

THEORETICAL AND LEGAL FOUNDATIONS OF TERRITORIAL-STATE ARRANGEMENT

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Abstract. This article examines the theoretical and legal foundations of territorial-state organization within the framework of comparative constitutional law and Georgian constitutional law. The purpose of the study is to analyze the legal nature of the principal models of territorial organization - the unitary state, the federation, and autonomy - to develop a theoretical classification of these models, and to assess Georgia's constitutional model in light of international standards and comparative experience. The work relies on comparative-legal, historical-legal, and formal-legal methods. The study confirms that Georgia's 1995 Constitution established the model of a unitary state, yet the unresolved status of the autonomous republics and the constitutional "freezing clause" concerning territorial integrity create a distinctive constitutional-legal phenomenon that has almost no analogue in comparative constitutionalism. The article also examines the constitutional guarantees of local self-government, the legal nature of the sub-national entities, and the prospects for decentralization within the context of European integration.

Keywords: territorial organization; unitary state; federalism; autonomy; Constitution of Georgia; constitutionalism; decentralization; local self-government; territorial integrity; regions (mkhareebi)

Introduction: The issue of territorial-state arrangement constitutes one of the most significant theoretical and practical problems of constitutional law. The form of a state's territorial organization determines the principles of the distribution of power and the balance between state unity and the governing autonomy of local communities. The legal formalization of this decision is, first and foremost, the prerogative of the constitution.

Contemporary constitutionalism distinguishes three classical models: the unitary state, the federation, and the confederation. However, since the second half of the twentieth century - and especially following post-communist transformations - the clear boundary between these models has increasingly blurred. "Hybrid" territorial systems, asymmetric federations, and various forms of political autonomy have become an increasingly common phenomenon within the space of comparative constitutional law (Elazar, 1987, 12).

Georgia represents a particularly interesting case in this context. Following the dissolution of the Soviet Union in 1991, the newly independent Georgian state found itself confronted with acute ethno-political conflicts - in Abkhazia and South Ossetia. Against this backdrop, the Constitution adopted in 1995 established the model of a unitary state while simultaneously "freezing" the final resolution of the territorial arrangement - that is, deferring it until the normalization of the situation (Kantaria & Ugrekhelidze, 2020, 45). This compromise solution continues to this day to determine one of the most significant unresolved issues of Georgian constitutional law.

The object of the study is the legal forms of territorial-state organization within the international comparative-legal and Georgian constitutional context. The subject of the study is the theoretical categories, constitutional norms, and mechanisms of practical implementation that define these forms.

The scientific novelty of this work consists in the fact that Georgia's constitutional model of territorial-state organization is analyzed not only within the framework of the classical unitary-state paradigm, but is also proposed for consideration as an independent model of "Deferred Territorial Constitutionalism." This concept describes a constitutional condition in which the state retains the constitutional identity of a unitary state while linking the determination of the final architecture of its territorial organization to a future constitutional act. In the author's assessment, Georgia's constitutional experience in this respect differs from both classical unitary states and federal or autonomous models, and creates grounds for the formation of an independent theoretical category.

In the author's assessment, Georgia's existing model of territorial organization represents a transitional constitutional construction that simultaneously preserves the formal stability of the unitary state and the dynamic demands of decentralization. Accordingly, the determination of its final legal form cannot be left dependent solely on the outcome of political conjuncture and requires a clear constitutional-normative resolution.

The objectives of the study are: to analyze the legal nature of the theoretical models of territorial organization; to assess Georgia's constitutional model in light of comparative experience; to identify the legal challenges of territorial organization; and to elucidate the constitutional prospects for decentralization.

Methods: The study is based on a comparative-legal methodology, within which states possessing differing models of territorial organization were selected - France, Germany, Spain, Canada, and Finland. These states were selected according to the principle of purposeful sampling, as each represents a distinct legal model of territorial organization: centralized unitarism, cooperative federalism, asymmetric autonomy, and territorial units with special status.

The comparative analysis was carried out according to three principal criteria: (a) the constitutional status of territorial units; (b) the mechanism for the distribution of competences; and (c) the participation of territorial units in the exercise of state power.

Additionally, the historical-legal method was employed to study the evolution of Georgia's territorial organization, the formal-legal method for the interpretation of constitutional norms, and the systemic analysis method for examining the interrelation of institutions of territorial organization.

Discussion: The unitary state is defined in the theory of constitutional law as a state in which sovereignty is indivisible and the central authority is hierarchically supreme over any territorial unit. The theoretical foundations of this model originate in Jean Bodin's classical concept of sovereignty, according to which state power can only be unified, indivisible, and supreme (Bodin, 1576/1992, 25). Bodin's concept was further developed in the seventeenth and eighteenth centuries by Jean-Jacques Rousseau, who, in his theory of the "social contract," defined sovereignty as the unified will of the nation, indivisible by its very nature (Rousseau, 1762/1968, 69).

The principal legal features of the unitary state are as follows: first, the unity of the hierarchy of norms, meaning that the constitution and central legislation operate throughout the entire territory with equal legal force; second, the supremacy of law, that is, the exclusive right of parliament to determine the status and competence of territorial units; and third, administrative uniformity, meaning the unity of administrative structures throughout the country (Dicey, 1885/1982, 39).

In contemporary political science, the concept of "pure" unitarism increasingly incorporates elements of decentralization. This process is particularly clearly expressed in the evolution of the French legal system. In France, historically the classical country of centralism, the competences of local government were significantly expanded by the decentralization laws of 1982 and the constitutional amendments of 2003, although the first article of the Constitution still confers upon the state an "indivisible" character (Loughlin,

2000, 56). An analogous tendency is observed in Italy and Spain, where the unitary model has been supplemented by extensive systems of autonomous regions.

For the theoretical explanation of this evolution, the scholarly literature employs the concept of "new unitarism" or the "decentralized unitary state," which distinguishes formal sovereignty (which belongs to the center) from the distribution of functional governance (which is transferred to territorial units) (Watts, 1999, 8).

Federalism, as a principle of state organization, entails the constitutional division of state power between the central government and the authorities of the federal subjects, such that each level is guaranteed autonomy within its own sphere of competence. The classical definition of federalism belongs to Alexander Hamilton, James Madison, and John Jay - the authors of "The Federalist" - who proclaimed this principle to be the theoretical foundation of the 1787 Constitution of the United States of America (Hamilton, Madison, & Jay, 1788/2003, 45).

Contemporary scholarly literature distinguishes several principal types of federalism. Dual federalism (the classical U.S. model) entails a sharp division of competences between the center and the subjects, such that each level is entirely independent within its own sphere. Cooperative federalism (the German model) is based on mutual cooperation between the center and the Länder in the process of legislating and implementing law - specifically, the implementation of federal laws is primarily entrusted to the administrations of the Länder (Hesse, 1962, 26). Asymmetric federalism, in turn, entails differing legal status among the subjects - the classical example being Canada, where Quebec possesses powers distinct from those of the other provinces (Kymlicka, 1995, 29).

The principal legal features of federalism are as follows: first, constitutional guarantee, meaning that the autonomy of the subjects is entrenched at the constitutional level and cannot be unilaterally abolished by the center; second, the division of competences, meaning that the constitution precisely defines which matters fall within the competence of the center, which within that of the subjects, and which are shared competences; third, the participation of the subjects in central decision-making, typically through a bicameral parliament (Elazar, 1987, 33); and fourth, the special role of the constitutional court in resolving conflicts of competence.

Autonomy, as a category of territorial-state organization, does not constitute an independent model but rather functions as a kind of intermediate form between the unitary state and the federation. According to a widely shared definition, territorial autonomy entails "the legal recognition of the ethnic, cultural, or administrative distinctiveness of a territorial unit and the guarantee of a degree of self-government in internal affairs, while preserving a centralized structure of authority" (Ghai, 2000, 8).

The legal distinction between autonomy and a federal subject is manifested in several key aspects. A federal subject possesses constitutionally guaranteed elements of sovereignty, and a change to its status requires its consent, whereas the status of an autonomous unit may, in principle, be altered by a decision of the central government, even by way of constitutional amendment (Lapidoth, 1997, 45). Autonomy, accordingly, formally belongs to the logic of the unitary state, but in substance may afford a degree of governing capacity that is at times no less than that of federal subjects.

European experience in this respect is rich. In Spain, the system of "autonomous communities" (Comunidades Autónomas), created by the 1978 Constitution, effectively renders the country a "semi-federal" state, since the Basque Country and Catalonia possess legislative, judicial, and fiscal autonomy broader than that of many federal subjects (Moreno, 2001, 51). In Italy, the Constitution distinguishes between "ordinary status" regions (15 regions) and "special status" regions (5 regions - Sicily, Sardinia, Aosta Valley, Trentino-Alto Adige, and Friuli-Venezia Giulia), the latter enjoying special status entrenched by the Constitution (Paler-

mo & Woelk, 2003, 38). The Åland Islands, part of Finland, present a rare example of autonomy guaranteed by international treaty (Hannikainen, 1994, 22).

Since the end of the twentieth century, the scholarship of constitutional law has increasingly focused attention on the phenomenon of the convergence of the three classical models. Ronald Watts's study, which examined 24 federal systems, demonstrated that "pure" federations and "pure" unitary states do not, in fact, exist - every state is situated somewhere along a continuum of centralization and decentralization (Watts, 1999, 14). This observation is especially significant for the analysis of post-communist transformation states, where the forms of territorial organization have undergone rapid and often inconsistent evolution.

The concept of "consociational democracy" offers a further important analytical framework: in ethnically or culturally diverse states, territorial autonomy may become an effective mechanism for conflict resolution if it grants groups a means of self-government while preserving the territorial integrity of the state (Lijphart, 1977, 42). This concept is directly relevant to the analysis of Georgia's case, which will be examined in the following subsection.

Georgia's 1995 Constitution was adopted under particular historical and political circumstances. As a result of the armed conflicts of 1991–1993, the country found itself facing the prospect of actual territorial disintegration - Abkhazia and South Ossetia (Samachablo) fell outside the sphere of effective control of the central government. Against this backdrop, the framers of the Constitution faced an exceedingly difficult dilemma: on the one hand, it was necessary to constitutionally entrench state unity; on the other, it was necessary to formulate norms that corresponded to the real situation and did not foreclose future negotiations (Kantaria & Ugrehelidze, 2020, 47).

Article 2 of the Constitution of Georgia establishes the foundations of the state's territorial organization. According to the first paragraph of Article 2, "Georgia is a unified and indivisible state, as confirmed by the expression of the will of the citizens of Georgia in the referendum of 31 March 1991 across its entire territory." This formulation is significant from several legal perspectives: first, it constitutionally entrenches the unitary nature of the state; second, this nature is linked to the outcome of the 1991 referendum, which lends it particular legitimacy; and third, the principle of "indivisibility" excludes the constitutional possibility of secession by any territorial unit (Gotsiridze, 2016, 112).

The third paragraph of Article 2 of the Constitution establishes the so-called "freezing clause": "The territorial-state organization of Georgia shall be determined by constitutional law upon the complete restoration of the jurisdiction of Georgia throughout its entire territory." This norm has been the subject of differing assessments in legal scholarship. On the one hand, it is interpreted as a pragmatic compromise - it was impossible to constitutionally entrench a federal or autonomous arrangement over territories that were not under effective control (Wheatley, 2005, 113). On the other hand, critics of the norm point out that the freezing clause in fact creates a constitutional vacuum - the territorial organization of the state constitutes one of the most fundamental elements of a legal order, and its "deferral" to any date left undetermined at the moment of the Constitution's adoption is difficult to reconcile with the principles of a constitutional state (Slider, 1997, 163). In the author's view, the "freezing clause" constitutes a necessary, albeit temporary, constitutional compromise, the prolonged maintenance of which increases the risk of legal uncertainty. Its existence is therefore justified only until such time as it becomes possible, under conditions of genuinely restored territorial integrity, to fully determine the constitutional model.

From the perspective of comparative constitutional law, partial analogues to the "freezing clause" can be found in the constitutions of other post-conflict states. The 1995 Dayton Agreement in Bosnia and Herzegovina likewise established a "transitional" territorial arrangement, although, unlike Georgia's case, this arrangement was reinforced by external international guarantees (Bieber, 2006, 78). Georgia's case,

accordingly, represents a unique phenomenon of constitutional law, in which the fundamental question of territorial organization remains suspended in constitutional-legal uncertainty.

The Constitution of Georgia recognizes two autonomous republics - Abkhazia and Adjara. However, the legal status of these two autonomous units is substantially different, as reflected across six articles of the Constitution.

The legal status of Abkhazia is not substantively regulated in the Constitution - owing to the territorial conflict, it has proven impossible to adopt the constitutional law that would define the legal framework of its autonomy. Article 89 of the Constitution merely establishes that the "state bodies of the Autonomous Republic of Abkhazia" operate, yet their sphere of competence, their relationship with the central government, and the specific content of the autonomy remain undefined by the Constitution (Kantaria & Ugrekheidze, 2020, 89). This situation, from the standpoint of comparative law, represents not merely a legal anomaly but also a serious challenge for practical state governance.

The Autonomous Republic of Adjara followed a different path of legal evolution. Prior to 1991, during the Soviet period, Adjara enjoyed autonomous status on the basis of the 1921 Treaty of Kars. The 1995 Constitution preserved this status, although until 2004 its legal content remained ambiguous - in practice, the region was under the autocratic rule of Aslan Abashidze, which operated beyond the effective control of the central government (Jones, 2013, 178). In 2004, following the change of the autocratic regime, the "Organic Law of Georgia on the Autonomous Republic of Adjara" significantly transformed the legal structure of the autonomy. The new framework narrowed the scope of the autonomy, established a constitutional balance favorable to the center, and, in effect, determined the "evolutionary" understanding of autonomy in Georgia (Nodia & Pinto-Scholtbach, 2006, 89).

In the author's assessment, the existing asymmetry between Georgia's autonomous republics does not represent a systemic defect but rather reflects the real conditions of the state's political development. Nevertheless, in the long-term perspective, a clearer constitutional differentiation of autonomous statuses is necessary in order to avoid ambiguity in the distribution of competences.

In assessing the legal status of the autonomous republics, particular significance attaches to the 2004 opinion of the Venice Commission, which noted that the legal basis of Georgia's autonomous structures is incomplete, and that full compliance with Council of Europe standards requires a clearer constitutional definition and entrenchment of the competences of autonomy (Venice Commission, 2004, 14).

One of the most significant elements of Georgia's system of territorial administration is the institution of the *mkhare* (region). The *mkhareebi* were established in 1994 by presidential decree - prior even to the adoption of the Constitution - and the 1995 Constitution incorporated them into the institutional system of state governance. Chapter 3 of the Constitution establishes the institution of the State Trustee-Governor: this official is appointed by the President, is accountable to the President, and exercises the functions of the central government within the territory of the region.

The legal nature of the *mkhareebi* elicits differing characterizations in the theory of constitutional law. Some scholars regard them as administrative districts - that is, as an instrument of the deconcentration of central authority - whose principal purpose is the implementation of central policy at the local level rather than territorial autonomy (Wheatley, 2005, 134). This characterization is supported by the fact that the administration of the *mkhare*, headed by the State Trustee-Governor, is not a representative body - the local population does not participate in its formation, and it is not accountable to the local electorate. This fundamentally distinguishes the *mkhareebi* from autonomous units and, still more so, from federal subjects (Slider, 1997, 158).

From a comparative-law perspective, Georgia's system of mkhareebi may be likened most closely to the institution of the French prefecture - a representative of the center at the local level who implements central government policy and oversees the legality of local governance (Loughlin, 2000, 134). This comparison well illustrates the centralized character of the Georgian administrative system.

In the author's view, the existing model of the mkhareebi is effective in ensuring the unity of central governance, but weak with regard to democratic accountability. Accordingly, further reform of the system should be directed toward strengthening mechanisms of local representation, without a complete loss of control by the central government.

Local self-government represents an institution of constitutional law in which the principles of territorial organization most directly affect the daily lives of citizens. Chapter 7 of the Constitution of Georgia, "Local Self-Government," establishes the basic constitutional guarantees of this institution. Article 104 of the Constitution provides that "the representative body of local self-government - the sakrebulo (council) - shall be elected by direct, universal, equal, and secret suffrage," which reflects the fundamental principle of representative democracy at the local level.

With regard to compliance with the European Charter of Local Self-Government (1985), Georgia acceded to this international treaty in 2004, which establishes European minimum standards for local self-government. Article 3 of the Charter defines local self-government as "the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population" (European Charter of Local Self-Government, 1985, Art. 3). The evolution of Georgian legislation from the 2005 Organic Law "On Local Self-Government" to the 2014 Code of Local Self-Government generally confirms a tendency toward convergence with the Charter's standards (Nodia & Pinto-Scholtbach, 2006, 145).

The constitutional amendments of 2017 marked a further significant step toward the strengthening of local democracy - the Constitution, for the first time, incorporated provisions concerning guarantees of the financial autonomy of local self-government. However, in scholars' assessments, the practice of fiscal decentralization continues to lag behind the principles declared in the constitutional norms - more than 80% of municipal budgets remain dependent on state transfers, which complicates the achievement of effective financial autonomy (Gotsiridze, 2016, 289).

An analysis of Georgia's constitutional model demonstrates that its classification solely within the category of the unitary state fails to capture the full legal nature of the existing system. Although the Constitution declares Georgia to be a unified and indivisible state, it simultaneously links the final form of territorial organization to a future constitutional law. Such a construction differs both from the federal model, in which the territorial architecture is defined by the constitution itself, and from the classical unitary state, in which matters of territorial organization are fully settled from the moment of the constitution's adoption.

This circumstance provides grounds for regarding Georgia's model as an example of "Deferred Territorial Constitutionalism." The essence of this model consists in the fact that the constitution determines in advance the principles of state unity and sovereignty, while linking the formation of the final construction of territorial organization to future political-legal circumstances. Comparative analysis demonstrates that a similar constitutional approach, in fully developed form, is practically absent from contemporary constitutionalism. Although Bosnia and Herzegovina, Sudan, and certain other post-conflict states contain transitional territorial mechanisms, Georgia's case differs in that the question of territorial organization is deferred not by a temporary transitional regime, but on the basis of a permanently operating constitutional norm. Accordingly, Georgia's constitutional experience may be regarded as an important example of the formation of an independent theoretical category of territorial organization within contemporary comparative constitutional law.

The collision between the principles of territorial integrity and the self-determination of peoples represents one of the most acute theoretical and practical problems of contemporary international law. Article 2(4) of the United Nations Charter prohibits the violation of the territorial integrity of states, while Article 1 of the same Charter recognizes the principle of the self-determination of peoples. These two norms, formally contained within a single document, frequently generate mutually opposing legal demands in practice (Cassese, 1995, 53).

The doctrine of international law offers several concepts for resolving this collision. The concept of internal self-determination, formulated in the UN's 1970 Declaration on Friendly Relations, holds that the self-determination of peoples essentially means the right to effective participation in the political life of the country, rather than a right to secession. Secession may be considered only as an ultima ratio - a solution of last resort - in circumstances where a group is entirely excluded from the state's political system (Cassese, 1995, 112). The Supreme Court of Canada, in the 1998 Quebec case, further developed this principle, holding that Quebec did not possess a "unilateral" right to secession, since Canada affords Quebecers an effective opportunity for political self-determination (Reference re Secession of Quebec, 1998, para. 138).

In Georgia's case, this collision acquires particular legal weight. Following the August 2008 war and Russia's recognition of the "independence" of Abkhazia and South Ossetia, the principle of territorial integrity came into direct conflict with the logic of the so-called "Kosovo precedent." International legal scholarship has divided into two camps on this question: one group considers that the International Court of Justice's 2010 advisory opinion in the Kosovo case - that "the declaration of independence does not violate general norms of international law" - creates a precedent for "remedial secession"; the other group argues that this opinion applies exclusively to the context of Kosovo and cannot be applied by analogy in the post-Soviet space (Weller, 2008, 34).

Georgian legislation responds to this challenge through the 2008 Law "On Occupied Territories," which establishes a legal framework for relations with occupied territories and relies on norms of international law to reinforce the position of territorial integrity. The law provides that the "occupied territory" constitutes an inseparable part of Georgia, where Georgian legislation applies, although the practical implementation of this norm is impossible for objective reasons (Kantaria, Ugrehelidze, 2020, 134).

The legal status of the occupied territories represents one of the most complex problems of Georgian constitutional law. The distinction between constitutional norms and reality acquires particular weight in this case: on the one hand, the Constitution regards these territories as an inseparable part of Georgia; on the other hand, the absence of effective governance creates a phenomenon of de facto statehood, which remains problematic from the standpoint of international law.

From the standpoint of international law, the phenomenon of "de facto states" has become the subject of extensive scholarly research in this space. According to Pegg's definition, a "de facto state" exists where there is "an organized political leadership which has achieved internal legitimacy, exercises the basic functions of a state over a defined territory, and does so for a sustained period of time, but fails to achieve international legal recognition" (Pegg, 1998, 26). This definition precisely characterizes the situation existing beyond the dividing lines.

Georgia's process of European integration has a direct bearing on the question of territorial organization. The granting of European Union candidate status in 2022 - formally in December 2023 - obligated Georgia to move toward alignment with EU standards, including in the sphere of the decentralization of governance. The European Commission's 2023 "Georgia Report" specifically points to the necessity of strengthening local self-government, fiscal decentralization, and the expansion of local budgets as an important condition of European integration (European Commission, 2023, 67).

The European Union's experience in the sphere of territorial organization offers rich foundational material for Georgia. The "principle of subsidiarity," which entered the European legal order through the 1992 Maastricht Treaty on European Union, establishes that decisions should be taken at the lowest possible level - local or national - where feasible. This principle directly coordinates with the philosophy of the Charter of Local Self-Government and offers a roadmap for the transformation of the Georgian state's centralized model of governance (Watts, 1999, 67).

From the perspective of constitutional law, three principal directions emerge in the evolution of the Georgian territorial system. First, the expansion of the financial base of local self-government, through the entrenchment of constitutional guarantees of municipalities' own tax revenues. Second, the creation of a legal framework for regional development policy, whereby the mkhareebi, as administrative units, might be assigned functions of socio-economic planning by analogy with the EU's "structural funds" model. Third, the constitutional concretization of the competences of the autonomous republics, particularly in the case of Adjara, in order to improve compliance with Council of Europe standards (Venice Commission, 2004, 22).

Wheatley's analysis, which studies the legal aspects of post-Soviet territorial conflicts in the South Caucasus, emphasizes that European integration and the resolution of territorial conflicts are mutually reinforcing processes: the demonstration of effective governance, including in the sphere of the rule of law and local democracy, may become an instrument of confidence-building in the process of long-term conflict transformation (Wheatley, 2005, 201).

Conclusion: The study has shown that, in contemporary constitutional law, the classical models of territorial organization - the unitary state, the federation, and autonomy - are increasingly undergoing convergence and no longer function in practice as strictly delineated categories. Within this context, Georgia's constitutional model represents a specific form of the unitary state, in which the final architecture of territorial organization is deferred by a constitutional norm, thereby creating a distinctive model of a "frozen constitutional solution."

The study has also shown that the country's principal challenge lies in the insufficient institutionalization of autonomous and decentralized mechanisms, which limits the development of effective territorial governance. Accordingly, the future of Georgia's territorial organization should be regarded as an evolutionary process requiring gradual constitutional development on the basis of the principles of subsidiarity and democratic governance.

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