Parliamentary oversight of the executive branch in three newly established Parliamentary systems: Georgia, Kyrgyzstan and Moldova

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Table of Content

Introduction

Several of the post-soviet states which in the past were characterized as Presidential systems transformed their systems of governance into Parliamentary ones. Among them were Georgia, Kyrgyzstan and Moldova. Through the process of Constitutional amendments Georgia and Kyrgyzstan transformed gradually from strong Presidential states into Semi-Presidential systems and later on, after the series of amendments established parliamentary systems. In all three of them legislative branch was placed in the center of the governmental structure.

The Parliamentary systems are viewed by academics as one of the most democratic form of governance. Linz argued that parliamentary system will more likely sustain democratic government than presidentialism exercised in a normal way'[1]'. Indeed, the parliamentary system proved to be a huge success in number of the European democracies, such as United Kingdom and Germany. The parliamentary oversight (control) of the executive is one of the essential components of these parliamentary systems.

The transition from the presidentialism to parliamentary system leads to the empowerment of the executive branch, namely cabinet and Prime-Minister who is in head of the ministerial office. The assumption is that the transformation should also inevitably lead to the further strengthening of legislative branch to avoid abusive application of powers by the executive.

[1] "Linz, J. J. (1990). The Perils of Presidentialism. Journal of Democracy, 1(1), 51-69.," n.d.

Constitutional reformers took some positive steps towards the empowering the Parliament in all countries studied here.

The purpose of the following article is to evaluate the performance of parliaments in the period of transition, focusing on the role the constitutional framework assigns to them and their oversight powers over the executive. As a point of departure for assessment the analysis will use the oversight tools which are usually granted to parliaments in parliamentary systems, such as Germany and Britain. I will examine particular oversight mechanisms on paper and in practice, in order to evaluate their effectiveness. In all three countries under review the center of executive powers transited from Presidential office to cabinet more or less successfully. In Georgia this transition was especially obvious as the President became a completely nominal figure. In Kyrgyzstan we see distribution of powers between two executives, while the President still dominates daily politics.

In the first chapter I will discuss briefly the basic features of the parliamentary system and compare it to other systems of government. Further I will introduce the concept of parliamentary oversight, its historical development and the underlying rationale behind it. The descriptive text-book features of executive responsibility will give the reader insight about the importance of the proper functioning of Parliamentary oversight in parliamentary systems.

In the second chapter I will offer an oversight of parliamentary control in the case of Georgia, Kyrgyzstan and Moldova before the constitutional transformation took place. This chapter will provide analysis of the pre-reform balance of powers between branches, special emphasize will be made on the place of parliaments in institutional settings.

From the abovementioned examples it appears that transformation to a parliamentary system of government did not deliver the outcomes political elites claimed to achieve. The constitutional reforms became tools for securing the existing political order. On the bright side, the long process of transformation without any plausible outcomes and postponement of establishment of proportional system made civil society more active. This led to the pressure on the government to bring positive changes, breaking the circle of one-party rule which is deeply rooted in Georgian party politics. This suggests that the transformation of the system of government on paper and the reduction of powers of particular constitutional actors cannot bring changes without genuine pluralism and competition between political parties.

The research methodology applied in this study is based on a functionalist approach, which aims at exploring how the same institution with different oversight powers operate in three rather similar jurisdictions.

Chapter 1: The Concept of Parliamentary system

Before I delve into the main issue of my research, I would like to introduce the analytical framework dealing with the issues such as general features of the parliamentary system, its interrelation with other systems of governance, mainly the presidential system.

1.1 Parliamentary system and its interrelation with presidential and semi-presidential systems

According to Bandeira and Norton there are three basic political systems: presidential, parliamentary and mixed systems[2].

Skach in ''Borrowing Constitutional designs'' describes presidentialism and parliamentary government as conceptual opposites[3]. Presidential systems strongly rely on separation of powers between the three branches of government. The President is directly elected without the involvement of legislature, enjoys broad public legitimacy and plays the active role in daily politics[4]. In contrast, in parliamentary systems, the president is mainly, indirectly elected and a nominal figure acting as a neutral arbiter between governmental branches. Executive powers are entrusted in a cabinet and / or prime minister supported by the majority in parliament.

[2] Philip Norton and Cristina Leston-bandeira, "The Impact of Democratic Practice on the Parliaments of Southern Europe," *The Journal of Legislative Studies* 9, no. 2 (June 21, 2003): 177–85, https://doi.org/10.1080/1357233032000250680.
[3] Skach, Cindy. Borrowing constitutional designs: Constitutional law in Weimar Germany and the French fifth republic. Princeton University Press, 2011.
[4] Supra note 2

As it will be discussed below systems with dual executives are considered to be semi-presidential. Besides the allocation of power, the main distinctive feature of the two systems is the level of dependency of the executive over legislature[5]. The executive and legislature are interdependent in parliamentary systems. And the executive may dissolve the parliament and call for new elections[6]. From the abovementioned characteristics we can deduce three features of Parliamentary government, among the governmental branches only legislature is directly elected, executive powers are held by the cabinet/or prime minister(and not by president) and the cabinet is directly elected by and responsible before Parliament[7].

The notion of semi-presidentialism was first introduced by French scholar Maurice Duverger[8]. He recognized three main features of this system: 1.direct public legitimation of the president, 2. The president enjoys quite considerable powers, 3. The prime minister is supported by the parliamentary majority. Shugart and Carrey identified 2 subtypes of semi presidential systems, Premier-Presidential and President-Parliamentary[9]. The crucial difference between two subtypes are in Presidential powers and the responsibility of cabinet. In the Premier-Presidential subtype the president appoints the prime-minister, but he is unable to dismiss the government. As this function is primarily assigned to parliament. In the president-parliamentary subtype the president has the right to dismiss the government. This results in dual responsibility of the cabinet towards both president and parliament.

[5] Gerring, John, Strom C. Thacker, and Carola Moreno. "Centripetal democratic governance: A theory and global inquiry." American Political Science Review 99.4 (2005): 567-581.
[6] Stepan, A., & Skach, C. (1993). Constitutional frameworks and democratic consolidation: Parliamentarianism versus presidentialism. World politics, 46(1), 1-22.
[7] Elgie Robert. Semi-Presidentialism Sub-Types and Democratic Performance, Oxford Comparative Politics, OUP – Oxford University Press 2011; pg. 28.)
[8] Duverger, M., 1980. A new political system model: Semi-presidential government. European journal of political research, 8(2), pp.165-187.
[9] Shugart S. M, Semi-Presidential systems, Dual executive and Mixed Authority Patterns, 2005, pp. 323, 324

On the basis of the characteristics of each of the system of government scholar made assumptions on which system is more efficient for newly emerged democracies. One of the pioneers in this debate was Linz who proposed that Parliamentary systems are less likely to become authoritarian.[10] He argued that it is not an accident that the majority of stable democracies are parliamentary systems, but rather relates to the underlying features of these systems. First he emphasized the perils of large Presidential powers without sufficient constraints. In contrast in the parliamentary systems the Prime-minster is one among equals, he is a member of the ''chamber over which he presides''. In terms of regime stability, although the vote of no confidence and dismissal of government create instability, but a government crisis in parliamentary republic is nothing in comparison to regime failure in presidential republics, e.g. in the case when president is impeached[11].

Georgia, Kyrgyzstan and Moldova opted for the parliamentary systems due to the promise of regime stability and checks on executive power which was arbitrarily applied by governing majorities was one of the main reasons. Like other post-Soviet republics (including Russia) these three countries established strong Presidential systems[12]. The transformation from presidentialism to a system widely applied by Western democracies shows their willingness to detach from Russian influence. Also, on paper the parliamentary regime creates the picture of a balanced government.

[10] Supra note 1
[11] Ibid
[12] Blondel, Jean. "'Presidentialism'in the Ex-Soviet Union." Japanese journal of political science 13, no. 1 (2012): 1 36.

1.2 The notion of Parliamentary Control and its importance in Parliamentary systems

As it was already mentioned, in Parliamentary democracies, the legislature shapes the executive branch meaning that, first of all, the legislature appoints or supports nominees for the cabinet. Beyond that, '' the legislature is instrumental in the cabinet's continued existence''[13], thus, in principle, parliament is holding tools for keeping executive in constant check. These tools are known as parliamentary oversight powers.

Parliamentary control is described as the ability of legislative branch to constrain executive behavior[14]. Parliamentary oversight has its roots in English parliamentarism. The primary function of the English Parliament (established in 1265) besides deciding on taxes was control over the king through his advisors drawn from parliament in order to limit his absolutist rule[15]. Nowadays, parliamentary oversight is one of the main features of parliamentary systems in all the democratic countries.

Parliaments perform a crucial role in any system of representative democracy, especially in emerging democracies, where they influence upon quality of governance, accountability of governments and public attitude towards the democracy in the country.[16] They shed light on acts of executive and guarantee the transparency of the system. In other words, the existence of Parliamentary control has 2-fold importance, on the one hand, it is based upon the recognition of

[13] Sajó, András, and Renáta Uitz. The constitution of freedom: An introduction to legal constitutionalism. Oxford University Press, 2017.p 144

[14] Mény, Yves (1996) France: the Institutionalization of Leadership. In: Josep M. Colomer (Ed) (1996) Political Institutions in Europe. London and New York: Routledge, pp. 99-137

[15] Principles for parliamentary assistance, These principles were prepared by Greg Power, Director of Global Partners & Associates for the OECD/DAC/GOVNET and presented to the Fourth Annual Donor Co-ordination Meeting on Parliamentary Support and the 16th Plenary Meeting of the OECD/DAC Network on Governance on 24-25 April 2012

[16] ibid

supremacy of legislative branch and on the other hand, it is a necessary precondition for effective enforcement of the representative function of Parliament[17].

1.3 Executive oversight mechanisms in parliamentary systems

Parliamentary control is a tool for enforcing government's accountability towards legislative branch. parliamentary systems establish various mechanisms for legislative control over the executive[18]. In his paper ''parliamentary control of executive in 47 Democracies'' Paul Pennings distinguishes three approaches, namely partisan, non-partisan and control with penalty. *Partisan control is driven by the political opposition in cases of governmental vulnerability, non-partisan is reflected in questions, works in committees, hearings etc. while control with penalty, is the most drastic among control measures as it causes the destabilization of the system.* [19]

The harshest among the accountability mechanisms is the dismissal of the cabinet [20] In order to enforce this measure parliaments apply the vote of no-confidence mechanism (also known as motion of censure). The ability of parliament to remove cabinet is a crucial feature of parliamentary systems. Parliamentary systems distinguish 2 types of no-confidence mechanisms: ordinary and constructive[21]. As opposed to ordinary vote of no confidence Constructive vote of no confidence entails that parliament expresses its lack of confidence towards a government while

[17] ibid
[18] Supra note 14
[19] Pennings, P. (2000, April). Parliamentary control of the executive in 47 democracies. In 28th Joint Sessions of Workshop of the ECPR (pp. 14-19).
[20] ibid
[21] Kaare Strøm, Wolfgang C. Müller, and Torbjörn Bergman, *Delegation and Accountability in Parliamentary Democracies* (Oxford University Press, 2003), https://doi.org/10.1093/019829784X.001.0001.

supporting another leader[22]. The advantage of this mechanism is that it avoids creation of the deadlock, as the existing cabinet automatically can be substituted by the new one.

Although the Constitutions of the most of parliamentary systems envision oversight and accountability mechanisms, the real matter of concern is the effectiveness of parliamentary control. Parliamentary systems heavily rely upon the principle of majoritarian decision-making[23], the majority has to support the election of the cabinet, in return the cabinet will exercise its functions to the liking of the majority supporting cabinet[24]. It is easy to see how this ‘’circular arrangement’’ might generate lack of transparency and unchecked executive powers- if the constitutional and legislative framework does not facilitate active participation of opposition in the oversight process[25]. Thus, the mechanisms embodied in national legislation should create favorable conditions for involvement of minority groups in the political process.

It is important to note the effectiveness of Parliamentary control largely depends on parliament’s authority rather than on its actual powers. The scope of control powers assigned to Parliaments varies in different governmental systems, but as Meinel has noted[26], even in Parliamentary systems they are different depending on the role Parliament has, the legitimacy of the legislative body, also its representation. This consideration largely applies to the cases that will be discussed in the upcoming chapters. In the circumstances when certain control powers are assigned to legislative body, the enforcement of these powers does not provide the effective mean of legislative oversight

[22] “Max Planck Encyclopedia of Comparative Constitutional Law, Anna Dziedzic, ‘No Confidence Vote’ (2018, Germany, United Kingdom),” n.d.
[23] Cheibub, J. A., & Limongi, F. (2002). Democratic institutions and regime survival: Parliamentary and presidential democracies reconsidered. Annual Review of Political Science, 5(1), 151-179.
[24] Ibid
[25] ibid
[26] Meinel, Florian. "Confidence and Control in Parliamentary Government: Parliamentary Questioning, Executive Knowledge, and the Transformation of Democratic Accountability." The American Journal of Comparative Law 66.2 (2018): 317-367.

because Parliament is not considered to be an ''influential'' player among the branches and executive easily disregards concerns raised by the parliamentary minorities.

Effectiveness and practical enforcement of oversight mechanisms is a critical point. Such powers technically also exist in countries such as Russia, but do not serve any constrain on president or the executive branch. These tools are merely used for creating appearance of accountability[27]. Effectiveness means that Parliamentary oversight should influence activities of the executive[28]. Parliamentary control entails different types of legislative control over the executive.

[27] Sarah Whitmore, "Parliamentary Oversight in Putin's Neo-Patrimonial State. Watchdogs or Show-Dogs," *Europe-Asia Studies* 62, no. 6 (August 2010): 999–1025, https://doi.org/10.1080/09668136.2010.489266.
[28] ibid

Chapter 2: Separation of powers and role of Parliament in pre-Parliamentary period Constitutions

In order to understand the role that parliaments play under the current constitutional framework and evaluate the effectiveness of parliamentary oversight mechanisms, in this chapter I discuss the role legislative branches played in three post-soviet republics before they adopted parliamentary systems of governance. This analysis will be focused on the pre-existing political power dynamics between executive and legislature, and illustrate how the political transition into parliamentary system affected it.

2.1 Georgia

In Georgia, the initial institutional setting which was stipulated in 1995 Constitution created a strong Presidential institute, like in the majority of the post-soviet republics. Considerable powers of Presidents included control over the cabinet[29]. As to the legislative branch, from the outset of Georgian Constitutionalism parliament was empowered to raise the issue of legal accountability of cabinet but could not make this power enforceable[30]. On the other hand, the executive branch, especially the president was gaining more power. Some scholars label the political system of

[29] "2017 Constitutional Reform in Georgia: Another Misguided Quest or Genuine Opportunity? | ConstitutionNet," accessed June 4, 2020, http://constitutionnet.org/news/2017-constitutional-reform-georgia-another-misguided-quest-or-genuine-opportunity.
[30] ibid

Georgia during the 2000th as a super-presidential one due to the wide influence the president had upon the government.[31]

In order to understand the interrelation of Parliament and the government in the current Georgian politics I will briefly discuss how the issue of executive responsibility has been settled by Georgian Constitutionalism historically. Initially, under the 1995 Constitution, when the prime ministerial office has not yet been established, cabinet was considered as a decision-making body for the head of executive, the president[32]. The 2004 Constitutional reform brought into play the prime minister and thus, a power-sharing process between two executives started. In 2004, a semi-presidential system was established, of a roughly presidential-parliamentary subtype.[33] Under the new arrangement government as a collective organ became responsible not only towards the president, but the prime minister as well. The 2010 Constitutional reform shifted the balance of powers once more: a gradual process of weakening of the presidential institute started, thus, cabinet responsibility became the matter of concern for the prime minister only[34].

Public discontent with the rule of former president Saakashvili became the starting point for a time-consuming transformation process, where the central issue was weakening the figure of the president via empowerment of the prime minister. Alteration of the governmental system was considered as a way for democratization of the political system, denial of totalitarianism and arbitrary application of executive powers[35].

[31] Stephen, Holmes. 'Superpresidentialism and Its Problems.' East European Constitutional Review 2/3 (1994): 4.," n.d.
[32] Bisarya, S., & Hubbard, E. (2017). 5. Constitution-building processes in Armenia and Georgia. Annual Review of Constitution-Building Processes: 2016, 64.
[33] Elgie Robert. Semi-Presidentialism Sub-Types and Democratic Performance, Oxford Comparative Politics, OUP – Oxford University Press 2011; pg. 28.)
[34] Constitution of Georgia, 2010, Art, 79
[35] Tamar Gamkrelidze, "Hegemony of the European Project in Georgia: From Foreign Policy Initiative to the Logic of State Building and Development," 2019, 25.

As the reforms revolved around the executive branch, empowerment of the parliament was never in the center of the majority agenda, Constitutional Commissions constantly disregarded the importance of strong legislative body in the governmental structure [36]. Under the 2010 Constitutional reform which established a semi-presidential arrangement of governmental system of Georgia, parliament was considerably weak in comparison with the other governmental branches. The clear example of the abovementioned was Art. 90 of the Constitution[37] dealing with the vote of no confidence, which is one of the most important tools of parliamentary oversight, but active involvement of president made it mostly symbolic in Georgian political reality. We will further elaborate on this topic in the upcoming chapter.

2.2 Kyrgyzstan

The parliamentary system is a relatively new phenomenon for the Kyrgyz republic. Similarly to Georgia, after the dissolution of Soviet Union Kyrgyzstan adopted a presidential system with a strong executive. Kyrgyzstan, which at the beginning of its independence was considered to be an isle of democracy among central Asian states[38] gradually turned itself into an authoritarian state. The consequences of System transformation from the parliamentary to presidential system and detachment from Soviet legacy was much more complicated process in Kyrgyzstan than in Georgia. This is largely because of monopolization of the economy by the political establishment and clan system, which is still deeply rooted in Kyrgyz politics[39]. Public discontent turned into

[36] "პრემიერის კონსტიტუცია და კონსტიტუციური რეფორმის წინაპირობები," Forbes Georgia, accessed June , 2020, https://forbes.ge/news/215/premieris-konstitucia-da-konstituciuri-reformis-winapirobebi.
[37] Constitution of Georgia, (Previous edition) Art. 90
[38] Dzhuraev, Emilbek, Saniya Toktogazieva, Begaiym Esenkulova, and Ayaz Baetov. "The Law and Politics of Keeping a Constitutional Order: Kyrgyzstan's Cautionary Story." Hague Journal on the Rule of Law 7, no. 2 (2015): 263-282.
[39] International Crisis Group. 'Political Transition in Kyrgyzstan: Problems and Prospects.' (2004).

massive turmoil, which led to complete system transformation, the establishment of temporary government and the adoption of new Constitution. The new Constitution introduced the semi-presidential system[40].

As opposed to Georgia, this amendment in the system of governance was immediately followed by amendments in the electoral system: instead of a mixed system, a completely proportional system was established[41]. As ruling majorities in Georgia are afraid to lose the Constitutional majority they are or have been holding in the past, they constantly postpone abolition of majoritarian system[42].

Unlike Georgian Parliament, which was deliberately wakened by Constitutional designers, legislative body of Kyrgyzstan, Jogorku Kenesh, was an influential governmental branch, at least under the constitution. The constitution put parliament in charge of defining the main directions of internal and external policy[43]. Since 2003 parliamentary oversight function appeared in the constitution, but these provisions did not serve any practical purpose as president has taken over executive as well as legislative branches[44]. Following constitutional amendments further empowered the president. The Undermining of separation of powers was also one of the main concerns of the Venice Commission raised in its opinions[45]. Commission saw the real threat of

[40] Fumagalli, M. (2016). Semi-presidentialism in Kyrgyzstan. In Semi-presidentialism in the Caucasus and Central Asia (pp. 173-205). Palgrave Macmillan, London.
[41] Constitution of Kyrgyzstan, Art. 70
[42] "Georgian Dream MPs Block Switch to Fully Proportional Electoral System," *OC Media* (blog), November 14, 2019, https://oc-media.org/georgian-dream-mps-block-switch-to-fully-proportional-electoral-system/.
[43] Constitution of Kyrgyzstan, Art. 74
[44] Russian State University for the Humanities and Nikolai A. Borisov, "PARLIAMENTARIZATION OF GOVERNMENT MANAGEMENT FORMS IN THE POST-SOVIET STATES. THE CAUSES AND CONSEQUENCES," *RSUH/RGGU Bulletin. Series Political Sciences. History. International Relations*, no. 3 (2018): 93–110, https://doi.org/10.28995/2073-6339-2018-3-93-110.
[45] CDL-AD(2007)045 Opinion on the Constitutional situation in the Kyrgyz Republic adopted by the Commission at its 73rd Plenary Session (Venice, 14–15 December 2007)
http://www.venice.coe.int/site/dynam- ics/ N_Series_ef.asp?Y=2007&S=1&L=E

further destabilization and confrontations as the constitutional powers of the president were in huge dissonance with his actual powers.

The 2010 Constitutional reform which established a semi-presidential system might be considered as a positive step in terms of empowerment of parliament, as it subjected executive branch exclusively to the control of the parliament[46] on the constitutional level.

2.3 Moldova

Transformation of system of governance in Moldova took place in 2000, as a result of the Constitutional reform. Before transition to parliamentary system, Moldova was under the semi-presidential arrangement, which granted president considerable powers. System of governance was based on a power-sharing between executive branch and president[47].

Similarly to Georgia 2000 amendments to the Moldovan Constitution introduced indirect election of president. Parliament was assigned a task of electing the president. Against the expectations of the parliament, which actively opposed to the domination of president over other branches of government, erosion of public legitimacy of the president Luchenko did not facilitate creation of the presidential institute, as a neutral arbiter between governmental branches[48]. On the contrary, president was weaker under semi-presidential arrangement, than it became after establishment of the parliamentary system[49]. Later on in 2016 Constitutional Court found this amendments

[46] Constitution of Kyrgyzstan, Art. 85
[47] William E. Crowther, "Development of the Moldovan Parliament One Decade after Independence: Slow Going," *The Journal of Legislative Studies* 13, no. 1 (March 2007): 99–120, https://doi.org/10.1080/13572330601165378.
[48] Roper, Steven D. "From semi-presidentialism to parliamentarism: Regime change and presidential power in Moldova." Europe-Asia Studies 60, no. 1 (2008): 113-126.
[49] ibid

unconstitutional[50]. In more detail on involvement of Constitutional Court I will discuss in the upcoming chapter.

From the early days of independent Moldovan state parliament was never stable[51]. The huge differences in ethnic composition, also, diverse perceptions of political parties about the future development of the country caused the discontent and disabled the formation of the stable majorities As a result this process weakened the legislative body[52]. Till nowadays Russia largely influences politics in Moldova. Political discourse revolves around the foreign policy preferences between Russia and European integration. Similarly to Kyrgyzstan and Georgia political system in Moldova is affected by informal rulers, Oligarchs. Although he formally not in power any more, influential rich-man, Vladimir Plahotniuc former leader of Democratic party had captured state institutions for more than ten years[53]. These and other factors disable the democratic development of the country.

Before the transformation of system took place the amendments suggested by the former President Luchenko were aimed at empowerment of executive branch and establishment of even stronger presidential system than it was before[54]. In the situation of the political crisis and the fact that President no longer enjoyed support from the Parliament accumulation of substantial powers in hands of the president was justified by an attempt to avoid further unrest and instability in governance.[55] But of course, President was trying to extend his political influence and consolidate

[50] "Erase and Rewind: Moldova's Constitutional Reform | European Council on Foreign Relations," accessed June 10, 2020, https://www.ecfr.eu/article/commentary_erase_and_rewind_moldovas_constitutional_reform_6082?fbclid=IwAR2vQeSYqkLHvY7PibjvZQNx17EGlM7kPVakjcPUR9MJKK5Gz_nohnLRWGk
[51] Supra note 48
[52] Supra note 47
[53] "What Happened in Moldova? And What Should the EU Do about It?," openDemocracy, accessed June 7, 2020, https://www.opendemocracy.net/en/odr/what-happened-moldova-and-what-should-eu-do-about-it/.
[54] Supra note 46
[55] Ibid

more powers in his hands. As far as presidential support in Parliament was very law, President did not manage to gain support for the amendments he proposed and instead of transformation of governmental system from Semi-Presidential to Presidential, Parliamentary system has been established.

In the upcoming chapter I will discuss how was parliament accommodated in order to bring in compliance political system with the features of parliamentarism which are commonly applied in Western democracies.

Conclusion

As we can see from 3 case-studies, Parliaments in respective countries were considerably week before transition in governmental system took place, especially in comparison to strong Presidents in Kyrgyzstan and Georgia. Parliaments were used as tools for executive to guarantee uninterrupted usurpation of power without a resistance. The reason for week legislative branch was not only institutional design, but especially strong ideological clashes related to foreign policy of the country, in case of Moldova, also, ethnic divisions. Conclusion we might draw from the abovementioned case-studies is that parliamentary majorities constantly avoided exercising genuine control over the actions of government. In these circumstances parliamentary system reaches its limits unless parliamentary opposition is given opportunity to actively participate and engage in Parliamentary oversight, in an attempt to bring the voice of people they represent to the daily politics.

Chapter 3: Constitutional reforms and revisited Parliamentary oversight of executive branch

3.1 Georgia

On 23 March 2018 new edition of Constitution entered into force, thus the 3rd wave of Constitutional review came to an end[56]. Constitutional reform was important in many regards. First of all, it finalized the process of weakening of Presidential powers, the new constitution provides the institute of a President who is neutral arbiter between governmental branches, and prime-minister-head of the executive branch[57]. Direct presidential elections has been abolished, taking away the public legitimacy directly elected presidents enjoyed. Secondly, reform redefined parliament's role in the constitutional setting. Crucial adjustments were made to the constitution in order to bring it into compliance with the common understanding of parliamentary system, most importantly the balance of powers shifted in favor of the parliament. Now legislative body became the center of the constitutional structure, as the governmental branch defining the main directions of domestic and international policy.[58]

[56] "New Constitution Enters into Force," Civil.Ge (blog), December 17, 2018, https://civil.ge/archives/271293. https://civil.ge/archives/271293
[57] "2017 Constitutional Reform in Georgia: Another Misguided Quest or Genuine Opportunity? | ConstitutionNet."
[58] See e.g. 2016 Amendments to the Constitution and 2018 Amendments to the RoP

Throughout the years Georgian parliamentarism revealed strong tendency towards one party leadership, holding the absolute majority of sits in the legislative body. Currently chairman of Georgian Dream, ruling political party in the parliament Bidzina Ivanishvili is an informal ruler defining the political agenda of legislative branch[59]. In these circumstances the only plausible way for preservation of checks and balances is the creation of an institutional framework, which will decrease to minimum possibility for formation of strong majorities in the parliament and at the same time create opportunities for opposition to actively engage in the enforcement of mechanisms aimed at check over executive powers.

With regard to parliamentary oversight over the executive branch several mechanisms were rearranged or introduced to the constitution. For instance, the complicated procedure for enforcement of constitutional mechanism for vote of no-confidence was amended, the constitution defined in more clear terms the interpellation mechanism, also, investigative committees became more heavily dependent upon the participation of opposition. In the following chapter I will discuss the role of the parliament in constitutional arrangement after constitutional reform of 2016. I will confine my analysis to several crucial mechanisms of parliamentary control: mechanism of interpellation, vote of no confidence and establishment of investigatory commission. I think that these very mechanisms in the politics of the current day plays the most important role in the balance of powers between two branches. One might find them as most useful tools for constraining the executive power, if it they are applied thoroughly.

Constitution of Georgia does not explicitly mention parliamentary oversight function, but it enumerates some of the mechanisms which serve this purpose. In a greater detail the tools for

[59] Gabriella Gricius, "Georgian Constitutional Reforms Alter Presidency," *Global Security Review* (blog), December 6, 2018, https://globalsecurityreview.com/georgian-constitutional-reforms-alter-presidency/.

parliamentary oversight are discussed in the rules of procedure of parliament.(RoP). One of the below discussed mechanisms, vote of no confidence has been an integral part of the Constitution for years[60], also, mechanisms of interpellation and parliamentary inquiry are relatively new mechanisms, adopted in the process of the last constitutional reform[61].

3.1.1 Investigative Commission

Art. 42 of Georgian Constitution deals with parliamentary committees and other temporary commissions of the parliament. Provision defines the procedure for the establishment of the commission. In the previous years investigatory commissions gained a lot of importance in the political life of Georgia, as they became the forums for discussion and establishment of truth in some of the famous criminal cases, were executive officials were allegedly involved.

Fair and genuine representation of opposition parties in the works of respective commissions is vital for achievement of commission's purpose. One of the essential features of the democratic system is ability of parliamentary minorities to exercise executive oversight when there is a suspicion that unlawful actions conducted by the executive branch[62]. The rationale behind investigative commissions is to enable opposition to actively participate in executive oversight. Disregarding of this paradigm undermines the importance of the oversight mechanism.

Georgian Constitution successfully implemented this aspect of investigative commission in some regards. According to Art. 42 of Constitution it takes 1/3 of deputes votes to establish the commission. Under the current allocation of mandates in the parliament where parliamentary

[60] see Constitution of Georgia, 2010

[61] TWENTY YEARS WITHOUT PARLIAMENTARY OVERSIGHT, Oversight of the Ministry of Internal Affairs, the State Security Service and the Intelligence Service of Georgia by the Supreme Representative Body, 2018, Open Society Foundation

[62] Final opinion CDL-AD(2010)028 on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, Adopted by the Venice Commission at its 84th Plenary Session, Venice, 15-16 October, 2010, 12.

opposition holds 62 out of 150 mandate, it is obvious that investigative commission is a theoretically effective mechanism for executive control [63] in the sense that opposition representatives are able to initiate the process and establish the commission even if they do not enjoy the support of the parliamentary majority. Before the constitutional reform was enacted, considerably high bar was envisioned by constitution for establishment of commission, which constituted a barrier for opposition and made the mechanism considerably inefficient[64]. The Ineffectiveness of the previous arrangement is proved by number of instances when it was actually applied, out of 34 initiatives for establishment of commission only 5 were successful.[65]

As to the compilation of the commission, according to the Art. 42 representatives of the opposition parties should not occupy less than half of the positions in the commission. The head of the commission should be leader of opposition. Obviously, these measures are aimed at facilitation of active participation of opposition members in the work of the commission. With regard to the time-constraints of the commission, it commission exists for a three-month period which might be extended only once for an additional three months. Representatives of non-governmental organization find the limitation upon time-period as a risky venture, because in some occasions this time-period might not be enough for the commission to fulfill its functions[66]. Legislation should provide guarantees for complete and comprehensive investigatory process. If we impose time-limits this might undermine the quality of the investigatory process and question the credibility of the mechanism as a whole.

[63] "To Understand Constitutional Reform in Georgia, Look beyond the President," *GIP* (blog), May 4, 2017, http://gip.ge/understand-constitutional-reform-georgia-look-beyond-president/.
[64] Constitution of Georgia, 2010 (previous edition) Art. 54
[65] ''Strengthening parliamentary control in Georgia'', report by Transparency International Georgia, Tbilisi, 2020 Available https://transparency.ge/en/post/parliamentary-control-georgia
[66] ibid

As we can see from the analysis, legislative framework provides the guarantees for the effectiveness of the process and facilitates opposition involvement, although, the practice shows that in practice mechanism has certain shortcomings.

One of the investigatory commissions was established in 2018 after the famous tragedy which took place on Khorava Street. Two youngsters were killed by their peers[67]. Court proceedings did not shed light on majority of the issues vital for the enforcement of the justice in particular case. It was still yet to be known who among the suspects was responsible for inflicting wounds that caused the death. Due to the distrust towards Court ruling among public as well as the parents of the victim, MPs from the opposition party initiated establishment of the inquiry commission. Out of 17 members of the commission 8 were representatives of the parliamentary majority. Among the rest were two MPs holding an independent mandate[68].

The issue I would like to raise is relationship of small political groups represented in parliament with the parliamentary majority. Abovementioned two MPs in the past were members of bigger coalition with Georgian Dream, currently majority party in the parliament[69]. This deputies on many instances have taken the stance of the ruling party and supported its politics. Thus, half of the votes assigned to the opposition leaders in fact might turn into the majority support for the ruling party

[67] "The Khorava Street Murders: Justice Delayed, Justice Denied," *Civil.Ge* (blog), June 1, 2018, https://civil.ge/archives/243423.

[68] "The Interim Fact Finding Commission on Murder of Two Young Men at Khorava Street to Be Set Up," Parliament of Georgia, accessed June 10, 2020, http://www.parliament.ge/en/saparlamento-saqmianoba/plenaruli-sxdomebi/plenaruli-sxdomebi_news/parlamentshi-xoravas-quchaze-momxdari-danashaulis-shedegad-ori-axalgazrdis-mkvlelobis-faqtis-shemswavleli-droebiti-sagamodziebo-komisia-sheiqmneba.page.

[69] "The Interim Fact Finding Commission on Murder of Two Young Men at Khorava Street to Be Set Up," Parliament of Georgia, accessed June 10, 2020, http://www.parliament.ge/en/saparlamento-saqmianoba/plenaruli-sxdomebi/plenaruli-sxdomebi_news/parlamentshi-xoravas-quchaze-momxdari-danashaulis-shedegad-ori-axalgazrdis-mkvlelobis-faqtis-shemswavleli-droebiti-sagamodziebo-komisia-sheiqmneba.page.

and thus, compromise the independent functioning of the commission. It is important to address this issue in the process of further modification of RoP in order to avoid this problem.

3.1.2 Constructive vote of no confidence

As it was already mentioned, one of the crucial reforms aimed at empowerment of the parliament is amended mechanism for the no-confidence vote. Historically the archetype for vote of no confidence is Weimar Republic, which was a parliamentary republic undergoing the chaotic rule, during the period of 1919-1932 12 people occupied the position of chancellor[70]. In the aftermath of the WWII when Germany started rationalization of the parliamentary system, vote of no confidence mechanism was established[71]. In Georgian political reality vote of no confidence was introduced as a result of 2013 Constitutional reform. The underlying idea of no confidence vote is that it enables parliament to dismiss the government but as opposed to destructive vote of no confidence is creates no vacuum in the executive branch, so that it does not pose a risk of political destabilization and deadlock[72]. Although opposition might successfully trigger the process of government dismissal, in case they are unable to negotiate on the compilation of the new government, they process still fails, thus it creates additional safeguard from the abovementioned deadlock[73].

The legal framework regulating vote of no confidence procedure was positively affected by the reform. Procedure established as a result of 2012 constitutional amendments was completely inadequate towards the aim this mechanism serves in general[74]. Constitutionally envisioned

[70] ლ.ცანავა, მთავრობის პასუხისმგებლობის პრინციპები: კონსტიტუციონალიზმის პრაქტიკა და საქართველოს კანონმდებლობა. თბილისი 2015 წ
[71] ibid
[72] Gegenava D., Constructive Vote of No-Confidence: Gordian Knot in the Constitution of Georgia, Journal of Law, #1, 2013
[73] Ibid
[74] Ibid

Georgian model of no confidence vote was without analogue. Several features of the mechanism is worth emphasizing in this regard. First of all, president was granted a veto power over the decision of parliament to dismiss the government[75]. The mechanism which is aimed at control of executive branch became dysfunctional because Constitution permitted another representative of executive branch to get involved in the process. Obviously, this did not make a lot of sense. According to Art. 81 of Constitution it took 3/5 of deputies to overrule the presidential veto, which made the process very complicated. The purpose of the vote of no confidence mechanism in this particular setting is to enable parliament to dismiss the government. It was impossible for the opposition to gain 3/5 of majority without the support of ruling party, which made the mechanism unenforceable. Venice Commission criticized the provision on several counts[76]. Especially with regard to the consequences of failure on the side of Parliament to overrule the veto. In this case president was empowered to dismiss the parliament. According to the Venice Commission vote of no confidence mechanism should not be too easy for the parliament to apply, because it will cause the destabilization of political system, on the other hand it should not be too complicated, so that it makes the important control mechanism impossible to enforce[77]. According to the current regulation stipulated in Art. 57 of the Constitution it take at least 1/3 of MPs to initiate the process, President is no longer involved, thus the procedure corresponds to the standards of Venice Commission. No confidence mechanism has ever been applied by the Parliament.

3.1.3 Interpellation

As it was already mentioned, interpellation mechanism in a novelty in Georgian political and legal reality. It was established as a result of 2016 Constitutional reform. According to the relevant

[75] Constitution of Georgia, Art. 89 (no longer in force)
[76] Supra note 47
[77] Ibid

provision of the Constitution[78] at least 7 MPs or a parliamentary fraction is empowered to ask a question to the organ responsible towards parliament and might take place twice during the session period. The addressee might be the government or particular cabinet members[79]. The issue at question should be clear and related to the functions the addressee carries out. The questions should be followed by a debate.

Interpellation mechanism is especially effective and fruitful mechanism for government accountability, as it enables MPs to discuss governmental policies with cabinet members in face to face discussion. Discussion makes political process more lively and challenging for the executive branch.

According to the data collected by Transparency International Georgia, amendments to the Constitution entered into force, the procedure has been applied 20 times, and mostly by opposition representatives[80]. This mechanism might be considered as a positive addition to governmental accountability mechanisms, although the practice of its application could have been more rigid[81]. One of the shortcomings of the legal framework might be limitation of interpellation procedure to two per session period. This restriction substantially limits opportunities provided by the mechanism. Elimination of this time-limit will be a positive step forward in terms of empowerment of legislative branch.

[78] Constitution of Georgia, Art 43
[79] Apostolahe M., Questions and interpellations-concrete and direct means of exercising parliamentary control, Petroleum – Gas University of Ploiesti Bulletin, Law & Social Sciences Series. 2013, Vol. 64 Issue 1,
[80] Supra note 61
[81] ibid

3.2. Kyrgyzstan

According to Art. 70 of Kyrgyz Constitution Jokorgu Kenesh- Parliament of the republic is the main representative body exercising legislative powers and control functions in the scope of its competences. Thus, Constitution of Kyrgyzstan explicitly mentions control function as one of its essential functions. Georgian Constitution does not share this feature.

Throughout the years Kyrgyzstan demonstrated the clear tendency towards presidential domination over the other branches of government. Similarly to Georgia the most recent Constitutional reforms (starting from 2010 were concentrated on gradual weakening of presidential branch and reorganization of separation of powers between the branches). Unlike Georgia, president of Kyrgyzstan is directly elected[82]. This is one of the crucial factors determining active participation of the President in daily politics, as he enjoys a public legitimacy.

According to the constitutional amendments of 2010 parliament of Kyrgyzstan was granted a power to confirm the cabinet's program, define its structure and compilation, also, parliament is empowered to apply a motion of no confidence leading to cabinet's dismissal[83].

Establishment of the parliamentary system was followed by constitutional amendments aimed at creation of strong and stable majorities in parliament. Venice Commission estimated very positively the way constitution decreased presidential powers in the country, as the emergency powers declined, although president still has enough powers to guarantee stability of the system[84]. Measures were taken in order to avoid one party dominance, mainly article 70 was introduced,

[82] Constitution of Kyrgyzstan, Art. 4
[83] Constitution of Kyrgyzstan, Art. 85
[84] ЕВРОПЕЙСКАЯ КОМИССИЯ ЗА ДЕМОКРАТИЮ ЧЕРЕЗ ПРАВО (ВЕНЕЦИАНСКАЯ КОМИССИЯ) ЗАКЛЮЧЕНИЕ ПО ПРОЕКТУ КОНСТИТУЦИИ КЫРГЫЗСКОЙ РЕСПУБЛИКИ1 Принято Венецианской Комиссией на ее 83 пленарном заседании (Венеция, 4 июня 2010 года) Заключение № 582 / 2010

which precludes one political party from having more than 65 deputies out of 120 total amount. This is an innovative provision and facilitates opposition parties to enter the representative body and don't be subjected to domination from ruling majority. Reform introduced concepts such as parliamentary faction and parliamentary majority[85]. Also, RoL prohibited withdrawal from political factions, in order to guarantee the stability in the representative body.

3.2.1 Investigative Commission

Executive control mechanisms has been established in the Kyrgyz Constitution since 2003. Inquiry Commissions is one of the widely applied mechanisms of Constitutional control in Kyrgyzstan[86]. The legal basis for establishment of investigatory commissions is Art. 76 of the Constitution. According to this provision Parliament facilitates creation of temporary commissions among the MPs. RoP define the scope of investigatory commission. Kyrgyz Constitution unlike Georgian Constitution does not enumerate particular forms of parliamentary control. This might be one of the reasons why the mechanisms of control are less effective in Kyrgyzstan than in Georgia, as they do not enjoy constitutional legitimation.

Under the RoP[87] of parliament scope of subjects legally empowered to initiate the establishment of commission is broader than in Georgia, among others it includes ombudsperson and speaker of the parliament[88]. Unlike Constitution of Georgia Kyrgyzstan does not .Kyrgyzstan does limit time period of investigation, it is defined in each case individually.

[85] Constitution of Kyrgyzstan, Art. 70
[86] Анализ международных стандартов, национального законодательства, а также правоприменительной практики в сфере парламентского и общественного контроля за сектором безопасности. – Б.: 2019. – 95 с. ОФ «Правовая Клиника «Адилет», 2019 г
[87] RoP of Kyrgyz Parliament, Art. 33
[88] RoP of Jogorky Kenesh, Art. 106, part 4.

If in case of Georgia the main problem with regard to investigatory commissions is rare application of the mechanism, especially by the parliamentary majority, in Kyrgyzstan matter of a serious concern is unclearness in procedures of establishment of the commission and inability on the side of MPs to interpret them correctly[89]. Clear example of abovementioned are court proceedings started by claims over alleged misuse of oversight powers, prosecutor general failed a complaint claiming that parliamentary committee established a commission without a legal basis[90]. This was not the only instance when the decision on the establishment of the commission raised questions.

3.2.2 Vote of no Confidence

Procedure for the Vote of no confidence is stipulated in Art. 85. It needs no less than 1/3 of deputies to start the process. To adopt the resolution of no-confidence it takes majority of total number of deputies. The next step is decision of the president on the resolution. He/she either approves it and dismisses the government or declines parliament' request. In case the decision on expression of no confidence against the cabinet is adopted repeatedly in 3-month period, it leads to the dismissal of the cabinet[91]. Unlike Georgia in Kyrgyzstan confidence mechanism was applied practice in 2018. Procedure was initiated by opposition MPs in response to cabinet's 2007 annual report[92]. Out of 120 deputies 102 voted in favor of dismissal. Apparently minority and majority were acting in coordination with each other in order to get rid of the prime-minister who was affiliated with the former president Atambayev. Prime Minister was sentenced to 15 years of imprisonment on counts of bribery[93]. As to the concerns raised about the political grounds for the dismissal of government,

[89] Supra note 77
[90] Ibid
[91] Constitution of Kyrgyzstan, Art. 85
[92] "Kyrgyz President Fires Government Following No-Confidence Vote," RadioFreeEurope/RadioLiberty, accessed June 7, 2020, https://www.rferl.org/a/kyrgyzstan-parliament-passes-no-confidence-vote-against-government/29176465.html.
[93] "Kyrgyzstan: Former PM Sentenced to 15 Years in Chinese Bribery Case | Eurasianet," accessed June 7, 2020, https://eurasianet.org/kyrgyzstan-former-pm-sentenced-to-15-years-in-chinese-bribery-case.

unfortunately if this is in fact the case mechanism for parliamentary oversight is used as tool for silencing the dissent, which completely undermines the purpose parliamentary control serves and goes against the fundamental values of rule of law.

As it was applied so far, ruling elite does not accept and implement the changes shift to parliamentary system brought to balance of powers among the governmental branches. Relations inside the factions and among political parties are based upon traditional ties rather than ideology and political belongings[94].

3.2.3 Interpellation

Kyrgyz Constitution distinguishes between parliamentary inquiry and inquiry of a deputies[95]. Parliamentary inquiry is analogous to the interpellation mechanism, as it entails a written request for information about issues of general interest. It is stipulated in Art. 110 of RoP. According to the provision scope of subjects able to request information is broader than in case of Georgia. It can be speaker of the parliament, committee, faction or group of deputies. The shortcoming of the procedure is that unlike Georgian regulation Kyrgyz Parliament does not request the relevant responsible cabinet member to appear in parliament and in person provide the answer to the question. Without follow-up debates effectiveness of the interpellation procedure substantially decreases. I doubt that cabinet members will perceive this kind of procedure as any meaningful inquiry over their activities.

[94] "Чотаев, З. (2013). Политическое Развитие Кыргызстана После Событий 2010 Года: Перспективы Парламентской Формы Правления. Центральная Азия и Кавказ, 16(2).," n.d.
[95] Constitution of Kyrgyzstan, Art. 110

3.3 Moldova

Similarly to Kyrgyzstan parliamentary oversight is a function of the Moldovan Parliament which is constitutionally explicitly assigned to it. According to Art. 66 of the constitution alongside with main legislative function parliament exercises control over the governmental actions in the scope which is defined under the Constitution. In a more detailed manner the relevant procedures of Parliamentary oversight are presented in the RoP.

Before discussing particular mechanisms of Parliamentary Control, in order to clarify the current position of the parliament among the branches of government I would like to briefly discuss the latest developments which took place in Moldova. 2019 was a year of a political crisis for the country, when firstly, parliament was dissolved as a result of the Constitutional Court judgment, and later on in November cabinet was dismissed by the executive through the vote of no confidence [96]. As it was mentioned in the previous chapter, Constitutional Court found unconstitutional the amendments of 2000, among them indirect elections of president. According to the Court, parliament did not have authority to adopt this amendments. In 2019 Constitutional Court rendered a judgment leading to dismissal of executive body and temporary suspension of the president[97]. This led to a huge political crisis. Interim and dismissed cabinet coexisted for a certain period of time. Venice Commission has mentioned in its findings that the circumstances in

[96] "Moldova: Dissolution of Parliament Did Not Meet Required Conditions," accessed June 10, 2020, https://www.coe.int/en/web/portal/full-news/-/asset_publisher/5X8kX9ePN6CH/content/venice-commission-the-dissolution-of-parliament-in-the-republic-of-moldova-did-not-meet-the-required-conditions.
[97] Ibid

which the Court rendered is judgment were rather suspicious[98] , firstly due to the fact that Court rendered three judgments on the very day when complaints were submitted, secondly, neither parliament's nor president's representatives were able to attend the hearing. These facts lead to a conclusion that the decision of the Court was politically driven, in an attempt to dismiss the legislative branch. Court interpreted constitutional provisions in a rather controversial manner, the power of president to dissolve a parliament, which Venice Commission understood as a discretionary, court interpreted as a duty. The three month time-limit was also calculated in a way that ultimately lead to dissolution of legislative branch.

3.3.1 Investigative Commission

Investigatory commission is not defined under the Moldovan Constitution as one of the mechanisms for executive oversight, but it is present in the RoP of Moldovan Parliament. As the practice of application of this mechanism shows, Moldovan parliamentary committees started using investigatory committees as means of parliamentary oversight rather late, since 2015. In comparison to Georgia and Kyrgyzstan, the procedure for establishment of investigatory commission is quite complicated in Moldova, as the decision of the parliamentary committee about the establishment of the commission needs an approved by the parliamentary bureau. Insertion of additional decision-maker in the process decreases the number of instances when mechanism is actually applied. Another problematic issue is that most of the times there are no consequences to the reports established by the committees. It means that work of MPs in the format of investigatory commissions is mostly futile and is completely disregarded, which of course, seriously questions the effectiveness of legislative oversight.

[98] EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) Mr Philip Dimitrov et al., "ON THE CONSTITUTIONAL SITUATION WITH PARTICULAR REFERENCE TO THe POSSIBILITY OF DISSOLVING PARLIAMENT," 2019, 18.

According to the report most commonly exercised tools for executive oversight in Moldova are parliamentary questions and interpellation procedure

3.3.2 Vote of no confidence

Art. 106 defines the procedure for vote of no confidence in Moldova. The parliament, upon proposal of at least a quarter of its members, may carry on a motion of no confidence to the cabinet, based on the majority vote of the MPs. The initiative to express a vote of no confidence shall be examined within three days from the date of its submission to parliament.

Similarly to Georgia this procedure is in majority of times applied by representatives of opposition parties in order to exercise political check on governmental activities[99].

Unlike Georgia Vote of no confidence was applied twice in history of Moldova[100].

In 2019 vote of no confidence caused dismissal of the cabinet. Venice Commission recommends that opposition parties should be able to file a motion of no confidence on their own. But it also entails risks that the procedure might be abused. The system established by Moldovan Constitution is rather compatible with standards of Venice Commission.

3.3.3 Interpellation

Article 105 deals with Questions and interpellations. Answer an interpellation is constructed as a duty of the government as a whole. Art. 105 of Moldovan Constitution deals with the issue of interpellation[101]. Similarly to Georgia government members have an obligation to present their answers on questions raised through interpellation procedure on parliamentary hearing. Provision

[99] Report MONITORING OF PARLIAMENTARY CONTROL IN THE REPUBLIC OF MOLDOVA, developed for Promo-LEX Association, prepared by Adrian Fetescu, independent expert, 2018
[100] Ibid
[101] PARLIAMENTARY OVERSIGHT IN MOLDOVA, Assessment report, prepared within the framework of the "Strengthening Parliamentary Governance in Moldova" February 2018

states that government is obliged to respond to all the questions and interpellations raised by the MPs. According to the data provided by the report[102] , in 2018 interpellation was used by MPs only 28 times in order to exercise the parliamentary oversight function. This number is rather small number, but if we look at statistics throughout years interpellation is used more frequently by MPs. The specificity of Moldovan interpellation mechanism in comparison to Georgia and Kyrgyztan is ability of MPs to trigger confidence mechanism in case of an unsuccessful interpellation procedure. Interconnection of the two mechanisms I think is an effective way to raise the responsibility of individual cabinet members, so that they take interpellation process more seriously.

Conclusion

As we can see from the above-discussed comparative study, in all three jurisdictions establishment of parliamentary system was followed by constitutional amendments, which facilitated increasing of the parliament's role and diversifying and modifying its oversight powers over executive branch. Besides this positive shift, practical application of these mechanisms is rather troublesome, because constitutional frame does not correspond to the real power-balance between branches. In Georgia, Kyrgyzstan and Moldova we can clearly see domination of executive branch and its strong influence over legislative branch. Practical realization of control mechanisms is rather rare, or when it takes place it is completely misused and aimed against political dissent.

[102] Ibid

Conclusion

The comparative study presented here suggests that the adoption of parliamentary systems of government in Georgia, Kyrgyzstan and Moldova did not deliver the outcomes political elites claimed to achieve. Rather, in these post-soviet states, constitutional reforms merely secured the existing political order. Given important similarities between the states under study, joint reflection is illustrative, and gives us insight into how the features of each system worked out, and what could be done to promote that these recently adopted parliamentary systems bring about the democratization.

As Elkins and Ginsburg noted[103], the all-encompassing generic descriptions of political systems have been developed from prototypes, such as the UK and the US. In states such as those I studied in this work, the operation of systems of government is far removed from whatever features of design have been drafted into their constitutions. Even if such designs largely copy those from the prototype states.

Even when considering the prototypes, the creation of the paradigmatic parliamentary states involved a long process of gradual evolution and transformation. In contrast with, e.g. the US presidential system, the features of parliamentary systems as we know them today did not emerge at once, but are products of an organic process of political change and societal transformation[104].

[103] Elkins, Z., & Ginsburg, T. (2014). Beyond presidentialism and parliamentarism. British Journal of Political Science, 44(3), 515-544.
[104] Supra note 13

In different states, with distinct societies and political situations, we cannot expect the mere incorporation of parliamentary features into constitutional frameworks to support a functional system. Less can we expect such incorporation to bring about the most important desiderata placed on it, regarding democratization of political power.

Although mechanisms of parliamentary control over the executive are present in all of these three systems, they are mostly ineffective. The fundamental reasons for this are party politics and the general unwillingness of parliaments to exercise their constitutionally assigned functions. Also, political opposition is suppressed in different ways and cabinet members do not take their responsibilities seriously enough, When tools of parliamentary control are actually put to work, they are mostly used by powerful majorities as state-backed attacks against political rivals.

All of these reasons clearly reflect the actual balance of political power and democratic culture present in these countries. We cannot expect those factors to change only because of alterations in constitutional framework. That such frameworks allow for healthier democracies in other places does not mainly depend on the frameworks themselves. Constitutional reform, then, cannot secure the concentration or misuse of political power by the executive branch, no matter how many features are imported from paradigmatic parliamentary systems.

I would like to conclude the positive aspect of things. Civil society is raising in awareness and opposition to these long, ineffective transformation processes, and the constant postponement of proportional systems of representation. In the case of Georgia, for example, societal pressure begins to force the government to enact real change and transform political system to break the circle of one-party, still deeply rooted in Georgian party politics. Although “paper-only” changes in distribution of power are obviously ineffective, the increased activity and participation of civil

society shows that power balances can be changed. They require genuine political pluralism, active participation, and real competition between political parties and powers.

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ЕВРОПЕЙСКАЯ КОМИССИЯ ЗА ДЕМОКРАТИЮ ЧЕРЕЗ ПРАВО (ВЕНЕЦИАНСКАЯ КОМИССИЯ)

ЗАКЛЮЧЕНИЕ ПО ПРОЕКТУ КОНСТИТУЦИИ КЫРГЫЗСКОЙ РЕСПУБЛИКИ1 Принято Венецианской Комиссией на ее 83 пленарном заседании (Венеция, 4 июня 2010 года) Заключение № 582 / 2010

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