

## Legal issues of impeachment of the president in Georgia

Malkhaz Chakhnashvili

Professor of International Black, Sea University, Georgia

### Abstract

Impeachment, as method of presidential resignation is universal form of imposing of responsibility of both legal and political type. The Constitution of Georgia defines two main grounds for impeachment of the President: “violation of the Constitution” and “if his/her actions contain elements of crime”. The power of the President in Georgia is essentially limited by the Constitution by means of consent, recommendations and countersigning of Government and Prime-Minister. In Georgia, there’s not any normative act which contains legal sanction (penalty) for the violation of the Constitution. So, Impeachment proceedings in Georgia is political in nature, because *violation of constitution* as ground of impeachment actually does not cause an imposing of legal responsibility, for the action, which hardly holds all signs of offence. Beside this, the President, elected by the people may be removed from by the Parliament in violation of the principle of people’s sovereignty and is derived from the right to *apply to the court for protection of his/her rights*, granted to every citizen of Georgia by the Constitution.

As to existence of elements of crime – there are two issues, concerning the conclusion of the Constitutional Court, which is not authorized to qualify an action as a crime and mismatch of the moment of impeachment and making of decision on the relevant criminal investigation which theoretically may not confirm commitment of crime by already removed President. Article offers special procedures to resolve above mentioned issues, inter alia by involvement in the investigation of special prosecutor from abroad.

**Keywords:** *constitution, president, violation, impeachment*

### Introduction

A President is the most widespread form of the Head of the country in XX and XXI centuries. The term “President” origins from Latin” praesidens”, that means “sitting ahead”. As the highest public official, the President exerts great influence on the public and political process, acts as guarantor of constitutional system and represents state identity.

Generally, The President:

1. Is elected Head of the country which performs executive function personally or in collaboration with the Government as its Head or arbitrator in the system of separation of state power;
2. Is highest political figure which forms internal and foreign policy of the state;
3. Hold highest place in hierarchy of posts
4. Carries out supreme representation in internal and foreign relation

An impeachment proceeding in England against Baron Latimer in 14<sup>th</sup> century was a direct method of bringing into account the King's ministers and favorites--men who might have otherwise been out of reach. Following the British example, the constitutions of Virginia (1776), Massachusetts (1780) and other states thereafter adopted the impeachment mechanism without punishment and removal from the office.

Impeachment, as method of presidential resignation is universal form of imposing of responsibility of both legal and political type. Grounds of impeachments may be a culpable violation of the Constitution, High Treason, willfully infringement of laws, high crimes and misdemeanor, including

bribery, graft and corruption and betrayal of public trust, dereliction of duty, unappropriated behavior and etc.

Article 75 of the Constitution of Georgia defines two main grounds of impeachment of the President: “violation of the Constitution” and “commission of a crime”, that is if action contains components of the crime. According to the article 63 of the Constitution of Georgia, entire process of removal of the President from His office includes three simple steps:

- At least fifty members of the Parliament of Georgia reflect their assumptions about wrongful and illegal behavior of the President in the constitutional claim and refer it to the Constitutional Court for final decision;
- It is very important to take into consideration, that during 30 days the Constitutional Court of Georgia only evaluates wrongfulness and illegality of action deemed to be ground for the impeachment defined by the article 75<sup>th</sup>;
- If the Constitutional Court in its conclusion confirms that the President has violated the Constitution, Parliament shall consider and vote for the removal of President from office via impeachment within not later than 15 days after the Court conclusion has been submitted.

We think that impeachment proceedings in Georgia is political in nature, because of two reasons:

1. The Presidents is not ordinary civil officer, but state-political civil servant who enjoys personal immunity while holding an office;
2. *Violation of constitution* as ground of impeachment actually does not cause an imposing of legal responsibility, because it hardly holds signs of offence.

Let's analyze those actions of the President, which may be considered by members of Georgian Parliament as violation of the Constitution.

- The first group deal with those actions of the President, which shouldn't be carried out without consent of the Government of Georgia or governmental recommendations or without Prime-Minister's countersigning, like:
  - a) conducting negotiations with other countries and international organizations;
  - b) concluding international agreements and treaties;
  - c) Appointment and dismissal of ambassadors and other diplomatic representatives of Georgia;
  - d) Accreditation of ambassadors and other diplomatic representatives of foreign states and international organizations;
  - e) Issuing of legal acts;
  - f) nominating a candidate for Chairperson of the Government of the Autonomous Republic of Ajara for approval;
  - g) Suspending an activity of self-government bodies or other representative institutions of territorial units or dismissing them.

As we see, power of the President in Georgia is essentially limited by the Constitution with agreements, recommendations and countersigning of Government and Prime-Minister. So, by acting in contradiction with these requirements of Constitution, the President goes beyond commission and abuses His constitutional rights.

- The second group deal with hypothetical dereliction of His constitutional duties by the President, like:
  - a) Non-submission or late submission within 48 hours to Parliament for approval of the decision on declaring of martial law or a state of emergency throughout the country or certain part thereof in the cases of war or mass disorder, infringement upon the territorial integrity of the country, coup d'etat and armed insurrection, ecological disasters and outbreak of epidemics <sup>[1]</sup>;
  - b) Non-scheduling of presidential, parliamentary and self-governing elections according to the Constitution <sup>[2]</sup>;
  - c) Non-appointment of referendum within 30 days regardless of existence of the request of the Parliament of Georgia, the Government of Georgia or 200 000 voters <sup>[3]</sup>.

Non-performance of constitutional functions reflected in this group may cause some, but improvable problems for normal constitutional and political processes in the country.

We think, that there are three major legal issues in the process of impeachment of the President of Georgia for violation of Constitution:

The first issue. Both groups of *Violation of the Constitution* contain breaching of requirements of constitutional provisions, but are they illegal actions with their individual signs, as we used to know in case of disciplinary, civil, administrative or criminal offences <sup>[4]</sup>, or they are none of them.

*Violation of Constitution* is not a civil delict, which may occur in private relations, nor a disciplinary offence which is usually held in the frame of entire system of governance of public <sup>[5]</sup>, civic <sup>[6]</sup> or private <sup>[7]</sup> type. The President is independent political figure, which maintains an essential distance from all

branches of state power, including Legislative. So, we cannot say, that Parliament imposes disciplinary responsibility on the President for bad performance of His "Labor duties", like Minister does towards subordinated functionaries.

May be a "violation of the Constitution" is a type of administrative offence, because takes place in the sphere of public relations and may be committed by the state-political civil officer, as the President is considered, during the process of execution of state governance or maybe it is not illegal action at all?

As we know, any action or inaction (omission) of the person may be considered as illegal, if it is socially dangerous, guilty, illegal and punishable. Let's say, the President concludes international agreement without consent of the Government of Georgia. If we take into consideration generally acknowledged signs of offence, we can easily confirm, that:

- *It is illegal action*, which abuses Presidential power, because violates p.1, "a" of the article 73 of the Constitution of Georgia;
- *It is culpable action*, because the President or His apparatus should know relevant provisions of the Constitutions and should provide observance of relevant restrictions, which are established by the Constitution of Georgia. So, when the Presidents enters into international agreement without governmental concordance, an intentional character of violation is obviously clear;
- The social danger of this action may cause short-term problems for international image of Georgia in international relationships and postponing of ratification or implementation of the treaty;
- But it is not punishable, because in Georgia there's not any normative act which contains legal sanction (penalty) for the violation of the Constitution.

No punishment – no offence!

The second issue. When the President and majority of the Parliament and Government belong to the contradictory political forces, an impeachment of the President on the ground of *violation of Constitution* always looks like political revenge, because fact of abusing or nonfulfillment of constitutional duties is not proved by legal investigation.

What if the President does not agree with the Conclusion of the Constitutional Court of Georgia and with the final decision of the Parliament concerning his impeachment?

Article 42 of the Constitution of Georgia stipulates, that "*Everyone have the right to apply to the court for protection of his/her rights and freedoms*". Does the President have right to protect himself or He has taken away from such right, because of his status of state-political civil officer? If we suppose, that the President of Georgia, like any other citizen, should have such right, it is not clear, to which judicial instance President should apply if Constitutional Court already had been considered constitutional claim on impeachment?

The third issue. We think, that in case of violation of Constitution real problem deals not only with a responsibility, imposed on the Head of the country, but first of all, with the right of the Parliament to remove the President, elected by the people.

The question is - how impeachment for the violation of the Constitution is in consistency with requirements of the key

principle of constitutional law – People’s sovereignty. People, as a single source of law has right to elect the Head of the country in Presidential, semi-presidential, semi-parliamentary republics that grants the President highest level of legitimacy. We think, that resignation of the elected President by 100 members of the Parliament on the of violation of the Constitution is serious breaching of requirements of the principle of People’s sovereignty and not only in Georgia. We can suppose, that in Parliamentary republics, such type of activity is permissible, because the President and majority of the Parliament belong to the same political movement, but it is absolutely unacceptable in case of Presidential, semi-presidential and mixed forms of parliamentary republics, especially, if the Parliament and President represent oppositional political forces it is absolutely unacceptable. The President, elected by the People should be impeached on the ground of violation of the Constitution only by consent of nation-wide Referendum, when the Conclusion of the Courts of Georgia is laid open to the public beforehand <sup>[8]</sup>. Beside this, in order to ensure execution of the right of President to appeal His case on impeachment, members of the Parliament should initiate their claim not to the Constitutional, but to Supreme Court of Georgia.

The second ground for impeachment, stipulated in the article 75<sup>th</sup> of the Constitution of Georgia deals with existence of elements of crime <sup>[9]</sup> in the action, committed by the President. Type and gravity of offence is not clear. It may be any crime, stipulated in the Criminal Code of Georgia. Legal issues deal with the mode of lawful applying of criminal ground of impeachment. If we recognize that conclusion of the Constitutional Court of Georgia on impeachment of the President is legal act, it should cause certain legal consequences, including rightful qualification of criminal action, committed by the President But the Constitutional Court of Georgia is not authorized to carry out a criminal prosecution <sup>[10]</sup> and to issue any decision which may cause imposing of criminal responsibility like the courts of any instances do. Logically, from the very beginning, the case against President on criminal offence should be investigated by those governmental agencies, which are authorized to prove that certain action of the President really contains components of crime. On the ground of this confirmation, the case should be heard by the court of relevant instance. But the question is when, at which moment? Unfortunately, in Georgia the moment of removal of the President from his office and time of imposing of responsibility to Him do not match with each other.

### Let’s analyze following casus

The President of Georgia is removed from His office because of criminal offence, “confirmed” by the Constitutional Court of Georgia, but further criminal investigation and/or hearing the case in the court do not prove commitment of crime by the President? *The President is already removed from His office, being released whom any criminal allegations later?*. Upon these conditions, the President, as innocent victim of false accusation, hasn’t any legal instrument to restore his rights, because the Constitution of Georgia does not know the mechanism of returning to the initial legal status of the President He had before starting up of impeachment

proceedings.

Beside this, if the President and majority of the Parliament are in contradiction with each other, allegations and investigation on the impeachment case should be carried out by politically neutral authorized civil servants, that is almost impossible in the existed political reality, when the Chief Prosecutor, as well as Georgian Government, including Ministers of Justice, Internal Affairs, State security are appointed and supported by ruling political forces.

We think, that an impeachment process in Georgia will be cardinally improved by avoidance of early termination of the term of office of the President before announcement of final juridical or judicial decision on the criminal allegations made by criminal investigation or Court and guaranteeing an objective investigation. The President should have legal instrument to be somehow protected in impeachment proceeding by means of:

- *appealing to the Constitutional Court or nation-wide referendum, if ground of impeachment is violation of Constitution;*
- *investigation on the case of impeachment by special Prosecutor of ICJ in collaboration with authorized and highly experienced Georgian investigators;*
- *hearing the case on criminal offence by judges, appointed for life-time that should minimize political influence of ruling authorities of Georgia over impeachment proceedings.*

These are very complicated tasks for Georgian authorities, because deal with:

1. Replacing of Constitutional Court with the Supreme Court of Georgia as judicial instance, where members of Parliament should apply on the matter of impeachment. In this case, if ground of impeachment is violation of Constitution, the President will have right to appeal to the Constitutional Court of Georgia according to the article 42 of the Constitution <sup>[11]</sup> and but if impeachment deals with crime offence and allegations are confirmed by investigation the trial will be carried out by legally authorized judicial instance;

### 2. Enacting of Constitutional norms which

\* provides impeachment of the President elected by popular vote only on the ground of the nation-wide Referendum if violation of Constitution is confirmed by Supreme and Constitutional Courts and Conclusion of Supreme Court is laid open to the public beforehand as well as

\* gives Him right to make choice between Georgian Procurator’s Office and Special Prosecutor, appointed by ICJ Beside these constitutional amendments, further improving of impeachment proceedings in Georgia requires serious revision of the Laws “On the Constitutional Court”, “Constitutional Proceedings”, “On the General Courts”, “On Procurator’s Office” and “On the Referendum” and etc.

On the ground of above mentioned amendments, impeachment of the President of Georgia on the ground of criminal offence should go through the following stages:

- (1) the President is suspected in criminal action and 50 members of Georgian Parliament applies not to the Constitutional, but Supreme Court of Georgia and submit

documents and evidences on the case;

- (2) The Plenum of Supreme Court carries out pilot survey of the case and if it issues preliminary statement on the bringing of prosecution, Supreme Court immediately applies to the Parliament about temporary removal of the President from his office and to the President due to make written choice of investigators between Chief Prosecutor of Georgia and Special Prosecutor, appointed by the International Court of Justice <sup>[12]</sup>;
- (3) On the ground of above mentioned preliminary statement of Supreme Court, in 48 hours the Parliament votes on the temporary termination of office of the President supported by more than half of the full list of MPs. and imposes Presidential power for the whole term of investigation and trial to the Chairperson of the Parliament or till the substitution of removed President;
- (4) If the President prefers foreign investigator, Parliament immediately applies to the ICJ to appoint a Special Prosecutor on Impeachment Case and applies to Georgian Procurators office to appoint two experienced and honored investigators with at least 15 years of career pattern <sup>[13]</sup>;
- (5) Maximum term of investigation must be determined by the Parliament but we think that this term shouldn't exceed more than one months with 15 extra days. Investigation will be carried out in accordance with the Code of Criminal Procedures of Georgia with relevant rights and obligation of participants;
- (6) When investigation is over, the case either should be terminated because of absence of guilt or the President may be charged with criminal allegations and the case transferred to the Supreme Court of Georgia which hears the case during one month with extra 15 days to make final judgment on the case. The case on impeachment should be heard by the plenum of Supreme Court of Georgia, in which majority of judges are appointed for life term.

We are sure, that ruling authorities and key political forces of Georgia should support amendments to the Constitution of Georgia and laws, because it deems to gain a lot of political and legal benefits.

And finally, we want to introduce one more additional ground for impeachment of the President of Georgia in addition of violation of the Constitution and commitment of a crime: we mean “*misbehavior*” or “*inappropriate conduct*”.

What if the President does not violate Georgian Constitution and is not charged with criminal allegation, but His personal behavior goes beyond his moral duties? The President is highest civil officer, whose way of living, moral, civil criteria should be an ideal pattern of behavior for every citizen of Georgia. The President bears moral obligation to restrain himself from any type of immoral and derogative misconduct. We think, that *inappropriate conduct* of the President, like alcohol, drug, sexual abuse, gambling, family treason or conflict are essential reasons for early termination of His office. Misbehavior of the President makes impossible of being acknowledged as national-wide leader from moral and ethical points of view and if he doesn't remove Himself, impeachment proceedings will be absolutely acceptable measure from both moral and legal points of view.

Legal issues of impeachment of the President we just discussed, are not separate and local problems of Georgia, but are common for every parliamentary republic, especially for those countries, where the grounds of impeachment deal with violation of Constitution and criminal offence, committed by the President.

For the time being, Georgian authorities are engaged in the process of “the next” revision of Georgian Constitution. We think our initiatives of the Constitutional bills may be reflected in the following reduction of articles:

#### **Article 63**

1. In the cases provided for by Article 75(2) of the Constitution, Parliament acting with at least one third of the total number of MPs shall have the right to raise a question to remove the President of Georgia from office via impeachment. The issue shall be referred to the Constitutional Court of Georgia for decision. The issue shall be referred to the Supreme Court for decision.

#### **Article 63** <sup>[14]</sup>

1. If the Supreme Court of Georgia by its conclusion confirms that the President has violated the Constitution by his/her actions, the President shall have right to appeal to the Constitutional Court of Georgia provided by article 42 of the Constitution not later than 7 days after the Court conclusion has been submitted.
2. If Constitutional court confirms violation of Constitution by the President, Parliament shall apply to the President with request to appoint referendum on the impeachment of the Head of the country
3. If referendum votes in favor of removal of President from office Parliament shall consider and vote for the removal of President from office via impeachment within not later than 15 days after the Referendum results has been submitted. The President shall be deemed removed from office via impeachment if at least two thirds of the total number of MPs supports the decision.
4. If violation of Constitution by President shall not be confirmed by Constitutional Court or does not supported by referendum impeachment procedure shall be stopped and the President shall be deemed to be on duties.

#### **Article 63** <sup>[15]</sup>

1. If at least one third of the total number of MPs raise impeachment procedures on the ground of alleged offence, the Plenum of Supreme Court shall carry out pilot survey of the case and if it confirms existence of components of crime in the actions of the President, Supreme Court shall issue preliminary statement on the bringing of prosecution and immediately applies to the President due to make written choice of investigators between Chief Prosecutor of Georgia and Special Prosecutor, appointed by the International Court of Justice
2. On the ground of preliminary statement of Supreme Court, the President shall be deemed preliminarily removed from office if at least two thirds of the total number of MPs supports the decision
3. If the President prefers foreign investigator, Parliament

- immediately applies to the ICJ to appoint a Special Prosecutor on Impeachment Case and applies to Georgian Procurators office to appoint two experienced and honored investigators with at least 15 years of career pattern
4. Investigation on the case on impeachment shall be carried out according to the Rules of Criminal Procedures of Georgia and shall not exceed 30 days with additional 15 days
  5. The case on impeachment either shall be terminated if criminal allegation against President is not confirmed or submitted to Supreme Court, which shall be heard during 30 days with additional 15 days
  6. If criminal allegations against the President are confirmed by Supreme Court, Parliament shall consider and vote for the removal of President from office via impeachment within not later than 15 days after the Court the decision has been submitted. The President shall be deemed removed from office via impeachment if at least two thirds of the total number of MPs supports the decision.
  7. Unless Parliament decides to remove the President from office via impeachment within the terms, defined in the sixth paragraph of this article, the impeachment procedure for the same issue shall not be initiated
  8. No impeachment procedure shall be implemented during war, state of emergency, or martial law.

#### **Article 75**

1. The President of Georgia shall enjoy personal immunity. No one shall have the right to arrest or bring criminal proceeding against the President of Georgia while holding the post.
2. Parliament may dismiss the President according to Article 63 of the Constitution and law if he/she violates the Constitution, if his/her actions are criminal or in case of misbehavior.

#### **References**

1. See art. 73<sup>rd</sup>, 1 “Z’ and “T” of the Constitution of Georgia
2. See the same article, 2.
3. See art. 74<sup>th</sup>, 1 of the Constitution of Georgia.
4. Criminal offence is the second ground of impeachment, stipulated in Georgian Constitution. So, it also should be excluded.
5. E.g. governmental agency
6. E.g. political party
7. E.g. Business company
8. The nation-wide referendum has to be appointed by the President at the request of the Parliament if the Constitutional Court made denies an appeal of the President on the decision of Supreme Court.
9. In the Law “On Impeachment” instead of elements of crime law – maker directly indicates to the “criminal offence”
10. According to the Code of Criminal Procedure of Georgia the Procurator’s Office is the body of criminal prosecution, while criminal investigation also can be carried out by the Ministries of Justice, Internal Affairs, Finance, Correction, Defence, State security
11. Georgian Constitution already contains such rule (art.54),

- upon which, the decision of the Parliament on the early termination of legal status of the member of Parliament, may be appealed in the Constitutional Court of Georgia,
12. At the same time, International Court of Justice should be informed about impeachment process in order to fasten appointment of special prosecutor
  13. 15years of working experience might be an indication of political neutrality of investigators, who at least are not appointed by ruling political party.