

Standards of Bicameralism: The Implementation Perspective in Georgia

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Abstract

Bicameralism has become one of the main institutes of modern political system. Since 1995 establishing of bicameral parliament is the one of the unresolved problem for Georgia. Bicameralism must be seen as the precondition for development of Georgian political system. Bicameralism is capable of promoting the Restoration process of territorial integrity as well as improving legislative process in Georgia. Also It's a possibility for realizing the separation of powers principle and indeed the better way for improving Georgian Territorial units representation in the legislature. And in general, bicameralism may become the precondition for the liberal democracy and political system in Georgia. The issue of bicameralism has 100 years of history in Georgia. The time when Bicameral parliament becomes real is approaching, our society and political specter gets more and more evidences of it. We can not reject the system which will help the process of Restoration of territorial integrity and final deoccupation from Russia.

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I. Stating the problem

The model of a two chamber parliament is a determining factor for the quality of democracy and stability of the political system¹. Approximately the third of the states recognize the bicameralism as a form for the organisation of the legislative power². All two chamber systems have their own history in which we can identify the historical, cultural and social reasons for their existence³. The bicameralism constitutes an essential element for the modern constitutionalism and political system.

The systems of bicameralism⁴ is quite spread all over the world and the instances of it do increase. The number of two chamber

¹ Bikameralismus auf europäischer Ebene? Vor- und Nachteile eines EU-Parlaments in zwei Kammern, Institut für Ökonomische Bildung. Seminar zu speziellen Problemen der Wirtschafts- und Finanzpolitik: Ökonomische Theorie der Politik und EU Integration Sommersemester 2010; Prof. Dr. Thomas Apolte / Dipl.-Volksw. Marie Möller / Nele Franz, M.A. (<https://www.wiwi.uni-muenster.de> 2.12.2014).

² Chancen und Probleme der Zweiten Kammer in Einheits- oder Bundesstaaten, bei Prof. Thomas Fleiner, Professor der Rechtswissenschaftlichen Fakultät der Universität Freiburg (<http://www.thomasfleiner.ch/> 2.12.2014).

³ Nach Prof. Thomas Fleiner;

⁴ The term “bicameralism” comes from Latin meaning two - “bi” - chambers - “camera”. The previous forms of the parliament can be found in the Greek and antic ages. The modern form of two chamber system was first established in the XIV century England and in the XVIII century United States of America. However, in these two radically difference worlds the two chamber representative body had different missions.

parliaments has almost doubled during the last 25 years, which is apparently the result of the democratisation of the post communist countries in the eastern Europe⁵. The monocameralism precedes the bicameralism⁶. The practise of parliamentarism also knows the multicameral (multi chamber) parliaments. The Republic of South Africa for instance has a three chamber parliament, the parliament of the former Yugoslavia had four chambers. However, the mentioned practice does not work well and the most of the states prefer one or two chamber parliaments⁷.

We deem it important to articulate more with the constitutional principle of bicameralism for the groups of the public, further to write and speak more about it, about the essence of the bicameralism, about

⁵ In the XXI century, according to the data from 2009, the following countries transited from one chamber parliament system to the bicameral parliament system: Afghanistan (the south of Central Asia), Bahrain (middle east), Burundi (Central Africa), Bhutan (Asia), Zimbabwe (South Africa), Yemen (Middle East), Senegal (West Africa), Sudan (North-east Africa), Tunisia (North Africa) and Uzbekistan (Central Asia).

⁶ The parliamentarism of the modern world is familiar also with a reciprocal process. For example, since November 17, 1814, the Parliament of Norway was bicameral. However, from 2009 it became single chamber and the division of the Parliament into the Odelsting and Lagting was abolished.

⁷ One chamber system was introduced in France in 1791. In the second half of the XIX century, one chamber parliaments existed under the constitutions of Greece (1864), Bulgaria (1879), Serbia (1889) and some of the countries of Switzerland (1848).

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the peculiarities of the model, its social purpose, and about the foreign experience and practice. All these shall serve for making the perspectives of the introduction of the bicameralism into the Georgian parliamentarism more visible. As for today, for more than 25 years the Georgian Constitution offers us the model of two chamber parliament. However, up to date no scientific and practical discussion on the issue was held in Georgia. The space for the possibilities to discuss the actual introduction of the bicameral system remains, however no practical discourse is in place in the academic and political fields. We believe that the blind and spontaneous implementation of the system shall not be permitted. We have to identify the optimal model of the bicameralism that would be useful for Georgia in solving the political and social problems.

However, we do not aim at providing here the complicated scientific research of the bicameralism, the study of its essence that certainly would be a task of a more in-depth and large project, and does not fit into the scope and format of this article.

Our object is clear: Based on the outcomes of the current research, to prepare a draft constitutional law⁸ on the two chamber system in order to begin a discussion on the issue of implementation of the bicameralism in Georgia and reflecting the latter in the Constitution of

⁸ In accordance with the Constitution of Georgia, the Constitution shall be amended by a constitutional draft law.

Georgia. Therefore, it is of great significance to us to promote the right implementation of the reforms based on the analysis of the theory and practice of the two chamber system. At the time being Georgia is in the middle of a development requiring the adoption of new standards in the political system, introduction and establishment of the models of the modern constitution.

The classical functionality of the monocameral parliament is more or less known to us based on the Georgian experience. Therefore, we focus in this article mainly on the bicameral parliament. Further, our aim is to reveal based on the comparative analysis the positive and negative aspects of the two chamber parliament and the dominant scientific conceptions on the issue.

The democratic process in Georgia develops day after day. From 2013, the new constitutional amendments came into force and the Georgian Constitution approximated itself to the model of the parliamentary republic. Unanimously Georgian people thrives to strengthen the democracy and one of the supporting factors to this may become the two chamber parliament.

According to the Georgian Constitution the issue of the territorial arrangement of Georgia is not solved up to the current date. Georgia does not belong neither to the federal state nor to the regional state. Even the standards of the unitarian state are not clearly enshrined in

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the Constitution. Whereas, Georgians consider the feasibility of all three possible models for the state, we deem it appropriate to have in the future the thorough comparative analysis of bicameralism within the conditions of the federal, regional and unitarian state. Therefore, it would be desirable to study the practice of the structure, powers and interrelation of the two chamber parliaments of the western Europe, namely of the German federal state, Italian regional state⁹ and French unitarian state¹⁰.

On 9th of April 1991, Georgia became an independent state¹¹. On the 24th of August of 1995, the Parliament of Georgia adopted the second

⁹ Unter den derzeit fünfzehn Mitgliedstaaten der Europäischen Union kennt nur Italien einen perfekten Bikameralismus (Zweikammer-Parlamente in der Europäischen Union, Thomas Groß (Autor), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, <http://www.zaoerv.de>.

¹⁰ In Frankreich und Belgien wird deshalb im Fall des Senats von einer Kammer des "Nachdenkens"; (chambre de reflexion). Im italienischen Verfassungsrecht wird die Funktion der zweiten Kammer als "Abkühlung" (raffreddamento) beschrieben. Auch für die Mitwirkung des deutschen Bundesrates an der Bundesgesetzgebung wird der dadurch entstehende Kompromisszwang als eine wesentliche Rechtfertigung angesehen (Zweikammer-Parlamente in der Europäischen Union, Thomas Groß (Autor), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, <http://www.zaoerv.de> (2.12.2014).

¹¹ The theoretical discussion on the two chamber parliament began in Georgia in 1918-1921. That was the time when the Constitutional Committee was working on the draft Constitution. The supporters of the two chamber system admitted that the system ensured the adoption of reasonable laws and the tendency of the lower chamber to gain more power was weakened. The supporters of the one chamber parliament argued that such system exists only under the federal system and the

constitution of the democratic republic in a declarative way stipulating the future prospects of a bicameral parliament. In accordance with that Constitution, the Parliament consisted of the Council of the Republic elected in a proportional manner and of the Senate elected from the territorial units and of 5 persons appointed by the President of Georgia. In accordance with article 37.1 of the Constitution Georgia, the precondition for establishing the bicameralism in Georgia is “the complete restoration of the jurisdiction of Georgia on the whole territory of Georgia”. Does this precondition actually provide for the threat that the prospects of bicameralism in Georgia would be postponed for a longer period? They believe in Georgia that the constitutional provision “the complete restoration of the jurisdiction on the whole territory of Georgia” implies the return of the territories occupied by Russia and the restoration of the territorial integrity of Georgia. Hence, the respective article of the Constitution of Georgia provides for the transition to the bicameral system after the deoccupation i.e. when the jurisdiction of Georgia would include two of its historical administrative and territorial units - the territories of the South Ossetia and Abkhazian Autonomous Republic.

upper chamber expresses the interests of the powerful class. Such system is to the detriment of the people. On the 21st of February 1921, the Georgian Parliament established a single chamber system. The Constitution lasted only for three days. On the 25th of February, the Soviet Russia occupied and annexed Georgia (Beka Kantaria. *The Fundamental Principles of the Constitutionalism and the Legal Nature of the Form of the Government in the First Georgian Constitution*. 2013. Tbilisi).

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As said, article 37 of the Constitution of Georgia links the adoption of the bicameral system to the full restoration of the territorial integrity. We believe that the establishment of the bicameralism may promote instead the deoccupation of the occupied territories because the two chamber parliament often ensures the representation of the ethnic minorities that is essential for the modern multi-ethnic states (e.g.: upper chamber of people of the Parliamentary Assembly of Bosnia and Herzegovina).

There is an opinion that for the countries including Georgia with a relevant problem of the ethnic and regional conflicts (in the case of Georgia the occupied South Ossetia and Abkhazia where non-Georgian population of Ossetians and Abkhazians are residing), the bicameralism could serve as one of the reasonable ways for the inclusion of the parties in overcoming the problem and solving the conflict.

The foremost object of ours is to ensure the public and especially the Georgian legislator that the existence of the two chamber system is possible even without the restoration of the territorial integrity of Georgia.

In order to acknowledge the essence of the bicameralism explicit would be only the fulfilment of the principle of the territorial representation. Unfortunately, the Georgian Constitution connects the

bicameralism only to the restoration of the territorial integrity and to the representation of the territorial units whereas the existence of the bicameralism may be contingent on some other significant factors. Precisely because of such factors has the bicameralism long time attracted our attention making us believe that it can respond to many challenges facing Georgia. In general we could outline the following missions of the bicameralism:

- The inclusion of the population and of the autonomous and bold territorial units into the state government;
- Strengthening of the legislative power and at the same time ensuring the internal balance within the power; Institutional restraining and outweighing when exercising the legislative powers, reducing the adoption of expedited, unbalanced decisions and legislative defects;
- The distribution of the workload in the parliamentary activities increasing the quality of the products of the parliamentary activities;
- The institutional continuity of the legislative power, for, when the Parliament is dismissed in certain cases under the Constitution, in the case of bicameral Parliament only one of the chambers of the Parliament is dismissed and not the both chambers;
- The considerable renewal of the political forces when due to the different terms of periods in authorities of the bicameral

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parliaments, the composition of the parliament is partially renewable because of the ordinary elections of the parliament.

Article 37 of the Constitution of Georgia provides for the significant aspect of the state power organisation i.e. for the model of structural and institutional arrangement of the legislative body and offers us the model of the bicameral parliament. The bicameralism implies also the full implementation of the distribution of the functional load and powers of the parliament. In Georgian reality, the conceptual vision of the implementation of the two chamber parliament is linked also to the raise of the functional and institutional importance of the legislative body creating even more possibilities for the participation of the public in the exercise of the public authority.

II. Points of the research

What positive outcomes can the bicameralism bring to Georgia? To answer the question without little scientific research would be quiet difficult. Our propositions may be formulated as follows:

- Under the conditions of the two chamber parliament the representation of the Georgian public would be better provided serving for more guarantees for the regions to be represented as well. In times of political conflicts the upper chamber may take the role of an arbiter. In favour of the state interests, the upper chamber may become the balancing factor towards the lower chamber;
- As already mentioned above, the two chamber parliament carries also other significant social meanings. We mean here the

improvement of the legislative process and continuity of the process and some other outcomes.

- For our country with its small scale and little budget the two chamber parliament would be a luxury if not one very significant factor i.e. the historical territorial background and the state arrangement of Georgia. All parts of Georgia are specific in a way. Taking into account such specificities of the parts is essential for establishing the two chamber parliament in Georgia.
- A question arises whether the implementation of the bicameralism is a factor for promoting the territorial conflicts resolution or it is the guarantee for the inclusion of the territorial units in solving the issues of the statuses of the units after the resolution of the principle of the territorial integrity. In the process of the resolution of the Georgian-Abkhazian and Georgian-Ossetian conflicts, the idea of two chamber parliament and that of the prospects of inclusion of the parties in the decision making process may be read as a positive gesture by the opposite side of the conflict and may become the factor promoting the conflict resolution. Traditionally, the upper chamber of the bicameral parliament ensures the representation of the territorial units. In the vertical distribution of the state power, the lower circles of the power belong to territorial units. The more autonomy and independence they have, the bigger is their participation in the political life of the country. The participation is carried out by the representation to the

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parliament. In the number of countries, the decision concerning the subjects of the federation may not be adopted where there is no consent on the issue from the representations of the particular unit in the upper chamber. There is also an option of securing for particular units such as Abkhazia certain privileges like that of official posts. The chair of the upper chamber of the parliament may be the senator elected from Abkhazia. Further, the following statement may be introduced in the Constitution: “On the issues immediately concerning Abkhazia no decision may be made unless supported by the delegates elected from Abkhazia”. Further, the two chamber system increases the instances of consideration of the local interests when exercising the central authority: The representatives endeavour to adopt the laws that would improve the situation of the territorial units and that of the population residing there;

- In the case of the bicameral setting of the Parliament of Georgia, the populations of Abkhazia and Ossetia must have representatives in the upper chamber in order to be able to participate in the decision making processes on the general state level. The quota for the representatives of Abkhazia and Ossetia to the upper chamber of the Parliament i.e. to the Senate could be much higher and also for the populations of Georgia that are characterised by the aggravated ethnic (national) self-determination processes. Moreover, the idea of bicameralism may be taken into consideration in any model of territorial organisation of the state (federalism, regionalism, unitarianism);

- The problems of territorial arrangement of Georgia and the Georgian reality speak of the possibility that the idea of bicameralism must find its positive mission in the constitutional arrangement of the state territorial organisation. The bicameralism should serve as a ground for the right of the respective populations to elect own representatives promoting the protection of the “territorial” interests;
- The constitutional provisioning of the bicameralism may become the promoting factor for overcoming political crisis and developing political pluralism. The Georgian reality was always characterised by political tensions and unrest expressed in street protests, in overthrowing the political governments and calls for the revolutionary change of the governments;
- The disadvantage of the one chamber parliament is that all legislative power is gathered under one body and there is no controlling authority over the legislative actions (the presidential veto as a restraining tool is rarely used). The partisan lower chamber as a rule is bound with desires of populist and expedited decision making impacting also the governmental policies. The situation could be balanced in most of the cases by the bicameralism. The bicameralism creates a balanced system not allowing the collection of the power under single institution and political force;
- Noteworthy is that in bicameralism the institutional continuity of the legislative body is ensured. In the parliamentary and semi-

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parliamentary states there are often political crises showing conflicts between the executive and legislative bodies. In such situations the head of the state is forced to activate the functions of the arbiter and to dismiss the legislative body in order to overcome the crisis. So the country may be left without the legislative body for a while creating a lot of problems for the exercise of state authorities. The bicameral systems are secured from such scenarios, because the President as a rule has only the right to dismiss the lower chamber (the exception is Poland where the termination of the powers of the Sejm results in the termination of the powers of the Senate as well). In such cases we have the continuity of the activities of the legislative body in the form of limited institutional and functional continuity. After dismissing one of the chamber the other chamber as a rule may not proceed with the legislative process, however we deem it feasible to distribute some of the special legislative authorities between the upper chamber and the President;

- The bicameralism has elaborated practical methods for overcoming the delays in the legislative process. Lawmaking is the activity of the Parliament where the chambers enjoy their powers in a mandatory way. In some instances the chambers enjoy identical powers, first one chamber hears the draft law, then the other chamber does the same, and in the case of discrepancies in the opinions a reconciliation committee shall be appointed providing the final agreed version of the draft law. We believe that in the case of implementation of the bicameral

parliament in Georgia it would be significant to elaborate the most efficient constitutional model for such an implementation. In order to carry out the legislative process efficiently and without delays, we believe that the Constitution of Georgia shall clearly differentiate the issues that should be heard by the parliament mandatorily in the both chambers. We have such a problem in Georgia. In the recent history, the President applied vetoes to the number of laws because he deemed them to be adopted in an expedite manner and undemocratic. The Parliament all the same overcome the veto of the President and put the law in place. As we can see, in some instances under the Constitution of Georgia, the President is powerless in front of the Parliament and hence we have to elaborate an efficient model against the laws that are adopted in a rush and without proper reasoning;

- We deem it possible to have a representative of the Georgian church to the upper chamber of the Parliament of Georgia - to the Senate. The above opinion is based on the following reasons: In accordance with article 8 of the current Constitution of Georgia. “Georgia recognises the outstanding role of the Georgian Orthodox Church in the history of Georgia.” Furthermore, in 2002, the Agreement between the State and the Church was concluded (ranking in the hierarchy of the normative acts second after the Constitution) according to which the State and the Church may conclude other agreements in the fields of

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common interests and for the implementation of the latter the parties shall adopt particular acts. Stemming from the objectives of the Constitutional Agreement, we believe that the Church bearing the special status of a legal entity under public law should be given the possibility to express its positions and participate in solving the issues of common interests on the state level. The election should be carried out in the following manner: By the Council of the Church or the Synod following the nomination by the Catholicos-Patriarch of Georgia. In some instances we have cases where the representatives of the state and of the Church could not find common grounds. One of the prominent opposition cases between the Patriarchate and the government involved the law on anti-discrimination. The representatives of the Church were actively against the adoption of the law. Finally, the Parliament adopted the law making some of the amendments to it under the pressure from the Church.

- Noteworthy is the fact that up to the date the venue of the Parliament is still is the subject of harsh debates and political conflicts. By adopting the two chamber system the issue may be solved easily. The Constitution must include the following statement: The venue of the upper chamber is Kutaisi (western Georgia) and the venue of the lower chamber - the Council of the Republic) is Tbilisi. The above would be favourable, on one hand, for the improvement of the constitutional model and establishment of the political system, and on another hand, for maintaining for Kutaisi the status of the parliamentary city.

III. Summary

The two chamber system may provide for more inclusion of the population among them of the autonomous and bold territorial units in the state government, further the strengthening of the legislative power and at the same time internal balance of the the legislative power, the continuity of the legislative power, the promotion of the adoption of the balanced decisions and raise of the quality of the legislative products, the distribution of the parliamentary work and finally the support of the political stability. The all above requires more complicated substantiation which would not be possible without the further research.

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