivation of participation and the sense that their opinions are considered as well as taken into account in the course of work planning.

Regular rotation and recruitment of respondents is important. It is desirable that this process is undertaken annually. If the number of people involved is small, sampling of citizens should be adequate to the quantity. Especially active citizens, having desire and time to continuously participate in the process, should be offered to take part within the framework of the meetings.

With regard to the meeting format, it implies mobilization of particular groups on particular topics. These topics may be related to neighborhood security, organization of public services and amenities, infrastructure, etc. Furthermore, coordination or supervisory public councils may be established, which will intensively cooperate with local administration. This form of cooperation provides for mobilization of public opinion, and its visualization in a new manner. The latter may become a fundamental source of innovation for public administration in solving community problems.

Through regular surveys and assembly, citizens' interest towards community problems increases as they realize that others pay attention to their opinions. Citizens identify themselves within their own region and neighborhood. In addition, they take the responsibility to be engaged along with the state in solving community problems.

These approved forms of cooperation between the state and the citizen in developed countries are the best means for giving institutional character to the dialogue between the state and the citizen. To this effect, the citizen becomes active and motivated.

CHAPTER 3.2

Consumer Contracts

A special form of cooperation between the state and the citizen on a local level are “Consumer Contracts”, which are mostly developed in China, the U.K. and Denmark. The aim of the contracts is to confer citizens, as public service clients, an important place and consider their desires to the maximum extent.

Through these Contracts, a self-governing entity takes responsibility before the citizens that it will render particular services to them by meeting certain quality standards. As to these standards, they shall be determined by citizens’ participation; namely, through surveys, expressing views in assembly, or by means of letters of criticism addressed to the administration.

Once an agreement is reached on the type of service the citizen expects from the state, these services are reflected in the brochures published by the administration. This helps the population to be aware of particular promises made by the self-governing entity and the self-governing entity to be conscious of the expectations of the population.

The said Contracts elevate the culture of state service. Public administration explicitly defines the types of its service, and citizens play a decisive role in the process of their establishment. In the event that one of the services was inadequately carried out, citizens may criticize them based on particular standards formulated by the Consumer Contracts. As a result, the Contracts raise the quality of service and the level of citizens’ participation in the process of governing of a state.

Consumer Contracts bring the citizen closer to the state. Accordingly, the citizen becomes interested not only in those activities concerning the citizen and those conducted by self-governing entity, but he/she also acquires information on the service that may not be directly related to him/her. Consequently, citizens become more informed, which heightens their sense of being dignified, full-fledged representatives of the state.

The methodology for elaborating Consumer Contracts consists of four stages:

1. Determining interests and needs of citizens;
2. Defining quality standards;
3. Keeping promises; and
4. Correcting mistakes.

To better understand particular aspects of Consumer Contracts, it would be appropriate to mention some examples from particular fields. For instance, local self-government makes the following commitment in the field of environment and health protection: citizens' complaints concerning environment pollution will be responded to within three days. Within this period, the citizen will receive information as to why the problem has occurred, and he/she will be notified in detail on the actions to be taken to resolve the problem. Apart from the complaint, the self-government entity, under its own initiative takes responsibility to monitor and protect the environment. For example, in case of the discovery of any harmful substances damaging to one's health in any product or potable water, a response will follow within one day.

The responsibilities of the administration in the field of infrastructure include checking the conditions of roads at least once every two months. In cases of complaints related to inadequate condition of roads, their repair shall be accomplished in three days from the date of receipt of complaint. The neighborhood will be cleaned every day, and a daily check of the cleaning quality and lighting in the city will be carried out randomly.

This is a simple example of the promises which the self-government entity gives in writing, considering citizens' interests. In case of failure to render a promised service, citizens may appeal.

The aim of filing an appeal for a particular service not provided is to control its quality and its improvement. It gives an opportunity to the administration staff to analyze and reveal the reasons behind citizens' dissatisfaction. Furthermore, it encourages the employees to elaborate rapid response mechanisms to problems, and alternative ways to overcome the problem.

It is true that the appeal does not entail legal responsibility; however, appeals have considerable importance in the society possessing high political culture. They increase the level of responsibility and accountability of state representatives and improve the standard of public administration service.

CHAPTER 3.3

Society-Oriented Police

The best elucidation of cooperation between state and the citizen is the society-oriented police. The concept of society-oriented police is an innovative type of agreement between the police and society, according to which, the police are committed to serve the society, and undertake certain responsibilities in terms of ensuring order.

Permanent and active cooperation between police and society is crucial. Every representative of the community should participate in this process. Here, we mean NGOs, local self-government bodies, as well as particular citizens or groups of citizens, who are able to represent the interests of a particular neighborhood. The aforesaid may also unite as a police consulting council. Mobilization and utilization of their resources is essential for public security and joint solution of problems.

Police should study the needs of the local population and understand that one of the aims of their activity is to promote cooperation between various community groups for resolving mutual security problems.

The police serve the people, not the state authority. They actively engage society in its activities to reduce crime. This is precisely the cooperation between police and society, the purpose of which is to render and provide high quality service to the society. This cooperation assists the police in determining and solving problems that concerns society the most. In the course of such cooperation, confidence towards the police is gradually established.

Police should always be concerned about maintaining cooperation with the society to evaluate the extent to which police activities aid in the security of the society. With the help of this type of cooperation based on confidence, police easily acquire information necessary for preventing a crime, or its disclosure. Therefore, direct contact with the society is a prerequisite for successful and effective activity of the police.

The police should inspire and activate the abilities of local community in order for it to assume a fair share of responsibility in ensuring security. In this regard, immense significance is attached to direct relations of the police with the local population. In particular, we refer to activities of police units, such as: assigning policemen to a particular section of a neighborhood, police foot patrolling, organizing regular meetings with the society, and implementing various programs for different community groups (educational programs in schools, volunteer projects, etc.).

Crucial importance is attached to cooperation programs focused on solving particular problems. Cooperation of such kind provides the opportunity to determine the most sensitive problems of the local community, to identify priorities, as well as to elaborate and implement a reasonable and adequate action plan.

Close partnership between society and the police ensures that a society evaluates police activities and participates in identifying priorities for the above activities. Police operational practices in developed countries, especially at the local level, are well familiar with the “Civil Council Institution,” which is aimed at providing civil participation in identifying strategic directions for police operations, and establishing civic oversight of police activities.

This independent form of overseeing is a favorable mechanism for effectively supervising police operations, supporting transparency, identifying specific legal violations by the police and reacting on those incidents. This is one of the best self-control mechanisms for the police.

Local police units should build partnerships not only with the local population but also with specific organizations, private and state entities. They usually play an important role in addressing the interests of a society in an organized manner. Furthermore, they possess sufficient resources that can be effectively applied in problem solving. This includes various NGOs, associations of flat owners (condominiums) and other interest groups.

There are various methods for achieving popular participation in problem solving and crime prevention activities. Examples of such methods are: creation of neighborhood councils or committees, participation of volunteers in local foot patrolling and responding to complaints and phone calls received by the police. Citizens are also entitled to participate in police training. One more option in this regard is to organize social programs with the participation of the population, such as, the arrangement of cultural-sports activities for the neighborhood youth.

There are numerous forms of civic involvement in police operations and these forms have to be defined by the police unit. The elaboration and development of these forms of engagement has to be carried out in a way that they actually support partnership between the police and society, help resolve local problems, and facilitate an open and honest exchange of information.

Any initiative by the police that involves civic participation requires monitoring and evaluation. It should assess how well a specific project achieves the set goals and

whether there is a need for increased participation of new actors, how well the participants familiar with the tasks and if there is a need to raise public awareness on the project, etc.

Public surveys play a special role in the relations between the police and the society. In cases, written surveys do not limit the respondents' ability to convey thoughts and opinions on various subjects. These types of surveys serve as the way of consulting with the society.

Typical surveys encompass the following aspects: trust towards the police, participation of the population, and an assessment of citizen satisfaction.

A questionnaire aimed at identifying the level of popular trust toward the police is mostly formulated with the following types of questions: How would you assess the level of crime in your neighborhood? Have you ever witnessed a crime in your neighborhood? Please name three main crime or security problems in your neighborhood, for which resolution is a priority for you? Are the police able to effectively solve security problems in your neighborhood?

A questionnaire designed to assess the level of public participation in police operations generally includes the following types of questions: During the recent years, have you been invited to one of the police organized meetings to discuss prevailing problems in your neighborhood? In case of receiving an invitation to such a meeting, would you agree to attend? Have you been receiving police questionnaires and have you been filling them out? Please, name any activity in your neighborhood that involves police participation.

Police service satisfaction questionnaires include the following types of questions: How satisfied are you with the style of police work in providing security for your neighborhood? In case you or someone you know has had an experience of operations carried out by the police, how would you describe the attitude of police towards you or your acquaintance? How well does the police respect and protect the law? How quick is police reaction to notification submitted by the population? Is the neighborhood policeman willing to engage in dialogue with the population? Do the local police raise public awareness on crime prevention activities?

CHAPTER 3.4

Joint Budget

In the past 15 years, the best form of involving citizens in state and local government has been through the practice of joint budgeting. Within barely four years (2001-2005), the application of the said practice has increased tenfold.

The following pre-conditions are necessary for the development of a joint budget: It should have multiple and long-term application and should not be based on a one-time survey or a referendum related to budgetary or taxation issues. It is equally important that the joint budget is an outcome of intensive discussions. Therefore, it should not be limited by conducting merely a written survey. The aspect of accountability has to be especially evident during the presentation of a report by state representatives to the population on the implementation status of their specific proposals.

There are three main phases in the process of optimal implementation of the above pre-requisites: In the first phase, the population must be informed about the local budget. To this end, information brochures are developed that include the budget of each local self-government unit and the priorities within each budget unit. In the second phase, it is important to find out the population's opinion, which is done through conducting, not only written surveys, but also organizing meetings with the population (mostly based on the principle of random selection). In the final phase, when budgetary priorities are defined based on the surveys, then comes the process of informing and reporting to the population, which has also be done in a written form.

Joint budgeting practice refers not only to a joint budget developed by the population and the self-governing unit, but also to its joint application. This refers to the forms of financial participation for solving specific routine problems or implementing specific projects, under which local self-government units and some groups of society jointly develop their own budgets. Either total budget funding or direct engagement of the population may contribute to fulfilling specific tasks.

Part Four

Citizen Participation Perspectives in Georgia

In this part, we will articulate the hypothesis of solving issues related to the formation of independent public administration. We will explore the peculiarities of competent and politically neutral public administration in line with the standards of state of law and democracy. Let us review the activities implemented for citizen's participation.

At the end of this part, you will be able to respond to the following questions:

- What is the prerequisite for citizens' genuine participation in public governance in Georgia?
- What are the types of public participation in Georgia?
- What role do service agencies have in the provision of speedy and quality services in Georgia?
- How can the principle of "One Stop Shop" be optimally realized by service agencies?
- How is the principle of "One Stop Shop" realized at the municipal level?
- How can service be improved at the municipal level?
- What are the prerequisites for citizens' active participation?
- What are ways of fostering active citizenship with the aim of increasing citizens' participation?
- What are ways of involving students for participation in public governance?
- How can universities foster students' participation?

CHAPTER 4.1

Public Administration Reform

There are certain prerequisites for citizens' participation in Georgian public life. It is essential that the state has a high level of democracy, independent state institutions, societal culture of self-organization and increased responsibility. Without these features, it is highly probable that citizens' participation will be employed as a tool for election manipulation and mobilization due to interests of state authorities and one's own power.

It is true that in recent times some positive steps were taken with respect to the reform of state and public administration, such as: fighting corruption, cutting excessive public positions, increasing salaries, and improving the working infrastructure and services. Nevertheless, establishing an independent public administration remains the main goal.

In order for citizens to participate in state governance and to respond to standards of democratic citizenship and rule of law, it is essential that a competent and politically neutral public administration, working in an impartial manner and executing the law, exists. Without the aforementioned, applying positive models of developed countries to Georgia will not yield any positive results.

At this stage, there are two main prerequisites for further reform of public administration in Georgia. First, a great deal of attention should be given to the development of training and qualification raising courses for public administration staff. These courses should not only be directed towards knowledge of the laws and concrete competences, but also on raising state-mindedness and acquiring relevant skills. In the framework of the training courses, public servants should develop the sense of belonging to public service and a sense that his/her work lies in provision of best services to the population.

Special attention should be given to relations with citizens and the development of cooperation skills with them. Often, opinions and views of citizens are an important for improving public administration work. Discovery and practical application of those ideas provides an instrument for constant response to societal needs by the public administration. The further a public servant stands from the citizen and the society, the more he/she will depart from his/her core responsibility – the people.

Interacting with the population, listening and taking into account their views require organizational work, for which one has to have certain set of skills as well as relevant

knowledge. Public servants need leadership and teamwork skills which can also be acquired through practical studies.

Another important component of public administration reform is the condition of political neutrality. It is essential to depoliticize each string of public administration. For this reason, political and non-political positions, as well as political and professional institutions have to be strictly separated from each other, both on the legal and practical level. Although certain state officials, such as ministers, city mayors, etc., have the right to determine the basic policy directions, they should not have the right to directly interfere with the exercising of public functions. Public service providers should possess a high level of independence, and should not be staffed according to the political belonging and used for one's own political interests.

Only in this situation, will it be possible to provide for the kind of citizens' participation which will deter actions solely based on political belonging - inclusion of population only for mobilization of potential voters.

CHAPTER 4.2

Civic Participation and Service Agencies

Certain steps have been taken in the direction of citizens' participation in state and local governance. Like every other new initiative, these actions have their own positive and negative sides.

By the Mayor's order, the "Statute of the Tbilisi City Municipality Service for Civic Participation and Integration - Tbilisi Block" was approved on December 26, 2006. One of the basic purposes of this service was to develop and implement programs of civic participation and to develop associations of flat owners.

In order to achieve this aim, associations of flat owners were formed. The associations elected chairpersons from within their membership, and the position of the chairperson was paid from the city budget. The Chairman was responsible for reporting problems to the self-governing body, and with the help of the latter, providing for their solution.

Joint financial participation practice of the associations of flat owners and local self-governing bodies was established for finding common solution to problems. In par-

ticular, a common budget was set for financing certain activities, of which 30% was funded by the self-governing body, and the remaining was financed by the population. In fact, self-governing bodies initiated the creation of a standard list of problems to be solved, in which, problems related to association of flat owners could be given top priority; in particular, repairing out of service elevators and roofing houses.

Funding expensive projects, such as laying asphalt in adjacent territories of a residential block or constructing sports and leisure infrastructure are taken up by the self-governing body. The Chairpersons play crucial role in such initiatives since they are the ones organizing relations between the population and the self-governing body.

In terms of civic participation in local governance, one has to mention the written survey of the population conducted in Tbilisi. Questionnaires were mostly dedicated to revealing the level of satisfaction of the population with the level of service offered to them by the self-governing body. Respondents had to determine those concrete spheres where the population was unsatisfied with the work of public administration.

Along with citizens' participation, improving public administration service is crucial for ensuring accessibility of public administration to the citizen, i.e. the "One stopOne shop" principle for customer service.

With regard to initiatives carried out in this sphere, one has to mention the service agencies established in the framework of the ministries of justice and interior. The major responsibility of the Ministry of Interior's service agency is the registration of motor vehicles and issuing and renewing of driver's licenses, as well as implementing permit-related and other issues under its jurisdiction. The Ministry of Justice's service agency is responsible for issuing ID Cards and registering of commercial and non-profit legal persons, among other activities.

Depending on the type of service required by a citizen, he/she can directly address the individual service agency and receive on the spot all pertinent services falling within the competence of the service agency.

Steps taken towards improving civic participation and service in Georgia are to be valued and encouraged, as they will contribute to the formation of a partnership and trust-based relationship between the citizen and the state. Nonetheless, it is also important to give attention to the shortfalls of the process.

Let us start by assessing the forms of citizen participation. Local self-governing bodies, especially in the period preceding the elections, undertake initiatives, such as:

solving maintenance problems by using the common budget, in particular, repairing elevators and roofs; laying asphalt, and other infrastructural activities. The same can be said about the activeness of chairpersons of associations of flat owners (funded from city budget). During the pre-election period, they are busy mobilizing supporters for the ruling party, and asking neighbors about their political preferences with pen and paper in their hands.

The very fact that the population elects the Chairperson of the Association of Flat Owners, who then helps neighbors in managing relations with the self-governing body, is a positive occurrence. But this cooperation should be free from all political interests and election settings. Therefore, in the future, it is necessary to maintain this type of cooperation based on impartiality, and objective work mainly oriented on solving problems facing the population.

The same can be said also for the way the survey was conducted among the population. Such surveys are the best tools for the public administration to assess itself, to realize strengths and weaknesses of its work, and to take the views of the population into account. But the survey will only be objective if it is not held in conjunction with the elections. It is also important that the results of the survey are accessible to the respondents and are transparent.

Objectivity, transparency, and flexibility characterize the work of service agencies. In the interests of the citizen, they use modern technologies to provide speedy and unified services so that the citizen can save time, energy, and money. Because of this approach citizens can view public administration as its caring partner.

In order for the services offered by service agencies of ministries of interior and justice to be more accessible and effective, it is recommended that these two service agencies merge. "One stop one shop" principle means that all types of services offered independently by these institutions would be possible to receive at one place and at one time, as it is an accepted practice in the West. Moreover, it is essential that such rights are given to local self-governing bodies for implementation.

An employee of the service agency should be a civic person regardless of the type of service he/she is involved in. As of now, an employee of the service agency of the Ministry of Interior is a policeman/woman regardless of the fact that his/her actual responsibilities are not linked with fulfilling police functions.

CHAPTER 4.3

Improving Municipal Services

In order to improve administrative services within a particular municipality, special services were set up in the form of a “civil access point” or a “citizen’s service centre” which offer the following services:

- registration in the computer system, prior management and referral of official correspondence;
- registration, prior management and referral of citizens’ letters and applications in the computer system;
- receiving citizens and providing verbal consultation;
- providing telephone consultations for citizens to receive needed advice and explanations;
- establishing social benefits within the framework of social and medical programs funded by the local self –government, and on municipal services.
- offering free municipal transport passes, as well as establishing other benefits or aids to a particular citizen.

In terms of improving service for the population, creation of the said services is certainly a significant step forward. However, it is essential to further develop and perfect these services. For achieving this purpose, first and foremost, the qualification of the employee needs to be raised in areas of effective communication, conflict management, internet technologies, and conduct of speech. For responding to citizens on their complaints or other communications, as well as any other needs, it is recommended there be a computer service that will enable citizen to receive information via Short Message Service (SMS) on their mobile phones. It is also recommended to have written reports on the works accomplished by the services on a monthly or quarterly basis. The report would assist in analyzing positive and negative aspects of service quality, and formulating recommendations on ways of improving it. The report would also reflect upon problems faced by the population, as well as determine which services are of priority for the population and what are its adequate response mechanisms. It is preferred that the experience gained is shared with other municipalities, both within the country as well as internationally, which would foster implementation of best practices and constant improvement of the services.

CHAPTER 4.4

Encouraging Citizen Participation

In Georgia, one of the challenges facing democratic development is providing for citizen participation in governance. Realization of civic participation the basic element of the principle of good governance is above all dependent on the skills of public servants to cooperate with civil society.

In terms of increasing citizen participation, it is important to further develop associations of flat (condominium) owners. Apart from removing inconsistencies in the areas mentioned above, associations of flat owners have to be vested with additional responsibilities. In particular, their activities should not be limited to solving small-scale maintenance problems, but rather expanded include active participation in determining strategic directions in different areas together with the self-governing body. These include jointly defining the local budget priorities, monitoring their implementation, drafting of infrastructure development plans and formulating public service and amenities plans, etc. Self-governing bodies should periodically hold meetings with chairpersons of associations of flat owners, and in some cases it might become necessary to gather together with inhabitants of each district if it concerns a major problem, or if the discussion concerns review and implementation of a major project.

It is also important to organize periodic surveys to assess the level of satisfaction of the population with public administration services. The results of the survey should be transparent and accessible to the respondents. The population should be given an option to criticize the work of the local public administration. It is essential that public administration respond to this critique and explain the possibility of resolving the problem. Without this, the principle of accountability of the administration becomes meaningless.

Being informed is a major component of citizen participation. The local population should directly receive information about who is responsible for what in the local self-governing body, what is the budget of the body, what are the goals of policies and projects, and other important issues. The local self-governing body should play an active role by making constant efforts to reach out to the population and introduce itself, rather than the other way around. This can be mostly achieved through dissemination of information brochures or other informational mediums.

Special mention should be given to informing the youth. To achieve this purpose, it is essential to organize meetings of public administration representatives with high

school students, which would foster motivation of youth to get involved in public activities, as well as help them in developing state-oriented thinking. As a result, they would be willing to share their part of civic responsibility, as well as realize that besides private interest, public interest also exists, and that it is important to balance the two.

Great importance is attached to establishing firm, cooperative links between citizens and local police in issues related to public security. Police, as an important link in the chain of public administration should not be a closed organization reacting only to citizen's calls, and violations of the law, but open for partnering with the population. For this reason, the police, and in particular, the district inspector should be organizing periodic meetings with the associations of flat owners in order to learn security challenges of the population as well jointly define actions for crime prevention. Effective crime-fighting by the police can only be possible through such cooperation and high level of trust.

Special attention should be given to relations with minors. It is important to make them interested in an active and healthy lifestyle. The district police officer could be a partner in this initiative by conducting joint sporting activities and facilitating dialogue between police and young generation on security of citizens and on the need for peaceful settlement of conflicts. This would be an important step forward in the country towards democracy, and in particular, towards the youth participation in public life.

CHAPTER 4.5

Student Participation

In the sphere of public governance, on the central, as well as on the municipal levels, particular importance is attached to ensuring students participation. The best precondition for enhanced participation is actual existence of student self-governing bodies within educational institutions. This would support genuine participation of students in defining university management strategies, student monitoring and assessment of university processes, which would have an overall positive effect on the formation of democratic skills among students.

It is important to support projects which offer students the possibility of direct involvement in certain spheres of public life. These are projects related to cooperation with non-governmental organizations in the fields of environment, human rights protection,

electoral process support, and other important areas. The same can be applied in the cooperation of students with state structures.

Individual projects can also be implemented at the university level. Here, one has to mention initiatives fostering the practical application of theoretical knowledge, e.g. preparing questionnaires for the population, aiming at assessing public administration service and organizing meetings with the population to discuss local problems with the participation of self-governing body representatives. All this creates a good foundation for students to reveal specific problems at the local level, which would be followed by analysis, and finding ways of resolving the problems.

It is important to organize inter-university student conferences, where results of the research and experience gained from cooperation with the population will be shared. It is also essential that experts and public administration representatives participate in these conferences. This is the best way to discover best practices of cooperation with the population in the process of mutual learning.

Given the importance of the content, it is possible that research carried out by students will result in broad public interest. In this regard, students' cooperation with the mass media is important for their research results to be reflected in newspapers, radio and TV. In general, all initiatives fostering students' state-mindedness and civic awareness require promotion and support from university administration.

Conclusion

Contemporary democracy is unimaginable without active citizens. As demonstrated, this activity can reveal itself in two directions: first, when citizens voluntarily participate in solving issues of public importance, and second, when citizens' activity is expressed through participation in public governance processes.

A citizen who actively participates in various spheres of public life is motivated by the awareness that development of a democratic society depends not only on state regulations and market economics, but it is also important that each citizen or group of citizens accept his/her share of responsibility and take concrete steps for betterment of a particular sphere.

In a modern democracy, citizens also actively participate with the public authority in achieving governance objectives. In this regard, particular importance is attached to organized forms of cooperation between the citizen and the state. These forms of citizen participation mean that every member of the society should be given the opportunity to participate in the process of important political decision-making. Each and every one of them should feel that in reality he/she is a respected member of the state.

Based on these challenges, public administration has increased citizens' role and provided them with the opportunity to participate in state and local self-governance. Organizing citizens' surveys and gatherings, drafting joint budgets, organizing roundtables, etc., have established themselves as commonly practiced forms of participation. In terms of relations with public administration, particular attention is given to facilitating access to services for citizens and removing excessive bureaucratic barriers.

It is true that in the recent period certain steps have been taken for reforming state and public administration. Nevertheless, the existence of competent and politically neutral public administration remains the basic goal to be attained. There are important steps to be taken towards the establishment of such forms of citizen participation, which will assist in building awareness among citizens to regard the state as a partner and simultaneously as the source of authority.

Useful Resources

Website	Address
Amnesty International	www.amnesty.org
Committee on the Elimination of Discrimination Against Women	www.un.org/womenwatch/daw/cedaw
Council of Europe	www.coe.int
Council of Europe, The Directorate General of Human Rights and Legal Affairs	www.humanrights.coe.int
Council of Europe Information Office - Tbilisi	www.coe.ge
International Centre for Human Rights and Democratic Development	www.ichrdd.ca
Fédération internationale des ligues des droits de l'Homme	www.fidh.org
Forced Migration Online (FMO)	www.forcedmigration.org
Helsinki Foundation for Human Rights (HFHR)	humanrightshouse.org www.hfhr.pl
The High Commissioner for Human Rights	www.ohchr.org
Human Rights First	www.humanrightsfirst.org
Human Rights Internet	www.hri.ca
Human Rights Watch	www.hrw.org
International Commission of Jurists	www.icj.org
International Committee of the Red Cross	www.icrc.org

International Labour Organization	www.ilo.org
International Monetary Fund	www.imf.org
Lawyers' Committee for Human Rights	www.hrweb.org
Organisation mondiale contre la Torture	www.omct.org
UN Commission on the Status of Women	www.un.org/womenwatch/daw/csw
UN Development Fund for Women	www.unifem.undp.org
UN Division for the Advancement of Women	www.un.org/womenwatch/daw
UNICEF	www.unicef.org
The United Nations	www.un.org
UNWHO	www.who.int
The Refugee Studies Centre, Oxford Department of International Development, Queen Elizabeth House	www.rsc.ox.ac.uk

Abbreviations

CAT	Committee against Torture (CAT)
COE	Council of Europe
CPT	Committee for the Prevention of Torture
EC	European Commission
ECHR	European Court of Human Rights
ECOSOC	United Nations Economic and Social Council
ECRI	European Commission against Racism and Intolerance
EU	European Union
ICC	International Criminal Court
ICC	The International Chamber of Commerce
ICJ	International Court of Justice
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
ICT	International Criminal Tribunals
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	International Humanitarian Law
ILO	International Labor Organization
LAS	League of Arab States
NATO	North Atlantic Treaty Organization
NGOs	Non-Governmental Organizations
OAS	Organization of American States
OAU	Organization of African Unity
OSCE	Organization for Security and Co-operation in Europe
SIO	Specialized International Organization
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	UN Refugee Agency
UNICEF	United Nations Children's Fund
WHO	World Health Organization
WTO	World Trade Organization

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ISBN 978-9941-0-4084-9



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