

**ANALYSIS OF GEORGIAN CONSTITUTIONAL LAW  
ON THE STATUS OF THE ADJARIAN AUTONOMOUS REPUBLIC**

**Introduction**

On April 20, 2000, an amendment was introduced to Article 3 of the Georgian Constitution. The amendment set forth that the status of the Adjara Autonomous Republic should be determined by a Georgian constitutional law. However, in May 2004, a “Rose Revolution 2” occurred in Adjara leading to the collapse of the Adjara regime and return of the region to Georgian control. These events delayed drafting of the Constitutional Law, which was quickly prepared thereafter, and on July 1, 2004, Parliament passed the Constitutional Law on the Status of the Adjara Autonomous Republic.

The purpose of this paper is to analyze the Constitutional Law on the Status of the Adjara Autonomous Republic and to compare its main provisions to the generally accepted practice of constitutionalism. This analysis was prompted by several factors: firstly, the Constitutional Law is a first effort to use legislative regulation to help define the country’s state-territorial structure, and secondly, it should serve as a model for dealing with this type of issue in the future. Furthermore, it should be noted that the Constitutional Law was passed somewhat hurriedly and in unusual political circumstances. Consequently, there are aspects of this law that could use refining.

This investigation will serve to identify weaknesses in the Constitutional Law on the Status of the Adjara Autonomous Republic, to examine the experiences of other countries in solving similar issues and to create a starting point from which the state-territorial structure issue can be addressed on a national scale.

## **State (Territorial and Political) Structure and Division of Jurisdictions**

Under the current Constitution, Georgia is a unitary state that has inherited two autonomous regions that were created during the Soviet era – the autonomous republics of Abkhazia and Adjara. In international practice, countries with state-territorial structures are referred to as decentralized unitary states with territorial autonomies (e.g., Northern Ireland in Great Britain, Sicily and Sardinia in Italy, Basque Country and Catalonia in Spain, Faroe Islands and Greenland in Denmark, etc.). The same is set forth in Paragraph 2, Article 2 of the Georgian Constitutional Law on the Status of the Adjara Autonomous Republic, which states that, “the Adjara Autonomous Republic is a territorial unit that is an inseparable part of Georgia.”

Division of jurisdictions between the central authority and territorial units is one of the most important issues that arises with territorial autonomies. There are several conventional models of jurisdictional divisions that are applied in world practice. In general, they can be classified into four basic types: 1) special jurisdictions of the central authority; 2) special jurisdictions of the state-territorial units; 3) joint (competitive) jurisdictions; 4) jurisdictions that are not vested in other bodies.

In Georgia, the division of jurisdictions is regulated by Article 3 of the Georgian Constitution, which prescribes the following:

- “ 1. The special administration of Georgian supreme state bodies is responsible for:
- a) legislation on Georgian citizenship, human rights and freedoms, emigration and immigration, entrance to and departure from Georgia, foreign nationals and stateless persons temporarily or permanently residing on the territory of Georgia;
  - b) status, regime and protection of boundaries; the status and protection of territorial waters, airspace, continental shelf and special economic zones;
  - c) the defense and security; military forces, military industry and arms trading;
  - d) issues of war and peace; determination of a legal regime for a state of emergency and a state of war and their introduction;
  - e) foreign policy and international relations;
  - f) custom and tariff regimes and foreign trade;
  - g) state finances and state loans; the minting of money; legislation on banking, credit, insurance and taxes;
  - h) standards and models; geodesy and cartography; time; state statistics;
  - i) energy system management; communications; merchant fleet; flags of ships; harbors of state importance; airports and airfields; control of airspace, transit and air transport; registration of air transport; meteorological services and the environmental monitoring;
  - j) railways and roads of importance throughout the state;
  - k) fishing in oceans and open seas;
  - l) boundary-sanitary cordon;
  - m) legislation on pharmaceutical medicines;
  - n) certification and accreditation of secondary and high schools, legislation on academic, scientific and professional titles and honors;
  - o) legislation on intellectual property rights;
  - p) legislation on trade, criminal and civil law, administrative and labor law, as well as legislation on enforcement of judgments and procedural legislation;

- q) criminal police and investigation;
  - r) legislation on land, minerals and natural resources.
0. Matters relating to joint administration are determined separately.
  1. The status of the Adjara Autonomous Republic is determined by the Georgian Constitutional Law on the Status of the Adjara Autonomous Republic.
  2. The status of the Abkhazian Autonomous Republic is determined by the Georgian Constitutional Law on the Status of the Abkhazian Autonomous Republic.”

Moreover, Article 6 of the Georgian Constitutional Law on the Status of the Adjara Autonomous Republic states that:

- “1. The authorities of the Adjara Autonomous Republic shall be based on the Georgian Constitution, this law and the Constitution of the Adjara Autonomous Republic.
2. The issues that, according to the Georgian Constitution and this law, are beyond the administration of Georgian supreme state bodies and the special administration of the Adjara Autonomous Republic are regulated by legislative acts of Georgia.
3. It is impossible to delegate the authorities vested in the special administration of Georgian supreme state bodies to the Adjara Autonomous Republic.”

Article 7 of the Georgian Constitutional Law on the Status of the Adjara Autonomous Republic prescribes that:

- “1. Under Paragraph 1, Article 3 of the Georgian Constitution, the special administration of the Adjara Autonomous Republic is responsible for:
  - a) adopting the Constitution and other normative acts of the Adjara Autonomous Republic and introducing amendments in them;
  - b) holding elections of the Supreme Council of the Adjara Autonomous Republic;
  - c) determining the structure, authority and activity of Government of the Adjara Autonomous Republic;
  - d) promoting education and science, establishing and managing cultural and scientific institutions, protecting locally important cultural monuments;
  - e) locally important libraries and museums;
  - f) tourism, culture and sport;
  - g) locally important construction and urban development;
  - h) locally important motorways and other communications;
  - i) sanitation, participating in solutions to problems connected with health and social security;
  - j) agriculture and hunting;
  - k) controlling the quality of foodstuffs and food products;
  - l) markets, fairs and exhibitions;
  - m) in accordance with the rule established by Georgian legislative acts and within the limits of income to the Adjara Autonomous Republic, determining and implementing the budget policy, drafting a budget for the Adjara Autonomous Republic, approving the budget and exercising control over its fulfillment;
  - n) introducing or revoking of local taxes and duties set forth by Georgian laws;
  - o) managing and disposing of property belonging to the Adjara Autonomous Republic;
  - p) the archive service necessary for the Adjara Autonomous Republic;

- q) forestry management;
  - r) fire prevention.
2. If the Adjara Autonomous Republic fails to regulate any of the issues covered by Paragraph 1 of this article, such issue can be regulated by a Georgian supreme state body within its jurisdiction through a Georgian normative act.”

In view of the above-cited norms, it is interesting to observe the inconsistencies between Paragraph 2, Article 3 of the Georgian Constitution and Articles 6 and 7 of the Georgian Constitutional Law on the Status of the Adjara Autonomous Republic. Paragraph 2, Article 3 of the Constitution provides for determination of joint or competitive jurisdictions. Thus, the Constitution distinguishes the issues within the administration of the central authority from those within joint jurisdictions and from those within the special jurisdictions of Adjara.

Unfortunately, the legislators who drafted the Georgian Constitutional Law on the Status of the Adjara Autonomous Republic did not follow the guiding principles set forth by the Constitution. Article 7 of the Georgian Constitutional Law on Status of the Adjara Autonomous Republic identifies the range of issues that lay within the special jurisdiction of the autonomy. Meanwhile, Paragraph 2, Article 6 of the same law states that “the issues that under the Georgian Constitution and this law are not included in the administration of Georgian supreme state bodies and the special administration of the Adjara Autonomous Republic, are regulated by Georgian legislative acts.”

This, in essence, rejects the model of joint (competitive) jurisdictions as set forth in the Constitution. The peculiarity of the Georgian Constitutional Law on the Status of the Adjara Autonomous Republic lies in the principle that a state-territorial unit can apply joint jurisdiction until the central government decides to intervene at will, since legal acts and the will of the central authority shall dominate in regard to those issues that lie within the joint jurisdiction. This enables the central authority to entrust regulation of particular issues of joint jurisdiction to state-territorial units, and through this, promote self-governance. However, if a territorial unit regulates in a manner that is not supported by the central authority, the central authority can then issue a legal act that takes precedence over the territorial unit’s regulation, thus providing ultimate control to the state. The choice of a particular model is a matter of political preference, and a deeper analysis of such a choice is beyond the scope of this research. Nevertheless, one cannot ignore the legal problem this creates. By rejecting joint (competitive) jurisdiction and assigning issues that do not lay within the special jurisdiction of Adjara to the central authority’s jurisdiction, the legislators defied the requirements of the Constitution. Consequently, the constitutional law is in conflict with the particular article of Constitution on which it was based and for which it was passed.

## **Constitution of the Adjara Autonomous Republic**

A Constitution (statute) is an essential element in the status of any autonomous community. In world practice there are several different types of acts that have been utilized to determine the status of autonomies. For example, in Finland and Denmark the authorities of autonomous communities are defined through a national law; in Italy and Spain the autonomies' status is determined by their supreme legislative body through legislative acts. The Georgian model is similar to the Spanish model, since subparagraph (a) of paragraph 1, Article 7 of the Georgian Constitutional Law on the Status of the Adjara Autonomous Republic states that:

“1. Under Paragraph 1, Article 3 of the Georgian Constitution the special administration of the Adjara Autonomous Republic is responsible for:  
a) adopting the Constitution and other normative acts of the Adjara Autonomous Republic and introducing amendments in them.”

Article 23 of the same law provides for the following:

“The Constitution of the Adjara Autonomous Republic shall be adopted by two thirds of the total number of the Adjara Autonomous Republic's Supreme Council members, and it shall come into force immediately after the Georgian Organic Law on Ratifying the Constitution of the Adjara Autonomous Republic is carried into effect.”

There are a couple of discrepancies between the two articles of the same law. Firstly, the authority to adopt and amend the Constitution is included in the special jurisdiction of the Adjara Autonomous Republic, and the central authority has no right to interfere in the special jurisdiction of the republic. If the term “adopt” is defined as the passing of an act as opposed to bringing it into force, then there is no conflict between Articles 7 and 23 of the Constitutional Law. If this is indeed the case, then Article 23 of the Constitutional Law complements Article 7. However, it would be preferable for “adopting” and “bringing into force” to be defined through a separate article.

Secondly, under Subparagraph (a) of Paragraph 1, Article 7 of the Constitutional Law, the special administration of the Adjara Autonomous Republic is responsible for adopting and amending the Adjara Constitution, while Article 23 provides for ratification of the Constitution by an organic law, and there is no mention of introducing amendments into it. To avoid confusion in the future, it would be better for Article 23 to specify that the organic law shall ratify the Adjara Constitution and amendments introduced into it. However, because the procedure for amending the Georgian Constitution is complicated, it would be reasonable if such norms were at first introduced to the new Constitution of Adjara, and were subsequently ratified by the Georgian Parliament.

## **Formation of the Supreme Bodies of the Adjara Autonomous Republic and their Relation to the Central Authority of Georgia**

The international practice of establishing governing bodies for state-territorial units varies greatly. However, in most cases the form of government for state-territorial units is identical to the structure of the central authority. For example, in the United States, which is a presidential republic with a president that is elected by the people, the states follow the same model as the federal government. Therefore, each state has an elected governor that is voted for by the people of that state. The Federal Republic of Germany is governed by Parliament, and the head of the government is the Chairman of the Government (Chancellor). The states of the federation each have the same form of elected government, which is the parliamentary model. In Georgia the form of government for the state-territorial units is not the same as that of the central authority. The structure of Georgia's national government is a presidential republic led by a president who is directly elected by people, whereas the head of the Adjara Autonomous Republic is the chairman of its government who is nominated by the Georgian President and confirmed by the Supreme Council of the Autonomous Republic.

### **The Supreme Council of the Adjara Autonomous Republic**

The structure and rules of establishing representative bodies of state-territorial units varies across the world. For example, in the United States, the federal legislative body is made of two chambers; the state legislative bodies also have two chambers (with the exception of Nebraska). In Germany the federal legislative body consists of two chambers, while the states have one-chamber bodies (with the exception of Bavaria).

Under Article 10 of the Georgian Constitutional Law on the Status of the Adjara Autonomous Republic, the supreme representative body of the Adjara Autonomous Republic is the Supreme Council, which is made up of 18 deputies elected by a proportional system and 12 deputies elected for a period of four years by a majority system.

Under Article 14 of the Constitutional Law, the Supreme Council:

- “a) adopts the Constitution of the republic and the laws of the republic on issues that are included in the special administration of Adjara under this law and in cases directly defined by Georgian legislative acts;
- b) confirms the budget of the Adjara Autonomous Republic;
- c) controls expenditures and the budget of the executive bodies of the Adjara Autonomous Republic;
- d) confirms the Chairman of the Government of the Adjara Autonomous Republic and the staff of the Government of the Adjara Autonomous Republic who are nominated by the Chairman of the Government;
- e) is authorized to adopt a motion of censure against the Adjara Autonomous Republic's government with support of two thirds of its members;
- f) applies other authorities that under this law, Georgian legislation and the Constitution of the Adjara Autonomous Republic lie within its jurisdiction.”

An analysis of the authorities vested in the Supreme Council as compared to other norms of the Constitutional Law reveals that the political weight of the autonomy's supreme representative body is rather insignificant.

Under Subparagraph (d) of Paragraph 1, Article 14, it states that the Supreme Council of the Adjara Autonomous Republic confirms the Chairman of the republic's government and the staff of the government, who are nominated by the Chairman. This gives the impression that the Supreme Council has some control over the republic's government. However, upon further investigation, this control is limited through Paragraph 2, Article 12 of the Constitutional Law, "the President of Georgia is authorized to dissolve the Supreme Council of the Adjara Autonomous Republic if the latter two times in succession refuses to confirm the candidacy of the Chairman of the Government of Adjara Autonomous Republic." Furthermore, Paragraph 1, Article 17 of the Constitutional Law states, "if the Supreme Council of the Adjara Autonomous Republic refuses to confirm the candidate submitted by the President of Georgia, the President is authorized to suggest to the Supreme Council the same or any other candidate within 10 days."

Analysis of all the above-cited norms reveals that in fact the representative body of the republic has significantly limited authority as compared with the executive branch. If the Supreme Council fails to accept the President's candidate two times in a row, the council can be dissolved. Additionally, if the Supreme Council does not confirm the candidate for Chairman of the Government that the President submits, the President can simply re-nominate the rejected candidate. With these restrictions of its authority, the Supreme Council in essence functions as a notary to legalize decisions that are made independently of it.

In addition to its role in the appointment of the Chairman of the Government of the republic, the Supreme Council serves a similar role in regard to several other significant issues such as confirmation of ministers, confirmation of a budget, etc. This fact is illustrated by Paragraph 1, Article 12 of the Constitutional Law, which reads:

"The President of Georgia is authorized to dissolve the Supreme Council of the Adjara Autonomous Republic by consent of the Georgian Parliament if its actions pose a threat to the state's sovereignty, territorial integrity, realization of the constitutional authorities of government bodies **or/and** the Supreme Council fails to exercise the authorities vested in it by this law and the Constitution of the Adjara Autonomous Republic."

In this provision, it is important to note the words, "or/and." The above-cited norm lists the reasons for dissolution of the Supreme Council of the autonomous republic. "And" is a conjunction connecting words/clauses/sentences, etc. If only "and" was used, then the Supreme Council could be dissolved only if all of the conditions of the norm were met. However, the legislators used the word "or" in addition to "and," which makes it possible for the Supreme Council to be dissolved even if only one of the conditions of the norm was met. Under Paragraph 1, Article 12, one of the reasons listed for dissolution of the Supreme Council is its failure to exercise the authorities vested in it by this law and the Constitution of the Adjara Autonomous Republic. Therefore, according to Article 14 of the Constitutional Law (see above)

and the entire text of the Law, the Supreme Council can be dissolved for failure to comply with any portion of the law, e.g., failure to introduce amendments in the Adjara Constitution, to confirm the budget, to control the budget of the executive bodies, refusal to confirm the Autonomous Republic's Government or Chairman of the Government, etc. Furthermore, a failure to fulfill any function given to the Supreme Council by this law or by either Adjara or Georgian legislation (by any normative act) is cause for dissolution of the Supreme Council.

It would be interesting to compare this norm to the norms generally dealing with local self-governments and their representative councils (Sakrebulo). Under Article 43 of the Organic Law on Local Government and Self-Government, a representative body of a local self-government can be dissolved if its activities pose a threat to the state's sovereignty, territorial integrity, and exercising of the constitutional authorities of government bodies. It can also be dissolved in any of the following situations:

- a) the Sakrebulo has lost more than half of its members;
- b) the Sakrebulo failed to elect the head of the executive body within two months;
- c) the Sakrebulo failed to confirm the local budget, drafted according to rules set forth by Georgian legislation, within two months from the beginning of the budgetary year.”

This is an extensive list of the circumstances for which a Sakrebulo can be dissolved. A comparison of the two norms demonstrates that the Supreme Council of the Adjara Autonomous Republic is deprived of any guarantees of protection, and it is protected from dissolution no more than the Sakrebulo of any small village is.

Finally, there is one more matter of concern regarding the temporary reassigning of the Supreme Council's authorities if it is dissolved. Under Paragraph 3, Article 12 of the Georgian Constitutional Law on the Status of the Adjara Autonomous Republic it states,

“In case of dissolution of the Supreme Council of the Adjara Autonomous Republic, its authorities shall be exercised by the Temporary Presidential Council appointed by the President of Georgia. The term of office of the Temporary Presidential Council shall terminate immediately after recognizing the authority of a newly elected Supreme Council of the Adjara Autonomous Republic.”

Paragraph 5 of the same article prescribes that the extraordinary elections of the Supreme Council shall be held not earlier than 60 days and not later than 90 days after its dissolution. Since tallying of election results and calling the first session can take as long as a month, the Temporary Presidential Council would most likely fill the role of Supreme Council for a period of four months. The Constitutional Law makes no mention of how the Temporary Presidential Council should be formed or its activities. Considering the length of time that the temporary council would serve, this is a significant omission.

## The Government of the Adjara Autonomous Republic

The Status of the Government of the Adjara Autonomous Republic is defined by Article 15 of the Constitutional Law, which states, “The government of the Adjara Autonomous Republic is the executive body of the Adjara Autonomous Republic, which exercises executive authority and determines the main direction of activities of the executive branch of the Adjara Autonomous Republic. The government of the Adjara Autonomous Republic consists of the Chairman of the Government and Ministers of the Adjara Autonomous Republic.” It is remarkable that the Constitutional Law, which contains detailed information on staffing and dissolution of the government, does not define the government’s functions and jurisdiction.

Since the procedure for appointing the Chairman of the Government was covered above, we shall focus here solely on the procedure for nominating candidates for this position. According to the Constitutional Law, the President of Georgia has the exclusive right to nominate candidates for Chairman of the Government of the Adjara Autonomous Republic. In view of the fact that the country is attempting to move in the direction of decentralization, this procedure seems counterproductive. Decentralization could be achieved by giving the state-territorial unit the right to choose the head of its own government, especially since the President of Georgia already has the authority to dissolve the republic’s government and Supreme Council (more detailed analysis of this issue follows below) and to replace both bodies (the Supreme Council with the Temporary Presidential Council and the government with the President’s Representative and his/her Administration.)

The procedure for filling the positions within the government of the Adjara Autonomous Republic is also perplexing. Under Article 17 of the Constitutional Law, a newly elected Chairman of the Government shall submit the candidates for staff positions within the government to the Supreme Council for confirmation, and the Supreme Council shall make the final decision. This procedure is identical to that employed by the central government. However, Paragraph 3, Article 17 of the Law goes on to state that:

“If a staff member of the autonomous republic’s government is terminated, a new member of the government shall be appointed by the Chairman of the Autonomous Republic’s government in accordance with the head (management) of the respective body within the Georgian central government.”

In addition, Paragraph 3, Article 20, prescribes that:

“A candidate for a ministry position within the Adjara Autonomous Republic shall be submitted to the Supreme Council of the Adjara Autonomous Republic for confirmation by the Chairman of the Adjara Autonomous Republic’s government in accordance with the head (management) of the Georgian central government’s respective body and according to the rule established by this law.”

These provisions contain the unreasonable requirement to coordinate the candidacies of particular ministers with respective ministers of the Georgian central government when a new minister is appointed and when any staff member of the government is submitted to the newly elected Supreme Council for confirmation.

The odd thing about this requirement is that Article 20 of the Constitutional Law includes a list of the sectors for which the autonomous republic can establish ministries. They are:

- a) economy, finances and tourism
- b) health and social security
- c) education, culture and sport
- d) agriculture

And Paragraph 2 of the same article prohibits the establishment of these specific ministries in the Autonomous Republic of Adjara: the Ministry of Internal Affairs, the Ministry of State Security, the Ministry of Defense or other militarized bodies. The Constitutional Law establishes the sectors that shall be administered exclusively by the central authority and those that shall be entrusted to the autonomous republic. At the same time, the law includes a norm that requires submission of all minister candidates for the approval to the central authority. In view of this norm and the narrow scope of the Adjara Autonomous Republic's jurisdiction, it is difficult to ascertain how the Adjara government maintains any autonomy.

The procedure for dissolution of the autonomous republic's government is also solved in a rather strange way through Article 19 of the Constitutional Law:

"The President of Georgia is authorized to dissolve the government of the Adjara Autonomous Republic in the following cases:

- a) if its activity poses a threat to the country's sovereignty, territorial integrity and for exercising the constitutional authorities of government bodies;
- b) if it fails to exercise the authorities vested in it by this law and/or by the Constitution of the Adjara Autonomous Republic."

The procedure for dissolving the government of the Adjara Autonomous Republic is the same as the procedure for dissolving the Supreme Council with one key difference. Georgian Parliament consent is required to dissolve the Supreme Council, but it is *not* required to dissolve the autonomous republic's government. Moreover, if the President dissolves the government, or if the Supreme Council of Adjara passes a no-confidence motion against the republic's government with two thirds of its members, then Paragraph 4, Article 16 of the Constitutional Law provides for the following:

"Before confirmation of the new staff of the Adjara Autonomous Republic's government, the authority of the Adjara Autonomous Republic's government is to be implemented by the President's representative and his/her administration, which shall be appointed in Adjara by the Georgian President."

According to Article 19 of the Constitutional Law, in a case of dissolution of the Adjara government by the President for failure to exercise the authorities vested in it by the Constitutional Law and the Adjara Constitution, the candidate for Chairman of the Government (who, after being confirmed, shall nominate the government's staff) shall be submitted to the Supreme Council for confirmation within two months after the government's dissolution. In a case of dissolution of the government for

activities that pose a threat to the sovereignty and territorial integrity of the country and for exercising constitutional authorities of government bodies, the candidate for Chairman of the Government shall be submitted to the Supreme Council within one month after rectifying the circumstances that led to the dissolution of the government.

This provision contains statements that seem ineffective. Firstly, if the government is dissolved because Parliament passes a no-confidence motion against it, or because it fails to exercise its authorities, then it is unclear why two months are needed to submit a candidate for Chairman of the Government and why it is necessary to appoint the President's representative and his/her administration. Such a situation could easily be dealt with by including a provision in the Constitutional Law that would require the Georgian President to submit a candidate for Chairman of the Government to the Supreme Council within ten days, and during this short period vest the authorities of the government in the old staff of the government. This would follow the model prescribed by the Georgian Constitution for the Georgian executive branch.

Another statement that is confusing is the one regarding dissolution of the government for posing a threat to the sovereignty and territorial integrity of the country and also for exercising the constitutional authorities of government bodies. There is no explanation of who should decide whether the circumstances that led to the government's dissolution have been rectified, by what criteria this should be measured and a timeframe for rectifying the situation. Additionally, it is not clear why a candidate for Chairman of the Government cannot be submitted until the circumstances have been resolved and corrected.

There is one additional statement that requires analysis, Paragraph 2, Article 18 of the Constitutional Law, which states:

“The Georgian President is authorized to repeal or terminate the effect of an act issued by the Chairman of the Government of the Adjara Autonomous Republic if it contradicts the Georgian Constitution, this law, international treaties and other agreements to which Georgia is a party, and Georgian laws and legal acts issued by the Georgian President.”

This raises several questions: whether the Georgian President's authority to repeal an act issued by the Chairman of the Adjara government can be regarded as interference in the jurisdiction of the Constitutional Court based on its inconsistency with the Georgian Constitution and the international treaties and agreements to which Georgia is a party; whether it is possible or lawful for the President to repeal an act of the Chairman of the Adjara government that were issued according to the special administration of Adjara by Article 7 of the Constitutional Law; and whether repeal of an act interferes with the exclusive jurisdiction of the Adjara Autonomous Republic. To avoid any possibility of jurisdictional interference, a mechanism could be introduced to enable the President to terminate the effect of an act, while appealing it through the court system.

Analysis of the rule for formation and dissolution of the Adjara government and the power of the central authority over it reveals that in actuality, the government of the Adjara Autonomous Republic is an extension of the Georgian executive branch rather than an independent government of an autonomous republic.

### Property and finances of the Adjara Autonomous Republic

Finances and property are two of the most important elements of an autonomous community, since they are essential to its existence and operations. Therefore, the jurisdictional issues related to finance and property should be defined in detail and separately from similar jurisdictions of the central authority. Furthermore, it would be advisable to do this through a constitutional law. Unfortunately, only Article 22 of the Constitutional Law on the Status of the Adjara Autonomous Republic covers this issue, and it does so in a cursory manner. This article prescribes the following:

- “1. The Adjara Autonomous Republic shall enjoy financial autonomy within the frames established by Georgian law. The Adjara Autonomous Republic shall dispose of the incomes received through the local taxes and duties imposed by it.
2. In order to ensure that the Adjara Autonomous Republic is able to exercise its authority, the republic may be granted a part of the state income received from taxes and other sources, as well as special funding from the state budget.
3. The Adjara Autonomous Republic possesses the property whose rule of formation shall be determined by Georgian legislation.”

Paragraph 1 of this article stipulates that the autonomous republic is authorized to “impose” local taxes and duties but does not specify which specific taxes and duties this refers to. The meaning of the term “impose” is also vague. Does it imply a right to collect all or part of the taxes set forth by the central authority, or shall the autonomy be authorized to determine (but not impose) taxes at its own discretion and according to its needs? The Constitutional Law does not provide answers to these questions. One has an impression that the Adjara Autonomous Republic has no special authority regarding financial matters, but is included in the system of local self-government units and enjoys the same authorities and guarantees as any regional unit or town.

It would be advisable, to avoid any ambiguity, for the Constitutional Law to go into more depth on financial matters, especially since there are many examples of this in other countries. For example, the German Constitution distinguishes between taxes imposed by the Federation and those imposed by the states. Additionally, the German Constitution establishes so called “competitive jurisdictions” regarding drafting of tax legislation and specifies that states have the right to draft tax legislation provided the taxes are not the same as those imposed through Federal legislation.

The Constitutional Law also does not provide much clarity regarding property-related issues for the Adjara Autonomous Republic. Property-related issues are covered in Article 24 of this law, which states the following:

“The Georgian government, within three months after putting this law into effect, shall decide the legal and organizational issues connected with transfer of state property to the Adjara Autonomous Republic, taking into consideration the issues attributed to the administration of the Adjara Autonomous Republic by this law and the issues attributed to the special administration of supreme state bodies by the Georgian Constitution.”

According to the norm cited above the legal and organizational regulation of this extremely important issue is entrusted to the Georgian government. It is difficult to understand how the Georgian government can legally regulate such issue. This raises several questions: Should the issue of the autonomous community's property be regulated by the government's normative act(s) or by a superior normative document like a law? Is the Georgian government authorized to regulate the issue of the autonomous community's property independently, or should the legislative branch of central authority and the President be involved in this process? How realistic is enjoyment of autonomy by a territorial unit when its property and property authorities can be determined, changed and/or restricted by the central government at will?

### **Conclusion**

The Constitutional Law on the Status of the Adjara Autonomous Republic represents a first effort at dealing with the issue of Georgia's state-territorial structure. The law was adopted in haste, drafted over too short of a time period and contains a number of serious shortcomings. Through the law, the status and authorities of the autonomous community are reduced to those of an ordinary local-government unit. This is of particular concern in the Georgian context, since the status and authorities of Georgian local governments are restricted in comparison to many local-government models in international practice.