

Politics and Law: Modern Challenges and Problems

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“The prince should make everything what is necessary in order to preserve the state, while all adopted means will be justified and then everyone will like it.”

Niccolo Machiavelli

Abstract: The article discusses and analyzes the essence of law and policy of the Georgian government on the modern stage, with the background of the problems and challenges that exist due to subjective or objective factual circumstances. Based on a general analysis of the state, government, law and policy [1; 2; 4], the author has made relevant recommendations for appropriate changes to the Constitution, which should first and foremost bring legal norms to the forefront of politics, and at the same time, we hope, they will contribute to a healthier implementation of appropriate policies by the government.

Keywords: Law, justice, politics, state, democracy.

Main text: The genius saying of the great Italian scientist and statesman has not lost its relevance even today (and will not lose it in the future) in the case of any state management. This is confirmed by the historical experience of mankind development under some conditions of socio-economic formation, which clearly shows the priority of legal norms, only in the democratic regime conditions, while law is based on the principle of universality of formal equality, and at the same time, there is a place for the construction of the legal state and the development perspective. At the same time, the dominance of political norms over legal norms creates violence and the basis of totalitarian regimes. Totalitarianism arises where politics and political norms have no legal basis in which human rights are not a means of controlling its existence. Therefore, in any society, the issue is whether it is first-rate law or politics. On the one hand, law is an important component of state policy, and on the other hand, politics must be based on law. Therefore, should the state pursue a fair policy based on the principles of their law? To answer this question is very difficult and at the same time varied, especially in the context of a state with a political or economic status, such as Georgia and other similar states. According to the Russian scientist Bronsky: “The point is that law is closely related to the state, and the majority of lawyers believe that these circumstances cannot exist without each other, because one comes from another. The state is a political

phenomenon, rather than law, and the party that comes to power becomes the ruler. It creates and establishes the state structure and, from its own point of view, begins to implement own presented program for the development of society” [3].

Following the example of the Georgian state, the ruling party, which came to power because of its political goals or ambitions (in some cases due to attitudes towards the former ruling parties), already unjustly and ruthlessly destroys the law and more or less destroys the achieved economic and political grounds. This shows the superiority of politics over law, and it will most likely try to keep the reins of governance at the expense of manipulating the norms of law. On the whole, if we take the law, the principles of its existence and action-dissemination disappear, when politics, or political processes need it, in order to maintain self-sufficient of ruling party, etc. Thus, from the very beginning, the law becomes politicized by the newly arrived ruling power, which instantly becomes a tool or means of implementing its own political vision. In our opinion, such politicization of the law should be of a "temporary", and with its help the government should consider the possible expected results, both positive and negative, in the near or distant future, and return the country in a normal legal relation, as soon as possible. Therefore, from a political point of view, it is possible that the law (or a certain norm of it) is deliberately ignored and replaced by a special norm (norms), by which there will be a "substitution" or "reversal" of the elimination of the existing situation and, as mentioned above, its purpose in the shortest possible time, the society will return to normal relations. There are many examples of (unjustly) applying and using such legal norms as a political suit by the Georgian authorities, which has caused the constitutional rights violation of many innocent persons or groups. For example, anti-corruption and "thief world" policies; "zero tolerance" and even if the socially wrong or legally unbalanced privatization policy; wrong personnel policy; The reform of labor legislation (reorganization of workplaces, which left many people unemployed), ignoring the deposit issues to the population, or postponing them indefinitely; Manipulation of the dollar exchange rate, which will sometimes be a heavy burden for a large part of the society, and after its stabilization, the society (in many cases) is not actually brought out of such distress; Recently, the head of the Georgian government paid special attention to socially vulnerable population regarding the doubling of the social allowance, at the expense of ignoring the interests of a large part of society (which is actually in the same situation); Adoption of the broad amnesty law and often its use by the Supreme Court in the consideration of cassation appeals due to statute of limitations and so on. The property rights and the rights in general have been violated. Based on the analysis of such results, the nature of the political regime, that does not recognize (or due to its political ambitions and other motivations) and does not want to put the principles of legal norms above politics in order to protect the

fundamentals of society interests, is clear. On the contrary, it is a paradox that the state interests are protected at the expense of ignoring the society interests. Therefore, when we say the state and we mean the society, and vice versa, when we say the society and we mean the state. The political governing power that will put law at least on the same level as politics, and as much as law above politics, its "viability of government" with respect of time and scope, will be long-lasting and will always win the trust and sympathy of the public. Therefore, in other words, law is an institution that can "force" the government not to rule the state by ignoring or abusing legal norms. In the end, the government willingly or unwillingly returns to the legal regime, but in many cases, it is already too late. But the word politics (Greek) means state or public affairs. The content of the mentioned term indicates that the government should take care of the existence of the state and its development, but of the society, as well. It is obvious that taking care of the first is a priority for them, they manage primarily by politics, and the second (should be managed) by law. But they govern not with fair politics, but with "politicized" law, which already excludes the civilized relationship, interdependence and mutual conditioning of politics and law.

In connection with the abovementioned, it is worthy to note the saying: "Politics is a dirty business" by Niccolò Machiavelli. In our opinion, politics is not a dirty business. It can be "clear" if the government shows a reasonable will and human rights will be protected as much as possible in terms of the rule of law. In fact, politics is polluted by gross violations of legal norms by inhumane, non-state and greedy authorities (some officials, etc.) or by ignoring the state management (if it is called management). Law is and should be the "filter" of dirty politics. And the more law will be used as a filter of politics, the more will be the hegemony of law over the politics. Therefore, in any state, including Georgia, democracy will be formed and developed earlier than with the "tandem" of modern political and legal norms. If we take a look at the two-decade practice of the Georgian state government in the dynamics of the relationship between politics and law, we will definitely see many legal "violations" to achieve a political goal:

1. First of all, according Article 8 of the Constitution of Georgia (Relationship between the State and the Apostolic Autocephalous *Orthodox Church* of Georgia): „long with freedom of belief and religion, the State shall recognize the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia, and its independence from the State.“ This article was violated in 2004. The intervention of the His Holiness and Beatitude Catholicos-Patriarch of Georgia, Ilia II, in a well-known incident between state officials (which included signs of crime), which "reconciled" the guilty party and the injured party, thereby excluding criminal liability. It should be noted that the intervention of patriarch did not cause negative complaints from the society. It is natural that such intervention is a noble thing, but

the Criminal Code did not recognize (and does not recognize at this stage) such ground of excluding responsibility. Therefore, such a noble gesture should either be extended to other subjects of criminal liability or it should be considered by the legislator (if it is acceptable to the society) and, if approved, it should be placed in the Section 4 of the Criminal Code - "Releasing from Criminal Liability and Punishment." Therefore, the mentioned fact and the discussion about it contradict the principles of legal norms, but from a political point of view, it has become "acceptable" for government policy and law enforcement agencies, because the latter (as a force institution) is the implementer of state policy in the prevention of crime and the protection and enforcement of law and order.

2. What we will talk about in this section fully indicates the legal norms of politics, which in our opinion are more unethical and disrespectful to society, while it should serve the fundamental interests of the state. The results of the 2020 parliamentary elections are still unacceptable for the leaders of the opposition or some other parties. In the reality of Georgia, it has already become a habit, if not a tradition, not to admit defeat in the elections, and the opposition spectrum "deal" and confronted the ruling party with various constitutional and unconstitutional methods: street demonstrations, not entering the parliament, scheduling new parliamentary elections and the so-called with the ultimatum of releasing political prisoners from criminal liability and others. We believe that the resolution of the current (and in the future) political crisis is depended on the law. In our opinion, the solution is an appropriate change to the Constitution of Georgia. for example:

a) In paragraph 1 of Article 24 "Right to vote" of the Constitution, we consider the following wording to be added at the end of paragraph 1to guarantee will of the voters: **"A candidate selected by a voter in any election has no right to refuse to exercise the will of voters."**

b) The following shall be added to the first part of Article 39 of the Constitution: **"Due to non-fulfilment of election promises by a member of the parliament towards the voters or any unworthy attitude towards them, with verified signatures of more than two-thirds of the voters have the right to recall him from the parliament."**

c) To Article 39 of the Constitution, "Member of the Parliament of Georgia", part 6, shall also add the following: **"A political subject participating in any type of election, upon placing its candidacy in the election, automatically and immediately confirms by signing that in case of victory, it has no right to refuse the mandate and to enter the parliament, except for circumstances related to health or criminal responsibility."**

In addition to the above, we do not aim to criticize the behavior of some politicians, but it can be said that, the political decision, made against them "overweighed" the law and an unfair political

verdict was made, which, on the one hand, is not (and will not be) beneficial, and, on the other hand, in the sight of the society, an obvious discriminatory approach by the state between a specific political subject and an ordinary citizen (even a criminal) was clearly seen. Here, once again, violation of the principle of the rule of law was shown, which is completely unacceptable for any democratic society, especially when, according to the constitution, Georgia is a legal, democratic and social state that seek for the democratic reconstruction. As a matter of fact, the political norm "endures" cynicism, disappointment of voters, etc. also, the political motivation or interests, the authority and dignity of the law have been violated many times, which backfires like a boomerang, but everything (as we mentioned above) is aimed for maintaining the self-sufficiency of the ruling party.

Thus, the article discusses and analyzes the essence of law and policy of the Georgian government on the modern stage, with the background of the problems and challenges that exist due to subjective or objective factual circumstances. State, society, law and politics are one organism and they cannot exist without each other. Which component is more useful, acceptable and profitable for the state? – It is significant question. The answer to the rest of the results depends on the time and scope of a certain time, but the issue of responsibilities of the former ruling party on the agenda does not actually exist (Georgian sample), or if there are legal regulations, again, according to the principles of political norms, they are transformed into a second quality and the issue of their implementation will be given to "forgetfulness", which is often accompanied by lack of political willingness or cohabitation or other domestic or foreign factors. Such approach blocks the progress and development of the state. Therefore, let us emphasize once again, that justice must stand above politics, for the country and society to be governed by fair politics at least.

Resume: The article discusses and analyzes the essence of law and policy of the Georgian government on the modern stage, with the background of the problems and challenges that exist due to subjective or objective factual circumstances. Based on a general analysis of the state, government, law and policy, the author has made relevant recommendations for appropriate changes to the Constitution, which should first and foremost bring legal norms to the forefront of politics, and at the same time, we hope, they will contribute to a healthier implementation of appropriate policies by the government.

References

1. Constitution of Georgia. Tbilisi. 1995 (latest edition 2021)
2. Petre Dautashvili - Criminal Law of Georgia, Special Part. Tbilisi. 2008

3. Бронский М. В. - Взаимодействие политического и морального сознания. - М.: Знание, 1985.
4. Vazha Gurgenidze, Theory and Practice of public-political administration (political-legal paradigms). Kalmosani Publishing House, 2014.

პოლიტიკა და სამართალი: თანამედროვე გამოწვევები და პრობლემები

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აბსტრაქტი: წინამდებარე სტატიაში განხილული და გაანალიზებული იქნა საქართველოს ხელისუფლების სამართლისა და პოლიტიკის არსი თანამედროვე ეტაპზე იმ პრობლემებისა და გამოწვევების ფონზე, რომლებიც არსებობენ სუბიექტური, თუ ობიექტური ფაქტობრივი გარემოებების გამო. სახელმწიფოს, ხელისუფლების, სამართლისა და პოლიტიკის ზოგადი ანალიზის საფუძველზე, ავტორის მიერ ჩამოყალიბებულია შესაბამისი რეკომენდაციები, რომლებიც მიმართულნი არიან კონსტიტუციაში სათანადო ცვლილებების შეტანის სურვილით, რომელმაც პირველ რიგში წინა პლანზე უნდა წამოიწიოს სამართლებრივი ნორმების უპირატესობა პოლიტიკაზე და იმავდროულად ვიმედოვნებთ, რომ ისინი ხელს შეუწყობენ ხელისუფლების მიერ სათანადო პოლიტიკის უფრო ჯანსაღად განხორციელებას.

საკვანძო სიტყვები: სამართალი, სამართლიანობა, პოლიტიკა, სახელმწიფო, დემოკრატია.