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An Essence of Public Government, its Subjects and Functions

Malkhaz CHAKHNASHVILI

Abstract

In Administrative Law of Georgia Public government is defined as activity of executory – ordering bodies, therefore, area of operation for the public government is limited with the sphere of operation of executive branch. We think that such definition of public government is not correct and does not reflect real interconnections between branches of state machinery. Government (management, administration) is not a type of activity of certain group of state bodies, as it is understood in Georgian Administrative law, but systematic method of solution of problems and functional tasks, faced to any branch of state power. So, the frame of public government should be expended and diversified into three types: Representative, Executive and Judicial Government. All of them have certain vertical of structural units of exact number of levels with their functionaries. Subjects of public government have similar stages of activity, sources of financing, order of classification and common functions, but different diversificative indications in the structure of state machinery, including different basic functions. We think that beside executive, representative and judicial bodies, special subject of public government can be distinguished, because the President, Parliament and Constitutional Court have mutual integrated rights in different spheres of the public government. Upon this approach, concerning the essence of concept of public government in Georgian Administrative law, the definitions of representative, executive, judicial and public governments are formulated.

Keywords: *theory of administrative law, Georgia*

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Introduction

It is well-known fact, that society cannot exist without social management¹ as the method and rule of coexistence of human beings. From the other hand, social management cannot be carried out without managerial systems, which is based on the authoritative and subordinate relationship between subject of management (a person or legal entity which governs. Author) and object (who is governed. Author) and bears organizational character. Every managerial system, like a state, parliament, ministry, school, company, family and so on has certain goals and tasks of their activity and relevant functions to be executed in society. Social management has one key function in social group – to arrange interactions among natural and legal persons in order to provide an accomplishment of different tasks. Managerial influence of the subject of management on the object of management has clear authoritative character, but there are some differences in private and public (state) managerial systems. In latter cases subjects of governing i.e. minister or director and others are authorized by the law in force with necessary managerial rights, while in private managerial systems, like business company or non-governmental organizations and many others, governing authority of the subject of management is based mostly on the personal authority of a person or on occupied position or on the social customs, established during hundreds and thousands of years.

In Administrative Law of Georgia Public government is defined as activity of executory – ordering bodies, so, area of operation for the public government is limited with the sphere of functioning of executive branch. We think that such concept is not correct and does not reflect real interconnections between branches of state machinery. Any branch of state power, whether is it legislative, executive or judicial, is not able to achieve goals of their activity without managerial relationships between subject and object of management. Therefore, we can prove that *government (management, administration) is not a type of activity of certain group of state bodies, as it is understood in Georgian Administrative law, but systematic method of solution of problems and functional tasks, faced to state machinery. Hence, we must expand the frame of public government*

¹ We use term “social management”, as a general term for the kind of activities and processes, concerning with the governing of the whole society, “public government”- the same for the whole country held by state bodies

and diversify it into three types:

- *Representative government;*
- *Executive Government;*
- *Judicial Government.*

The structure of state machinery reflects internal diversification “of labor” among legislative, executive and judicial legal entities, where each of them has its own function as their diversificative feature: for representative Government it is legal regulation of social life, for executive Government – it is performance of laws and by-laws by executory-ordering agencies, while for judicial government – it is protection of law by means of justice and constitutional control. Despite their different goals and functions, we think that they are sub-types of entire Public government, because each of them acts with the help of managerial systems, as objective phenomena of social group.

The numerous numbers of state bodies operate in the sphere of executive government, where we can find nine levels of executive agencies:

1. *Supreme body* (President of Georgia)²;
2. *Higher republican bodies of common competence* (Prime-Minister and Government of Georgia);
3. *Higher bodies of common competence of Autonomous republics* (Governments of Adjarian AR and Abkhazian AR);
4. *Central Branch-wise and functional bodies of Georgia* (the Ministries, National Bank, Supervisory Chamber of Georgia);
5. *Central Branch-wise and functional bodies of Autonomous republics* (the Ministries of Adjarian AR and Abkhazian AR);
6. *Regional bodies* (authorized representatives of President in the regions);

² In accordance with the article 69 p.1 of the Constitution of Georgia President is not a head of executive branch, but if we take into consideration His real competence in the sphere of executive power (e.g. he appoints Prime-Minister, can give the air to the Government and dissolve the Parliament, enters into international agreements, is Chief-Commander and many other rights upon article 73 of the Constitution) we can say, that in reality he is a supreme body of executive system

7. *Local executive bodies* (municipalities)³;
8. *Lower bodies of central branch-wise bodies of Georgia* (departments and other legal entities);
9. *Lower bodies of central branch-wise bodies of Autonomous Republics* (departments and other legal entities).

The same hierarchy we meet in the vertical of the bodies of judicial government. There are *Constitutional*, *Supreme*⁴, *District* (county in USA. Author), *Appellate*, *city* and *local*⁵ courts. In the structure of this system we don't meet lower bodies, but relationship of apparatus and logistic Departments with the courts have the same functional character as in case of lower units of executive government.

Representative government in Georgia includes three levels of representative bodies, like the Parliament of Georgia, Supreme Councils of Autonomous Republics and City Halls called Sakrebulo. Accepted practice of world-wide constitutional law is an absence of representative bodies on the regional level, especially in the small and medium countries. The same situation we meet in Georgia. Law-making activity of Georgian Parliament, Supreme Councils of Autonomous Republics and City Halls is absolutely enough to provide legal regulation of social life in our home country.

Beside hierarchical vertical, executive, representative and judicial government have similar stages of activity, order of establishment and financing, territory of operation, as well as common nature of internal relationships and common ground of classification and forms of activity.

Day by day activity of public agency of any branch of state power is carried out by means of such *stages* as: making of decision, execution and supervising over its realization. This is form of activity of the whole state machinery, which represents interests of the state. But they differ from each other by means of their place in hierarchy of state bodies and territory of operation.

Constitution, Laws and by-laws regulate *order of establishment*

³ In Georgia they are called “Gamgeoba”

⁴ Supreme court of Georgia and Supreme courts of Autonomous Republics

⁵ Called “Common courts” in Georgia

and appointment of the agencies of all three types of government. Constitution defines relevant proceedings concerning with the President, Government, ministries, Parliament and Supreme Courts, while the laws⁶ adopted by the Parliament deals with the same procedures for the legal persons of public law and Justice Councils.

Absolute majority of legal entities of all three branches of state power are *financed* from the state budget and all of them have unlimited time of functioning, but different place in the hierarchy of state bodies determines different scales of *territory* of their activity. E.g.:

- territory of operation of Municipality, City Halls, district and city courts is limited with the area of relevant administrative-territorial units;

- jurisdiction of the Authorized representative of the President from one hand and of District and Appellate Courts from another hand spread on the territory of certain region or regions;

- the governments, Ministries and Supreme Courts of Autonomous Republics operate on the territory of Adjara and Abkhazia;

- the President of Georgia, Georgian Parliament, the national Bank of Georgia, Supervisory Chamber of Georgia as well as Constitutional and Supreme Courts of Georgia carry out their functions on the whole territory of Georgia.

Relationship among both executive and judicial bodies bear nature of mutual subordination, but such type of relations does not rule out the possibility of operation of executive and judicial agencies with independent authorities, like we meet in case of local executive bodies and bodies of self-governing, the conferences of judges and so on. Concerning with representative government, there is no direct subjection between the Parliament of Georgia and City halls as local bodies of self-governing except general subjection to the legal normative acts, adopted by the Parliament.

The same can be said concerning with the order of decision-making, as a ground of classification of public agencies. One-man decision bodies we find in the structure of executive and judicial government represented by Ministries, mayors, courts and lower bodies, while

⁶ E.g. the law of Georgia of 1997 “on the common courts” and the law of Georgia of 1999 on the “legal persons of public law”.

collegiate organs, where decisions are made jointly, can be met in all three types of public government represented by Central Government, Parliament and Supreme Council of justice, Supreme Councils of Autonomous Republics, Municipalities, conferences of judges and etc.

Similarity among executive, representative and judicial governing bodies is more evident upon indications which prescribe them as part of state machinery. Activity of any agency, be it Parliament, Ministry or Court have organizational, uninterrupted, cycling character, all of them have relevant tasks upon their goals and functions and necessary competence to accomplish them. Such “division of labor” among branches of state power does not exclude mutual exchange of functions:

- executive bodies also carry out protective activity with the help of law enforcement bodies, as judicial agencies do it and has right to establish legal normative act- Decree, which has legal force of law;

- activity of both representative and judicial bodies bear executive character, because concerns with observance and application of law in force;

- uninterrupted nature of activity of representative and judicial bodies has sessional and cycling character and by this indication periodicity of meetings of the courts and City Halls is identical with periodicity of gathering of municipalities upon the principle “from the problem to problem.”

Among the subjects of public government Public officials are the most numerous subjects. In accordance with their competence, public officials of all three branches of state power should be divided into two groups:

1. functionaries and public officials which are entitled with the powers of authority;

2. public officials which are not entitled with the power of authority⁷

Public officers of the first group include following categories of officials:

⁷ We mean subsidiary personnel and out-of-staff employees of executive bodies, Parliament, City Halls, courts and judicial management which only support the representatives of first group in their everyday activity (author)

a) *governmental-political functionaries* with widest powers like the President of Georgia, Speaker of Georgian Parliament and Vice-Speakers, Chairmen of the Supreme Councils of Autonomous Republics, the Prime-Minister of Georgia and members of Georgian Government, Chairs of the Constitutional and Supreme Courts of Georgia, the President of the national Bank of Georgia and so on;

b) *managing leadership*, which carry out executive, representative or judicial functions and are empowered to appoint or dismiss subjected officials, like: leadership of lower bodies, judges, members of the Council of Justice, members of Parliament, supreme Councils of Autonomous Republics and City Halls, mayors, heads of administrative departments of the bodies of local governing and self-governing as well as the heads of judicial bodies;

c) *operative personnel* of public officials, which carry out their functions inside of executive, representative and judicial government and outside of above mentioned systems if natural and legal persons apply to them;

d) *representatives of public authorities*.⁸

It should be underlined, that while managing leadership of executive bodies naturally combined governing functions with internal administrative duties, in judicial and representative government, such “collaboration” is carried out only by the first persons of bodies of representatives (Speakers. author) and by chairman of the common, Appellate and Supreme courts.

Powers of authority of managing leadership of representative government bears some peculiarities. Their impact on the activity of natural and legal persons is not carried out directly but implicitly through laws and by—laws adopted by the Parliament and Local bodies of self-governing. Of course, members of the Parliaments and City Halls have certain obligation to meet with their electorate in the frame of their accountability towards electors, but not to use state power.

⁸ Representative of authority is an official, who is authorized to give an obligatory order to a person, who is not subjected him officially.

In conclusion of this article we think that it is necessary to distinguish new category of subjects of public government - “*special subjects of public government*”, which has essential mutual governing rights in two or three spheres. Analysis of mutual competence of state bodies clarifies that special subjects of public government are: *the President, Parliament and Constitutional Court of Georgia*.

Below we show essential rights of above mentioned special subjects of public government in other spheres of governing:

*The President of Georgia*⁹

In representative government:

- promulgates and publishes laws upon the order, defined by the Constitution;
- in case of extraordinary state issues Decrees which have force of law;
- dissolves Parliament in the event and upon order, defined by the Constitution;
- issues Decrees on the budgetary and fiscal policy during the period between dissolution of the Parliament and first meeting of newly elected body of representatives;
- convenes the meeting of dissolved Parliament during the period between dissolution of the Parliament and first meeting of newly elected body of representatives;
- convenes special session of the Parliament upon demand of the Speaker of the Parliament, 1/4th of the deputies and on his initiative;
- has right to initiate draft law;
- resigns the Government or the Ministers of Defense, Internal Affairs and Justice on his initiative or upon event defined by the Constitution
- fixes the date of elections of the Parliament and local self-governing bodies¹⁰.

⁹ As we already mentioned above that we recognize the President as factual head of Executive Government though upon Georgian Constitution He is only the Head of the country. That's why, we do not enumerate widest rights of the President in the sphere of executive government, stipulated in the article 73 of the Constitution of Georgia but only those rights which He has in representative and judicial government as special subject of public government of Georgia.

¹⁰ See articles 61,67 and 73 of the Constitution of Georgia.

In judicial government:

- appoints three members of the Constitutional court of Georgia;
- nominates to the Parliament candidacy of the Chairman and members of Supreme Court of Georgia;
- appeals to the Parliament on the withdrawal of the Chairman and members of Supreme Court of Georgia before the appointed time¹¹.

The Parliament of Georgia

In executive government:

- gives consent to the President and Prime-Minister to appoint Ministers and offers their resignation;
- appoints the President and members of the Council of the National Bank and Chairman of Supervisory Chamber of Georgia.

In judicial government:

- appoints and resigns the Chairman of Supreme Court of Georgia.¹²

The Constitutional Court of Georgia

In executive government:

- carries out constitutional control over the law-making activity of the President and Government on the matter of compliance of by-laws, adopted by them with the Constitution of Georgia;

In representative government:

- carries out constitutional control over the legislative activity of the Parliament concerning with compliance of the Law, adopted by Parliament with the Constitution of Georgia;

As we see, the President actually take particular place among special subjects of public government and in reality He is not informal head of executive government but Supreme body of public government in Georgia. However, in accordance with amendments to the Constitution of Georgia, made in 2010, from 2013 Georgia will change its form of state-governing from Presidential Republic into mixed form of governing and presidential authorities will be limited in a fundamental way.

The structure of public government is entire vertical with certain

¹¹ See article 73 of the Constitution of Georgia and articles 21 and 23 of the law “on the Supreme Court of Georgia” of 1999.

¹² See articles 64 and 90 of the Constitution of Georgia.

functions divided into managerial systems of lower level with their own functions. Functions of lower systems provide performance of functions of managerial systems of higher level and all together – ensure realization of basic functions of public government.

Of course, all three forms of public government have their basic functions in the state: for representative government it is determination of internal and external policy of the country¹³ and law – making activity, for executive government it is execution of internal and foreign policy in practice¹⁴ and for judicial government – protection of law by means of justice and constitutional control¹⁵.

Basic function of public government can be defined as: “*accomplishment of internal and foreign policy of the state*” with the help of above mentioned functions of representative, executive and judicial government. “Accomplishment” of policy includes definition of key directions of state policy inside and outside of the country by the Parliament and local agencies of self-governing, concerning with local problems, practical execution of defined policy by executive government and its judicial protection by the courts. If state power is based on the principles of separation of state authority a single sub-type of public government has no ability to fulfil basic function of public government, which is “distributed” among executive, representative and judicial government. In order to carry out their basic functions, the bodies of all of these three types of government receive, keep and analyze information, make decisions and planning measures upon prognosis, organize execution of adopted decisions, coordinate activity of organs inside and outside of the system and supervise performance of execution.

Each type of public government carry out *basic* and *common* functions. Basic function deals with diversificational indication of certain types while common functions deals with certain sphere and purposes e of activity. Let's analyze common functions of public government and its sub-types upon such general function of each branch of state power as *protection of public peace and security*:

¹³ See article 48 of the Constitution of Georgia.

¹⁴ See article 78 of the Constitution of Georgia

¹⁵ See article 82 of the Constitution of Georgia

Representative government

The Parliament of Georgia

Basic function – to determine of internal and external policy of the country and law – making activity.

Common functions – to adopt laws and Codes concerning with order and security in the country;

- to ratificate international instruments concerning with fighting against international crimes;

- to give consent to nominated Ministries and to offer their personal resignation;

- to invite of relevant Ministries and to hear their reports on the criminal cases or general problems of order and security;

- to make amendments in the Laws and Codes adopted by the Parliament.

In executive government

The President of Georgia (*Supreme body of executive government*)

Basic function – to carry out internal and foreign policy of the country in the sphere of order and security and execution of laws and by-laws which regulate activity of law enforcement bodies.

Common function – to provide public peace and security on the whole territory of Georgia;

- to define of state policy in the sphere of public peace and security for natural and legal persons;

- to promulgate the structure of law enforcement agencies;

- to affirm assignment of high functionaries' and their dismissal;

- to submit to Georgian Parliament the draft Laws, concerning with the struggle against crime and maintenance of public peace and amendments in the law in force;

- to establish those legal entities of public law, which operate in the relevant sphere;

- to adopt by-laws (Regulations of Ministries and other decrees);

- to assign international treaties (agreements) in the sphere of security;

- to lead the meetings of Georgian Government

- to supervise an activity of leading functionaries of law enforcement bodies;

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- to supervise law-prescriptive activity of law enforcement bodies;
- to countermand those normative acts, which contradict to the Constitution of Georgia, international agreements, laws and by-laws.

The Government of Georgia (The higher body of executive government)

Basic function – to carry out internal task of the state – protection of public peace and security;

Common functions – to control and coordinate activity of law enforcement bodies;

- to abrogate normative acts, adopted by law enforcement bodies;
- to adopt governmental programs, concerning with straightening of public peace and security;
- to provide logistic supplying of enforcement bodies;
- to provide social protection of public officials of law enforcement bodies;
- to initiate draft law in the sphere protection of public peace and security

In judicial government

The Constitutional and Supreme Courts of Georgia

Basic functions – to protect law by means of justice and constitutional control.

Common functions – to supervise law-making activity of representative and executive bodies concerning compliance with the Constitution of Georgia;

- to consider complaints of the natural persons on the breaching of their rights and freedoms;
- to consider criminal, civil and administrative cases and relevant appeals.

It is very interesting that despite of different basic functions of representative, executive and judicial government, their leadership represented by the President, Speaker and Prime-Minister have similar functions concerning with appointment, representation and enacting of legal normative acts. In accordance with the Constitution of Georgia, the Law “on the Structure, authorities and order of activity of Georgian Government” and Regalement of Parliament following functions are performed :

Functions of representation

President of Georgia – is supreme representative of Georgia in international relations;

Speaker of the Parliament of Georgia – represents Georgian Parliament in domestic and foreign affairs;

Prime-Minister of Georgia – represents government in its relationship with other state bodies and international organizations.

Appointment and dismissal of the functionaries

President of Georgia – appoints Prime-Minister, members of the Council of National Security, Chief of Headquarters of military forces, resigns government and key ministers

Speaker of the Parliament of Georgia – appoints and dismisses the head of administration of the Parliament; leadership of Departments and services of the Parliament

Prime-Minister of Georgia – appoints and dismisses members of the Government upon consent of the Parliament and President

Signing and enacting of legal normative acts

President of Georgia – signs international agreements and promulgates laws, issues decrees, orders and directions;

- proves Charters of the Ministries, structure of military forces

Speaker of the Parliament of Georgia – signs acts adopted by the parliament, promulgates law if certain event defined by the Constitution occurs and Regalement of the Parliament

Prime-Minister of Georgia – signs by-law adopted by the Government.

Despite common functions of highest public officials there are some essential differences: the President represents whole country while Speaker of the Parliament and Prime-Minister represent certain public agencies like Parliament and Government. President issues legal normative act on His own name while Speaker and Prime-Minister on the name of Parliament and Government.

Conclusion

In conclusion of this article we can define concepts of representative, executive and judicial government:

Representative government is activity of legislative and local bodies of self-governing and consists in definition of internal and foreign policy of state and in legal assurance of outlined policy by means of law-making activity;

Executive government is activity of executive bodies which deals with practical accomplishment of current laws and by-laws adopted in administrative-political, social-cultural and intersectoral spheres;

Judicial government is activity of the bodies of justice, judicial management and constitutional control by means of law enforcement and judicial supervising.

On the ground of above mentioned definitions we can formulate the concept of public government as basic type of social management:

Public government is activity of the bodies of representative, executive and judicial government to carry out internal and foreign functions of a state.

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