

TECHNICAL OR SUBSTANTIVE ERRORS IN THE CONSTITUTION OF GEORGIA?

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Abstract

As a result of the constitutional reform of 2017, substantial changes were made to the Constitution of Georgia, from the adoption of the constitutional amendments to their implementation, many negative evaluations were written and expressed. The purpose of the study is not to evaluate the constitutional reform. The research discusses the inaccuracies of the provisions of the constitution which the reader should evaluate whether it is technical or substantive. Of course, the study does not include a grammatical analysis of all provisions of the Constitution. The study will focus on several provisions, which we think will help the legislator to refine and make the text of the Constitution perfect. The research has revealed substantial inaccuracies in the constitution which, at first glance, may seem like technical rather than substantive errors, although they clearly require correction.

Keywords: Deficiencies of the Constitution of Georgia, Problems of the Constitution of Georgia, Errors in the Constitution of Georgia, Inaccuracies in the Constitution of Georgia, Legislative Technique.

Introduction

As a result of the 2017 constitutional reform, extensive amendments were introduced into the Constitution of Georgia. The period between the adoption of these constitutional changes and their entry into force generated numerous critical assessments in both academic and political circles. Nevertheless, the present study does not aim to provide a substantive or politico-legal evaluation of the constitutional reform.

The objective of this research is to identify inaccuracies and inconsistencies within selected provisions of the Constitution of Georgia, based on a textual and systemic analysis, which create practical difficulties in the process of constitutional interpretation. The issues discussed in this paper enable the reader to assess whether these inaccuracies constitute merely shortcomings of legislative technique or whether they may also entail substantive and institutional consequences. According to the theory of constitutional law, the precision of normative formulation represents one of the fundamental elements of legal certainty and predictability - an aspect that acquires particular importance in relation to constitutional norms¹.

The study does not seek to analyze all provisions of the Constitution of Georgia. Instead, it focuses on selected constitutional norms whose formulation, in the author's assessment, requires reconsideration. The analysis of these issues may be used both for the further refinement of the constitutional text and for ensuring legal clarity in the process of constitutional interpretation.

The purpose of this paper is to contribute to the improvement of the constitutional text and to draw the legislator's attention to issues which, at first glance, appear technical in nature, yet acquire essential significance from the perspective of constitutional law doctrine².

¹ Fuller, L., *The Morality of Law*, Yale University Press, 1964. p. 33; Xanthaki, H., *Drafting Legislation: Art and Technology of Rules for Regulation*, Hart Publishing, 2014. p. 63.

² Barak, A., *Purposive Interpretation in Law*, Princeton University Press, 2005. p. 110.

1. The Preamble of the Constitution

Within the framework of the 2017 constitutional reform, the legislator left the text of the preamble unchanged, despite the fact that the structure and content of the core provisions of the Constitution underwent substantial modification. In constitutional theory, a preamble is not merely a declarative or symbolic text; it is employed in the interpretation of constitutional norms, particularly in cases where the content of a provision is ambiguous or requires value-based clarification³. Accordingly, the formulation and internal coherence of the principles reflected in the preamble should be consistent with the fundamental provisions of the Constitution.

According to the preamble of the Constitution of Georgia, the firm will of the citizens of Georgia is to establish a democratic social order, economic freedom, and a social and rule-of-law state. At the same time, in Chapter One of the Constitution, these principles are presented in a different sequence: democracy, the rule of law the social state, and economic freedom. Each of these principles is assigned a separate provision within the general constitutional framework.

This inconsistency does not constitute a merely formal issue. According to the method of systemic interpretation of the Constitution, the sequence of fundamental principles may reflect the value hierarchy of the legislator, which acquires particular importance in the interpretation of constitutional norms⁴. For this reason, it is advisable that the order of constitutional principles set out in the preamble correspond to the sequence of principles presented in Chapter One of the Constitution.

In light of the above, it is recommended that the preamble be revised so that the list of constitutional principles is formulated in the following order: a democracy, the rule of law and social state and economic freedom.

2. Chapter I of the Constitution of Georgia. General Provisions

2.1. The Title of Article 3 of the Constitution of Georgia – “Democracy”

One of the innovations introduced by the 2017 version of the Constitution of Georgia is the inclusion of titles for individual articles, which facilitates the structural comprehension of the text and the identification of legal norms. In earlier versions of the Constitution, articles were not provided with titles. The title of Article 3 of the Constitution is “Democracy,” which serves to enshrine the principles of a democratic state.

From the perspective of legislative technique, the title of a legal norm should reflect the core substance of its content and ensure the logical coherence of the text⁵. It is noteworthy that the titles of the subsequent articles are “Rule-of-Law State” and “Social State,” which further accentuates the general nature of the title of Article 3. In light of the above, it is advisable that the title of Article 3 be specified more precisely and formulated as “Democratic State,” which would ensure the internal structural consistency of the constitutional text.

2.2. Article 3(2) of the Constitution of Georgia – the Meaning of the Word “As Well As”

Article 3(2) of the Constitution enumerates the principal forms of the exercise of popular sovereignty, namely: the people exercise power through their representatives, as well as through referenda and other forms of direct democracy.

An analysis of the constitutional text raises the question of the functional significance of the phrase “as well as.” The content of the provision clearly encompasses both representative and direct forms of democracy, and the phrase “as well as” does not create any additional normative meaning. According

³ Orgad, L., *The Legal Nature of Constitutional Preambles*, International Journal of Constitutional Law, 2010. p. 714.

⁴ Jacobsohn, G. J., *Constitutional Identity*, Harvard University Press, 2010. p. 55.

⁵ Xanthaki, H., *Drafting Legislation: Art and Technology of Rules for Regulation*, Hart Publishing, 2014. p. 47.

to the principles of legislative technique, a legal text should be characterized by conciseness and a formulation free of superfluous wording⁶. The removal of this phrase would not substantially alter the content of the provision; however, it would render the text clearer and more technically refined.

2.3. Article 3(3) of the Constitution of Georgia – “The Principle of the Inviolability of the Term of Office”

The Constitution of Georgia enshrines the principle of the inviolability of the term of a democratic mandate, according to which it is impermissible to shorten or extend the current term of office of a body or official elected through universal suffrage. The inviolability of the term of a mandate constitutes one of the fundamental elements of democratic legitimacy and aims to prevent the self-extension of power and political manipulation⁷. This principle is widely recognized in international standards and comparative legal practice. In Georgia’s recent past, however, this fundamental theoretical principle of constitutional law was violated on two occasions, when, on the basis of constitutional amendments, the authorities first extended the term of the Parliament and later that of the President by nearly one year. In order to prevent such precedents, the legislator entrenched the principle of the inviolability of the term of a democratic mandate at the constitutional level.

However, under the current wording of the Constitution, this principle applies only to bodies or officials elected through universal suffrage. This formulation is problematic insofar as it leaves outside the scope of constitutional protection those state bodies elected indirectly. Accordingly, the constitutional provision under consideration cannot be extended, for example, to the inviolability of the current term of office of the President of Georgia.

According to constitutional doctrine, the principle of the inviolability of the term of office should apply to all bodies and officials whose mandate is determined for a fixed term, regardless of the method of their election or appointment⁸. Thus, it should be impermissible to either extend or reduce the term of office of the Public Defender, a member of the Constitutional Court, the Chief Justice of the Supreme Court, and others. However, under the current constitutional wording, the scope of the “principle of the inviolability of the term of office” is limited and applies only to bodies or officials elected through universal suffrage.

In practice, it is possible that the constitutional provision in question may be interpreted broadly and, notwithstanding the reference to “universal suffrage,” the principle may be extended to the indirectly elected President of Georgia. Nevertheless, for the sake of greater precision, it would be preferable to reformulate the provision accordingly.

2.4. Article 4(4) Sentence 3 of the Constitution of Georgia - Types of Normative Acts

According to the Constitution, the procedure for the adoption and promulgation of legislative and other normative acts, as well as their hierarchy are determined by an organic law. This wording suggests that legislative acts and normative acts constitute distinct categories, whereas, in fact, a legislative act is one of the types of normative acts. More specifically, normative acts in Georgia are divided into legislative acts and subordinate normative acts, which together constitute the system of Georgian legislation⁹. According to the theory of normative acts, a legislative act represents a category within normative acts and cannot be regarded as a separate and independent classification¹⁰. Therefore, it is advisable that the words “legislative and other” be removed from the constitutional provision under consideration.

⁶ Fuller, L., *The Morality of Law*, Yale University Press, 1964. p. 65.

⁷ Venice Commission, *Code of Good Practice in Electoral Matters*, CDL-AD, 2002. 023 rev, § 7.

⁸ Issacharoff, S., *Democracy Unmoored*, Oxford University Press, 2023. p. 88.

⁹ Organic Law of Georgia on Normative Acts, Article 7(1) <https://www.matsne.gov.ge/document/view/90052?publication=40> [L.s. 28.03.2026].

¹⁰ Kelsen, H., *Pure Theory of Law*, University of California Press, 1967. p. 221.

2.5. Article 7(1) (d) of the Constitution of Georgia - Armed Forces

One of the progressive and substantive changes introduced by the 2017 constitutional reform was the replacement of the term “Armed Forces” with “Defense Forces.” While a positive evaluation of this conceptual change is beyond the scope of this study, as a result of the constitutional amendments, Georgia now has Defense Forces¹¹. Accordingly, the term “Armed Forces” has been replaced throughout the Constitution with “Defense Forces,” for example in Article 21(1), Article 23 (2), and others.

However, the term “Armed Forces” continues to appear in Article 7 of the Constitution. Since Georgia has renounced militarization, the existence of military forces in the country is justified solely for the purpose of national defense. Moreover, the state of Georgia currently does not maintain “Armed Forces.” Therefore, in the provision under consideration, the term “Armed Forces” should be replaced with “Defense Forces.”

3. Chapter III of the Constitution of Georgia – The Parliament of Georgia

3.1. Article 39(5) of the Constitution of Georgia

According to subparagraph (z) of Article 39(5) of the Constitution of Georgia, a member of Parliament shall lose their mandate before the expiration of the term if they lose Georgian citizenship. Under current legislation, the loss of Georgian citizenship constitutes one form of termination of citizenship¹².

This raises the question: does voluntary renunciation of Georgian citizenship by a member of Parliament constitute a basis for early termination of their mandate? Formally, the text of the Constitution does not explicitly provide for this, as it refers only to the “loss” of citizenship and not to its termination through voluntary renunciation.

The principle of legal certainty requires that a constitutional norm be formulated in a manner that excludes ambiguous interpretations¹³. In this context, the term “termination of citizenship” is substantively broader, encompassing both involuntary loss and voluntary renunciation of citizenship. Accordingly, it would be advisable to revise the relevant constitutional provision so that the early termination of a member of Parliament’s mandate is based on the termination of Georgian citizenship, rather than solely on its loss.

4. Chapter IV of the Constitution of Georgia – The President of Georgia

4.1. Article 50(5) of the Constitution of Georgia – “Holding the First Session of the Newly Elected Parliament” and “Recognition of the Mandate of the Newly Elected Parliament”

Although parliamentary and presidential elections are held on different schedules, the legislator has anticipated the possibility that the elections for the Head of State and the legislative body may coincide. Practically, Georgia faced such a situation in October 2024. According to the Constitution, if the date of the presidential election coincides with the parliamentary elections or the preceding month, the presidential elections are held within 45 days following the first session of the newly elected Parliament. Accordingly, the legislator seeks to avoid holding parliamentary and presidential elections simultaneously.

Since the Georgian Parliament participates in the presidential elections, the legislator’s intention is for the newly elected Parliament to take part in these elections. Under the transitional provisions of the

¹¹ Constitution Of Georgia, Article 70 (3)<https://www.matsne.gov.ge/ka/document/view/30346?publication=36> [L.s. 28.03.2026].

¹² Organic Law of Georgia on Citizenship, Article 19<https://www.matsne.gov.ge/ka/document/view/2342552?publication=11> [L.s. 28.03.2026].

¹³ Craig, P., EU Administrative Law, Oxford University Press, 2012. p. 395.

Constitution, in 2018 the Head of State was elected for a six-year term instead of the standard five years. The legislator extended the presidential term so that the presidential elections in 2024 would allow full participation by the Parliament elected under a fully proportional system.

To what extent does Article 50(5) fulfill the legislator's intention? As noted, when presidential and parliamentary elections coincide, the Constitution links the timing of the presidential elections to the holding of the first session of the newly elected Parliament. However, the first session of the newly elected Parliament does not necessarily signify the recognition of its mandate. First, the Parliament may commence work at its first session if more than half of the total membership — i.e., at least 76 deputies are present. On the other hand, the Parliament acquires full powers only from the moment two-thirds of its members that is, 100 deputies have their mandates recognized. It is from this moment that the mandate of the previous Parliament is terminated¹⁴.

Thus, if the legislator's objective is for the newly elected Parliament to participate in the presidential elections, the elections should be held not within 45 days following the first session of the newly elected Parliament, but within 45 days following the recognition of its mandate. It appears that the legislator did not clearly distinguish between the holding of the first session of the newly elected Parliament and the recognition of its mandate. The first session does not necessarily imply recognition of the Parliament's mandate. If this textual ambiguity is not corrected at the constitutional level, in practice the current provision may prevent the newly elected Parliament from participating in the presidential elections.

It is noteworthy that the last sentence of Article 50(5) mirrors a provision in the German Constitution¹⁵. Specifically, in the event of the expiration of the Bundestag's mandate, the Federal President is elected within 30 days following the first session of the newly elected Bundestag. However, unlike in Georgia, in Germany the mandate of the previous Bundestag expires immediately upon the first meeting of the newly elected Bundestag¹⁶. Accordingly, in Germany, the Head of State's election always involves the participation of the newly elected legislative body.

4.2. Article 51(1) of the Constitution of Georgia – The Oath Text

In the Constitution of Georgia, the presidential oath begins with the words “I, the President of Georgia...,” meaning that a person who has not yet assumed the office of Head of State declares himself/herself to be the President. According to the Constitution, the term of office of the incumbent President ends and the mandate of the newly elected President begins immediately upon the latter's full taking of the oath. In this context, the argument that “President of Georgia” refers to a state body is untenable, as a body cannot take an oath and an individual cannot declare themselves to be a body. This may be considered a legal fiction, where a fact that does not exist in reality is nonetheless attributed legal significance. Legislators often employ such devices when it is necessary to assign legal effect to a given fact. In the present case, however, such a device does not appear to be necessary.

In most foreign countries, an elected individual does not declare himself/herself the President prior to taking the oath, as he/she has not yet formally assumed office¹⁷. A review of foreign constitutions reveals only two countries (Tajikistan¹⁸ and Turkey¹⁹) where, similar to Georgia, the oath text begins in the first person: “I, the President...”.

We consider it appropriate to amend the text of the Georgian presidential oath by removing the words “...the President of Georgia” immediately following the personal pronoun “I.”

¹⁴ Constitution of Georgia, Article 38 <https://www.matsne.gov.ge/ka/document/view/30346?publication=36> [L.s. 28.03.2026].

¹⁵ Constitution of the Federal Republic of Germany, Article 54 (5) <https://www.verfassungsvergleich.de/> [L.s. 28.03.2026].

¹⁶ Constitution of the Federal Republic of Germany, Article 39*(32) (1).

¹⁷ Constitution of the Republic of Azerbaijan, Article 83; Constitution of the Republic of Belarus, Article 56; Constitution of the Republic of Finland, 81; Constitution of the Republic of Estonia, Article 81; Constitution of Romania, Article 82 (2); Constitution of Ukraine, Article 104; Constitution of the United Mexican States, Article 87; Constitution of the Republic of Moldova, Article 79 (2); Constitution of Ireland, Article 8 (12); Constitution of Cyprus, Article 42 (1); Constitution of the Portuguese Republic, Article 127 (3) <https://www.verfassungsvergleich.de/> [L.s. 28.03.2026].

¹⁸ Constitution of the Republic of Tajikistan, Article 67 <https://www.verfassungsvergleich.de/> [L.s. 28.03.2026].

¹⁹ Constitution of the Republic of Turkey, Article 103 <https://www.verfassungsvergleich.de/> [L.s. 28.03.2026].

It is also noteworthy that the newly elected President takes the oath not before the people, but before the nation. In the Constitution of Georgia, the term “nation” appears twice: in the preamble (“...the Georgian nation...”) and in the text of the presidential oath (“before the God and nation”). The oath text does not explicitly clarify, but it is presumably intended to mean the Georgian nation. The term “nation” is not defined by law, nor is its definition within the scope of this study. It is not the subject of our research. However, it is clear that “nation” represents a narrower concept than “the people.” Since the source of state authority in Georgia is the people²⁰, we consider that the President should take the oath before the people rather than the nation. Accordingly, the oath text requires revision in this respect as well.

Finally, according to the content of the oath, the President undertakes an obligation to ensure the safety and well-being of only the citizens of Georgia. While the Georgian state has a duty to protect the security of all individuals under its jurisdiction, the presidential oath limits the President’s obligation to the protection of Georgian citizens. Therefore, from this perspective, the text of the oath also requires reconsideration.

4.3 Article 51(5) of the Constitution of Georgia – “Inability to Exercise Powers”

One of the grounds for appointing an Acting President is the “inability of the President to exercise their powers.” This raises the question: does the inability of the President to exercise their powers lead to an early termination of their mandate, or merely to a temporary suspension of powers? Why does the Constitution single out this situation, when no provision specifies which body (Parliament or the Constitutional Court) is responsible for determining the fact of the “inability to exercise powers” or when such a determination must occur? Such a formulation creates legal difficulties in cases of temporary suspension of the President’s powers. State bodies (Parliament, the Constitutional Court) might interpret the basis for recognizing this fact differently, which could undermine the stability of the constitutional order²¹.

Since the legislator explicitly distinguishes the fact of the President’s inability to exercise powers, it can be inferred that this does not automatically trigger termination of the mandate. However, it remains unclear what the legislator intends by “inability to exercise powers,” for example, whether it encompasses incapacity due to health conditions or a lack of competence. We contend that the phrase “inability to exercise powers” is ambiguous. The legislator should either remove it or regulate at the constitutional level which body determines the fact of the President’s inability to exercise powers. Moreover, a specific timeframe should be established within which this determination must be made.

4.4. Article 51(4) of the Constitution of Georgia – Political Activity of the President

As a result of the 2017 amendments, the President is prohibited not only from holding a party office but also from being a member of a political party. According to the explanatory note, this provision aims to ensure the President’s non-partisan status. Accordingly, unlike the previous version of the Constitution, which prohibited only the holding of party office while allowing party membership, the current version expands the restriction to include membership in a political party.

Given the parliamentary nature of the political system, restricting the President’s participation in political activity provides a guarantee of non-partisan status²². Therefore, the legislator’s intention should not only prohibit party membership for the President but also restrict participation in political activity more broadly, similar to the restrictions applied to judges²³.

²⁰ Constitution Of Georgia, Article 3(2), <https://www.matsne.gov.ge/ka/document/view/30346?publication=36> [L.s. 28.03.2026].

²¹ Choudhry, S., *Constitutional Design and Political Accountability*, Oxford University Press, 2015, p. 115.

²² Ackerman, B., *The Living Constitution*, Harvard University Press, 1991. p. 82.

²³ Constitution Of Georgia, Article 63 (4) <https://www.matsne.gov.ge/ka/document/view/30346?publication=36> [L.s. 28.03.2026].

4.5. Article 52(2) of the Constitution of Georgia – Issues Determined by Law or Organic Law

The Constitution of Georgia establishes the general grounds for holding a referendum and provides that the President calls a referendum on issues determined by the Constitution and by law. Since, according to the Constitution, matters related to the appointment and conduct of a referendum are regulated by organic law, it would be appropriate to amend the text to state that the President calls a referendum on issues determined by the Constitution and by organic law.

4.6. Article 53(1) of the Constitution of Georgia – Co-Signature by the Prime Minister or the Government?

As a general rule, the Prime Minister signs a presidential act not in his/her personal capacity or under individual responsibility, but as the head of the Government. This is confirmed both by the Constitution and by current legislation. Specifically, under the Constitution, political responsibility for a co-signed legal act lies with the Government²⁴. The procedure for co-signature on a presidential act is determined at a Government session: the Prime Minister submits the presidential legal act to the Government within ten days for consideration. If the Government approves the act according to the procedure established by its rules of procedure, the Prime Minister signs it, thereby completing the co-signature. If the Government does not approve the act, it prepares motivated objections, which the Prime Minister delivers to the President within ten days. The President may then amend the act within ten days or resubmit it in the same form to the Prime Minister. If the Government still does not approve the presidential act, the President may not resubmit the same act to the Prime Minister for co-signature within six months of the repeated rejection²⁵. Thus, the decision regarding co-signature of a presidential act is not made unilaterally by the Prime Minister. The matter is resolved by a collegial executive body - the Government. It is noteworthy that the President may, on the basis of a reasoned request to the Prime Minister, request expedited co-signature of a legal act. If the Prime Minister considers the request sufficiently justified, the act is submitted to the Government within three days for consideration²⁶. In this case, the Prime Minister decides only whether the timeframe for submitting the act to the Government should be shortened; the issue of co-signature itself remains decided at the Government session.

Only in exceptional circumstances may the Prime Minister decide on co-signature unilaterally, without referring the matter to a Government session. This occurs, for example, when a presidential order concerning the declaration or termination of a state of war or emergency, issued upon the Prime Minister's submission, is transmitted directly to the Prime Minister, who immediately decides on co-signature. Similarly, a presidential decree issued on the Prime Minister's proposal is transmitted for co-signature in the same manner²⁷. Although, in these cases, the Government does not consider the matter, political responsibility for the co-signed legal act remains with the Government.

In light of the above, it would be advisable to clarify in Article 53(1) that a presidential legal act requires co-signature not by the Prime Minister personally, but by the Government, except in legally defined exceptional cases. Otherwise, the current wording may be interpreted as allowing the Prime Minister to decide on co-signature unilaterally in all cases, while the Government remains politically responsible for that decision. Moreover, under the current wording, if the Prime Minister signs a presidential act without submitting it to the Government, such an act could be considered fully constitutional.

²⁴ Constitution Of Georgia, Article 53 (1) (3) <https://www.matsne.gov.ge/ka/document/view/30346?publication=36> [L.s. 28.03.2026].

²⁵ Law of Georgia on the Structure, Powers and Rules of Operation of the Government, Article 7³ (6) and (7) <https://www.matsne.gov.ge/ka/document/view/2062?publication=49> [L.s. 28.03.2026].

²⁶ Law of Georgia on the Structure, Powers and Rules of Operation of the Government, Article 7³ (9) <https://www.matsne.gov.ge/ka/document/view/2062?publication=49> [L.s. 28.03.2026].

²⁷ Law of Georgia on the Structure, Powers and Rules of Operation of the Government, Article 7³ (10) and (11) <https://www.matsne.gov.ge/ka/document/view/2062?publication=49> [L.s. 28.03.2026].

5. Chapter X. Revision of the Constitution of Georgia

According to Article 77(1) of the Constitution of Georgia, the initiative to revise the Constitution may be undertaken by more than half of the total composition of Parliament. Grammatically and literally, “more than half of the total composition of Parliament” implies that only 76 members of Parliament may serve as initiators of a draft constitutional law, and no additional member beyond this number would have the right of legislative initiative. In practice, however, the initiators of constitutional amendments have often included more than 76 members. If one interprets the provision strictly, it would follow that any constitutional revision proposal ever submitted to Parliament even those initiated by 77 members - would have been introduced by an unconstitutionally authorized subject.

For greater clarity, it is advisable to insert the word “at least” before “more than half of the total composition of Parliament” so that a minimum 76 members, rather than exactly 76, would have the ability to propose a draft constitutional law.

It is noteworthy that voters also possess the right to initiate constitutional amendments. In this case, the legislator specifies a minimum number of voters (not less than 200,000), which does not apply to members of Parliament.

Similar technical or content inaccuracies appear elsewhere in the Constitution. For instance, according to the third sentence of Article 38, Parliament attains full authority from the moment that two-thirds of the members’ mandates are recognized. Logically, it is likely that the legislator intends “at least” rather than exactly two-thirds. Moreover, the phrase “two-thirds of members’ mandates” presumably refers to the total composition of Parliament, not merely two-thirds of those present.

Conclusion

Through the interpretation of constitutional provisions, this study has sought to identify inaccuracies and issues within the Constitution of Georgia. The so-called “errors” in the constitutional text discussed in this article may be of a substantive or technical nature; determining their character is ultimately left to the reader. Nevertheless, the issues raised clearly warrant the attention and deliberation of the legislator.

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