# კონსტიტუციური პროცესების განვითარება პირველი მსოფლიო ომის შემდგომი ცენტრალური და აღმოსავლეთ ევროპის რეგიონში და საქართველოს 1921 წლის კონსტიტუცია

# Post World War I Constitutional Developments in Central and Eastern Europe and the 1921 Constitution of Georgia

გიორგი პაპუაშვილი

სადისერტაციო ნაშრომი

*სადისერტაციო ნაშრომი წარდგენილია ილიას სახელმწიფო უნივერსიტეტის მეცნიერებათა და ხელოვნების ფაკულტეტზე პოლიტიკის მეცნიერების დოქტორის აკადემიური ხარისხის მინიჭების მოთხოვნების შესაბამისად*

სოციალურ და ჰუმანიტარულ მეცნიერებათა და ხელოვნების

ინტერდისციპლინური სადოქტორო პროგრამა

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# განაცხადი

*”როგორც წარდგენილი სადისერტაციო ნაშრომის ავტორი, ვაცხადებ, რომ ნაშრომი წარმოადგენს ჩემს ორიგინალურ ნამუშევარს და არ შეიცავს სხვა ავტორების მიერ აქამდე გამოქვეყნებულ, გამოსაქვეყნებლად მიღებულ ან დასაცავად წარდგენილ მასალებს, რომლებიც ნაშრომში არ არის მოხსენიებული ან ციტირებული სათანადო წესების შესაბამისად.”*

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# Abstract

This research investigates the emergence of a new era of constitutional legal thinking in Europe in the aftermath of World War I (hereinafter WWI) by discussing the constitutions of 10 European states.[1] In particular, the research offers analyses of the constitution-making processes in these newly established Central and Eastern European countries with the emphasis on their liberal and democratic attributes. Out of the countries in question, Georgian case – substance and adoption of 1921 Constitution - is closely scrutinized to illustrate the similarities with other states in the region.

Constitution-making in the wake of WWI can be characterized as a silent revolution as it brought about institutions of representative democracy, parliamentary system of government, higher standards of human rights, establishment of self-governance, stronger electoral rights, the clearer division of powers, and, most importantly, reinforcement of the national independence of the countries concerned. These constitutions have clearly superseded outdated system of absolute monarchy and instead embarked on the road of European understanding of democracy and rule of law. The present study is important for two main reasons: there has been no major historical and political research so far that would reflect the common trends and characteristics of these constitutions; it is also important to document and better understand the roots of modern-day socially driven constitutional thinking in Central and Eastern Europe.

The research argues that growing unpopularity of dictatorial and monarchical regimes in Europe induced the newly emerged states to take a progressive course. It is further concluded that in rejecting their past, these states followed legal and socio-political

[1] Georgia, Latvia, Lithuania, Estonia, Ukraine, Finland, Poland, Czechoslovakia, Yugoslavia and Romania.

trends of democracy developing in the Western Europe, particularly those in victor countries of WWI.

**Key words:** constitutional developments, central and Eastern Europe, Europe's legal history after WWI, democratization in central and Eastern Europe, 1921 Constitution of Georgia, constitutional traditions, human rights.

## აბსტრაქტი

წინამდებარე კვლევა იძიებს ახალი კონსტიტუციურ-სამართლებრივი აზროვნების აღმოცენების საწყისებს პირველი მსოფლიო ომის შემდეგ ევროპის

ათი სახელმწიფოს კონსტიტუციათა განხილვის მეშვეობით. უფრო კონკრეტულად, ნაშრომი ახდენს კონსტიტუციის შემუშავების პროცესების გაანალიზებას ცენტრალურ და აღმოსავლეთ ევროპის ახლად შექმნილ ქვეყნებში და აღწერს მათ ლიბერალურ და დემოკრატიულ მახასიათებლებს. მოცემული ქვეყნებიდან, განსაკუთრებულად სიღრმისეულად შესწავლილია საქართველოს დემოკრატიული რესპუბლიკის 1921 წლის კონსტიტუციის არსი, მისი შემუშავებისა და მიღების პროცესი.

პირველი მსოფლიო ომის შემდგომ კონსტიტუციათა შემუშავების პროცესი შეიძლება შეფასდეს როგორც ჩუმი რევოლუცია, ვინაიდან მის შედეგად რეგიონის ქვეყნებში დაინერგა წარმომადგენლობითი დემოკრატია, მმართველობის საპარლამენტო სისტემა, ადამიანის უფლებათა მაღალი სტანდარტები, ადგილობრივი თვითმმართველობა, სახელისუფლებო ძალაუფლების მკაფიო გადანაწილება და, რაც უფრო მნიშვნელოვანია, მოცემულ ქვეყანათა ეროვნული დამოუკიდებლობის გამყარება. აღნიშნულმა კონსტიტუციებმა ერთმნიშვნელოვნად მოახდინეს მოძველებული აბსოლუტური მონარქიის სისტემის ჩანაცვლება უფრო პროგრესულით და დასაბამი მისცეს ევროპული დემოკრტიისა და კანონის უზენაესობის პრინციპებს. წინამდებარე ნაშრომი მნიშვნელობას იძენს ორი ძირითადი მიზეზის გამო: დღემდე არ მოიპოვება მნიშვნელოვანი ისტორიული და პოლიტიკური კვლევა, რომელიც ასახავდა ხსენებული კონსტიტუციების საერთო ტენდენციებსა და მახასიათებლებს. იგი მნიშვნელოვანია ასევე ცენტრალურ და აღმოსავლეთ ევროპაში დღეს არსებული სოციალურად ორიენტირებული კონსტიტუციური აზროვნების საწყისების გააზრების საკითხში.

ნაშრომი ნათელყოფს, რომ დიქტატორული და მონარქიული რეჟიმების მზარდმა არაპოპულარობამ ბიძგი მისცა ახლად შექმნილ სახელმწიფოებს

პროგრესული აზროვნებისაკენ. ნაშრომში გაკეთებულია დასკვნა, რომ ახალი სახელმწიფოებისთვის საკუთარი წარსულის გადაფასების პროცესში სამაგალითო მოდელს სწორედ პირველ მსოფლიო ომში გამარჯვებული ქვეყნები წარმოადგენდნენ, რომელთა არსებული სოციალურ-პოლიტიკური დემოკრატიის ტენდენციები მისაბაძი გახდა რეგიონის ქვეყნებისათვის.

**ძირითადი საძიებო სიტყვები:** კონსტიტუციური პროცესები, ცენტრალური და აღმოსავლეთი ევროპა, ევროპის სამართლებრივი ისტორია პირველი მსოფლიო ომის შემდეგ, დემოკრატიზაციის პროცესი ცენტრალურ და აღმოსავლეთ ევროპაში, საქართველოს 1921 წლის კონსტიტუცია, კონსტიტუციური ტრადიციები, ადამიანის უფლებები.

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# Introduction

## *Study Objective, its Significance and Research Questions*

In the wake of WWI new states emerged in Europe, new political parties advanced and constitutions were adopted by the national legislators. Most of these constitutions were adopted during 1917-1922 as a symbol of cementing the newly acquired independence in these ten countries. But did these constitutions have anything in common? Had they been drafted and adopted using a common strategy? Were they democratic? How distinct was constitutional processes in Georgia in comparison with that of other countries in the region. This study will attempt to answer these questions by looking into the historical, political and legal perspectives of this process. For these reasons, this research will apply comparative methodology and historical analysis in order to identify those preconditions that led to the emergence of a new era of constitutional law in the countries concerned.

WWI had far-reaching consequences from historical, political, economic and legal perspectives as Europe saw the downfall of empires and outbreak of civil wars, which in turn helped to shift the balance of powers in the region. These turbulent processes triggered global economic crisis and rampant poverty. This course of events propelled national movements among nations and led to the emergence of newly independent or successor states. Despite political and economic pretexts, the birth of new countries was justified by the principles of nationality[2] and self-determination.[3] These

[2] Ivan T. Berend, Decades of Crisis: Central and Eastern Europe before World War II 145-146 (2001). On the rise of "Nationalism" see: *Ibid.* 50-53; Joseph Rothschild, East Central Europe Between the Two World Wars 1-3 (1974).

[3] It was articulated by US President Wilson as being just and democratic principle. See: Umesh Srinivasan, *Woodrow Wilson's "Peace without Victory" Address on January 22, 1917: a continuity of thought.* The Concord Review. 3/3 Sp91 (1991).

developments went hand in hand with constitutional and legal developments in the region. Newly emerged states sought to legitimize their institutions by adopting democratic constitutions. In doing so, they all chose to pursue the path towards establishing parliamentary democracies with a strong representative body of government. This trend may seem peculiar at some point, yet there are some political and social issues which lie behind such an interesting development.

This research aims to analyze what socio-political preconditions led the newly emerged states throughout Central and Eastern Europe to craft democratic constitutions. The study keeps its focus on the states of Georgia, Latvia, Lithuania, Estonia, Ukraine, Finland, Poland, Czechoslovakia, Yugoslavia and Romania as they, despite some internal differences, had one distinctive feature in common – they all sought for independence from imperial hegemony and went on to adopt genuinely democratic constitutions. The research devotes detailed attention to the case of Georgia in this regards and draws a parallel between the evolving constitutional processes in the Democratic Republic of Georgia and those of other countries in the region. By elaborating on this point, this research, on the one hand, tries to illustrate constitutional developments in this region after WWI and also to demonstrate the resemblance of Georgian post WWI constitutional evolution with the countries belonging to the European legal family.

It is widely accepted that political setting in a country has always had a palpable effect, and served to a great degree as a determinant of the legal evolution of a state. A constitution, as a founding legal act, has to reflect people's historical, political, social, cultural and economic preferences. It has to determine fundamental human rights along with a system of government, and within this, design a path to future progress of a country. In this context, it is of profound interest to gain an insight into the reasons that influenced the choices of newly emerged countries in Europe. This research gains

significance for investigating often neglected topic that reflects the common trends and characteristics of the countries in question by putting emphasis on legal history. The research also holds a great promise in closely studying Georgian case through the prism of Central and Eastern European region, which helps us to understand the genesis of legal traditions in Georgia, as well as, in general, to grasp the origins of modern-day socially driven constitutional thinking in Central and Eastern Europe.

### *Methodology and Structure*

The study seeks to address the said principal questions by focusing on the comparative and case-oriented analysis of the states concerned in three chapters. Firstly, the research explores the political context of the constitution-drafting process in the respective states. This sets stage for the examination of the general political picture in the region that preceded the adoption of the respective nine constitutions. The next chapter of the analysis focuses on the high-level description and analysis of key substantive provisions of each country's basic legal acts. Namely, the system of government is discussed along with human rights' provisions. The last chapter goes in some detail to closely analyze constitutional developments in Georgia – adoption of 1921 Constitution - and illustrate similarities with emerging processes in the Central and Eastern Europe. Finally, the research will conclude with main findings of the research and offer author's analysis of the presented study. The information provided about the countries in question differs in size as it is dependent upon the availability of historical materials and spatial scope of various constitutions.

In the end, this research reaches the conclusion that the downfall of dictatorial and monarchical systems, as well as the post-WWI precarious situation in Europe greatly encouraged newly emerged states in the region to discard their past and adopt a genuine constitutional blueprint for progressive development. It is further argued that new states in Central and Eastern Europe made quite a deliberate attempt to pursue

and embrace legal and socio-political trends dominant in victor countries of WWI. The study reveals the striking resemblance between the constitutional processes in Georgia and other countries of the region. It is submitted that such similarity is mainly predicated upon the widespread social-democratic ideology in Europe, which also happened to be dominant in Georgia, as well as the close affinity of Georgian political elite with major influential statesmen in Europe who were willing to pass their experience onto fellow Georgian counterparts.

The major sources of this research are historical documents reflecting the post-WWI period in Eastern Europe, the constitutions of the countries concerned, and scholarly accounts of law and history. The present research mainly focuses on the substantive provisions of the constitutions and, in this respect, outlines some of the most relevant facts of historical importance which greatly influenced the evolving legal process in Central and Eastern Europe after WWI. It does not intend to go beyond and exhaustively address other historical developments regarding the countries in question. The research also circumvents the issue of assessing practical operation of the constitutions concerned and it neither discusses nor intends to analyze their democratic viability in the ensuing years.

## Chapter I. Political Context Preceding Constitution-Making in Central and Eastern Europe

Post-WWI constitutional developments in Central and Eastern Europe coincided with critical events on a global stage. The major European empires – Austro-Hungarian, German, Russian, and Ottoman – were breaking up and smaller nation-states were taking their place. In the conditions of chaos caused by WWI, the ultra-left and ultra-right political forces put the traditional social-political ideologies of

contemporary democracy in doubt. The economic crisis[4] brought about by the results of WWI rendered the socialist ideas rather popular in Europe, which in turn, later was conducive to the formation of communist and totalitarian-fascist regimes in the region. Their accession to power was much contingent on vigorous campaigning and application of socialist-populist ideology.

The constitution-making process within Central and Eastern Europe can be viewed as an attempt by the states to regain freedom and independence from the imperial influence.[5] The deterioration and ultimately, the break-up of Austro-Hungarian, German, Ottoman and Russian empires led newly emerged states to set up a legal foundation for future nationhood.

By adopting their constitutions in the 1920s, countries of this region - Estonia, Finland and Georgia - tried to get out of the reach of the Russian peril as sovereign independent republics. Similarly, Latvia and Lithuania benefited from the defeat of Germany in WWI and the internal civil conflict within Russia, while Czechoslovakia and Yugoslavia sought their independence after Austro-Hungarian Empire was severely weakened. Poland, Romania and Ukraine on the other hand, found themselves free after years of struggle for independence with their neighboring countries. Post-WWI political developments in these countries arguably are somewhat analogous in terms of overcoming the past, and their endeavors to establish democratically legitimate and legally sound foundations of statehood. In order to trace those similarities, the rest of this chapter will present an overview of the political context that preceded the constitutional drafting process in the respective countries.

Despite the defeat of Germany in WWI, it still maintained substantial influence in Europe. Namely, political forces allied with Germany were gaining momentum to

[4] Further see: Berend, *supra* note 2, at 224-244.

[5] John S. Micgiel, Wilsonian East Central Europe: Current Perspectives 7-65 (1995).

form independent states in the Baltic region and Ukraine. Yet, it never proved to be an easy task. After the accession of Bolsheviks to power, they immediately began to expand their imperial ambitions by disrupting such processes militarily. This became the case in most of the countries of the region. Estonia had fought bloody independence war against Russian army and eventually succeeded.[6] Latvia, Finland and Poland all had troubles with both Russia and Germany, as they were torn between different political and popular interests in-and-outside the country. Similarly, Lithuania, Ukraine and Georgia had experienced tough times in negotiating their cause for independence with Russia. Alternatively, Czechoslovakia, Romania and Yugoslavia were less damaged in the course of establishing statehood and unifying territories they all inherited in the wake of WWI.

Political processes in the Baltic States developed somewhat identical as they all struggled against poverty and economic hardship, as this was the case for many countries across the Europe. These countries mostly depended on agricultural sector, which was in need of reform[7] and they lacked nation-building experience.[8] Similarly, Romania, Poland, Georgia and Ukraine were also rural societies and having lived under imperial dominance, required both political and economic transformation. In contrast, Finland, Czechoslovakia and Yugoslavia, though facing economic hurdles, demonstrated little more maturity in terms of consolidating political spectra. Moreover, in each of these countries emerging peasant movements enjoyed immense popularity, especially in countries dependent on agriculture.[9] Yet, in a larger sense, the

[6] Further see*:* Rothchild *supra* note 2, at 367-374; & BEREND, *supra* note 2, at 159-163.
[7] Mary E. Seldon & F. Benns Lee, Europe Between 1914-1939, 375 (1965).
[8] C. E. Black & E. C. Helmreich, Twentieth Century Europe: a history 377 (1964).
[9] *Id.* 378.

social-democratic ideology was in its heyday spreading successfully all around the continent.[10]

In Estonia, for example, after 1917 decree of the Russian Provisional Government restricted nobility's rights over the Landtags,[11] in the election of the National Council, Estonian Peasants League won the popular majority.[12] Russian Provisional Government's order required the National Council to draft the constitution and submit it them for ratification. However, after a staged coup in Russia, the Estonian National Council regarded itself as independent and assumed the constituent power.[13] Months later, Estonia was occupied by the German forces as a result of the failure of peace talks between the Soviet Russia and Germany. The Estonian National Council, along with the provisional government under Konstantin Paets, was suspended. Yet National Council maintained itself by continuing its missions abroad getting *de facto* recognition.[14] Right after the Germans left the country to deal with deteriorated internal problems, the National Council resumed the power and reconstituted the provisional government. Then, Estonia concluded a peace treaty with Moscow, and only thereafter, following the special commission's work, the constitution was adopted on June 15, 1920.

Latvia too achieved independence and recognition after the peace treaty with Russia was brokered,[15] and was later, on September 22, 1921, admitted into the League of Nations.[16] In contrast, Latvia did not hold elections for provisional government, instead Latvian Council of State was formed consisting of major political parties, *inter*

[10] *Id.* 349.
[11] Mcbain H.Lee, The New Constitutions of Europe 452 (2013).
[12] A conservative political party in Estonia led by Konstantin Päts.
[13] Graham, *supra* note 25, at 256.
[14] Karsten Bruggemann, "Foreign Rule" During Estonian War of Independence, 210-226 (2006).
[15] *League of Nations Treaty Series* (*LNTS*), ii (1920–1921), 212–31.
[16] James K. Pollock, *The Constitution of Latvia*. The American Political Science Review. 17(3), 446 (1923).

*alia*, Peasant Union and Social Democratic Labour Party.[17] Lately in 1920, following the election won by the same two parties alongside bourgeois and minority representatives, the constituent assembly was convened.[18] The constitution was adopted 2 years later.

In Finland, however, the changes were propelled by 1905 revolutionary developments in Russia, whereby historic parliamentary reform was put in place. The Parliament Act of 1906 replaced the four-estate Diet with the unicameral parliament - the *Eduskunta*, which was elected on the basis of universal suffrage and proportional representation. Thus, as a result of this reform, for the first time in Europe, men and women were granted equal voting rights.[19] Eventually, in 1907 the first parliamentary elections took place, giving 19 seats to women.[20]

The Social Democrats continued to dominate Finnish politics for a while as they again emerged victorious in 1916 and gained an absolute majority in the Parliament. In the subsequent year, right after the Russian Revolution, on December 6, 1917 Finland declared its independence, which was instantly recognized by the Soviet government.[21] Yet, Finland suffered one of its most serious setbacks right after this occasion. Namely, in January 1918 civil war broke out, much like in Estonia, as the socialists initiated an armed struggle against the bourgeois part of Finland. The latter acted under the command of the former Tsarist officer, General Mannerheim, and was aided by the German interventionist forces, who as a result of the conflict achieved

[17] Graham 329-330.

[18] Arveds Svabe (ed.), *Latvju Enciklopedija* (*LE*), 3 vols. (Stockholm: Tris Zvaigznes, 1953–5), s.v. 'Satversmes sapulce' [Constituent Assembly], iii. 2252

[19] Fred Singleton, *The Myth of Finlandisation*. International Affairs. 57(2), 272 (1981).

[20] See Dag Anckar, *The History of the Finnish Parliament*. European Journal of Political Research. 9(2) (1981).

[21] Singleton, *supra* note 46, at 273.

victory in May 1918.[22] This tumultuous course of events eventually led Finnish nation to adopt the constitution in 1919.

During 1919-1921, like Estonia and Finland, Poland also fought a war and succeeded against Russia in 1921. It settled the Eastern border which preserved a good portion of the old Commonwealth's Eastern lands for Poland.[23] This arrangement left Ukrainians with no state, which caused resentment and contributed to a rise in extreme nationalism and anti-Polish hostility.[24] Unlike the countries above, Poland saw a diverse political landscape with numerous parties.[25] Elections for the constituent assembly were held in January, 1919.[26] The assembly set up a commission to draft a new constitution and after considering plenty of proposals on March 17, 1921, the constitution was adopted.[27]

Once the first open debates were held in 1916, the cause of freedom was further advanced in Lithuania with an appeal to the principles endorsed by the US President Woodrow Wilson.[28] The country had earlier aspirations towards independence, primarily intended to secure wider autonomy within the Russian empire.[29] Another major breakthrough was the election of a 20-member council on September 21, 1917 - the Taryba, which was granted the executive authority as well as the power to work on the adoption of the constitution.[30] Alerted by imperial Germany's position on the fate of Lithuania during the negotiations at Brest-Litovsk, the Taryba officially

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[22] Karvonen, L. Finland: From Conflict to Compromise. In: Dirk Berg-Schlosser and others (eds.), conditions of democracy in Europe, 1919-39, 131 (2000).
[23] Norman Davies, Heart of Europe. A Short History of Poland 115-121 (1986).
[24] Timothy Snyder, The Reconstruction of Nations 139-144 (2003).
[25] Richard Crampton, Eastern Europe in the Twentieth Century – And After 40-44 (1997).
[26] One-third of the country's population went to vote resulting in 412 deputies elected.
[27] Lee, *supra* note 26, at 403.
[28] Andrew Parrott, *The Baltic States from 1914 to 1923*. Baltic Defence Review. 8(2), 152 (2002).
[29] Crampton, *supra* note 26, 99-102.
[30] *Id.*

declared Lithuanian independence on February 16, 1918, embodying the resolutions passed by the Vilnius Diet of 1905.[31]

Interestingly, Romania had witnessed its area and population to double following WWI territorial arrangements.[32] Newly added neighboring lands promised valuable agricultural and industrial resources to the Romanian economy. The nation was optimistic for the future as its historically dangerous neighbors, Russia and Hungary, were considerably weakened.[33] This strengthened nationalistic sentiment among people, and Romanian leaders though being less experienced, were capable enough to provide guidance during the struggle for independence.[34] Eventually, Liberal Party of the Regat, which later was in charge of undertaking drastic economic decisions, managed to unite the nation.[35] Romania's path to unification, and subsequently to independence, bore certain parallels to the corresponding processes in Yugoslavia and Poland. Yet, in terms of reconciling minorities and creating a unified nation-state, Romania, along with Poland, succeeded better than Yugoslavia.[36] The adoption of the 1923 Constitution of Romania was subject to a greater debate. It primarily intended to establish the form of a state on the basis of universal male suffrage and also reflected the realities emerging after the Great Union of 1918.[37] Eventually, following proposals from respective political parties,[38] on March 29, 1923 the constitution was adopted.

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[31] In a number of resolutions the Diet in 1905 laid down far-reaching constitutional program, designed to establish autonomy within Russian empire by demanding its outright transformation into federal state.

[32] Cramton, *supra* note 26, 107-110.

[33] Rothschild, *supra* note 2, at 281.

[34] Berend, *supra* note 2, at 175.

[35] Rothschild, *supra* note 2, at 293.

[36] Berend, *supra* note 2, at 177.

[37] The Union of Transylvania with Romania on December 1, 1918 marking the unification of Transylvania and the provinces of Banat, Bessarabia and Bukovina with the Romanian Kingdom.

[38] National Liberal Party, Romanian National Party and Peasants' Party.

The Treaty of Versailles ensured long-standing national aspirations of Yugoslavia, Czechoslovakia[39] and Poland to come to fruition. The constitution-making process in Czechoslovakia was greatly influenced by American constitutionalism and even resembled the US Constitution in some respects.[40] Moreover, Professor Masaryk's personality played a crucial role in this process. He was a prominent adherent of the American system and was deeply influenced by the study of the American principles of constitutional freedom.[41] His Washington Manifesto of October 1918 referred to the general structure of the future Czechoslovak state and endorsed the following constitutional principles: the state was to be a parliamentary democratic republic, respecting freedom of religion and conscience, freedom of speech, press, literature, science, art, assembly and petition.[42]

Political landscape of Czechoslovakia, like in Poland, was quite varied.[43] About twenty-three parties and movements took part in the first election. In both local and national elections following the adoption of 1920 constitution, the Social Democrats emerged as the strongest political power. Despite the unstable political situation between the parties, politicians resolutely managed to set up a coalition of five bodies, known as Pětka, consisting of the leaders of the five main parties (Social Democrats, National Socialists, National Democrats, Agrarians and Clericals), who would meet until 1925 to chart the broad lines of government policy.[44]

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[39] Further see: Berend 163-168; Rothschild 73-111, *supra* note 2.

[40] Vaclav Partl, *American Influence on Political Thought in Czechoslovakia*. The American Political Science Review. 17(3), 448-452 (1923).

[41] *Id*, 451.

[42] Bradley, J. Czechoslovakia: External Crisis and Internal Compromise. In: Berg-Schlosser 87.

[43] Thompson, M. R. Building Nations and Crafting Democracies – Competing Legitimacies in Interwar Eastern Europe. In: Berg-Schlosser 28.

[44] John Coakley, *Political succession and regime change in new states in inter-war Europe*. European Journal of Political Research. 14. 199 (1986).

Similarly, following WWI and the defeat of the Austro-Hungarian monarchy, the Kingdom of Serbs, Croats and Slovenes was established in 1918.[45] In the same year, general Yugoslavian Council was formed, comprising representatives from Croatia, Slovenia, Albania, Istria, Bosnia, Herzegovina and Southern Hungary. On October 15 this assembly proclaimed the independence of all the Yugoslavian territories.[46] As a result of subsequent elections, the Democratic and Radical Parties emerged as the major power brokers in the Constituent Assembly, which was convened on December 12, 1920 with an effective parity between those two.[47] The assembly was given constituent powers with the authority to adopt the constitution and legislate for the new country. The draft constitution put forward by the Radical-Democratic coalition was fully supported by all major parties. Hence, the constitution went into effect on June 28, 1921.[48]

Ukraine's case was somewhat unique from the countries discussed above. Following the 1917 Revolution in Russia, Ukrainian leaders in Kyiv created the Central Rada,[49] headed *in absentia* by Mykhailo Hrushevski,[50] who was at that moment making his way to Kyiv from Moscow.[51] Originally the Rada had a number of diverse educational and cooperative functions, which had no definite political intentions, except a general sympathy for the idea of Ukrainian autonomy. The Rada, with its diverse representation,[52] turned itself into a representative body in the summer of 1917 and claimed authority over the Ukrainian provinces of the Russian Empire – including

[45] Further see: Rothschild 201-230; & Berend 168-173, *supra* note 2.
[46] Isaiah Bowman, The New World: Problems in Political Geography 253 (1986).
[47] Sabrina p. Ramet, The Three Yugoslavas, State-Building and Legitimation 1918-2005, 54 (2006).
[48] Lee, *supra* note 26, at 347.
[49] Stephen Velychenko, State Building in Revolutionary Ukraine 66 (2011).
[50] Further see: Serhii Plokhy, Unmaking Imperial Rusiia: Mykhailo Hrushevsky and Writing of Ukrainian History 281-316, (2005)
[51] Richard Pipes, The Formation of the Soviet Union 54 (2011).
[52] Three major parties were: All-Ukrainian Peasants' Deputies Council – 212 members, All-Ukrainian Military Deputies Council – 158 members, All-Ukrainian Workers' Deputies Council – 100 members.

Crimea.[53] The Central Rada intended to create Ukrainian National (People's) Republic with federal ties with democratic Russia.[54]

The draft Constitution was adopted in 1918 and served as an institutional pillar of the Ukrainian National Republic. It was largely influenced by previous legislative acts of the Rada and had an important impact on the government structure of the Ukrainian National Republic.[55] Yet, Ukrainian leaders, inexperienced and idealistic as they were, failed to appreciate the need for both establishing state institutions and the army to defend their territory. This proved to have pivotal consequences for the country, as it became the battlefield of Russian military intervention. Following the outcome of WWI, Russia had managed to overturn the legitimate government in Ukraine and include the country into the Soviet Federation.[56] The Soviet government abolished the Ukrainian Constitution, which had never come into force, turned out to have merely a moral-political significance for Ukrainian national revival.

[53] Velychenko, *supra* note 81, at 66.
[54] Kataryna Wolczuk, The Moulding of Ukraine 36 (2001).
[55] Matvii Stakhiv, *Constitution of the Ukrainian National Republic*. Encyclopedia of Ukraine. l(1) (1984).
[56] Wolczuk, *supra* note 89, at 37.

## Chapter II. Substance of Constitutions – System of Government and Human Rights Provisions

When adopting their constitutions, newly emerged Central and Eastern European countries all espoused a parliamentary model of government.[57] However on closer examination, there are considerable differences between the models chosen by these countries. For the purposes of this chapter, the constitutions of these countries will be grouped into three categories. Namely, the first part of this chapter will focus on the countries with an absolute parliamentary system, without any institutional head of state, such as President or monarch, including Georgia, Estonia and Ukraine. In the next part, the countries of the parliamentary system of government with an existing President - Latvia, Lithuania, Finland, Poland and Czechoslovakia - will be overviewed. Finally, the parliamentary monarchy system of the countries of Yugoslavia and Romania will be discussed. Some of the countries in question even went on to incorporate significant human rights guarantees in their basic laws and this chapter also intends to analyze these respective provisions along the way.

### *Absolute Parliamentary System*

Estonia and Ukraine opted for purely Parliamentarian system of governance. Hence, many similarities can be found between the constitutions of these countries.

[57] For general characteristics of the systems, see: George Papuashvili, *Presidential Systems in Post-Soviet Countries: The Example of Georgia*. Georgian Law Review. (3), 3-5 (1999).

Proportional electoral system, 3-year election cycle, secret and universal suffrage are some of characteristics that they all have in common. However, there are still some features making each of these constitutions unique.

*Legislature*

Estonia, power was centered in the Estonian National Assembly (Riigikogu),[58] which was elected by universal, equal, direct and secret suffrage on the principle of proportional representation.[59] The Riigikogu not only had legislative powers, but it also elected the members of the Supreme Court and, above all, had the right to appoint and dismiss the government. Indeed, the Estonian government was totally dependent on the graces of the National Assembly, since the Constitution did not grant the government any corresponding power to dissolve parliament and call new elections, as in the British tradition. However, the National Assembly was not an absolute sovereign in legislative affairs. Rather, legislation could have been passed by referendum, which was indeed obligatory on all constitutional changes.[60] The members of the Riigikogu enjoyed wide guarantees of independence, including immunity from arrest.

Ukraine's Parliamentary system was considerably strong than the Estonian model. Supreme legislative authority of the Ukrainian National Republic was vested in the National Assembly.[61] It performed the highest legislative functions and formed the highest bodies of the executive and judicial branches of the Ukrainian National

[58] Lee Kendall Metcalf, *The evolution of presidential power in Estonia, 1920–1992*, Journal of Baltic Studies, 29:4, 333-352 (1998).
[59] Article 36.
[60]Article 39.
[61] Internet Encyclopedia of Ukraine, available at: http://www.encyclopediaofukraine.com/display.asp?linkpath=pages%5CC%5CE%5CCentralRada.htm

Republic.[62] In general, the constitution asserted the principle of parliamentary democracy, with the legislative power outweighing the executive.[63] The National Assembly would be elected by the population on the basis of equal, direct, universal, and secret ballot by proportional election system: one MP per 100 thousand people for a period of three years. Every citizen of the Ukrainian National Republic, who was twenty years old and had no limited citizenship, was entitled to a single vote. Other issues related to elections were regulated by the law.[64] Judicial control of the elections was performed by the Court of the Republic. The decisions of the Court in this respect were to be approved by the National Assembly, which was entitled to declare mandates invalid, or an election void and call for new elections.[65]

The Ukrainian Constitution proclaimed the principle of parliamentary immunity and introduced a fixed salary for the deputies. The deputies were elected for three years. The Constitution provided for the possibility to dissolve the National Assembly upon the request of three million electors. Interestingly, the latter might be dissolved prematurely by its decision according to the will of the people and identified by no less than three million voters' written statements submitted through the General Court, which would check the formal requirements and inform the National Assembly.[66]

The Assembly had several instruments to influence the executive branch of the state. It was entitled to form and control the government. The Chairman of the Assembly was to represent the republic in foreign relations.[67] Moreover, the Constitution

[62] Article 23.
[63] Stakhiv, *supra* note 90.
[64] Article 28.
[65] Article 30.
[66] Article 32.
[67] Stakhiv *supra* note 90.

provided for the power of interpellation and a requirement of confidence.[68] The decision of 2/3 of the members of the Assembly was the precondition to impeach the ministers and commence criminal investigation.[69]

The Ukrainian National Assembly, as a powerful representative body, also enjoyed broad powers with respect to military and international policy of state, namely it was empowered to decide on the declaration of war and conclusion of international treaties on behalf of the Republic. Moreover, a declaration of war needed a special majority of two-thirds of the members of the National Assembly.[70] It also had important powers with respect to state economic policy. For instance, the National Assembly had the exclusive right to form the state budget, to set taxes,[71] to take a loan on behalf of the Republic,[72] and to set units of measure, weight and currency of the Republic.[73] Furthermore, the National Assembly was entitled to promulgate the political and economic resolutions on behalf of the Ukrainian National Republic.[74]

*Executive*

In Estonia the government consisted of the State Head and ministers. The number of ministers, their office and detailed order of business was established by special law.[75] Similar to the Georgian model, there was no head of state in Estonia. Instead, the office of Riigivanem or "State Elder" was established. The Riigivanem led the activities of the government and signed all acts, but - like the government collectively - could

[68] Articles 56-57.
[69] Article 58.
[70] Article 47.
[71] Article 44.
[72] Article 45.
[73] Article 49.
[74] Article 48.
[75] Article 58.

not veto legislation, nor dismiss the Assembly, nor even submit a bill for referendum.[76] The government was empowered to appoint and dismiss military and civil officials, insofar as this duty was not confided by the laws to other institutions; declare war and conclude peace on the basis of the corresponding decisions of the National Assembly; proclaim a state of emergency in individual counties or in the whole state, which they submit to the National Assembly for approbation; present the drafts of bills to the National Assembly; issue regulations and orders on the basis of the laws; decide petitions for mercy.[77]

The executive was formed by the legislative body, which in turn also accepted its resignation.[78] The cabinet or its members had to resign provided the National Assembly expressed a direct declaration of absence of confidence in them.[79] The head of the government or ministers could be brought to trial for the usual delinquencies only on the basis of the respective decision of the National Assembly. The examination of such cases fell within the powers of the State Court.[80]

In Ukraine the executive power was vested in the Council of National Ministers of the Ukrainian National Republic (the Government). Its appointment procedure was initiated by the chairman of the National Assembly, who named the members of the Council and its program in consultation with the Council of the Assembly Elders (*Rada Starshyn Zboriv*). The appointment was confirmed by the National Assembly,[81] which also determined the number and specialization of national ministers.

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[76] *Id.*
[77] Article 60.
[78] Article 59.
[79] Article 64.
[80] Article 67.
[81] Stakhiv, *supra* note 90.

The Government was accountable before the National Assembly, which was entitled to express non-confidence to the government or its particular members.[82] Members of the National Assembly had the right of interpellation, implying for the 7 days, individual ministers or the Council had to answer respective requests. Ministers were entitled to take part in the debates of the Assembly in an advisory capacity, as well as MPs might participate in governmental meetings. Like ministers, the member of the National Assembly had only a consultative vote.[83]

*Judiciary and Human Rights*

In Estonia, on the other hand, the courts of justice were independent in their activities. The apex of the judicial system was the "State Court of Justice" formed of judges elected by the National Assembly. Judges of the lower courts who were not otherwise elected, as, for instance, by local government bodies, were appointed by the highest court. Judges could be dismissed only by the court, and would not be replaced except according to the rules laid down by law.[84]

The Constitution of Estonia guaranteed the equality for all citizens, regardless of their ethnicity, language, religion, or social class. The state ensured fundamental rights such as the right to property, freedom of expression and assembly, freedom of conscience and religion. The Constitution also provided for male suffrage and equal political rights. Estonia was also familiar with civil liberties, minority rights and the notion of cultural autonomy.

[82] *Id.*
[83] Article 59.
[84] Graham, *supra* note 25, at 304.

The highest judicial institution in Ukraine was the General Court of the Ukrainian National Republic. It consisted of collegiums of judges [85] and acted as a court of cassation. The term of the General Court Judges encompassed five years.[86] The Constitution did not provide for the office terms for judges of other courts. It was to be regulated by separate law on the judicial system. According to the Constitution, legal proceedings were public and oral.[87]

The Ukrainian Constitution proclaimed the principle of the separation of powers and affirmed the independence of the judiciary from the executive and legislative branches.[88] Moreover, the constitution provided for the non-interference guarantees concerning the court decisions and established the principle of equality before the courts. The judicial acts were not subject to change by any legislative or administrative authority.[89] The specifications of the enforcement were exclusively regulated by the law.[90] The Constitution did not provide for privileges and immunities of judges as these were supposed to be regulated by the separate law on the judicial system.

### *Parliamentary System with President*

There are number of constitutional provisions that are similar in the constitutions of Latvia, Lithuania, Finland, Poland and Czechoslovakia. For example, the limited role of the president, notion of counter-signature, the right of interpellation of MP, presidential veto power, removal of the president by the majority of the MPs, are all

[85] Stakhiv, *supra* note 90.
[86] Article 66.
[87] Article 61.
Stakhiv, *supra* note 90.
[89] Article 63.
[90] Article 64.

commons for the constitutions of these countries. However, at the same time, there are number of differences that could be observed. Out of these 5 countries, the Finnish Constitution provided strongest rights to the president of the country. Also, it was elected not by the parliament, but by the Electoral College. The Finnish constitution additionally provided for the unique system of administrative courts. Unlike the rest of these 5 countries, Polish Parliament was elected for the longest period – 5 years through proportional voting, and was of bicameral structure (Senate and Sejm) with MPs enjoying the *"liberum veto"* power. The constitution of Poland also provided for a unique "justices of peace" institution, which was a representative institution. Czechoslovakia also followed the route of Poland and instituted bicameral Parliament (Chamber of Deputies and Senate). They were elected respectively for 6 and 8 years.

*Legislature*

The 1922 Constitution (Satversme) of Latvia provided for the parliamentary system, establishing a unicameral legislative assembly - the Saeima, elected on the basis of universal, equal, direct and secret vote, within the system of proportional representation.[91]

The Latvian constitution attached special importance to the independence of a legislative body. Thus, respective provisions stipulated the guarantees and conditions aimed at securing the autonomy of the Saeima. Namely, the constitution provided for the prohibition of recall of a MP by voters,[92] as well as addressed the indemnity and immunity enjoyed by the members of the Saeima.[93] Furthermore, the document envisaged the election of ordinary parliamentary committees and the appointment of

[91] Article 6.
[92] Article 14.
[93] Articles 28-30.

parliamentary inquiry committees, both of them contributing to the effective exercise of control over the executive branch.[94] At the same time, the right of interpellation was vested in the Parliament, obliging ministers and their subordinates to reply.[95]

According to the Constitution of Lithuania, legislative authority was vested in the Seimas.[96] As in Latvian model of proportional electoral system, the Seimas was a unicameral assembly directly elected every 3 years on the basis of a party list system. Members of the Seimas were not bound by the instructions of their constituents and were to be guided only by their own consciences. They enjoyed usual parliamentary immunities and were entitled to free transportation over the Lithuanian railroads, in addition to the compensation provided by law.[97]

The powers of the Seimas were broad.[98] As a body of the legislative branch, the Seimas could enact legislation.[99] The President had veto power and might return laws for reconsideration, but this could be overturned by an absolute majority of the Seimas.[100] The Seimas further controlled and supervised the government, either propounding questions or interpellations, or conducting investigations.[101] The Constitution granted the Seimas the power to confirm the state budget and its administration.[102] The Cabinet was subject to parliamentary confidence and "must" resign if the Seimas "shall directly declare want of confidence in them".[103] The Seimas played an important role in the international relations of the State. Its ratification was necessary to validate

[94] Articles 25-26.
[95] Article 27.
[96] Section 22.
[97] Graham, *supra* note 25, at 391.
[98] *Ibid.*
[99] Section 27.
[100] Section 50.
[101] Graham, *supra* note 25, at 391.
[102] Section 27.
[103] Section 59.

treaties of peace, commerce and cession, as well as treaties modifying the laws, imposing new duties on Lithuanian Citizens, or affecting monopoly or condemnation rights. It alone had the power to declare and end war, though war might be prosecuted by the Lithuanian government in case of attack or invasion, or the declaration of war on Lithuania by a foreign power.[104] In short, the Seimas was a sovereign body to which all other branches of government save the judiciary were responsible.[105]

Finland also espoused a directly elected unicameral legislature. The legislative process under the Constitution appears to be well balanced. Both the President and the Parliament had the power to initiate legislative process.[106] All the legal acts adopted by the Parliament required ratification by the President. The Parliament, before legislating, and the President, until ratification, were allowed to seek opinions concerning the legislative bill from Supreme Courts and Supreme Administrative Courts.[107] Moreover, the President enjoyed the veto power which was not absolute.[108] The legislature could only overcome the veto if the Parliament, after new elections, re-adopted a respective bill without alteration, by an absolute majority.[109]

Thus, it can be asserted that the Finnish President was an active figure in the context of the legislative process. He/she has been described as a "partner in legislation".[110] Furthermore, the competence of the Finnish President to veto a bill and the possibility of submission of the bill to the Supreme Court for consideration emphasized the role

[104] Section 31.
[105] Graham, *supra* note 25, at 391.
[106] Section 18 (1).
[107] Section 19.
[108] Section 19 (2).
[109] Headlam-Morley, *supra* note 73, at 171.
[110] *Id.*

of the President as a guardian of the Constitution, something more than a mere "agent of the Cabinet".[111]

The notion of countersignature, one of the essential provisions of the legislative process, is also found in the Finnish Constitution. According to Section 20, an act that had been ratified or that entered into force unratified was to be signed by the President and countersigned by a respective minister.[112]

In Poland, on the other hand, the Constitution provided for bicameral legislature, vesting all the legislative powers in the Sejm and the Senate, requiring all statutes to be passed by the Sejm.[113] The annual budget and the levying of annual conscript quotas,[114] the establishment of the army and permission for the annual drafts of recruits,[115] the contracting of a state loan, the alienation, exchange or pledging of intangible property of the state, the imposition of taxes and public dues, the determination of duties and monopolies, the establishment of the monetary system,[116] all required statutory enactment. Both the government and the Sejm were given legislative initiative power. All motions or bills involving expenditure from the state treasury had to include the manner of raising revenue therein to defray the cost involved.[117] This is an important provision taken directly from the Czechoslovak constitution for the country inexperienced in self-governance and likely to follow the way of indiscriminate expenditures.[118]

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[111] *Id.*, at 172.
[112] Section 20 (2).
[113] Article 3.
[114] Article 4.
[115] Article 5.
[116] Article 6.
[117] Article 10.
[118] Lee, *supra* note 26, at 407.

The Sejm itself was composed of deputies elected for five-year terms by secret, direct, and equal suffrage on the basis of proportional voting.[119] Every citizen who had the right to vote was eligible for election to the Sejm, including members of the army on active duty who were at least twenty-five years old, regardless of their current place of residence.[120] State officials, other than in central departments of national administration, could not run for office in the districts of their residence.[121] The Sejm was entitled to verify its own elections, but in the case of a protest, the Supreme Court had the final word.[122]

Various articles in the Constitution provided for the complete internal autonomy of the Sejm. Particular procedures were designed for interpellations. The ministers being questioned were obliged to reply within the period of six weeks or submit a statement to the Sejm justifying their refusal to reply. Much like in Germany and other European countries, investigative committees could be set up in order to make judicial inquiry.[123]

The Senate considered every bill passed by the Sejm within a period of thirty days of its adoption. Should it take no action, the President of the republic promulgated it. If the Senate amended the bill, it must return such document within a thirty day time-frame, and in the case of the Sejm's approval by an ordinary majority, the bill might still be promulgated. However, if the Sejm rejected the changes by an 11/20 majority, the original bill became the law.[124] The Senate possessed scant authority, as 5 percent of the Sejm's voting was sufficient to reject or sustain the Senate's proposals.[125]

[119] Article 11.
[120] Article 13.
[121] Article 15.
[122] Article 19.
[123] Graham, *supra* note 25, at 470.
[124] Article 35.
[125] Graham, *supra* note 25, at 470.

The Senate is chosen from the voyevodeships (administrative provinces of Poland) on a general ticket by universal, secret, direct, equal and proportional voting. Senators constituted one-fourth of all deputies.[126] Electors for the Senate had to possess the same qualifications as for the Sejm, though they had to be at least thirty years old and have a year of residence in the voyevodeship of registration. All forty year old citizens were eligible for Senate membership. This provision also applied to persons in the military service. Logically, membership in both the Sejm and the Senate simultaneously was not allowed.[127]All the provisions respecting internal autonomy, procedure and immunities of the Sejm applied equally to the Senate. Notably, the Senate was really given only an ineffective veto power on legislation, yet it was at best a chamber of revision rather than a rival of the Sejm for political authority.[128]

Notably, in terms of historical evolution of constitutionalism, Poland is almost exclusively associated with the "*liberum veto*" phenomenon, whereby any member of the Sejm could force an immediate end to the current session and nullify any legislation already passed at this session.[129]

Czechoslovakia, after strong opposition by the Social Democratic Party, eventually opted for the bicameral system of parliament in order not to have a "rival infallibility" but an "additional security".[130] This representative system bore a striking resemblance to the French Third Republic, although in reality it was a partial copy of the Austrian system.[131]

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[126] Article 36.
[127] Article 36.
[128] Graham, *supra* note 25, at 471.
[129] Lee, *supra* note 26, at 401.
[130] Vladimir Dedek, *The Constitution of Czecho-Slovakia*. Journal of Comparative Legislation and International Law, Third Series, 3(1), 117 (1921).
[131] Bradley In Berg-Ssclosser 96.

The legislative power was exclusively in the hands of the National Assembly, composed of the Chamber of Deputies and Senate. Both chambers were elected by universal, direct and secret suffrage according to the principles of proportional representation. The term of office for the lower chamber was six years and for the Senate eight years.

The President had the right to return any bill with remarks to the National Assembly (the collective denomination of both chambers). If both houses, by simple majorities, declared their adherence to the bill, or provided there was a dissent between the chambers, the House of Representatives would confirm the bill by three-fifths of its members.[132]

In order to deal with political crises, the President of the Republic was attributed with the right to dissolve the Assembly. After the dissolution of the Assembly, new elections should take place within sixty days. The legislature possessed substantial safeguards *vis-à-vis* the executive, even in case the Parliament was dissolved. In case of dissolution, special permanent Committee controlled the Cabinet and legislated "under precautions and restriction. Acts of the Committee, adoption of which was the responsibility of the Assembly, were additionally scrutinized by the Constitutional Court.

The Assembly had the right to vote for the lack of confidence in the government or reject the government's proposal for a vote of confidence. In these cases, the government had to resign.

*Executive*

[132] Dedek, *supra* note 174, at 119.

In Latvia, although the President was the ultimate representative of the country in international and war affairs, his/her powers as well as accountability were relatively limited. It has to be emphasized that while exercising their authority, the president was not politically liable for his/her own activities, but the responsibility for presidential acts was assumed by the Prime Minister, or by any other minister counter-signatory to the respective Presidential decree.[133] There was no need for the counter-signature with regard to the dissolution of the Parliament and the nomination of the Prime Minister.[134]

At the same time, the fact that the presidential term of three years coincided with the duration of the parliamentary mandate, underscores once again a kind of "dependence" of the President on the legislative branch. The procedure for dissolution of the parliament attached to the Latvian legislature overwhelming importance *vis-à-vis* the president of the state. According to the Constitution, the President enjoyed the right to propose the dissolution of the Latvian legislature, which however should have been approved by referendum. In contrast, the legislature had the right to remove the President without cause by two-thirds majority of its total members.[135]

It might be argued that the goal pursued by the drafters of the 1922 Latvian Constitution was to avoid the "tyranny of Parliament", yet this aim was not achieved by establishing the strong presidency. However, the critical assessment of the Latvian model of presidency goes as far as stating that "the President is to such an extent dependent on the Assembly that he is likely to become a mere nonentity or a political tool of the majority."[136]

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[133] Article 53.

[134] Agnes Headlam-Morley, The New Democratic Constitutions of Europe, 190 (1928).

[135] Lee Kendall Metcalf, *Institutional Choice and Democratic Consolidation: The Experience of the Russian Successor States, 1918-1939*. Communist and Post-Communist Studies. 30(3), 313 (1997).

[136] *Id.*, at 191.

The government was responsible to the legislature both individually and collectively. Hence, if a lack of confidence was voted in the Prime Minister, the entire cabinet had to resign. On the other hand, if the vote of no confidence, as an instrument, was applied to one particular minister, it resulted in individual responsibility, whereby the Prime Minister was required to replace the former member of the Cabinet.

Similarly, in Lithuania "the executive authority shall be vested in the president of the republic and the cabinet of ministers".[137] The president was elected to a three year term (with a possibility of re-election) by an absolute majority of the Seimas.[138] He/she might be recalled from office by a two-thirds vote of all the members of the Seimas, yet no constitutional provision envisaged such procedure. This made the recall a potentially effective instrument in the hands of the Seimas, in case of a possible usurpation of authority by the chief executive.[139] The presidential term could also be terminated by dissolution of the Seimas, as upon the convening of each new body the President had to be re-elected. This arrangement was intended to keep the titular, as well as the active, real executive under the definite control of the Seimas.

The President owned the classical authorities of the chief executives, encompassing representative, diplomatic, pardon and military powers. He/she represented the republic, accredited emissaries and accepted the envoys of foreign countries.[140] Furthermore, the President performed an active role in forming a government, appointing the Prime Minister, authorizing him/her to form the Cabinet of Ministers, confirmed by the Seimas and accepted the resignation of the Cabinet.[141]

[137] Section 40.
[138] Metcalf, *supra* note 179, at 309.
[139] Graham, *supra* note 25, at 392.
[140] Section 46.
[141] Section 47.

The authority of the President was limited by the counter-signature requirement. For all the acts of the President to become legally effective, they had to be signed by the Prime Minister, or the proper minister. Responsibility for the act would rest upon the Minister who was required to sign it.[142] Notably, the Seimas was in dominant position with regard to other state institutions, as typical for parliamentary systems. The President did accept the Cabinet formed by the Seimas, but still was empowered to dismiss the individual ministers, only if he/she found a politically responsible substitute candidate.[143] Constitutional features of the parliamentary system[144] are very obvious in the case of forming and supervising the Cabinet. Moreover, the Seimas had the power to impeach the President. It also, by the absolute majority of votes, had the right to commence criminal action against the President, the Prime Minister or any Minister for abuse of office or treason. Such cases were adjudicated by the Supreme Court.[145]

The President in Finland however was elected on the basis of indirect voting. Thus, an electoral college, consisting of three hundred presidential electors chosen by all qualified voters (i.e. the same voters which elected the Eduskunta) voted for respective candidates in a secret ballot. The President "shall not be a mere party man, but shall have behind him the support of the majority of the nation".[146] The President was seen as a national leader, who could appoint the government, present bills to the Parliament, appoint senior officials, convene extraordinary sessions of Parliament, and open and close the sessions of the latter. He/she also was the Commander in Chief of the armed forces.

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[142] Section 55.

[143] Graham, *supra* note 25, at 393.

[144] Further see: Juozas Laucka, *The Structure and Operation of Lithuania's Parliamentary Democracy 1920-1939*. Lithuanian Quarterly Journal of Arts and Sciences. 32 (3) (1986).

[145] Section 63.

[146] Headlam-Morley, *supra* note 73, 180.

It is important at this point to refer to one particular manifestation of the President's strong position within the domestic political system, namely, the right to dissolve the legislature. "On the initiative of the Prime Minister, the President may, after consulting the Speaker of Parliament and the various parliamentary factions, and at a time when Parliament is in session, dissolve Parliament by ordering that new elections be held."[147]

The status of the Finnish President is interesting not only in respect to the interplay between him/her and the legislature, but also in the context of President's role *vis-à-vis* the executive branch. In order to enter into force, respective acts of the President had to be countersigned by a minister.[148]

The overall effect of the constitutional order established in Finland in 1919 was that the President played a relatively active role in governance. The powers of the Finnish President have been summarized in the following manner: "the initiation of laws, the exercise of the veto, the summoning and dissolution of the Reichstag, the issuing of ordinances, the granting of pardons, and the conduct of foreign affairs."[149]

In Finland, within the 1919 framework of the constitutional order the Council of State acted as the Cabinet. The Prime Minister served as a chairman of the Council of State. He had no "independent power of decision". The members of the Council of State were accountable to the Parliament for their official acts.[150] Notably, confidence of the legislature was required for the members of the Cabinet.[151] The President was the person who appointed all the ministers directly, after consulting various parliamentary

[147] Section 27 (2).
[148] Section 34 (2).
[149] *Id.*, at 218.
[150] Section 43 (1).
[151] Section 36 (1).

factions,[152] as well as released the Council of State or its member from service upon request, and he/she could also do that without prior request, if the Council of State or its member no longer enjoyed the confidence of the legislature.

The executive branch of the government was divided between the President and the Cabinet of Ministers in Poland. The chief executive was elected for a seven-year term by the absolute majority vote of the Sejm and the Senate united in the National Assembly.[153] The Constitution provided neither for re-election nor for a limitation on the presidential term, nor did it establish an age qualification. In fact, the strong influence of Jozef Pilsudski as chief of state and potential authoritarian leader was largely the reason for vagueness of the Constitution[154] and proves effective in explaining the institutional choice made in the Constitution.[155] Three months before the expiration of his term, the President had to convoke the legislative bodies as a National Assembly in order to proceed to the presidential election. Should he/she fail to do so, the chambers would convene on their own under the presidency of the marshal of the Sejm.[156]

The President had little independence from the Cabinet, as executive power was actually exercised by the Cabinet. Presidential powers included signing statutes and directing their promulgation; issuing executive ordinances, directions, orders and prohibitions with ministerial approbation and countersignature;[157] appointing the President of the Council of Ministers and, on ministerial recommendation appointing

[152] Section 36 (2).
[153] Article 39.
[154] Graham, *supra* note 25, at 471.
[155] Michael Bernard, *Institutional Choice and The Failure of Democracy: The Case of Interwar Poland*. East European Politics and Societies. 13 (1) 34-70 (1999).
[156] Article 39.
[157] Article 44.

officers of civil and military forces;[158] commanding the armed forces in time of peace. It is important to note that he/she might not exercise military command in the time of war. Instead, a special commander-in-chief was appointed by him/her on recommendation of the Cabinet, made through the minister of war, who retained the political responsibilities therein.[159] Moreover, the President exercised the rights to reprieve, mitigate and pardon offenders.[160]

The President acted as the nation's official representative in foreign affairs. He/she could negotiate treaties with other states and notify the Sejm hereof.[161] In practice, each treaty, convention or accord had been submitted to the Sejm for ratification and in certain cases to the Senate too.[162]

In Czechoslovakia, the President of the State was elected by the National Assembly. The executive powers were divided between the Government and the President. The President of the Republic was the head of State. Anyone, regardless of gender, could be elected as President by a bicameral session of the Assembly. The President was the top representative in foreign relations, yet his/her acts, whether executive or governmental, required a counter-signature of a responsible member of the government.

The President had the right to dissolve the Assembly except during the last six months of the presidential term, or prorogue the Assembly. All the laws passed by the Assembly should have been signed by the President and he/she had the right to comment on any law enacted by the Parliament as well. The President was the commander in chief of the armed forces of the republic.

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[158] Article 45.
[159] Article 46.
[160] Articles 47- 48.
[161] Article 49.
[162] Graham, *supra* note 25, 473.

The President could appoint and dismiss the Cabinet of Ministers and the government was the sole accountable body for all the Presidents' official acts.[163] Even though the Government was formed by the President, it was still politically accountable before the Chamber of Deputies. According to the Constitutional Charter, all the executive power, insofar as it did not explicitly appertain to the President, should have been reserved to the Government.[164] Should the National Assembly pass a vote of no confidence, the Government would resign before the President, and the latter would have to determine who should direct governmental affairs until the formation of a new government.[165] If the National Assembly failed to adopt a bill submitted by the Government, the Government had the right to call for a national referendum on the matter, a procedure which was however never applied during the First Republic period.[166]

*Judiciary and Human Rights*

The Latvian Constitution embodied the guarantees of judicial independence and other safeguards enhancing the status of the courts of justice.[167] Article 84 stipulated that the appointment of judges was to be confirmed by the Saeima and it was irrevocable. At the same time, the dismissal of judges against their will was prohibited on the basis of that provision, unless such a decision was made by the Judicial Disciplinary Board. Notably, judges were appointed for an indefinite period, until retirement. The Constitution provided for the possibility of establishing courts of law with juries based on the special legislation. Nevertheless, despite some attempts, the idea to establish a

[163] Articles 66.
[164] Article 70.
[165] Article 78.
[166] http://www.vlada.cz/en/media-centrum/aktualne/constitution-1920-68721/
[167] Articles 83-86.

judicial body of constitutional review and include human rights provisions in the Constitution had never gained momentum in Latvia.[168]

The 1921 Lithuanian Constitution was very brief on the Judiciary, but set quite important guarantees.[169] The independence of the judicial system was highlighted by the rule that no decision of a court could be modified or reversed except by the judicial authority in the manner prescribed by law.[170] Moreover, the Constitution provided the principle of equality before the courts.[171] The courts were endowed with both ordinary and administrative jurisdiction, so that the final control over national administration, as well as over conflicts between local and national authorities, reverted to the judiciary for settlement.[172] The Constitution introduced a sole central and final judicial body, the Supreme Court of Lithuania, to which all other tribunals were subordinated.[173]

The Finnish Constitution, similar to Lithuania, had scarce provisions on judiciary, regulating only the Supreme Court and Supreme Administrative Court. The Supreme Court exercised the highest jurisdiction in general legal proceedings and it also had the power to supervise the administration of justice by the judiciary and respective executive authorities. The Finnish system also included the notion of the Supreme Administrative Court which acted as the highest appellate jurisdiction in the field of administrative law and was also entrusted with the authority of overseeing the

[168] Caroline Taube, Baltic Diversity: Comparing Constitutions. *Jurisprudencija*. 30 (22), 45 (2002).
[169] Sections 64-69.
[170] Section 65.
[171] Section 69.
[172] Graham, *supra* note 25, 396.
[173] Section 69.

exercise of judicial authority by lower officials within the field of administrative law.[174]

One of the most interesting features of the Finnish judicial system was the notion of court propositions to the President of the republic. Thus, the Supreme Court or the Supreme Administrative Court, if considered that an act of Parliament or a decree had to be amended or expounded, they could propose to the President the initiation of such legislation.[175] The Finnish system was also familiar with the notion of a special court. It follows that if charges were brought against certain high-ranking officials, the matter had to be heard in a special court, namely the High Court of Impeachment.[176]

The 1919 Finnish Constitution also entailed stipulations regarding the notion of judicial independence, namely the guarantees for the judges not to be removed from office except on the basis of lawful trial and judgment, rules to be transferred to another office only with consent or reorganization of the judicial system and retirement [177] and the obligation of the officials to comply with the law.[178]

One of the most interesting stipulations indicating the progressive character of the Finnish Constitution was the provision concerning the competence of the Chancellor of Justice. The latter, while representing the body of public prosecutors in the Supreme Court and the Supreme Administrative Court and while serving as the supreme public prosecutor himself, acquired special significance in the context of protecting human rights and with regard to guaranteeing the observance of proper legal standards. Broader prosecutorial functions were vested with this authority.

[174] Section 56.
[175] Section 58.
[176] Section 59 (1).
[177] Section 91.
[178] Section 92 (1).

Finnish Constitution entailed plenty of important human rights provisions. Namely, much like to Georgia's example above, civil, political, economic, and social rights all were enshrined in the document.  right to life and personal liberty, physical integrity, security, private life, protection of personal data, secrecy of correspondence, freedom of expression and assembly; electoral rights, property rights, right to education and work. Interestingly, Finnish Constitution made both Finnish and Swedish national languages. Finnish citizens were guaranteed the right to use either of these languages before the courts or other authorities.[179] The same section included the right of indigenous people of the Sami and of the Romanies and other groups, to maintain and develop respective languages and cultures.[180] The Finnish system was also familiar with the notion of an ombudsman,[181] whose was to monitor compliance of respective authorities to the law and human rights.

In Poland courts administered justice in the name of the republic[182] and judges were appointed by the President in case they were properly qualified.[183] Judges were independent, subject only to the law, and could not be removed from office except by a judicial decision.[184] They might not be arrested or prosecuted, even if caught in *flagrante delicto*, without the consent of the appropriate court.[185] The courts did not have the power to review the validity of properly promulgated statutes.[186] Yet, both executive and legislative authorities were precluded from repealing judicial decisions. Such a peculiarity means that individual decisions could not be annulled by the

[179] Section 14 (2).
[180] Section 14 (3).
[181] Section 49 (1).
[182] Article 74.
[183] Article 76.
[184] Article 77.
[185] Article 79.
[186] Article 81.

statute, though it did not deny the Sejm the authority to revise the law when an inconsistency with the judicial practice was revealed.[187]

The Supreme Court was the single highest tribunal for both civil and criminal cases.[188] The Constitution also established the Supreme Administrative Court in order to decide on jurisdictional conflicts between the administrative authorities and the ordinary courts.[189] It is worth noting that in framing the fundamental law, Poland made no attempt to establish a constitutional court, as was done in Austria and Czechoslovakia. Yet more emphasis was given to superiority of the Constitution and the obligation of the ordinary judiciary to uphold the fundamental law. In this respect, Poland seemed more similar to the American system than to European models.[190]

The Constitution of Czechoslovakia regulated the judiciary powers, which were entrusted to not overly structured court system. The administration of the law was vested with public law courts. Jurisdiction was divided between criminal and civil law courts as well. The Constitution introduced a single Supreme Court of Justice and also established jury trials. Judicial and administrative power was strictly separated and the Constitution guaranteed independence of the judiciary.

Similar to Finland, the Czechoslovak Constitution recognized a set of human rights guarantees, *inter alia*, the right to property, protection of privacy, postal inviolability and domestic liberty, freedom of association, freedom to religion and assembly, and of expression. The basic law also attached special protection to national, racial and

[187] Graham, *supra* note 25, at 479.
[188] Article 84.
[189] Article 86.
[190] Graham, *supra* note 25, at 479.

religious minorities.[191] Yet, interwar period's capital punishment, a remnant from Austria – Hungarian Empire, was still retained in the country, though it was rarely used.[192] It is evident however that Czechoslovakia, as opposed to many of the countries of the region, strictly refrained from guaranteeing social and economic rights in the Constitution.

Following the example of the US Supreme Court, the 1920 Constitution introduced judicial review, but in contrast to the US model, in the form of a specialized constitutional court.[193] The Constitution of Czechoslovakia provided that all enactments, *inter alia*, laws amending or supplementing it, contrary to the Constitution, were invalid. Hence, the framers of the Constitution envisioned the necessary institution in charge of constitutional review. The Constitutional Court was composed of seven members appointed by judicial authorities and by the President.

### *Parliamentary System with Monarch*

The constitutions of Yugoslavia and Romania provided for a model with parliamentary system with Monarch. In both of these countries the executive power was vested with the monarch – King, while legislative authority was, to some extent, exercised by the parliament. In each country deputies enjoyed the right to interpellation and they were immune against criminal prosecution. Despite many similarities, there were number of differences between the models chosen by these constitutions. For example, in Yugoslavia the Parliament was unicameral, while in Romania parliament was bicameral and, a bit similar to Yugoslavia, the legislative power was split among the

[191] Thompson, M. R. (2002). Building Nations and Crafting Democracies – Competing Legitimacies in Interwar Eastern Europe 20. In: D. Berg-Schlosser & J. Mitchell (eds.), *Authoritarianism and Democracy in Europe, 1919–39*, Comparative Analyses. London: Palgrave, 28.
[192] Peter Hodgkinson, Capital Punishment: Global Issues and Prospects 217 (1996).
[193] Herman Schwartz, The Struggle for Constitutional Justice in post-comunist Europe 54 (2003).

King, Senate and Chamber of Deputies. Therefore, any draft proposal needed to pass all three instances to become a law in Romania. The powers of the King were much stronger in the constitution of Romania than in Yugoslavia. For example, in Yugoslavia the legal acts of the King required countersignature by the appropriate minister, while in Romania there was no such requirement. In neither of these jurisdictions, however, the King could not be impeached by the Parliament.

*Legislature*

The Constitution of the Kingdom of the Serbs, Croats and Slovenes (the Vidovdan Constitution) provided for a unicameral legislature.[194] Legislative power was exercised jointly by the King and the National Assembly.[195] Keeping in mind the fact that the new State was a successor of several preceding States, diversity was expressed in religion, customs, and everyday life. It became necessary therefore to unify the different laws and methods of administrations that prevailed formerly under various governments, and pertinent provisions were therefore made in the Constitution to this effect.

The National Assembly was composed of Deputies freely elected by the people by universal, equal, direct and secret suffrage, including minorities.[196] The Constitution set out a proportional electoral system, whereby one Deputy would be elected for each

[194] Irish Free State, Parliament, Chamber of Deputies, Constitution Committee, Select Constitutions of the World, Dublin, 1922, 24.
[195] Article 46.
[196] Article 69.

forty-thousand inhabitants. The National Assembly itself had jurisdiction to define women's suffrage,[197] as the Constitution made the issue subject to legislation.[198]

The provisions in the legislative section of the Constitution set forth the rights, privileges, qualifications, disabilities and incompatibilities of the deputies, declaring that deputies represented the whole nation instead of merely their respective constituencies and forbidding the imperative mandate.[199] Every deputy had to be a citizen by birth or naturalization of the Serb-Croat-Slovene Kingdom, must have completed his thirtieth year and must speak and write the national language. Furthermore, officials of the police, finance, forestry and agrarian reform services could not stand as candidates unless they had resigned from their positions one year prior to the decree announcing the elections.

Power of legislative initiative was granted to the Council of Ministers, individual ministers and every member of the National Assembly.[200] The voting procedure in the National Assembly was public and every legislative initiative had to be voted upon twice in the same session of the National Assembly before being finally adopted.[201] The National Assembly was also entitled to certain other powers, which are very characteristic for the legislative bodies of this generation of constitutional systems.

The National Assembly was a powerful actor in international relations of the State, in particular, it had some power in treaty ratification. Treaties with foreign States had to be concluded by the King, but the prior approval of the National Assembly was

[197] Joseph Hayden, *New European Constitutions: In Poland, Czechoslovakia and the Kingdom of the Serbs, Croates and Slovenes*, American Political Science Association, 215 (1922).
[198] Article 70.
[199] Hayden, *supra* note 243, at 215.
[200] Article 78.
[201] Article 86.

necessary for the ratification of such treaties.[202] Furthermore, the territory of the State might not be alienated or exchanged without the approval of the National Assembly.[203]

The Assembly had influential instruments *vis-a-vis* the executive branch. Every member of the National Assembly should have the right to address questions and interpellations to the Ministers, who were bound to reply thereto during the course of the session and within a period fixed by the rules of procedure. All the ministers were responsible to the National Assembly, which could impeach Ministers for any violation of the Constitution or the laws of the country.[204] Notably, in contrast with most of the constitutions of this generation, the legislative branch was not entitled to take part in the process of government formation.

The 1923 Romanian Constitution provided for the principles of separation of powers in the State, decentralization, sovereignty and rule of law. Legislative power was exercised jointly by the King and the bicameral national body, composed of the Senate and the Chamber of Deputies. [205] Despite there were restriction on women and military members, the Constitution in part adopted universal voting principle.[206] Each enactment demanded the assent of all three branches of legislative power. No Law could be presented before the Royalty unless it was passed by a majority of both chambers. All three branches of legislative power were given legislative initiative, but all laws involving State incomes or expenditures must first be put to the vote in the

[202] Article 79.
[203] *Id.*
[204] Article 91.
[205] Article 34.
[206] A. Banciu, (1996). *Istoria vieții constituționale în România (1866-1991)* (*The History of Constitutional Life in Romania*), Bucharest: ŞANSA SRL, 92.

Chamber of Deputies.[207] Authentic interpretation of laws solely belonged to the legislature.[208]

The members of both chambers were elected for four years. The Constitution guaranteed immunity for members of each chamber. The members of either chamber could not be prosecuted or arrested for an offense without the consent of the Assembly to which he/she belonged, except when caught red-handed.[209]

*Executive*

The King in Yugoslavia appointed the members of the Council of Ministers. The monarch's authority was limited by the institution of countersignature. In the kingdom, the "irresponsibility of the titular chief"[210] of State was definitely provided for by the usual provisions that official acts of the chief executive shall be countersigned by the appropriate minister or ministers who were responsible in the political sense.[211] The Minister was politically responsible for all acts of the King, oral or written whether countersigned or not and for all his actions.[212] Furthermore, the Minister for War and the Minister for Marine were responsible for all acts of the King in their capacity of commander-in-chief of the armed forces.[213]

The King alongside the ministers had a strong constitutional mechanism to influence the National Assembly. He had the power to dissolve the Assembly, but such decree

[207] Article 35.
[208] Article 36.
[209] Article 55.
[210] Under Article 54 of the Constitution, royal power is not valid unless countersigned, meaning competent minister is responsible for all the acts of the King, regardless of the fact whether countersignature does actually happen or not.
[211] Hayden, *supra* note 243, at 219.
[212] Article 54.
[213] *Id.*

had to be countersigned by all the ministers.[214] The King could not be impeached, had the right to reside permanently in the country and should not be at the same time head of any other State without the consent of the National Assembly.[215]

Ministers were the most important figures in the government. They collectively formed the Council of Ministers, which was subject directly to the King. Ministers acted as heads of the different departments of the administration of the State. The Constitution provided the legal possibility to appoint the ministers without portfolio. They undertook the political and legal responsibility for the acts of the King, insofar as the countersignature was concerned.[216]

The Ministers might be impeached on legal grounds. The King and The National Assembly may impeach Ministers for any violation of the Constitution or the laws of the country committed during their term of office.[217] The impeachment of a Minister originated with the National Assembly and the decision to bring him/her before the tribunal had to be taken by a majority of two-thirds of the members present.

The King appointed and dismissed the ministers in Romania and possessed strong executive powers in general. He appointed public offices or approved them under the law, issued decrees for the execution of the laws, but never had the right to modify or discontinue the very laws and no one could be exempt from their execution. He was the head of the armed forces. Like in Yugoslav system, the King concluded conventions on trade, shipping and other contracts of this kind, but they became binding only upon approval by chambers. He had the right to dissolve the chambers both together and separately (The act of dissolution must contain a call for elections

[214] Article 52.
[215] Articles 53, 59.
[216] Article 54.
[217] *Id.*

within two months, and the convening of chambers within three months).[218] In addition, ministers were responsible for their actions. Yet the royal power was limited by the countersignature institution. No act of the King could be binding, unless it bore the signature of the minister, who thus became responsible for it.[219] The final article concerning royalty stated that "The king has only constitutionally granted powers".[220]

According to the Romanian Constitution, the government exercised executive powers in the name of the King. Ministers as a whole constituted the Council of Ministers, headed by the President.[221] Each of the two chambers and the King had the right to demand the prosecution of ministers and their appearance before a court of appeal and the Supreme Court of Justice. The law on ministerial responsibility would determine the cases of ministerial responsibility and penalties thereof.[222]

*Judiciary and Human Rights*

In Yugoslavia the structure of the judiciary was regulated under a brief part of the Constitution, which contained basic principles about judicial power. Namely, the Constitution highlighted the independence of the judicial system and stipulated that the courts ought to be independent. In administering justice they would not be subject to any authority but to give judgments according to the law. The Constitution introduced the one central and final judicial body, a single Court of Cassation sitting at Zagreb (Agram) for the whole kingdom.[223] Furthermore, the Court of Cassation had

[218] Article 90.
[219] Article 37.
[220] Article 91.
[221] Article 93.
[222] Article 98.
[223] Article 110.

the authority to determine conflict of jurisdiction between civil and administrative judicial authorities.

The judges were appointed by royal decree on the proposition of the Minister of Justice from among candidates selected by an electoral body.[224] They had sufficient degree of independence because of statutory privileges and immunities.[225] Namely, judges were appointed for life and no judge might be prosecuted for any action performed in the exercise of their judicial functions, without the sanction of the competent Court. The judges of the higher military courts were also irremovable, could not be impeached without the authorization of the Court of Cassation or transferred without their own consent.[226]

Romania provided for one single highest tribunal - the Supreme Court. It was the sole body that had the right to judge the constitutionality of laws and declare them invalid with respect to the constitution.[227] Moreover, the Cassation court heard the cases of conflict between departmental jurisdictions.[228] Administrative justice was a matter for judicial authorities under special law. Anyone who suffered abrogation of their rights or as a result of administrative actions of the government, or from the actions of business, committed in violation of the laws and regulations, or from malicious refusal of administrative authorities to move a request relating to any law, was entitled to seek protection before the courts of their rights.

Notably, the Romanian Constitution also provided for human rights, namely, the principle of equality was guaranteed for all citizens, regardless of ethnicity, language,

[224] Article 111.
[225] Article 112.
[226] Hayden 223.
[227] *E. C. Parau, Romania's Transnational Constitution. In Denis* J. Galligan and Mila Vesteeg (eds), Social and Political Foundations of Constitutions, 513 (2013).
[228] Article 103.

religion, or social class. The state guaranteed fundamental rights such as the right to property, freedom of expression and assembly, freedom of conscience and religion. Moreover, the Constitution granted males suffrage and equal political rights, eliminated the Romanian Orthodox Church's legal supremacy, gave Jews citizenship rights, prohibited foreigners from owning rural land, and provided for the expropriation of rural property and nationalization of the country's oil and mineral wealth.

## Chapter III. Constitutional Processes in Post WWI Georgia and the 1921 Constitution

### *Political Context in Post WWI Georgia*

In the background of rapidly changing situation in Russia and beyond, similarly to many others in Europe, Georgian Social Democrats revived nationalistic sentiments by supporting full self-determination.[229] They managed to distance themselves from

[229] George Papuashvili, *The 1921 Constitution of the Democratic Republic of Georgia: Looking Back after Ninety Years*. European Public Law. 18 (2), 323-350 (2012).

the Russian Menshevik party and took different, less stringent socialist views.[230] The Russian proposal of municipalization was rejected and a land privatization idea was championed instead.[231] Notably, wide national appeal and unwillingness to give up local values for a global plan gave substantial credence to Georgian Social Democrats among people.[232] Also, the internal party-model based on "elective principle"[233] and the leadership of Noe Jordania, as well as their unwavering determination to establish the European socialist parliamentary system, laid the groundwork for the democratic state-building process in Georgia.[234] By the time of the establishment of the National Council[235] on November 19, 1917, the whole Georgian political spectrum had embraced the idea of independence, without serious contradiction.[236]

The successful national-emancipatory movement that brought the almost century long annexation of Georgia, and the formation of the first republic were to a great extent facilitated by the external factors that include the political and military cataclysms underway in Russia. It must be mentioned that the leading Georgian political force of the time, Georgian social-democrats under the influence of Russian social-democrats and the external factors, were initially hesitant to declare their full support to the Georgian independence and correspondingly, to the necessity of creating a constitution. The provisional bourgeois government, which has come to power after toppling the Tsarist regime in Russia as a result of the 1917 February revolution, had no wish whatsoever to let go of the countries comprising the empire that included

[230] Ramishvili, L. and Chergoleishvili, T. March of the Goblins: permanent revolution in Georgia. In STEPHEN F. JONES (Ed.), THE MAKING OF MODERN GEORGIA, 1918-2012, 177 (2014).
[231] Stephen f.Jjones, Socialism in Georgian Colors 145, 158, 212-14, 230, 249-53 (2005).
[232] Sunny, R. G. The Young Stalin and the 1905 Revolution in Georgia. In JONES, *supra* note 7, at 287-316.
[233] This principle was actively advocated by Vladimir Lenin in 1905, meaning that all major positions inside the party has to be elective, and appointments be permissible only as exceptions. (Lenin: Collected Works (Moscow: FLPH, Progress Pub., 1960-70).
[234] Sunny In JONES, at 287-316.
[235] During 1917-21, Legislature in Georgia was renamed twice; initially, it was called "National Council" in 1917-18, and then "Constituent Assembly" in 1919-21.
[236] Geronti Kikodze, National Energy 138-141 (1917).

Georgia, Armenia and Azerbaijan. For this purpose, in place of the institute of the Tsar's vice-regent in the region, a special committee of Trans-Caucasus was set up on the 6th March of the same year for bringing 'law and order' and better arrangement of the region. After the October 1917 Bolshevik *coup d'etat* and the dissolution of the Russian Constituent Assembly, the so called 'Trans-Caucasian Commissariat' (TC hereinafter) was formed on the 15 November of the same year.[237]

On 10 February 1918, at the invitation of the Trans-Caucasian Commissariat, the TC Seim session which included deputies from Trans-Caucasus was convened – participants of the Russian Constituent Assembly dismantled by Bolsheviks. Karlo Chkheidze, a prominent Georgian social-democrat (formerly the leader of social-democratic faction in Russian Constituent Assembly), was elected the chairman of the Seim. On 22 April of the same year, the Seim established 'The Independent Federative Republic of Trans-Caucasus' and declared independence. The Federative Republic of Trans-Caucasus had existed only for one month and four days due to various internal and especially external factors.9 The Seim declaration was annulled on 26 May of 1918. It is noteworthy that some months prior to these events, between 19–22 November of 1917, a convention (the so called 'National Council') of political parties of Georgia (excluding Bolsheviks, who boycotted the Council) and representatives of public organizations was held, which was chaired by Noe Zhordania, a social-democrat. By this time, with the backdrop of Bolsheviks having come to power in Russia, internal Disputes in the Southern Caucasus and external factors, even the social–democrats started to share the attitude of political groups with nationalist

[237] For further analysis, see: George Papuashvili, *The 1921 Constitution of the Democratic Republic of Georgia: Looking Back after Ninety Years*. European Public Law. 18 (2), 323-350 (2012).

sentiments on the necessity to create an independent state (and not to be confined to an autonomous status).[238]

At the backdrop of disorganized social-democratic movement in Russia, Georgian social–democrats chose their own path and they supported full self-determination in the national issue. Correspondingly, by the time of establishment of the National Assembly, the whole Georgian political spectrum (Except for Bolsheviks, who did not exert serious influence upon the society) had embraced the idea of independence without serious contradiction or confrontation.[239]

It was the abovementioned National Council, which simultaneously to the liquidation of the Trans-Caucasian Republic on 26 May 1918, declared independence of Georgia. The act of independence, which founded independent Georgian State, declared that 'the political form of governance of independent Georgia is a democratic republic'. The final Article of the act read that before convoking the Constituent Assembly 'the rule of the whole of Georgia was assumed by the National Council …', which was later called the parliament of Georgia. The government of the newly created democratic republic had actively started to conduct democratic reforms in different directions and reconstruction of the country from the scratch as well as creation of different institutions.

In 1919, the Constituent Assembly (parliament) was elected by exercising the most democratic suffrage in that period marked by equal suffrage, women's participation in the elections as well as using other democratic elements. Parliamentary governance model that ensures efficient control over the government by the parliament was put to practice. The parliament had adopted more than 100 laws regulating different

[238] *Id.*

[239] See G. Kikodze, *National Energy* 138–141, G.Tskhakaia Publication, 1917.

spheres[240] and some of the measures included recognizing private property, creating propitious environment and legislation for foreign investors, introducing agrarian reform, introducing judicial reform, jury trial as well as election of the lower instance judges by the local self governments, etc. The crowning glory of the entire process was the adoption of the Constitution. Despite unfavourable external factors, Georgia managed to gain recognition in the international arena. In 1920, it was recognized *De Facto* by the major Western countries,[241] and in January 1921 – the same states and the League of Nations recognized it de jure.16[242]

The social-democrats represented absolute majority in the National Council (just like in the Constituent Assembly elected by direct vote). It was natural that the government had also been composed of social-democrats. It is noteworthy that the Georgian government of 1918–1921 can be considered as the first social-democratic orientated government in Europe and the whole world.

Camille Huysmans, a famous Belgian statesman and public figure (later Belgian prime-minister), who visited Georgia in 1919 as one of the members of the Second International, noted in his address to his Georgian colleagues: 'You are our hope. Here is the only country which is headed by socialists.'[243] The primary objective of the government of that time was to create an exemplary democratic state in the Southern Caucasus. Karl Kautsky, one of the leaders of the European social–democrats, when speaking about the successful political, legal and economic reforms launched by Georgian social-democrats, noted that the Georgian democratic road of 1918–1920 had fundamentally differed from the Bolshevik choice – instead of dictatorship and

[240] See the *Handbook of the Legal Acts of the Democratic Republic of Georgia, 1918–1921* (Tbilisi 1990).
[241] Z. Avalishvili, *Georgian Independence in the International Politics in 1918–1920*, 201, 281, Mkhedari, Tbilisi, 1924.
[242] Ibid.
[243] Newsp. Ertoba, (Oct. 1, 1920), see Matsaberidze, M. *Elaboration and Adoption of the 1921 Georgian Constitution,* 170–171, Akhali Azri, 2008.

tyranny the country was governed in a democratic way. Creation of an exemplary democracy in the Southern Caucasus should have been, to a certain extent, an antidote and an efficient alternative to the Bolshevik tyranny in Russia. In Ramsey McDonald's opinion: 'Currently there does not exist a bigger obstacle for the Bolshevism than the socialist government in Georgia.'[244]

But in hindsight, this quotation seems a little idealistic as later the Bolshevik aggression against Georgia could not be stopped through confronting it solely by democratic values. During three years before the occupation by Soviet Russia, it was mainly due to the necessity of establishing a democratic society as an alternative to Russian Bolshevism that the government of Georgia had launched speedy democratic reforms and commenced to work actively for working out a new draft constitution based on democratic principles. The task of the new Constitution was to streamline the internal legal and political system as well as represent Georgia on the international arena with the constitution characteristic of the most democratic country not only in the region but in the whole of Europe. This factor was very important for the country embarked on the road to restoration of its independence.

Elaboration of the 1921 Constitution was started by the 'National Council of Georgia' through the activity of the Constitutional Commission created in June 1918. The Commission consisted of members of different political parties. Election of the Constituent Assembly (Parliament) by direct vote and universal suffrage marked by participation of women, absence of property census, etc., was held on 14–16 February of 1919, and as a result of which Georgian social-democratic party earned the vast majority of parliamentary mandates (109 mandates out of 130). The remaining mandates went to national-democrats, social-federalists and 'Essers' (social –

[244] R. McDonald, Newsp. 'Nation' (October 1920), see Elliott, W. Georgia and Soviets, Letters to Editors, September 27, 1924.

revolutionaries). It is noteworthy that Bolsheviks earned only very few votes and did not get a single mandate.[245]

The newly elected Constituent Assembly set up a Constitutional Commission consisting of fifteen members, the majority of which were social-democrats. The authors of the Constitution, who were mentioned above, had had the experience of studying and working in Europe behind their shoulders, naturally knew the texts of contemporary world constitutions, their underlying principles, and associated work well. Experience gleaned from these constitutions naturally influenced the Georgian legislators a lot. For example, common approaches on different issues are tangible when compared to the Swiss constitution of 1874, Belgian constitution of 1831, the United States constitution of 1789, German constitution of 1919, Czechoslovakian constitution of 1920 and French constitution of 1875.[246] Almost all existing Constitutions had been translated into Georgian and published in the press between 1919–1920, and concurrently in various issues of the newspaper 'Ertoba'. Members of Constitutional Commission and other Lawyers had also run Articles and reviews on the essence of different constitutions.

Process of working on the new draft Constitution had taken the newly created commission considerable time as it endeavored to study as much of international experience as possible, and also reach a political consensus on important issues. In July of 1920, the draft Constitution was published for the review. And in November of 1920, the parliament started the procedure of its review and adoption.

At the same time, Russia still tried to hamper Georgia's aspirations to become an independent state. In February of 1921, Soviet Russia occupied and subsequently annexed the country. Beginning of the Russian army offensive had speeded up the

[245] See the report of Georgian Constituent Assembly of April 11, 1919, p. 31.
[246] Papuashvili, supra note 229.

adoption of the draft Constitution with certain amendments on 21 February of 1921. By this time, almost all chapters of the constitution had been reviewed and adopted by the parliament and the Article by Article review process had already been started. But coming out from the existing situation, it became necessary to speedily adopt full-fledged constitution that would represent a sovereign country before the world and the enemy. On 25 February 1921 the 11th army of the Soviet Russia occupied Tbilisi and declared Soviet power in Georgia. The government of independent Georgia was forced to move to Western Georgia – the Black Sea town of Batumi. It was in this town, in local print-house, that the official text of the 1921 constitution of Georgian republic was first published.[247]

### *The Legal Nature of 1921 Constitution*

1921 Georgian constitution consisted of 17 chapters and 149 Articles. The document belongs to the first wave of constitutions drafted as a result of historical evolution of justice. The date of its adoption coincides with the end of the World War and the emergence of new states in place of empires like Russian, Ottoman, Austro-Hungarian and others. The countries that adopted new constitutions at that time include Austria, Germany (Weimar republic), Czechoslovakia, Finland, Baltic republics and other European countries.

By its nature, it was a 'rigid' constitution, amendment of which entailed intricate procedures. To make an amendment to it, initially it was necessary to obtain 2/3 of votes of the members of parliament, and then this amendment was to be approved by a referendum. The draft could only be reviewed six months later after its submission to the parliament. The right to initiate revision of the constitution was enjoyed by no less

[247] *Id.*

than half of the members of parliament and 50,000 electors. Annulment of Georgian Democratic Republic's form of governance could not be a matter for initiating a proposal to revise the Constitution. This was a very important provision; it represented one of the main mechanisms of constitutional protection of democracy. It could not be altered by constitutional or legitimate mechanisms.

Pavle Sakhvarelidze, one of the authors of the Constitution, while substantiating the necessity of the provision, noted the existence of similar types of provisions in the 1875 French Constitution (with 1884 amendment) and the Portuguese Constitution active in 1917.[248]

It is noteworthy that before the adoption of the constitution, its function was fulfilled by 'The Act of Georgian Independence' of 26 May 1918, which consisted of seven paragraphs. Besides declaring the creation of an independent state, the Act of Independence, among other issues, defined the political form of independent Georgia as a democratic republic. It also defined respect for human rights and ensuring their protection. It is true that the constitution did not directly point out that the Act of Independence was part and parcel of the constitution. But considering their inter-connection, we must deem it as such, as it was the constitution which had carried out more scrupulous regulation of the recognized principles in the Act of Independence. Due to its importance, this Act was re-confirmed in 1919 by the newly elected Constituent Assembly.

It is natural that the social-democratic ideology of that time influenced the 1921 Constitution to a considerable degree. Social-democrats had a vast majority in the parliament and the government was also mostly comprised of their rank and file. This was reflected in the text of the Constitution. This was most conspicuous in the

[248] P. Sakvarelidze, *Discussions of Draft Constitution, Georgian Republic,* Georgian Republic, 1920.

provisions on social rights. But on the whole, the views of Georgian social-democrats of that time played a positive role for the democratic nature of the Constitution. More so if we take into account that from the point of view of conducting democratic reforms, they considered themselves as the followers of the European social-democracy and strove to share in the democratic values of Europe.[249] They tried to pursue socialist ideas through the prism of European democratic values by ensuring human rights and private property.

The members of the Second International delegation, Vandervelle, Renodel, McDonald, Shaw, Snowden, De Bruke, Ingels, Marques, Hausman and others who visited Georgia in the autumn of 1920 got acquainted with the draft constitution, valued it highly and commented and opined on it to the representatives of Georgian authority. A little later, Georgia was visited by Karl Kautsky, one of the prominent representatives of "Socintern" and social-democratic movement of Europe, who stayed here for a little less than three months. The draft constitution impressed him highly.[250]

### *System of Government*

The governance system defined by the first Constitution of Georgia can undoubtedly be grouped together with the European type of parliamentary systems popular by that time, albeit with many peculiarities. For example, we cannot say that all three branches of the powers were equally balanced, as its structure did not incorporate perfect impact mechanisms of the government on the parliament or vice versa… The peculiarities of the governance system, which distinguished it from other parliamentary systems of that time, were: non-existence of the neutral (from other

[249] S. F. Jones, *Socialism in Georgian Colours,* 61, Harvard University Press, 2005.

[250] M. Matsaberidze, *1921 Constitution of Georgia, Elaboration and Adoption,* 170, Akhali Azri, 2008.

branches) institution like President (or monarch in case of Constitutional monarchy), establishment of only the individual responsibility of the government; impossibility to dissolve parliament by the government in case of crisis, etc. The authors of the Constitution attempted to merge the Swiss type of direct popular democracy with the elements of representational parliamentary system.[251] Pursuance of popular sovereignty principles in the constitution was all the rage, which was probably influenced by Rousseau's ideas and Swiss democratic experience. More precisely, in accordance with Article 52 of the Constitution, the principle of popular sovereignty was laid down – 'Sovereignty belongs to the whole nation.' The authors of the Constitution were aware of the unrealistic character of absolute implementation of this principle, which can be seen in retaining the principles of representational democracy in the framework of a parliamentary republic, although they tried to keep the parliament and other state institutions under certain 'surveillance' and 'control' by the popular sovereignty, which manifests itself in various provisions of the Constitution.

*Legislature*

Under Article 46 of the Constitution, the parliament of Georgia was elected on the basis of universal, equal, direct, secret and proportional suffrage for the term of three years. This provision was rather progressive for that period. It reflected all the principal characteristics of the modern democratic election systems. Women's equal suffrage with men was especially important. It is noteworthy that before the adoption of 1921 Constitution, the rules of conducting elections were regulated by the provision

[251] see Noe Zhordania, Speech, Tbilisi party meeting, *Social Democracy and Organization of Georgian State*, (Constituent Assembly publishing Aug. 4, 1918), p. 14–17.

of 'Constituent Assembly Elections'[252] adopted by the National Council of Georgia on the 22 November 1918, under which men and women above twenty years of age were granted the right to participate in elections on equal footing.

The progressive character of this measure is pointed out by the fact that the congress of the United States proposed the constitutional amendment (s.c. XIX amendment) on women's suffrage rights only on the 4 July 1919 becoming effective only on 18 August 1920. Women in Germany[253] and Austria[254] have been enjoying equal suffrage only since 12th November of 1918. In the United Kingdom, women from thirty years of age were given the right to participate in parliamentary elections only from 6 February, 1918 (at the same time property census was considered),[255] where as men were eligible to vote from twenty-one years of age and the voting age of men and women has become equal only from 1928.

The 1921 Georgian constitution stipulated election of the parliament only on the basis of the proportional system. One can consider that a certain precondition for this was that party system in the country was quite well developed, which provided the possibility for the efficient functioning of this kind of electoral system. It was also natural that such election system facilitated promotion of parties' image and their ability to wield more influence on the political stage. The authors of constitution thought that proportional system would better ensure more adequate representation of different groups and layers of population in the parliament than the majority system.[256]

[252] Supra note 229.
[253] The Decree of Nov. 30, 1918, on elections of the Constituent Assembly.Verordnung über dieWahlen zur verfassunggebenden deutschen Nationalversammlung vom 30 Nov. 1918.
[254] The law of Nov. 12, 1918 law on German-Austrian state and governance forms. Gesetz vom 12 Nov. 1918 über die Staats und Regierungsform von Deutschösterreich. Staatsgesetzblatt in retrodigitalisierter Form bei ALEX – Historische Rechts- und Gesetzestexte.
[255] Representation of the People Act 1918.
[256] G. Gvazava, *Basic Principles of Constitutional Rights,* 23–25, Tbilisi, 1920.

The Parliament was viewed as the supreme body of the country, though just like with the principles of constitutionalism, it was defined that it would act as a 'Sovereign of the state' within the limits of the constitution and for balancing the so called parliamentary supremacy. The parliamentary authority was restricted by the constitution itself in the first Article in which (the constitution) this was pronounced as the 'main law', also by popular initiative and referendum. The tenure of the parliament in the constitution was defined as three years. According to the 1921 constitution, nobody could either convoke or dissolve the parliament, not even the government (more so, that the institutions of monarch or president did not exist). As the constitution did not provide for the institution to disband the parliament, it is logical that the constitution itself defined (Article 51) the obligation to appoint parliamentary elections at one and the same time (autumn). Definition of the date ruled out the possibility of leaving the right to declare elections in the sphere of discretion of the governmental branches. After each three years, the newly elected parliament was to commence its work on the 1 November. The constitutional commission noted that 'the composition of parliament is changed through new elections, but its operation is constant; like the ruler of the country its operation is uninterrupted. This is why it does not dissolve by itself nor any other force has the right to dissolve it'.[257]

According to the 54th Article of the constitution, the parliament's discretion covers legislative activity, discharging management of the armed forces, declaration of war, signing armistice, trade and similar agreements with foreign states, discussing amnesty issues, approval of budget, taking internal or external loans as well as overall control of the executive government. The 1921 constitution provided for the inviolability of a chief characteristic of modern parliamentarianism (Article 48), as well as banning the

[257] M. Matsaberidze, *The Political Concept of the 1921 Georgian Constitution,* 81, Tbilisi, 1996.

activities incompatible with the office of a member of parliament. The 59th Article of the constitution provided for the accountability of the government to the parliament, among them the possibility to query and put up an investigative commission.

In spite of the fact that the regulatory constitutional norms of parliamentary organization and authority were quite progressive for that time, they still lacked viable mechanisms of political crises resolution, which should have reflected them in the right to dissolution of the parliament. Although large discretion of the parliament pointed to the aspiration of Georgia of that time to develop fully-fledged parliamentary democracy in the country.

*Executive*

Under 1921 constitution, the structure of the executive was based on the principle of government's responsibility and obedience which is a characteristic of parliamentary system ('The Principle of Accountability'), which was taken from the Swiss system, the closest system to direct democracy. The supreme executive government – the government of the republic represented a panel accountable to the parliament.

While working out the chapter on regulating the structure and authority of the executive, the Constitutional Commission actively discussed the issue of introducing the presidential institution. It was supported by national-democrats. For example, Grigol Lortkipanidze noted that introduction of the presidential institution 'was utterly scholastic and dogmatic … If there is a place anywhere where a president with sufficient authority is needed, then this place is Georgia, which today is struggling for reunification'.[258]

[258] G. Gvazava, *The Main Principles of Constitutional Right* 54, Qalaqta Kavshiri, 1920.

The majority of social-democrats were against the introduction of presidential institution. In the opinion of the opponents of president's institute, by introducing this office the whole power would end up in the hands of one person, which would jeopardize establishment of democratic rule in Georgia. Members of the commission used to say that the president of USA had more power than the king of England. The presidential system was not introduced due to a number of factors: (1) Russian monarchy had collapsed just a little while before and because of the recent negative experience and the leading parties' negative attitude towards it. There was a lingering fear and wariness against establishment of unilateral rule. (2) A more collegial form of governance was established among the Social-democrats, who had many leaders among them (Zhordania, Ramishvili, Chkhenkeli, Tsereteli, Chkheidze and others), and thus, as the leading political force, did not feel it expedient to rely on one leader. (3) At the same time, Noe Zhordania, the leader of the party, despite his influence in the party, as it turns out, was not a very charismatic person and having heeded the negative attitude of the party towards this issue, personally came out against the introduction of president's institute, which, eventually turned out to be one of the most decisive factors, if not the most decisive, against its introduction.

Under 1921 Constitution, the government was headed by a chairman who at the same time was a supreme representative of the republic and was elected by the parliament. Under Article 67 of the Constitution, a person could be elected to the office of chairman twice only. (It is to be noted that the initial version prohibited re-election of the chairman). This restriction was criticized by Kautsky[259] when he was in Georgia in 1920. In due course such a harsh restriction, which no other parliamentary system was characterized by, would have become problematic and triggered relevant amendment.

[259] Supra note 244, 171.

Under Article 70 of the Constitution, the chairman of the government was granted the rights characteristic of the head of state (the president) – for example, appointment of ambassadors, representation of the state, discharging armed forces during threats – but for not more than twenty-one days, after which parliamentary permission was required.

Whatever concerns the remaining members of the government, the ministers (Article 68) were appointed ('invited') by the chairman of the government who were approved by the parliament. Based on the Article 69 of the Constitution, ministers had no right to work in any other office. Two exclusions from the principle of total incompatibility had been allowed for: combining membership of parliament and the position of the 'elector' in the local self-government. In the opinion of the Constitutional Commission, implementation of the principle of individual responsibility represented a guarantee of the government's stability. Namely, denying vote of confidence with respect to an individual minister would not cause the resignation of the whole cabinet. In their opinion thus Georgia would have avoided frequent governmental crises caused by the collective responsibility of the government, which is characteristic of parliamentary regimes (as an example they frequently alluded to governmental crises erupting in France and England).

Hence, Article 73 of the Constitution defined individual responsibility of the ministers. This Constitution did not provide for the government's collective solidarity, a characteristic of classical parliamentary systems. By establishing the principle of individual political responsibility, individual dismissal of each minister by the parliament did not cause resignation of the chairman of the government. The chairman of the government had a deputy (Article 71).This must have served as a guaranty that in case of personal dismissal of a chairman of the government, the government would not stop functioning.

It may be argued that, unlike the parliament's, the Executive's competencies were less developed, which could be the case due to the existence of parliamentary conditions. The chairman of the government practically enjoyed president's authority, but in a more restricted way. The tenure of the chairman of the government was also quite restricted (one year). At the same time, he could be elected only twice. By the Constitution, the government did not have a legislative initiative which can be considered as a shortcoming of the Constitution as government should have had a possibility to initiate legislative proposals in the parliament for carrying out necessary governmental policies for the country. Besides, the mechanism of individual responsibility stipulated by 1921 Constitution considerably differed from the similar institutions of other parliamentary countries. Non-existence of the institutions of the upper chamber of parliament and president (or monarch), who could fill in the governmental vacuum during crises can be considered as one of the reasons[260] due to which introduction of government's collective responsibility and its dissolution during crises had not been taken into account.

*Judiciary*

Despite devoting comparatively smaller chapter to this issue, the Constitution elaborated rather positive provisions in connection with the Judiciary. At the same time it was defined that the details concerning court arrangement and organization would be regulated by relevant legislation. Thus, this was probably one of the reasons as to why comparatively few regulating provisions were reflected in the Constitution.

[260] Papuashvili, supra note 229.

Article 76 of the Constitution established that there existed only one Supreme Court on the whole territory of Georgian Republic. The senate, which was elected by the parliament, represented a court of cassation. The Constitution ruled out creation of a provisional court, which was not a part of the judiciary. The Constitution warranted the principle of independence of judiciary from government. It was impermissible to abrogate, alter or suspend a court ruling by legislative, executive or administrative bodies. The Constitution also advocated the principle of public hearings of cases.

The Constitution provided for the establishment of a jury for hearings of especially important cases. Introduction of this institution was a major step forward and ensured participation and involvement of public in administration of justice. This fact once again points to the shrewdness and progressiveness of the legislators of that time, as eighty years later this issue has once again become actual and modern legislators have once again reverted to it.

It is interesting that the legislation regulating court arrangement and organization, and jury procedures had been adopted by the State Council and later by the Constituent Assembly between 1918–1921, prior to the adoption of the Constitution by the parliament.[261]

Interestingly, 1921 Constitution introduced the notion of constitutional review is to a certain extent provided in Articles 8 and 9. It underscores the principle of constitutional supremacy: 'No law, decree, order or ordinance which contradicts the provisions and the purport of the Constitution can be issued.' The abovementioned provisions unequivocally show the necessity to establish relevance between the Constitution and the legal acts existing before adoption of the Constitution and the legal acts issued after its adoption, which would have been impossible without exercising constitutional review. But the 1921 Constitution did not provide for a body

[261] Supra note 229.

of constitutional review, similar to a constitutional court in classical understanding of this institution and its regulatory functions and authority as was done in Austria and Czechoslovakia in 1920. It must be noted that the government, as it turns out, had already exercised some constitutional review leverage. Under 'B' sub-paragraph of Article 72, one of the competencies of the government was 'scrutiny and enforcement of the Constitution and laws'. Although it's logical that such a function must be under the competence of court. It's interesting that only the court had the right to repeal the acts of local self-governments (Central bodies had only enjoyed the right to suspend these acts and appeal to the court by submitting the request for repeal of these acts). Hence, we can conclude that though in such a case full constitutional review was not exercised, full court scrutiny of legitimacy of legal acts was carried out, which manifested itself in examining the relevance of legal acts issued by self-government bodies against the law by court.

This is also corroborated by the function of the Supreme Court, the senate, stipulated in Article 77, which is obliged to 'scrutinize how the law is abided by'. The law on the provision on the senate, adopted on 29 July 1919, defined that the senate was obliged to scrutinize how the law was abided by and examine the legitimacy of acts of all the governmental institutions, high ranking officials and local self-governmental bodies and in case of aberrations from the law the senate was obligated to either suspend or repeal them. One more function of the senate was resolution of disputes between the state bodies concerning their competencies.

Because the Constitution abounded in ideas and principles necessary for administering constitutional review, we can conclude that establishment of such a separate constitutional body in future or granting the function of constitutional review to general courts would have been logical had the independent Georgia not been forced to cease to function. It is also noteworthy that such a concept was not alien to

Georgian legislators. Giorgi Gvazava, a national democrat and one of the members of the Constitution Elaboration Commission, noted that: There is only one case, when a citizen has a right not to abide by law. Such a case is called disputing constitutionality of the law. A citizen has a right to lodge a claim with a court on the constitutionality of the law which restricts his liberties or threatens him with such a restriction. The court is obliged to review this case and if it deems that the plaintiff's claim is well grounded, it can reject the law and not guide itself by it in deciding the case.[262]

Gvazava, who was well aware of the constitutional review mechanisms of Western Europe and the United States also noted, that: 'The court is obliged to defend the Constitution, as the main law, and reject all new laws which contradict it. Such right of review is enjoyed by the court in the USA.'[263]

Popularity of the concept of constitutional review in political and legal circles of Georgia of that time is emphasized by the views of K. Mikeladze, one of the famous public figures and attorneys. He expressed these views in his work on the process of elaboration of the Constitution. Drawing mostly on the United States' experience, he maintained that the role of a court must be more than just hearing cases '…reviewing laws elaborated by legislative bodies in terms of their compatibility with the Constitution'.[264]

*Basic Human Rights and Freedoms*

The constitutional provisions reflecting human and citizens' rights can be considered the greatest achievement and the prominent symbol of progressiveness of the 1921

[262] Supra note 245.
[263] Id.
[264] K. D. Mikeladze, *Constitution of Democratic State and Parliamentary Republic, some Considerations on Elaboration of Georgian Constitution,* 47, Tbilisi, 1918.

constitution of Georgian Democratic Republic. The spirit of 1921 constitution attests to the fact that by adopting it its authors tried to establish a rule of law or if we use the term of that time 'rule of right', when the traditional human and citizen's rights are based on the principle of individual liberty.[265]

Articles 25 and 26 of the Constitution provide very interesting and liberal approach to human rights for that period, which define the principle of habeas corpus, that is, inadmissibility of detaining a person without trial. Moreover, unlike in other democratic countries of that time, the abovementioned provisions provide specific and shortest terms for bringing an arrested person before a court. More concretely, an arrested person had to be brought before a court within twenty–four hours of arrest, but as an exception this term could have been extended for twenty–four hours more (forty-eight hours in total). At the same time, a court was given twenty–four hours to either remand an arrested person to prison or release him immediately. It must be mentioned that the present Constitution provides with similar terms. It's noteworthy that death penalty, has the highest measure of punishment for any category of a crime, be that during peace or times of war, was abolished by Article 19 of the 1921 constitution.

Its inclusion into the Constitution represented one of the unprecedented humane legal acts in the world of that period. Some European countries, like Belgium, Lichtenstein, Norway and Luxembourg, abolished death penalty in the nineteenth century.[266] But in the majority of cases, death penalty as the highest measure of punishment was not totally abolished; it was abolished mainly for particular crimes and by legislative acts

[265] Papuashvili, supra note 229.

[266] J. Khetsuriani, *From Independence to Legal State* 176, Tbilisi, 2006.

and not on a constitutional level.[267] Hence, the provision in 1921 Constitution of Georgia was not only on par with the legal standards and requirements of the civilized world of that period, but also was distinguished for rather innovative approaches.

Like other democratic Constitutions of that period, freedom of belief and conscience was upheld (Article 31). The Constitution separated the church from the state. Article 144 of the Constitution practically banned financing the church from the state budget.

Political rights of citizens were also widely covered in the Constitution. Here worthy of note is the freedom of speech and printed media (Article 32), abolition of censorship and freedom of assembly (Article 33). Chapter three also guaranteed the freedom of trade unions (Article 36) and the right of laborers to strike (Article 38). The rights to individual and collective petitions were separately provided for (Article 37).

The 1921 constitution is one of the first documents in the world which reflects citizens' socio-economic rights, which is not surprising given that social-democrats were heading the government. At the same time Georgian legislators, naturally, were aware of how the communist rulers in Russia had been lavishly distributing populist, social promises, and it was probably not desirable to 'lag behind' the Bolsheviks in that respect. In particular, the constitution stipulates such unprecedented and hard to be implemented or in some parts unrealistic guarantees for that period, such as free primary education (Article 110), food, clothes and hats and school items for socially vulnerable children. They were to be helped in employment by the state or granted the social benefit in the form of insurance (unemployment insurance).Working hours per week were restricted to forty-eight hours (Article 123). The constitution also

[267] Under para. 22 of Art. 3 of the 1911 Portuguese Constitution, the death penalty was abolished for all categories of cases, just like in Georgia, during peaceful as well as war times, and in accordance with 18th Art. of 1866 Romanian constitution the mentioned measure of punishment was abolished only for the peaceful time. The abovementioned records had practically been the first constitutional regulations before the Georgian precedent.

ensured protection of labour rights of women and minors. At the same time, violation of the labour code by an employer was punishable by criminal law (Article 127).

Constitutional regulation of property rights is worthy of attention. Under Article 114 of the Constitution, forceful expropriation of property or restriction of private enterprise could only be done for the state or cultural necessities and that only by abiding by the rules defined by virtue of the law. In case of deprivation of property, relevant compensation was to be paid, unless the law stipulated otherwise.

Articles 115 and 116 of the Constitution carry a rather ultra-socialist tinge. Namely, the state was authorized to 'nationalize through legislation any industrial or agricultural branch and production, which was worth it.' Also a matter of special concern of the state was the protection of products of the labor of small entrepreneurs – a farmer, an artisan, a household worker – from the private exploitation.

# Conclusion

### *Findings of Research and Analysis*

The tumultuous course of events on the international stage, displayed by geographical changes and economic hardship within the continent, clearly hastened independence movements in the countries discussed above. The pursuit of independence and the process of nation-building went on its own account in each nation, yet still there are few important political factors that unite all these countries in this regard. They all came out from the difficult past and inherited outdated governance system requiring outright transformation. For this purpose, as it was the case in the whole Europe, socialist and radical parties came to the fore and attained power. The emergence of fresh political climate was further predicated upon the fact that majority of the countries in question, except for Finland, and Czechoslovakia, were almost entirely agrarian-rural societies where radical peasant movements enjoyed rising popularity. They actively campaigned for economic and land reform seen as indispensable to the economic recovery. Moreover, some of these newly-created states faced challenges regarding their minority population. As a consequence of territorial redistribution after WWI, Yugoslavia, Czechoslovakia, Romania, Finland, Poland and Lithuania all were in desperate need of devising a proper legal framework to accommodate society's diverse interests. And finally, some of these countries were largely dependent upon the gravitas and authority of their leaders in the course of fighting for independence. Namely, Masaryk in Czechoslovakia, Pilsudski in Poland, Pats in Estonia, Hrushevski in Ukraine and Jordania in Georgia, all enjoyed tremendous respect and influence, which eventually helped them to make a difference to their nations.

In the wake of WWI, newly emerged countries in the Central Eastern part of Europe found themselves in desperate conditions both morally and economically. The outdated state model and forms of its organization had rendered medieval institutions of noble privilege extremely unpopular and illegitimate, which in turn sparked the national uprisings across the region. Economic crisis and widespread poverty further served as a testament to the need of overhauling existing political system. Not surprisingly, in the process of fighting against vested interests of nobility, the peasant movement - a driving force of agricultural economies - took the leading role. Against this backdrop of chaos and uncertainty, the countries of the region had to decide on the future path of their development.

Once tensions started to subside, Central Eastern Europe became immersed in the blueprint stage of constitution-making, whereby the region witnessed gradual spread of ideals of liberalism and parliamentary democracy. The countries in question all went on to incorporate the most advanced Western-dominated political devices of the time.[268] All the constitutions guaranteed male suffrage and proportional representation, some of them even included equal voting rights for women. The countries differed in establishing either unicameral or bicameral legislatures, but most importantly, the new constitutional systems eliminated upper chambers that had normally acted as hereditary body to the nobility. As for the executive authority, states vary in balancing the power between branches of government. Some states, e.g. Romania, Yugoslavia and Czechoslovakia introduced the strong head of state with significant powers. On the other hand, majority of the countries embraced pure parliamentary models, whereby either there is no active head of state, President or Monarch (Georgia, Ukraine) or there is one with less active role in policy-making (Poland, Latvia). Such universal adoption of parliamentary systems, modeled on

[268] Black, *supra* note 8, 337.

English, French or Swiss systems echoed the unwavering will of newly-emerged states towards democratic development. In the judiciary provisions some progress were made in terms of introducing strict guarantees for judicial independence.

Out of the 10 states above, only five - Georgia, Estonia, Finland, Romania and Czechoslovakia – managed to include a bill of rights in their constitutions. Yet, the approach embraced by these states, which mainly reflected in further guaranteeing citizens' decent social and economic rights, was a transformation from old understanding of the rights of man, implying that least intrusive government measures, i.e. only negative initiative is justified, to a fresh positivist perception of social rights. In this sense, state is obliged to engage in a series of activities and observe the constitutional provisions in a way to realize the ends of social-democratic ideology. Such a drastic change may have different reasons. One of the reasons is obviously connected to the socialist ideology of the political parties in power that enjoyed overwhelming dominance in the whole Europe, which righteously seems a plausible explanation.

Accordingly, on the eve of WWI, the advancement of the civil and political rights of women and children, and the rise of socialism laid the groundwork for a historic change.[269] The end of the war further accelerated this process, and in many national constitutions drawn up during and after WWI, significant human rights provisions were enlisted therein.[270] Moreover, as global human rights situation was acutely depressing for that time, a growing trend in promoting rights and freedoms of individuals was observed on the international political agenda. Namely, popularization of liberal-democracy and human rights was President Wilson's foreign policy priority and the United States was vigorously advocating these principles around the globe. In

[269] F. Edwords, *The Advance of Human Rights*. The Humanist magazine (1998).
[270] *Id*.

particular, newly created League of Nations, *inter alia*, was aimed at advancing minority rights, as well as International Labour Organization intended to promote decent working conditions and equal opportunities for men and women. Membership of the League of Nations was even predicated upon minority rights guarantees and many countries made proper unilateral or bilateral commitments before acceding to the organization.[271] Such global background greatly encouraged Central and Eastern European countries to introduce human rights provisions in their constitutions.

Interestingly enough, the adoption of 1921 Constitution of the Democratic Republic of Georgia, alike to other countries in the region, occurred during continuous political and social unrest. Yet, politicians still proved to be able to produce highly valuable legal document. Parliamentary governance system, establishment of local self-governance, abolition of death penalty, freedom of speech and belief, universal suffrage (pressing at that time for equal right to vote for men and women), introduction of jury trial and guarantying of habeas corpus, as well as many other provisions, were some of the features of the 1921 Constitution that distinguished it among the constitutions of those times, and among the modern European ones too, for progressiveness. This document adopted by the Georgian legislators in 1921 can unquestionably be considered as one of the most advanced and perfect supreme legislative acts oriented towards human rights in the world for its time that is, the beginning of the twentieth century. It reflects the most progressive legal and political discourse and tendencies underway or yet in theoretical stage in the Western European countries or the US at that time.

In the words of Hans-Dietrich Genscher, the former Federal Foreign Affairs Minister of Germany: 'At that time it (the 1921 Georgian constitution) already advocated such

[271] H. Rosting, *Protection of Minorities by the League of Nations*. The American Journal of International Law. 17 (4) 641-660 (1923).

values as liberty, democracy and rule of law, which the modern Europe is based on currently.'[272]

It is noteworthy that the draft Constitution was highly valued by the members of The Second International in 1920, who played an important role in the political life of the European countries. Ramsey McDonald, a prominent British politician, later twice prime-minister of Great Britain, while speaking about the achievements of Democratic Republic of Georgia in the letter 'Social State in the Caucasus', published in the magazine 'Nation' on the 16th October of 1920 after his visit, stated: 'I familiarized myself with its constitution, its social and economic reconstruction and what I saw there, I wish I could see in my country too.'[273]

On a larger scale, the Post-WWI period brought about many changes on the European continent and the emergence of a new political and legal culture was one of them. Central and Eastern European states discussed above made a scrupulously conscious effort to establish democratic systems of governance, oriented towards the principles of civic engagement, separation of powers, wider political representation and equal suffrage. Clearly, each constitution was unique from country to country, but they all had similarities in terms of introducing the parliamentary system with or without a formal head of state, stronger human rights and more equaled access to elections for men and women. Specifically, Georgia, Estonia and Ukraine installed strong parliamentary systems with absolute parliamentary authority, while Finland, Poland and Czechoslovakia, as well as Yugoslavia and Romania, adopted the parliamentary model with a head of state – a President and a Monarch respectively. The reason behind different approaches to the institute of head of state lies within each country's

[272] Hans Dietrich Gensher, Introduction, in Wolfgang Gaul, *Adoption and Elaboration of Constitution in Georgia (1993–1995)* (Wolfgang Gaul, Verfassungsgebung in Georgien), (BerlinVerlag Arno Spitz Gmb 2001); 9 (IRIS Georgia 2002).
[273] supra note 244, 171.

distinctive constitutional traditions, emerging reality and ruling ideology, and/or even personalities, dominant in the political elite. For example, since the monarchical system of government had long been strong in Yugoslavia and Romania, both countries, having strong attachment to old system, continued along this path but carried out sweeping constitutional reforms while still retaining their sovereign. In contrast, Finland, Poland, and Czechoslovakia came from a murky past where the monarchical system was not very popular, and they also were, to some extent, influenced by the American constitutional model of the presidency. Such a framework, in addition, greatly served the purposes of the checks and balances system, and thus it proved a rather appealing for policy makers in these states to adopt a presidential model of government. On the other hand, there was no head of state introduced in Georgia, Estonia and Ukraine, largely because of the unpopularity of the monarchy, as well as the fear of authoritarianism and lack of coherence within the political elite. It was argued in the political circles of the countries concerned that a head of state with special powers would most likely abuse their power to the detriment of the entire democratic system. They accordingly went on to vest almost limitless powers in the representative body of government and thus installed absolute parliamentary democracy.

Some of the states went as far as to include human rights catalogues in their constitutions, whereby civil and political rights along with social and economic rights were enshrined. In particular, Georgia, Estonia, Finland, Romania and Czechoslovakia managed to introduce solid human rights guarantees in their founding documents ranging from strong procedural rights in criminal procedure, the right to property, the right to vote, to freedom of speech and association Interestingly, social rights enjoyed unprecedented guarantees, particularly in Georgia where the state was responsible for free education, healthcare, housing etc. In addition, Georgian and Czechoslovak

political elite, who were aware of the diverse nature of their societies, introduced strong constitutional rights for ethnic and religious minorities. It is noteworthy and further solidifies the argument that there were genuinely democratic and progressive constitutions adopted in the countries in question.

The large-scale military conflict in Europe created many problems within the countries on the continent. It particularly revealed deficiencies within dictatorial and absolute monarchical systems of governance and their immoral character. As societal groups in Europe became more and more mindful of abject failures of the system, they seriously questioned its propriety and reasonability. In addition, a desperate economic situation and extreme poverty in the region further exacerbated social unrest and brought much needed change to the fore. This was mainly the case for the Central and Eastern European states where the political landscape was dominated by Western-valued liberal or leftist forces. It was firmly believed in these countries that the idea of liberal-democracy was the best alternative to the obsolete monarchical system. The newly emerged Bolshevik regime also was unpopular as it exercised some authoritarian characteristics. Central and European states were poised to transform for the better in terms of democratic governance and economics. In this respect Western European WWI victor countries were exemplary for them. Social Democracy as a dominant movement of that period in these countries and in Europe in the 1920s had made a clear choice in favor of human rights, self-governance, parliamentary democracy and equality before the law. Western European countries, though significantly weakened by the war, still were in a promising condition to further develop economically. Thus, it seemed rather a judicious step for newly born nations to follow the path of already developed states in every way possible. The above-discussed constitutions of the countries concerned, precisely illustrate that the newly

emerged states adopted similarly democratic legal systems, embodying the most progressive principles of the victor countries of WWI.

As the discussion above clearly revealed, the entire process of drafting new constitutions in ten European countries in the aftermath of WWI, was driven by a strong sense of protest against absolute monarchy as well as non-democratic Bolshevik rule. These countries were determined to reject the rule of a sovereign and instead introduced representative democracy. The research plainly illustrates that the emergence of these new countries was an important of aspect of European political and legal developments. Georgia and Ukraine, however, could not manage to keep their independence as they were occupied by Soviet Russia for seven more decades. This gravely hampered their European aspirations and isolated them from the European context. After World War II, however, all of the remaining states, except Finland, were violently forced to enter either into the Soviet Union or Socialist Bloc. It was only after the collapse of the Soviet Union when those states eventually regained independence and returned to the European legal family.

## Bibliography

*Legal Documents*


- 1919 Constitution of Finland;
- 1920 Constitution of Czechoslovak Republic;
- 1920 Constitution of the Esthonian Republic;
- 1921 Constitution of the Democratic Republic of Georgia
- 1921 Constitution of the Kingdom of Serbs, Croats and Slovenes (Vidovdan Constitution);
- 1921 Constitution of the Republic of Poland;
- 1922 Constitution of the Republic of Latvia;
- 1922 Constitution of the Republic of Lithuania;

- 1923 Constitution of Romania;
- Constitution of Ukrainian National Republic, approved in 1918.

*Monographs*


- Arjnenkiel, A. The Establishment of a National Government in Poland, 1918. In Paul Latawski (ed.), *The Reconstruction of Poland*. London: Palgrave McMillan, 1992.
- Avalishvili, Zurab. *Georgian Independence in the International Politics in 1918-1920,* (written in 1924). Tbilisi: Mkhedari, 2011.
- Berend, Ivan. *Decades of Crisis: Central and Eastern Europe before World War II*. Berkeley and Los Angeles: University of California Press, 2001.
- Black, C, E. &Helmreich, E, C. *twentieth century Europe: a History.* Alfred A. Knopf, 1964.
- Bowman, Isaiah. *The New World; problems in political geography*. New York: Yonkers-on-Hudson, 1922.
- Bradley, J. Czechoslovakia: External Crisis and Internal Compromise. In: D. Berg-Schlosser & J. Mitchell (eds.), *Conditions of Democracy in Europe*, *1919-39*, Systematic Case Studies. London: Palgrave McMillan, 2000.
- Brzezinskli, M. *The Struggle for Constitutionalism in Poland*. London: Macmillan, 1998.
- Crampton, Richard. *Eastern Europe in the Twentieth Century – and after.* Routledge,1997.
- Davies, Norman. *Heart of Europe. A Short History of Poland*. USA: Oxford University Press, 1986.

- Gachechiladze, R. Geopolitics and foreign powers in the modern history of Georgia: Comparing 1918-21 and 1991-2010; & Rondeli, A. The Russian-Georgian war and its implications for Georgia's state building. In S. F. Jones (Ed.), *The Making of Modern Georgia, 1918-2012: The First Georgian Republic and its Successors*. New York: Routledge, 2014.
- Galligan, Denis. & Versteeg, Mila. *Social and Political Foundations of Constitutions.* New York: Cambridge University Press, 2013.
- Graham Jr, Malbourne. *New Governments of Eastern Europe.* New York, 1927.
- Gvazava, Giorgi. *Basic Principles of Constitutional Rights*. Tbilisi, 1920.
- Headlam-Morley, Agnes. *The New Democratic Constitutions of Europe*; *A Comparative Study of Post-War European Constitutions with Special Reference to Germany, Czechoslovakia, Poland, Finland, The Kingdom of the Serbs, Croats and Slovenes and the Baltic States*. London: Oxford University Press, 1928.
- Held, Joseph (ed). *The Columbia History of Eastern Europe in the Twentieth Century*. New York: Columbia University Press, 1993.
- Hodgkinson, Peter. *Capital Punishment: Global Issues And Prospects*, London: Waterside Press, 1996.
- Janos, Andrew. *East Central Europe in the Modern World.* Stanford University Press.2002.
- Jones, Stephen. *Socialism in Georgian Colors*. Cambridge: Harvard University Press, 2005.
- Karvonen, L. Finland: From Conflict to Compromise. In: D. Berg-Schlosser & J. Mitchell (eds.), *Conditions of Democracy in Europe*, *1919-39*, Systematic Case Studies. London: Palgrave McMillan, 2000.
- Kautsky, Karl. *Georgia: A Social-Democratic Peasant Republic – Impressions And Observations*. Chapter IX. Translated by H. J. Stenning and revised by the Author. London: International Bookshops Limited, 1921.

- Kikodze, Geronti. *National Energy*. Tbilisi: G. TskhakaiaPublication, 1917.
- Kitchen, Martin. *Europe Between the Wars.* Routledge, 2006.
- Kopecký, Petr. *The Czech Republic: From the Burden of the Old Federal Constitution to the Constitutional Horse Trading Among Political Parties.* Oxford: OUP, 2001.
- Korbel, Josef. *Twentieth Century Czechoslovakia,* New York: Columbia University Press. 1997.
- Latawski, Paul. *The Reconstruction of Poland, 1914-23*. Palgrave Macmillan, 1992.
- Matsaberidze, M. The Democratic Republic of Georgia (1918-21) and the search for the Georgian Model of Democracy. In S. F. Jones (Ed.), *The Making of Modern Georgia, 1918-2012: The First Georgian Republic and its Successors*. New York: Routledge, 2014.
- Matsaberidze, Malkhaz. *Elaboration and Adoption of the 1921 Georgian Constitution.* Tbilisi, 2008.
- Mc Bain, Lee. *The New Constitutions of Europe.* New York, 2013.
- Micgiel, J, S. *Wilsonian East Central Europe: Current Perspectives*. New York: The Pilsudski Institute, 1995.
- Parau, E, C. Romania's Transnational Constitution. *In* D. J. Galligan and M. Versteeg (Eds), *Social and Political Foundations of Constitutions*. Cambridge University Press: Cambridge, 2013.
- Pipes, Richard. *The Formation of the Soviet Union*, Cambridge: Harvard University Press, 2011.
- Ramet, Sabrina. *The Three Yugoslavas, State-Building and Legitimation, 1918-2005*. Washington: Indiana University Press, 2006.
- Ramishvili, L. and Chergoleishvili, T. March of the Goblins: permanent revolution in Georgia. In S. F. Jones (Ed.), *The Making of Modern Georgia, 1918-2012: The First Georgian Republic and its Successors*. New York: Routledge, 2014.

- Rothschild, Joseph. *East Central Europe between the two World Wars.* Seattle and London: University of Washington Press, 1974.
- Schwartz, Herman. *The Struggle for Constitutional Justice in Post-Communist Europe*. London: University of Chicago Press, 2003.
- Snyder, Timothy. *The Reconstruction of Nations: Poland, Ukraine, Lithuania, Belarus, 1569-1999.* New Haven & London: Yale University Press, 2003.
- *Sukiennicki, W., Sierkierski, M., and Czeslaw, M. East Central Europe During World War I: From Foreign Domination to National Independence. 2 vols.* New York, *1984.*
- Sunny, R. G. The Young Stalin and the 1905 Revolution in Georgia. In S. F. Jones (Ed.), *The Making of Modern Georgia, 1918-2012: The First Georgian Republic and its Successors*. New York: Routledge, 2014.
- Thompson,M. R. Building Nations and Crafting Democracies – Competing Legitimacies in Interwar Eastern Europe. In: D. Berg-Schlosser & J. Mitchell (eds.), *Authoritarianism and Democracy in Europe, 1919–39*, Comparative Analyses. London: Palgrave, 2002.
- Velychenko, Stephen. *State Building in Revolutionary Ukraine: A Comparative Study of Governments and Bureaucrats - 1917-1922*. London: University of Toronto Press, 2011.
- Weber, Renate. *Constitutionalism as a Vehicle for Democratic Consolidation in Romania.* New York: Oxford University Press, 2001.
- Wolczuk, Kataryna. *The Moulding of Ukraine*. Budapest: Central European University Press, 2001.


*Articles*


- Anckar, Dag. (1981). The History of the Finnish Parliament. *European Journal of Political Research.* 9 (2).

- Briiggemann, Karsten. (2003). Defending National Sovereignty against Two Russias: Estonia in the Russian Civil War, 1918-1920. *Journal of Baltic Studies* 34. 22-51.
- Coakley, John. (1986). Political succession and regime change in new states in inter-war Europe: Ireland, Finland, Czechoslovakia and the Baltic Republics. *European Journal of Political Research.* 14.
- Dedek, Vladimir. (1921). The Constitution of Czecho-Slovakia. *Journal of Comparative Legislation and International Law*, Third Series, 3 (1).
- Hayden, Joseph. (1922). "New European Constitutions: In Poland, Czechoslovakia and the Kingdom of the Serbs, Croates and Slovenes." *American Political Science Association*.
- Laucka, Juozas. (1986). The Structure and Operation of Lithuania's Parliamentary Democracy 1920-1939. *Lithuanian Quarterly Journal of Arts and Sciences*. 32 (3).
- Metcalf, Lee. (1997). Institutional Choice and Democratic Consolidation: The Experience of the Russian Successor States, 1918-1939. *Communist and Post-Communist Studies.* 30 (3).
- Papuashvili, George. (1999). Presidential Systems in Post-Soviet Countries: The Example of Georgia. *Georgian Law Review*. (3).
- Papuashvili, George. (2012). The 1921 Constitution of the Democratic Republic of Georgia: Looking Back after Ninety Years. *European Public Law*. 18 (2).
- Parrott, Andrew. (2002). The Baltic States from 1914 to 1923: The First World War and the Wars of Independence. *Baltic Defence Review.* 8 (2).
- Partl, Vaclav. (1923). American Influence on Political Thought in Czechoslovakia. *The American Political Science Review.* 17 (3).
- Pollock Jr, James. (1923). *The Constitution of Latvia*. *The American Political Science Review.* 17(3).
- Siaroff, Alan, (1999). "Democratic Breakdown and Democratic Stability: A Comparison of Interwar Estonia and Finland," *Canadian Journal of Political Science*

32 (1), 102-124.

- Singleton, Fred. (1981). The Myth of 'Finlandisation'. *International Affairs*. 57 (2).
- Srinivasan, Umesh. (1991). Woodrow Wilson's "Peace without Victory" Address on January 22, 1917: a continuity of thought. 3/3 Sp91. Flossmoor: *The Concord Review*.
- Stakhiv, Matvii. (1984). Constitution of the Ukrainian National Republic. *Encyclopedia of Ukraine*. l(1).
- Taube, Caroline. (2002). Baltic Diversity: Comparing Constitutions. *Jurisprudencija*. 30 (22).
- Uibopuu, Henn-Jüri. (1973), The Constitutional Development of the Estonian Republic. *Journal of Baltic Studies.* 4 (1).

*Other Sources*

- Declaration of the Rights of Men and of the Citizen, passed by France's National Constituent Assembly in August, 1789.
- G. Lortkipanidze, Political Will: Roads of development of Georgia, 275, Tbilisi University Publishing, 1925.
- Irish Free State, Parliament, Chamber of Deputies, Constitution Committee, Select Constitutions of the World, Dublin, 1922.
- K.D. Mikeladze, *Constitution of Democratic State and Parliamentary Republic, some Considerations on Elaboration of Georgian Constitution,* 47, Tbilisi, 1918.
- Lenin: Collected Works (Moscow: FLPH, Progress Pub., 1960-70), 5:375.
- Noe Zhordania*, Social-democracy and the State Organization of Georgia, 32,* Tbilisi, 1918.
- *Noe Zhordania, Chairman of the government, Speech, Constituent Assembly, the Session of Dec. 1, newsp.,* Republic of Georgia. (Dec. 5, 1920).

- *P. Sakvarelidze, Discussions on draft Constitution, Georgian Republic (Feb. 4, 1920) Rights,* 23–25*,* Tbilisi 1920*.*
- A. Svabe (ed.), *LatvjuEnciklopedija*(*LE*), 3 vols. (Stockholm: TrisZvaigznes, 1953–5), s.v. 'Satversmessapulce' [Constituent Assembly], iii. 2252.
- Representation of the People Act 1918 (United Kingdom).
- Representation of the People (Equal Franchise) Act 1928 (United Kingdom).
- Soviets in Estonia 1917/18." in Ezergailis, Andrew et al., eds. *Die baltischenProvinzenRufllandszwischen den Revolutionen von 1905 und* 1917. Koln: Bohlau 1982. 295-314.
- *The Compilation of Legal Acts of Democratic Republic of Georgia, 1918–1921,* Tbilisi 1990.
- The Decree of Nov. 30, 1918, on elections of the Constituent Assembly. Verordnung über die Wahlen zur verfassunggebenden deutschen Nationalversammlung vom 30 Nov. 1918.
- Frauen Macht Geschichte: frauen und gleichstellungspolit. Ereignisse in der Schweiz 1848–1998, 2 Mappen, 1998–99, S. Hardmeier, Frühe Frauenstimmrechtsbewegung in der Schweiz, 1997,Y.Voegeli, in: Historisches Lexikon der Schweiz Schwabe, 2008
- The law of Nov. 12, 1918 law on German-Austrian state and governance forms. Gesetz vom 12 Nov. 1918 über die Staats und Regierungsform von Deutschösterreich. Staatsgesetzblatt in retrodigitalisierter Form bei ALEX – Historische Rechts- und Gesetzestexte.


*Online Sources*


- "Stephen Jones on the 90th anniversary of the Democratic Republic of Georgia." Accessed on September 25, 2015. http://matiane.wordpress.com/2009/08/30/stephen-jones-on-the-90th-anniversary-of-the-democratic-republic-of-georgia/

- Karl Kautsky. "The permanence of the Social Democratic Party." Accessed on September 26, 2015. http://www.marxists.org/archive/kautsky/1921/georgia/ch05.htm

- "President Lincoln's Gettysburg Address." Accessed on September 24, 2015. http://www.presidency.ucsb.edu/ws/?pid=73959

- "Constitution of the Ukrainian National Republic." Accessed on September 17, 2016. http://www.encyclopediaofukraine.com/display.asp?linkpath=pages%5CC%5CO%5CConstitutionoftheUkrainianNationalRepublic.htm

- "Central Rada." Accessed December 27, 2015. http://www.encyclopediaofukraine.com/display.asp?linkpath=pages%5CC%5CE%5CCentralRada.htm

- "The 1920 Constitution." Accessed December 26, 2015. http://www.vlada.cz/en/media-centrum/aktualne/constitution-1920-68721/

- "Constitutional court of the Czechoslovak republic and its fortunes in years 1920-1948." Accessed December 23, 2015. http://www.usoud.cz/clanek/Czechoslovak_Court_1920

- "The Constitution of the Republic of Latvia." Accessed on September 27, 2015. http://www.saeima.lv/en/legislation/constitution

- "Romania – History." Accessed September 27, 2015. http://www.mongabay.com/reference/country_studies/romania/HISTORY.html

- "The House of Commons and the right to vote." Accessed September 27, 2015. https://www.parliament.uk/documents/commons-information-office/g01.pdf