

# Considerations on the Future Plans of Territorial Arrangement of Georgia

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## Abstract

While adopting the Constitution in 1995, it was impossible to determine the territorial arrangement and its regulation was postponed for future. The main aim of an article is illustration of my suggestions concerning the future model of territorial arrangement of Georgia. Taking into consideration the territorial, ethnical and political problems and the analysis of Clauses 3 - 4 of the Constitution of Georgia should be excluded the typical unitary form from the perspective versions of territorial arrangement of the country and while choosing the future model of territorial arrangement, I consider as irrevocable in any case implementation of the asymmetrical principles of federalism and regionalism (In Concrete Asymmetrical Federalism). Federalism in Georgia will greatly enhance the decision making process oriented on the local needs. The citizens will be actively engaged in the political life and the local problems will become familiar to them than the issue to be resolved on the Central level. At the same time, Federal system will protect the social groups living in Georgia and their individual uniqueness. It will support the integration of these groups in united federal system through the balance of powers which will be gained by vertical distribution of the powers in parallel with the horizontal division. Federal state will reduce the possibility of abuse of powers. Federalism will raise the level of political culture and first of all, the culture of political dialogue. The political centers established in the country will not be the united political force and Party political competition will become much more intensive. Different political orientation forces will conduct of the constructive dialogue and respect to each other's positions and opinions. The suggested research is acute and is greatly important concerning Georgia. Federalism and Regionalism as the experienced forms for solving of territorial

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problems are the important method for restoration of broken territorial integrity.

### Keywords

Territorial Arrangement, Asymmetrical Federation, Decentralization, Territorial Integrity, No Right of Recession, Conflict Regulation

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## 1. Introduction

In spite of the civil war, the military conflicts and the chaos reigning all over the country at the beginning of 90s of the XX century, Georgia managed to adopt the new Constitution on the 24<sup>th</sup> of August, 1995 which greatly contributed to the stability of the country. But the Constitution failed to determine the territorial structure of the state. The new Constitution was limited to only a general phrase about this important issue and postponed its regulation for the future. The major reason for this postponement in the future was the situation of that period in the country and the necessity for the adoption of the Constitution. Such decision was the optimal solution to this situation as the new Georgian State was established, the reform process under the Constitution began and at the same time status quo was maintained.

The determination of the territorial structure of the state extended for a longer period, which emerged the difficulties in the Country's public and political life. That is why it is essential to start this process in respect to Abkhazia, and generally, the adoption of the substantiated concept on the territorial arrangement by the Government. Nowadays, it is inevitable for the Government of Georgia to determine its position for the problem of Abkhazia as well as the significant question of the future territorial arrangement of the Country.

We can take the advantage of the Constitution of 1995 of Georgia while determining the concept of the territorial arrangement of the Country. From the General Provisions of the Chapter I of the Constitution, it is obvious that in future the creators of the Constitution were aiming to create the united country with autonomous territorial units, the separation of competences between the Center and the regions, following the establishment of the relevant conditions throughout the territory of Georgia, the representatives of the regions in the highest state authorities (the Senate-Parliament's upper chamber), the special powers of the highest state authorities or in accordance with the principles characteristic to the Federal State.

In addition, pursuant to the provisions of the new constitution of Georgia, the statuses of the autonomous republics of Abkhazia and Adjara shall be determined by the relevant Constitutional laws.

“Following the establishment of the relevant conditions and the formation of the local authorities throughout the Georgian territory, the Parliament will be composed of two chambers: the Council of Republic and the Senate” (*The Con-*

stitution of Georgia, 1995).

Georgia has always consisted of the parts different by its ethnographic and economic conditions and that was why each region required a specific approach for management.

Even during the reigning of King David the Builder and the Queen Tamar, the Feudal Monarchy consisted of royal principalities (small kingdoms), which ruled the kingdoms separately; there was vertical distribution of rights and etc. Georgia represented the union of small kingdoms obeying one state. This situation was reflected in the title of King of the United Kingdom: "The King of all Kings, the King of the Abkhaz, Georgians, Rans and Kakhs". The concept "Unconquered Freedom" was used for the designation of the sovereignty that the state possessed.

Therefore, during the period of the independence of Georgia, the priority was often given to the decentralized management method.

The Constitution of Georgia made the decision in favor of decentralized federation state. This means that the conception of the future territorial arrangement of Georgia shall be based on the principles of the territorial decentralization of the state.

On the first stage of decentralization it is recommended to grant the status of administrative territorial units to the regions of Georgia; Abkhazia, as it is the only homeland of the Abkhaz, who have important contribution to the establishment of the Georgian state, should have some special status, different from all others. At the same time, we should take into consideration the experience of other states.

Adjara should have much lower level of political autonomy than Abkhazia; as for the former Autonomous Region of the South Ossetia or Tskhinvali Region (Samachablo), it should be granted some different political legal status different from Abkhazia, Adjara and any other region of Georgia. This status should be lower than the status of Abkhazia and Adjara and higher than the status of other regions of Georgia (In terms of cultural and linguistic autonomy).

However, granting the status of administrative territorial units to the other regions of Georgia on the very first stage shall require the bringing elements of regionalism and by merging the principles of regionalism and federalism, we shall get the organic model of territorial arrangement for Georgia which will give us the opportunity to take into account the uniqueness of Abkhazia, established historically and legally, the peculiarities of other regions and its current reality as well.

The constitutional and legal definition of any territorial model of the state is based on the history, and the political and legal development of this state.

The Principle of Asymmetric Federalism means that the part of the state-the member of the federal state (one or several of them) has different higher political and legal status and authorities than the others.

From all the above mentioned Georgia shall give priority to the Principle of Asymmetric Federalism.



Administrative Map of Georgia

## 2. Forms of Territorial Arrangement of the State

### Unitarism

The unitary state is divided into the units that are administered from the centre. It is united and indivisible state. In such type of state the united political governance is executed which is the only one throughout the country. Its territorial units have no own constitution, legislation and the highest administrative bodies. The administrative territorial units have no political independence, enjoy the united legal status and have equal attitude towards the central bodies.

There is only one constitution and legislation in unitary states which is common for everyone; single citizenship; the united system of both the law and judiciary; the united tax system in the field of finance and budget.

According to the administrative territorial division the levels of the units are different from each other. The number of levels of the administrative units depends on the size of the country's territory and the number of the population. But all the above mentioned is not always the defining moment for the specific occasion, as it is possible that the territory with larger area and more population shall have less administrative territorial levels. For instance, the UK has only three levels of the territorial division. There is rare exception in the world's constitutional practice, when the country has no administrative territorial division at all. This country is Malta (Melkadze, 1996).

There are centralized and more decentralized unitary states. There are no facts of autonomy of the local territorial units in the centralized unitary state; there are no local decision-making elective authorities, and their duties are exercised by the person appointed from the centre.

The more decentralized unitary state is distinguished by fact that there are lo-

cal elective bodies in its territorial units but there is entity's no local legislature different from the decentralized state.

Therefore, the advantage of the unitarism is that this forms of territorial arrangement focuses on the major resources of the state governance in the higher governing bodies which gives the opportunity for the central authority to exercise its decisions with maximum efficiency throughout the country, but the fairly higher level of the concentration in the centre of the authority may cause the drift towards the no democratic regime and all this violate the human rights and freedoms.

Hence, by taking into consideration the current territorial, ethnic and political problems in Georgia and in regard with the analysis of Articles 3 and 4 of the Constitution, the traditional unitary forms shall be excluded from the most promising options of the territorial arrangement.

### **Federalism**

The word "federation" comes from the Latin word of "foedus" which means the Union. This state unites the former states or similar entities and the federation subjects. Federalism is considered much more progressive and democratic form in comparison with the unitarism as it is distinguished by the highest level of the state decentralization. There are two levels of government: Federal authorities and the authority of federation subjects.

The state authority is exercised by the two-chambered parliament on the common federal level of which upper chamber expresses the interests of the Federation Subjects at the highest representation. It is known as bicameralism in the constitutional law doctrine. The highest bodies of governance are acting in the federal states and realizing the function of state decentralization. The Federal system is built on the principle of unity, which ensures the existence of the united sovereign state. The most importance principle of federalism, integration of different territorial units, is realized by this. Unity guarantees are regulated by federal constitutions. For example, the federation subject has no right of secession i.e. leaving the federation and establish as an independent state (Khubua, 2000).

The following circumstances indicate the unity of the state: at this time there is national competence and the united system of federal authorities. Two levels of citizenship are formal and the person's legal status in the federation is defined in accordance with the citizenship of the united federal state.

In his work "Spirit of the Laws" Montesquieu describes the problem of a small state in detail. According to him, the development of the political freedom is possible via the unification of the small territories. In Montesquieu's opinion, the easiest way to protect and maintain the small countries (like Georgia) is unification, federation (republique federative) (Montesquieu, 1994). Federalism is the best mean for protecting power of the state freedom and international order. It shall be discussed as the most special stable union which can resist not only the foreign attack but also the action towards the usurpation of the authority. If any part of federal republic reveals the unhealthy trends, it shall be overcome by

other parts of the republic.

There are two main ways of establishing a federation: contractual and constitutional. The contractual constitution means concluding the contract between the states about the unification. The constitutional federation is established by the constitution or the constitutional law by which the state authority grants autonomous rights to the separate territorial units.

According to the general signs and the characteristics there are: national, territorial and national-territorial federations.

In multinational states, where they are voluntarily united into one state, there is a federation regulated on the national basis. These nations give their Sovereign rights to the union authority; for example, the Russian federation.

The federation regulated by the territorial sign, may be based on economic, lingual (for example: Belgium); geographic, cultural and other factors. This form of federalism is characterized by the highest degree of centralization.

When the federation is regulated by national-territorial sign, the state's territory is organized by using the both signs, but the federation is no form of national problem solution (for example: The Russian Federation).

The Constitutional Law also differ decentralized and centralized federations. The federation may be symmetrical and asymmetrical. The subjects of symmetrical federation enjoy the equal rights in relation with the federal authority; though the equality is not absolute.

As for the countries of asymmetrical federalism, the subjects have different constitutional-legal status. Besides the subjects of equal rights there are other territorial units in the asymmetrical federation.

Its example is the comparison of the constitutional-legal status of the federal district of Columbia, USA with its 50 states. The District of Columbia is represented by one voting Member of Parliament in the House of Representatives and has no representative in the Senate.

In some states of asymmetrical federation there are no other territorial units, but its subjects are still different from each other by the constitutional-legal status. For example, there are 6 federation subjects in Russia: republic, region, district, autonomous district, autonomous "Okrug" and the city of federal meaning (Melkadze, 1996).

While choosing the future territorial arrangement model, I consider it inevitable for Georgia to establish the asymmetrical principle.

**Regionalism** originated from the good soil of unitary and as the model of territorial arrangement of the state it has been formatted by the interim formation to the classical federalism. In such types of states it is possible that separate territorial units shall have much more different status than the other ones. Some units with its specific character (national, ethnic and other), may be granted wider self-governance right. Such units are called territorial autonomies in the Constitutional Law (Melkadze & Tevdorashvili, 2003).

Therefore in modern theory of Constitutional Law there are three major forms of the territorial arrangement: unitary, regional and federal. All these

three forms are mainly different from each other by the degree of decentralization as well as the autonomy of the territorial units. Constitutional law distinguishes between decentralized and centralized unitary states. In regionalist-type states, however, it is possible for individual territorial unit or units to have a different status than others. Some units may be granted a broader right to self-government due to their specificity which is referred to as territorial autonomies. Constitutional law also recognizes a decentralized and centralized federation. The federation can be both symmetrical and asymmetrical also. The subjects of the symmetrical federation enjoy equal rights in relations with the federal government; however, equality is not absolute. In the countries of asymmetric federalism, its subjects have a different constitutional-legal status.

### 3. The Development of Federalism in the World

The federal territorial arrangement in a number of countries caused the changes in unitary territorial arrangement. The starting point of the establishment of federal arrangement of the Public authorities is XVIII century, when the Federalism was implemented in the first democratic country-the USA on the basis of the Constitution of 1787. The first European federation established on the basis of the constitution adopted in 1848 was the federation of Switzerland with cantons.

The federal model of the territorial arrangement is widely spread in the conditions of republican governance. However, there are also exceptions, in particular: on the example of Belgium, Canada, Australia and Malaysia we can say that federalism is successfully operating in monarchical governance as well.

**Germany** represents the federal union of 16 lands. The Federal Parliament consists of two chambers: The Bundestag and Bundesrat. The Bundesrat is the body expressing the interests of the lands which is formatted by the members of governments of the Lands. Previously all the lands (In German: Das Land) in Germany were equip constitutionally and legally. Germany appeared in the international arena in the form of decentralized state which consisted of territorial formations with equal political autonomy. The first federal state in Germany was established in 1871. The German Empire of 1871-1918 was the voluntary unification of the equal territorial units which retained their traditions and identities. Even in the period of the Weimar Republic the tradition of federalism continued in Germany. And by the Constitution of 1949 there established the Federal Republic of Germany which consists of 16 lands today. The Lands, subjects of federalism, enjoy the equal rights.

**Belgium** is the youngest of all European federations. It consists of unions and regions. It comprises three unions and three regions: French, Flemish and German Union, as well as the regions of Wallonia, Flemish and Brussels. Legislative power is vested to the House of Representatives and the Senate. Highly complex territorial division of Belgium is the synthesis of the elements of personal federalism.



**Switzerland** is the perfect model of the federal state. It consists of 22 sovereign cantons. The Legislative body is the Bicameral Federal Assembly. Both chambers of the Parliament are equal in the legislative process. The Executive power is collegially exercised by the Union Council.

The Switzerland constitution refers to its established state as the Confederation. However, in accordance with a number of circumstances, the guarantees from the federal state for the adoption of own constitutions by the Cantons, the Institute of Common citizenship, lack of eligibility of the secession and nullification for the Cantons, the restriction of the boundaries within the federation and so on, is undoubtedly putting the country at the head of classic federal states.

**Russia** is arranged on the basis of the principle of the asymmetrical federation. The legal ground for the asymmetrical territorial arrangement of Spanish and Russian States is the agreement, when there is special agreement between the subjects and the federation on the specific political and legal status and authorities (Melkadze, 1996). In Spain there is one more determinant of the asymmetrical principle, historical distinctiveness of the specific region and its traditional political uniqueness. Basque Country and Catalonia in Spain have always been distinguished from other regions for centuries, retaining their national traditions and always enjoyed more rights than any other regions of the country. The first person of the autonomous government of Catalonia expressly stated: "Catalonia is a nation with all the characteristic of this concept: historical background, geographical borders, language, the private law, the distinguished lifestyle, traditions and the future plans" (Melkadze & Tevdorashvili, 2003). In 1932 Catalonia and later (in 1936) the Basque Country gained the status of the Autonomous region. In the Constitution of 1978 of Spain from the outset they had envisaged to grant the status of the large political autonomy to these regions. Respectively, the today's model of territorial arrangement in Spain represents the outcome of historical features of the Spanish regions and nations.

The same basis has the status of the Åland Islands in Finland, which is enhanced by the existence of the Swedish, the minority living on the Island. This fact is also considered as the major basis for the creation of asymmetry (Demetashvili, 2005).

In France we have got Corsica as an example; its different status is based on one more important reason for the asymmetrical territorial arrangement, its geographic location. In 1991 special law was adopted in France in regard with Corsica. According to this Law, regional authorities were established there and the authorities of this island were enlarged (Gogiashvili, 2000). The geographic basis has also the statuses of Azores Islands and Madeira in Portugal, as well as the Faroe Islands and Greenland in Denmark.

Therefore, while determining the future territorial arrangement of Georgia we shall envisage the relevant provisions of the Georgian Constitution, the current reality, the historic, legal, cultural, political and economic characteristic of Georgia as well as the experiences of federal and unitary decentralized states.



#### **4. Considerations on the Future Plans of Territorial Arrangement of Georgia. Asymmetrical Federalism in Georgia. Federalism and the Perspective of the Restoration of Infringed Territorial Integrity**

I think that federalism in Georgia will greatly enhance the decision making process oriented on the local needs. The citizens will be actively engaged in the political life and the local problems will become familiar to them than the issue to be resolved on the Central level. The federalism will create the additional opportunities for the optimal distribution of the state activities and democratic control of the government; it will help to overcome the alienation between the electorate and the political elite. During the federalism there will be healthy competitiveness among the political parties and this model will give the chance to satisfy the political ambitions.

Federalism will raise the level of political culture and first of all, the culture of political dialogue (Kublashvili, 2004). The political centers established in the country will not be the united political force and Party political competition will become much more intensive. Different political orientation forces will conduct of the constructive dialogue and respect to each other's positions and opinions (Sajo, 2003).

At the same time Federal system will protect the social groups living in Georgia and their individual uniqueness. It will support the integration of these groups in united federal system through the balance of powers which will be gained by vertical distribution of the powers in parallel with the horizontal division. Federal state will reduce the possibility of abuse of powers (Maurer, 2001).

Federalism gives the additional chances for the conflict resolution as it creates the additional levels for the conflict regulation (Degenhart, 2002).

The model of federal territorial arrangement is actually the only model which will greatly enhance the coexistence of the Georgians and Abkhazians in the united state. It must be the territorial federation as the subject of the autonomous rights will be not only the ethnic Abkhaz, but the entire population of Abkhazia.

As a result of the federation of Georgia, Abkhazia will enter in Georgia on the basis of Federal Agreement. This agreement shall become the integrated part of the Georgian Constitution. The government of Abkhazia will be based on the independent legitimating source and the state structures shall be elected by the population of Abkhazia. Abkhazia will also have power to adopt the constitution which means that its autonomy shall not be governed by the central government.

The concept ethnic Abkhaz shall not be regarded as the ethnic minority but as one of the nation establishing the Georgian State. The Georgian side should take into account the sense of regional identity of the Abkhazians. The Georgian State will be the protecting guarantee of their cultural identity, history, language, national identity. Georgia will support the cultural development of Abkhazians and in its turn the government of Abkhazia will be obliged to protect the constitu-

tional rights of the population despite the person's ethnicity, social state and religion.

Abkhazia will take part in the implementation of state authority throughout the country as the subject of federation. Besides the large autonomy, it will take the responsibility for state management in the second chamber of the Parliament of Georgia, in the Executive authorities by participating in juridical and constitutional justice.

By the unification in federation it will have the perspective of going to the wider market, participate in international relations and etc.

In case of federal model, the difficulties between the Georgians and Abkhazians will not be solved automatically, but if there is no sense of alienation between them and this problem turns into the regime of dialogue and is conducted in the united political frames this problem will necessarily be solved.



Abkhazia and Tskhinvali Region/Samachablo (South Ossetia) in Georgia.

## 5. The Negative Side

The formation of the new model of the territorial arrangement is the most important and at the same time very dangerous process. That is why the greatest importance is given to the political situation in which this process shall begin.

The democratic potential of the federalism greatly depends on the community's political culture. It will not automatically provide the establishment of democratic institutions. Federalism complicates the political decision-making process and the differences in the policy of the federation subjects hinder the establishment of equal standards of life (John, 1994).

While adopting the model of the territorial arrangement of Georgia, we must take into account the fact that different consideration about the people by the sign of group affiliation always faces the resistance from the other groups which will easily turn into the conflict reason.

The sustainable federalism requires the existence of the similar sustainable subjects of federation. In case the subject has no resources to exercise its rights independently, the federal system shall develop into centralization. The sustainable subjects of federation encourage the decentralization (Vogelgesang,

Lübking, & Ulbrich, 2005).

By the influence of the wrong policy it is possible that Particular form of federalism should be established, when the political weight of the federation subjects are strengthened. The particular federalism may repress the idea of unity and integrity which carries the disintegration sparkle. Federation model also includes the anger of separatists' encouragement ("Society for Technical Cooperation (GTZ)", 2003).

Therefore, the question of the territorial arrangement of Georgia is the question of the state establishment: will Georgia be a state or not? Furthermore, it is obvious that actually new territorial arrangement is needed. The successful model requires the overcoming of disintegration processes. Will the disintegration processes be overcome and management optimization, this depends only on the internal potential of Georgia, on Georgian people and the development of civil society by them.

## 6. Conclusion

Hence, the above mentioned question is current and extremely important for Georgia. There is nothing that is absolutely positive or negative. As we have seen from the above, all forms of territorial arrangement have its advantages as well as disadvantages.

Thus, constitutional law distinguishes between decentralized and centralized unitary states. Under decentralization, authority between the central government and territorial units is governed by the country's constitution. An example of this is the territorial arrangement of Italy. The decentralized unitary state is a form close to federalism, and I consider the use of elements of this form to be permissible in relation to Georgia.

In regionalist-type states, however, it is possible for individual territorial unit or units to have a different status than others. Some units may be granted a broader right to self-government due to their specificity (national, ethnic, etc.). Such units are referred to as territorial autonomies. Georgia can also use elements of regionalism.

Constitutional law also recognizes a decentralized and centralized federation. The federation can be both symmetrical and asymmetrical also. The subjects of the symmetrical federation enjoy equal rights in relations with the federal government; however, equality is not absolute. In the countries of asymmetric federalism, its subjects have a different constitutional-legal status. In addition to federation subjects (units) with equal rights, there are other territorial units in the Asymmetric Federation. In any case, when choosing a future model of territorial arrangement of Georgia, I consider it inevitable to establish the principle of asymmetry.

Therefore, by taking into consideration the current territorial, ethnic and political problems in Georgia and in regard with the analysis of Articles 3 and 4 of the Constitution, one of the real ways and methods for the problem resolution I

consider it inevitable for Georgia to establish the asymmetric principle and should be excluded the typical unitary form from the perspective versions of territorial arrangement of the country.

By starting the discussions on federalism Georgia will start negotiations and find a compromise with regions supporting the decentralization. All this will greatly encourage the negotiation process and support the solution of the problem of our country's territorial integrity.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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