

TRANSITIONS TO PARLIAMENTARY SYSTEMS: LESSONS LEARNED FROM PRACTICE

Discussion Paper 5/2023



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Sumit Bisarya

Contributors:

Sophio Asatiani

Georgi Chitidze

David Hakobyan

Nana Kalandadze

Armen Mazmanyán

Rodica Secrieru

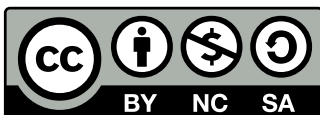
Alexandru Tănase



International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
+46 8 698 37 00
info@idea.int
www.idea.int

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International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
Tel: +46 8 698 37 00
Email: info@idea.int
Website: <<https://www.idea.int>>

Cover illustration: Illustration is AI-generated with Midjourney.
Design and layout: International IDEA
Copyeditor: Andrew Mash

DOI: <<https://doi.org/10.31752/idea.2023.89>>

ISBN: 978-91-7671-715-8 (PDF)
ISBN: 978-91-7671-716-5 (Print)

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EXECUTIVE SUMMARY

Despite widespread claims that parliamentary systems with an indirectly elected president produce better outcomes for democratic governance, constitutional reform to move away from a directly elected president to an indirectly elected president is extremely rare. In recent history, only three countries have undergone such a change in a civilian democratic context—Armenia, Georgia and Moldova. The transition in Moldova, which took place in 2000, was reversed by a court decision in 2016. The transitions in Armenia and Georgia are more recent and still in their early stages.

This Discussion Paper examines these changes to distil lessons learned. It has been drafted in large part by national experts who have played key roles in these changes. The Discussion Paper discusses the background and triggers for the transition, the textual changes to the constitutions and their consequences.

In all three cases, the status of the executive—and its relation to other organs of governance—had been unsettled since the time of independence. This is a common feature of many of the former-Soviet republics. It should also be noted that all three of the systems were semi-presidential and ‘premier-presidential’, or systems with a dual executive where the government is responsible only to the legislature. Furthermore, none of the systems at the time of the transition had presidents with a strong set of formal powers under the constitution, although informal powers provided a wide range of opportunities to influence other actors.

The immediate triggers for the transitions were complex. There were self-interested political motives for changing the form of government in all cases. However, the reforms were also set against a background of ongoing discussions on accession to the European Union, which looked favourably on parliamentary systems.

Constitutional reform to move away from a directly elected president to an indirectly elected president is extremely rare.

The textual changes differ in their detail, but all centred around a new mode of election of the president. The other changes made in Moldova were minimal, while in Armenia and Georgia there were widespread changes to the constitution beyond the office of the president. Each country adopted a different mode of election. In Armenia and Moldova, the legislature was to elect the president by a supermajority, while in Georgia the legislature now joins with representatives drawn from local assemblies to form an electoral college. Importantly, there was no provision in Moldova to allow for a lower threshold to elect the president if no candidate received the required number of votes in the first round.

There are concerns in Armenia and Georgia about the dominance of the parliamentary majority, on which the president can no longer provide a check.

Given that the changes are very recent in the cases of Armenia and Georgia, it is difficult to speak about consequences—in particular given that the transitions are ongoing. In the case of Armenia, two constitutional review commissions have been established in the period since the constitutional reforms were promulgated. In Georgia, the changes provided for a lengthy transition period, and the first indirect presidential elections are not scheduled until 2024. Russia’s full-scale invasion of Ukraine, the armed conflict between Armenia and Azerbaijan and the Covid-19 pandemic have also made for an unusually unstable geopolitical and economic environment in which to assess any new political framework. Nonetheless, there are early concerns in Armenia and Georgia about the dominance of the parliamentary majority, on which the president—shorn of a directly elected mandate—can no longer provide a check. In Georgia, the long transitional period has resulted in additional intra-executive tensions as the directly elected president clashes with the parliamentary majority party that nominated her, at least in part because she can claim a separate electoral mandate.

In Moldova, the parliamentary system was never fully accepted and the poorly designed presidential electoral rule, which called for the dissolution of parliament if no candidate could achieve the required three-fifths supermajority, resulted in numerous dissolutions and widespread frustration with the political system.

INTRODUCTION

There is a longstanding debate over whether presidential, parliamentary or semi-presidential systems of government lead to more democratic outcomes (see e.g. Linz 1990; Horowitz 1990; Samuels and Shugart 2003). In practice, however, while there have been numerous constitutional transitions between the two forms of semi-presidential government, and many transitions—particularly in Africa—from parliamentary to presidential systems of government, very few reforms have transitioned away from a directly elected president. Ignoring instances of military coups, there are only three cases of such transitions, all of which took place in relatively close geographical proximity: Moldova in 2000, Armenia in 2015 and Georgia in 2017. All three countries previously had a semi-presidential system of government and implemented constitutional amendments to move to a parliamentary system.¹ In 2016, however, Moldova’s Constitutional Court annulled the amendments adopted in 2000, which had introduced an indirectly elected president, and the country reverted to a directly elected president.²

Reforms that replace a directly elected president with a president elected by an electoral college are rare, and their rationale and impact on the functioning of democratic systems of governance have not been sufficiently explained or documented for comparative analysis and learning. This Discussion Paper contributes to a better understanding of these three important constitutional transitions, their drivers and their impacts. In examining the transitions, it asks four questions:

There is a longstanding debate over whether presidential, parliamentary or semi-presidential systems of government lead to more democratic outcomes.

¹ The frequently cited definition of semi-presidentialism by Robert Elgie is used, in which the constitution includes both a popularly elected president and a prime minister and cabinet responsible to parliament (Elgie 1999). Unlike the definition of Duverger, this categorization does not depend on a subjective assessment of the extent of presidential power (Elgie 2011: 19–23).

² It is important to note that in the view of the Constitutional Court of Moldova, changing the mode of presidential election from direct to indirect did not imply a change in the system of government as the powers of the presidency were not changed. For the purposes of this paper, however, the system is classified as semi-presidential.

1. What were the constitutional arrangements before the transition, in particular with regard to the relationship between the president, the government and parliament?
2. How did these arrangements work in practice and what were the reasons for the transition?
3. What were the relevant changes to the constitutional text?
4. What were the consequences? How did the parliamentary system work in practice?

The Discussion Paper is based on discussions at the International IDEA Workshop 'Semi Presidential Systems in Constitutional Transitions', which took place in The Hague, the Netherlands on 13–14 December 2022.

Chapter 1

PRE-TRANSITION CONSTITUTIONAL AMENDMENTS

In each case, the central element of the constitutional transition was a move away from a system where a directly elected president shared executive power with a prime minister and government responsible to parliament, to a system where the president was indirectly elected and executive power was concentrated in the prime minister and government.

This chapter describes the salient constitutional provisions related to this transition as they were in the semi-presidential constitution before the transition and the parliamentary constitution following the amendment, focusing in particular on the formation and responsibilities of the executive branch.

Presidential election

In all three semi-presidential constitutions, the president was elected in a direct vote by a majority of the voters (Constitution of Armenia, 1995, article 51; Constitution of Georgia, 1995, article 70; Constitution of Moldova, 1994, article 78).

Parliamentary election

Apart from the number of members of parliament (MPs), which was specified in the Constitution, the electoral system in Armenia and Moldova was left to legislation. In Georgia, however, the electoral system specified in the Constitution provided for a mixed system, specified the number of parliamentarians elected by both proportional representation (PR) and majoritarian voting—77 and 73 respectively—and the votes threshold (5 per cent) for eligibility for a seat in parliament (articles 49 and 50.2). Georgia's Constitution also specified that pre-election blocs could be formed as 'electoral subjects' entitled to be awarded parliamentary seats (article 50.2).

Government formation

In the pre-reform constitutions in all three countries, the president selected the prime minister, the prime minister chose her or his government and the

government was subject to a vote of investiture. In Georgia and Armenia, the constitutions provided more guidance for the president on selecting the candidate who ‘performs best at elections’ (Constitution of Georgia, 1995, article 80.2) or the candidate who ‘enjoys the confidence of the highest number of the majority of deputies, and if this is not possible the candidate who enjoys the confidence of the highest number of deputies’ (Constitution of Armenia, 1995, article 55.4). In Moldova, the Constitution provided that the president ‘hear the parliamentary factions’ before selecting a candidate for prime minister (article 98.1). The Constitutional Court interpreted this as a substantive requirement for consultations, whereby the president can only appoint a candidate who has obtained the support of a formal parliamentary majority (Constitutional Court of Moldova 2015).

Government removal

In all three systems, the government could be removed by a vote of no confidence in parliament. At the time of the transitions, however, the president did not have discretionary power to dismiss the government, although notably in both Armenia and Georgia the Constitution had allowed this in the past.

Law and policymaking responsibilities of the president

Only in Moldova did the Constitution give the president the right of legislative initiative (article 73). It also gave the president the power to call for a referendum ‘on matters of national interest’ (article 88.f), which was understood as only consultative. In Georgia, the president also has the power to call a referendum, although the scope of matters potentially subject to referendum is defined in law (article 74). In Armenia, the president had no constitutional power over referendums.

In all three cases, the presidential veto is only suspensive and parliament is able to override any veto with a simple majority (Armenia, article 55.2; Georgia, article 68.3; Moldova, article 93).

Presidential appointment responsibilities

In Moldova, the Constitution provided no explicit, unilateral powers of appointment.

In Georgia, according to the pre-reform Constitution, the president appointed three of the nine members of the Constitutional Court (article 88.2) and nominated Supreme Court justices to be approved by parliament (article 90). In addition, the president appointed one member of the High Council of Justice, ‘participated in the appointment of the Chairperson and members of the Central Election Commission’, as defined by law, and nominated, in agreement with the government, members of the National Regulatory Authorities (article 73.1.e). The president also appointed all the members of the National Security Council (which he also chaired) and—together with the government—appointed the Chiefs of the General Staff of the Armed Forces (articles 73.3 and 99.1).

In Armenia, the pre-reform Constitution provided that the president appoint four of the nine members of the Constitutional Court and two of the nine members of the Council of Justice, and could appoint and dismiss the High Command of the armed forces and diplomatic representatives. The president also appointed to and presided over the National Security Council (article 55).

Miscellaneous

The titles and descriptions of the roles of the president in each semi-presidential constitution lent themselves to broad interpretation of the president's mandate. As well as being head of state in Moldova, the president is described in the Constitution as the 'guarantor of national sovereignty, independence, unity and territorial integrity' (article 77). In Armenia, as the guarantor of national security and independence, and to 'ensure the regular functioning of legislative, executive and judicial powers' (article 49). Similarly, in Georgia, as well as being the guarantor of national independence and unity, the president was to 'ensure the functioning of state bodies within the scope of his powers under the Constitution' (article 69). In Armenia and Georgia, in particular, the inference is that the president is apart from—and above—all other organs of state.

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Chapter 2

PRE-TRANSITION CONSTITUTIONAL PRACTICE

This chapter seeks to understand how executive power worked in practice.

From the moment of its proclamation of independence, discussions regarding the system of government have played a central role in the history of the Republic of Moldova.

2.1. MOLDOVA

From the moment of its proclamation of independence, discussions regarding the system of government have played a central role in the history of the Republic of Moldova. Confrontation between different political branches was common throughout the post-Soviet space and Moldova was no exception.

At independence, Moldova adopted a semi-presidential system with decision making located in parliament. The Office of the President was endowed with limited powers and lacked the necessary constitutional instruments to exercise direct control over the parliamentary majority. The tenure of each president saw persistent efforts to obtain more powers, while parliament consistently opposed the transfer of power from the legislature or government to the presidency. This particularly post-Soviet characteristic shaped the logic of constitutional reform concerning the distribution or redistribution of power within the state. The 2000 constitutional reforms were motivated solely by political considerations and removing this reform from its specific historical context would make its rationale hard to understand.

The first presidential elections in the Republic of Moldova took place on 8 December 1991. Mircea Snegur, a former leader of the Communist Party of the Soviet Union (PCUS) was the only candidate and was therefore elected without opposition. Until adoption of the 1994 Constitution, President Snegur sought enhanced powers and advocated for a presidential system.

Reasons for transition

On 1 December 1996, Snegur failed in his bid for re-election, losing to another former leader of the PCUS, Petru Lucinschi. On the first day of his mandate,

President Lucinschi tried to establish control over parliament to move Moldova towards a presidential republic, following the model of Russia or Belarus. In this context, on 23 May 1999 Lucinschi organized a consultative referendum. The referendum question was: 'Are you in favour of amending the Constitution in order to establish a presidential system of governance in the Republic of Moldova, in which the President of the republic would be responsible for the formation and leadership of the Government, as well as for the results of the country's governance?'. The proposal was approved by 64 per cent of voters, but being only consultative had no legal effect.

In response, parliament promptly initiated its own constitutional reform. On 5 July 2000, parliament passed Law No. 1115-XIV, modifying article 78 of the 1994 Constitution. A significant change introduced by this reform was a new procedure for electing the president, who would no longer be directly elected but elected by parliament.

2.2. ARMENIA

Presidents have always been the central figure in the Armenian power structure. With brief exceptions, they have either controlled parliamentary majorities or effectively enjoyed the support of parliament. Armenia's first president, Levon Ter-Petrosyan, enjoyed parliamentary majorities in each of his terms (1991–1998), until his party split in 1998 forcing him to resign in February that year.

President Robert Kocharyan (1998–2008) had to cope with more sensitive political balancing as he did not lead a party of his own but instead needed to bargain with the leading parties, in particular the Republican Party (RP). Unlike the terms of both his predecessor and his successor, Kocharyan's term witnessed strong pressure from the parliamentary majority and influential prime ministers such as Serzh Sargsyan (2007–2008), who eventually replaced Kocharyan as president. An emboldened parliamentary majority in 1999–2000 led to a full-scale semi-presidential cohabitation.

By the time Sargsyan became president in 2008, his RP had already emerged as the dominant party in the legislature following the 2007 parliamentary elections. The RP maintained that status following the 2012 and 2017 elections, effectively making the president the sole leader of the executive, and his prime ministers rather technical figures.

In summary, while presidents had been key decision makers in Armenia since adoption of the 1995 Constitution, they did not necessarily enjoy unconstrained, quasi-monarchic privileges, as is often believed to be the case in post-Soviet 'super-presidential' settings (Markarov 2016; Mazmanyan 2010). Armenia has witnessed periods of meaningful semi-presidential power-sharing and balancing, and one of the aims of the 2015 constitutional reforms was probably, at least in part, to achieve a political regime where power is more

With brief exceptions, presidents in Armenia have either controlled parliamentary majorities or effectively enjoyed the support of parliament.

concentrated. There is no doubt that the presidency was the most powerful decision maker in the country, due to both the formal and the informal powers it enjoyed. Endowed by the Constitution with wide-ranging executive functions, from a near-exclusive monopoly in foreign affairs to the final say on the composition of governments, presidents also controlled the security and law enforcement agencies, the courts and the prosecutor, as well as all the other agencies that were supposed to be (at least quasi-)independent, such as the Central Elections Administration, the media regulator and the Central Bank. In addition, presidents led informal but powerful patronage networks, coordinating any significant business activity and its proceeds, and controlled the media and often mafia-like local power structures. Some heads of state delegated these sensitive functions to their immediate trusted advisors, while others would handle these personally. The patronage system was essential for sustaining the presidents' tight grip on the distribution of any resources and informal power that was important for maintaining an uncontested decision-making monopoly during their tenure, and eventually for the reproduction of their power at critical junctures during elections.

Reasons for transition

So what brought about the reforms that ended the semi-presidential constitution? The officially stated reasons for the transition, as spelled out in the concept note on the constitutional reform from the Commission for Constitutional Reforms (Government of Armenia 2014), were that a parliamentary system would better promote consolidation of democracy and contribute to the separation of powers, and that semi-presidentialism had been at fault for the consolidation of a political system dependent on a single strong leader.

The real reasons for the transition were deeply political—to help an incumbent president reproduce and cement his power.

The real reasons for the transition, however, were deeply political—to help an incumbent president reproduce and cement his power. The parliamentary form of government, especially in its proposed incarnation, would have achieved this goal for several reasons. First, the transition to parliamentary government was intended to allow Sargsyan to remain as head of government. The president's second term was about to end and further re-election was prohibited by the two-term limit. However, the new constitution would allow him to remain in power as prime minister. Indeed, in April 2018, immediately after the expiry of his presidential term—and contrary to a public promise—Sargsyan had his party in parliament elect him prime minister.

Second, facing ever-increasing empowerment of the opposition and growing discontent among the public, Sargsyan's elite was happy to reduce the frequency of elections to just once every five years, as opposed to the parliamentary and presidential elections under the previous Constitution. The importance of this should not be overlooked. The ruling elites in a country like Armenia, with no significant internal resources and experiencing growing fragmentation, faced a key challenge in consolidating the critical financial and human resources needed to manipulate elections, and to cope with the potential turbulence caused by a fraudulent election—post-election protest and riots, domestic and international litigation, and international outrage.

Furthermore, the proposed parliamentary model would allow Sargsyan to rule without any of the constraints imposed by semi-presidentialism's inherent power-sharing arrangements. Indeed, the model of government introduced, which has been branded 'super prime-ministerial', endows the head of government with almost limitless powers while exempting her or him from accountability. Thus, why face term limits, impeachment procedures, a competing office within the executive and elections every two or three years if you can rule without any significant constraints for a five-year period?

To conclude, despite illusions of a parliamentary form of government, the transition in Armenia promised more power and fewer constraints. The 2015 constitutional reform was above all an instrument for reproducing and consolidating the rule of the incumbent president and the governing elite.

2.3. GEORGIA

After regaining its independence in 1991, Georgia adopted a new Constitution in 1995, which has since undergone significant amendments at various times, encompassing almost all forms of government and significantly affecting the country's landscape. Under the first Constitution, in the period 1995–2004, the president held significant power but did not have the competence to dissolve parliament. However, the legislature could not dismiss or impeach ministers or the executive branch. This configuration effectively made the president the sole leader in the executive.

During the second wave of constitutional amendments (2004–2012), Georgia shifted to a semi-presidential system with strong presidential powers. The directly elected president nominated the prime minister, who had to be approved by parliament. The president also had the authority to appoint and dismiss the ministers of domestic affairs, defence and state security. Importantly, the president could now dissolve parliament, which introduced an imbalance to the power dynamic between the president and the legislature. However, conflict between the president and the government would generally be resolved through political negotiations and parliamentary processes.

The next two waves of constitutional reform, of 2010 and 2018, represent significant phases of transformation in the country's political landscape. The first set of reforms marked a pivotal shift from a presidential-parliamentary system to a premier-presidential one. This shift involved reducing the powers of the president, notably including removal of the president's authority to dismiss the government. In doing so, the reforms aimed to establish a more balanced distribution of power between the executive and legislative branches, promote political stability and prevent abrupt governmental changes orchestrated by the president. These changes sought to lay the foundations for a more harmonious coexistence of the executive and legislative bodies within Georgia's political framework.

After regaining its independence in 1991, Georgia adopted a new Constitution in 1995, which has since undergone significant amendments at various times, encompassing almost all forms of government.

In a complementary move, the constitutional reforms of 2018 introduced the second phase of transformation by altering the mode of electing the president. This pivotal change shifted the country from a system of direct presidential elections to an indirect method of selection. This transition was part of broader electoral reforms aimed at enhancing democratic practices and fine-tuning the electoral system. While the primary focus of this discussion is centred on the transition from direct to indirect presidential elections, it is crucial to recognize that these changes occurred within the broader context of Georgia's political evolution. Understanding the interplay between these reforms is essential in order to grasp the nuances and implications of the electoral shifts and their impact on the democratic fabric of Georgia.

Throughout these constitutional changes, informal powers such as patronage, control over the security services and cultural influence played a significant role.

Throughout these constitutional changes, informal powers such as patronage, control over the security services and cultural influence played a significant role. Despite formal limitations, the president often had informal influence over key institutions and appointments. In particular, control over law enforcement and the judiciary was a critical informal power. During the era of strong presidential powers, the president's authority over law enforcement agencies and the lack of long-needed judicial reform gave rise to strong informal influence mechanisms. This authority often played a role in quelling opposition and resolving disputes for the benefit of the ruling party.

Moreover, in the absence of true local self-governance, where locally elected bodies are equipped with the required administrative and financial capacities, local government in Georgia has long been susceptible to influence from powerful patronage networks. Elected officials at the local level are often deeply embedded in these networks, affecting how resources are distributed from the central to local budgets and how decisions are made. These forms of influence serve as a sort of parallel governance structure that exists alongside the formal government. They serve as unofficial means of governance, filling the gaps left by the official legislative and executive branches, and have been critical mechanisms for delivering local votes in all elections. While they are now less visible, their impact on Georgian politics and governance continues to be substantial.

Reasons for the transition

Overall, Georgia's constitutional reforms over the past 30 years represent a complex interwoven process involving various political, historical and international threads. While each wave of reform—from establishing a new framework for an independent Georgia to the shift towards a more balanced and democratic system of governance—has been driven by factors such as the Rose Revolution and aspirations for European integration, the state has struggled to cement the robust liberal institutions that underpin a stable constitutional democracy. Each change in political power has led to the formation of constitutional commissions and vows to correct the abuses of predecessors, but these commitments have often gone unfulfilled in practice. The recurrent issue has been a lack of genuine incentives or constraints to prevent majorities from leveraging constitutional reform for short-term political gain rather than long-term democratic stability.

Following the 'super presidential' period of 2004–2012, which proved ineffective in the long term, there was growing recognition of the need to strengthen democratic institutions and prevent an over-concentration of power in the presidency, while also creating a more balanced system where no single branch of government held disproportionate power. The constitutional changes were also a response to criticism and concern raised during the period of super presidential powers. Some argued that the concentration of authority in the hands of a president was undemocratic because it lacked proper checks and balances.

Moreover, Georgia's aspirations to deepen its European integration played a role in the transition. The reforms were seen as a way to align Georgia's political system more closely with European standards on democracy and the rule of law (see e.g. article 78 of the Constitution). European institutions welcomed these changes, in particular the Venice Commission which published a positive assessment of the 2017 amendments that provided for the transition to a parliamentary system ([Venice Commission 2017](#)).

However, as is often the case with constitutional change, political incentives should not be overlooked. The president at the time of the 2017 reforms, Giorgi Margvelashvili, had a tense and difficult relationship with the Georgian Dream government, despite having initially been proposed as their candidate for the presidency. Removing the direct mandate of the president would weaken her or his ability to act as a constraint on government and strengthen the ability of the government to pursue its policy and political ends. Despite protests from both the president and opposition parties ([Civil Georgia 2017](#)) that the reforms were an attempt to entrench the governing party's power, the government was able to push through the reforms thanks to its constitutional majority in the legislature.

Georgia's aspirations to deepen its European integration played a role in the transition.

Chapter 3

EFFECTS OF THE CONSTITUTIONAL AMENDMENTS ON THE TEXT

3.1. MOLDOVA

In moving to a parliamentary system in 2000, the proponents for change had to devise a method by which parliament would elect the president. The change adopted was that a candidate would be elected president with the votes of three-fifths of all parliamentarians. If no candidate won three-fifths of the votes, a run-off would be held between the first two candidates. If still no candidate won a three-fifths majority, the election would be repeated. If still no candidate received a three-fifths supermajority, the parliament would be dissolved and new elections held.

Significantly, however, few of the president's major responsibilities were curtailed by the amendments.

Significantly, however, few of the president's major responsibilities were curtailed by the amendments. The power to call a consultative referendum, for example, was not removed by the amendment, nor were many of the appointment powers, with the exception of the two justices of the Constitutional Court.

At the same time, the powers of the government vis-à-vis parliament were strengthened by a new vote of confidence procedure (article 106.1), a broad procedure for parliament to delegate law-making to the government (article 106.2) and a provision that required government approval for any amendments to laws that would affect revenues or expenditure (article 131.4).

3.2. ARMENIA

The 2015 amendments brought wholesale changes to the Constitution. However, the focus here is on those changes that directly affected the executive and its relationship with the legislature. With regard to the presidential election, the amendments provided that the National Assembly

should elect the president with a three-quarters supermajority. Should no candidate receive the requisite number of votes, a second round would be held where the required supermajority was reduced to three-fifths. If no candidate achieved the threshold, a run-off would be held between the two leading candidates (article 125.4).

The responsibilities of the president have been much diminished, leaving her or him with a ceremonial role commonly seen in parliamentary systems, and no unilateral law- or policymaking powers or appointment powers, although the president can still nominate three of the nine justices to the Constitutional Court, to be approved by a three-fifths supermajority in the legislature (article 166.1). This more ceremonial role is also reflected in a modified description of the status and functions of the president, which now provides that the president 'shall observe compliance with the Constitution', 'shall be impartial and shall be guided exclusively by state and national interests' and 'shall perform his functions through the powers stipulated by the Constitution' (article 123).

Beyond the office of the president, notable changes were made to the form and functioning of parliament. Specifically, article 89 now specifies that the electoral system should be proportional but with a guaranteed 'stable parliamentary majority' to be produced by the Electoral Code. This guarantees the government a strong majority at the outset of every parliamentary term, the stability of which was further strengthened through the introduction of a constructive vote of no confidence (article 115.1), whereby the prime minister can only be removed if a vote of confidence proposes another prime minister who can command a majority.

While the amendments sought to establish a stable government with a strong parliamentary majority, they also included provisions to empower the parliamentary minority. For example, a quarter of the membership of the legislature can establish a Committee of Inquiry (article 108) or call for a parliamentary debate on an urgent topic (article 114).

The responsibilities of the president have been much diminished.

3.3. GEORGIA

As in Armenia, the amendments in Georgia were wide-ranging but the focus here is on those that directly affected the system of government. The new method of indirect election of the president involves an electoral college formed from the national parliament, representatives of special autonomous areas and electors chosen by political parties as represented in local government. In the first round of voting in the electoral college, a two-thirds supermajority is required to become president. If no candidate receives two-thirds of the votes, a run-off is held between the two leading candidates (article 50).

The president's constitutional responsibilities were significantly reduced in Georgia, and few unilateral powers remain.

Again, like Armenia, the president's constitutional responsibilities were significantly reduced, and few unilateral powers remain. The president retains a suspensive veto over legislation (article 46), can appoint five members of the Senate (once it has been established) and—it would appear from article 52(2)—has the power to refuse a request for a referendum by the government, parliament or a citizens' initiative. The overarching article on 'the Status of the President of Georgia' has also been amended to reflect this more ceremonial role. The language 'shall ensure the functioning of state bodies within the scope of his powers under the Constitution' has been deleted and the president's role is now described as 'Head of State', 'Guarantor of the Country's Unity and Independence' and 'Commander in Chief' (article 29). Article 49.3 adds that the president 'shall represent Georgia in foreign relations' but article 52.1 specifies that the president's representative powers are conducted with the consent of the government.

The electoral system for the legislature and the transitional provisions also merit comment. First, the Constitution establishes a bicameral system. A Senate is to be established 'following the restoration of Georgia's jurisdiction throughout the entire territory of Georgia' (article 37.1). Until this condition is met, parliament remains unicameral, but with significant changes to the electoral system. As noted above, the Georgian Constitution already contained detailed parameters for the electoral system. The amendments altered these to move away from a mixed system to a fully proportional system in a single nationwide district (article 37.2). The 5 per cent threshold is maintained (article 37.6). Furthermore, references to pre-electoral coalitions have been removed, and the Constitution now specifies that only political parties can receive mandates for members of parliament (article 37.6). Thus, the overall effect of the changes tends towards a 'rationalized' parliamentary system that favours stability in government over pluralism in the legislature.

Second, and importantly, the Constitution includes a set of transitional provisions to structure a staged approach to the principal changes. First, the Constitution only came into force following the presidential elections of 2018, which were conducted under the existing system of direct elections, but for a six-year term. Thus, the first indirect elections for the president will be in 2024. Second, implementation of a fully proportional electoral system for the legislature was also delayed, so the 2020 elections were held under the existing mixed system with the threshold lowered to 3 per cent.

Chapter 4

CONSEQUENCES OF CONSTITUTIONAL AMENDMENTS IN PRACTICE

4.1. MOLDOVA

Parliament was dissolved in 2000. In the elections held in March 2001, the Communist Party (PCRM) won a majority of seats. The changes to the electoral legislation, which included raising the electoral threshold, gave the Communist Party a supermajority, which enabled it to elect Party Secretary Vladimir Voronin as president. Voronin was re-elected as president in 2005, following PCRM's victory in the 2005 elections. President Voronin tightly controlled the special services and law enforcement institutions, and the entire judicial system was placed under the control of the president.

After 2009, parliament was consistently unable to elect a president due to the requirement for a three-fifths majority of the elected deputies. This led to an endemic political crisis and a series of dissolutions of parliament, lasting 900 days. All attempts to modify the Constitution in order to reduce the number of votes required to elect a president failed (Fruhstorfer 2016). The situation returned to normalcy after a decision by the Constitutional Court on 4 March 2016, by which Moldova returned to the situation that existed before the constitutional reform of 2000.

The Republic of Moldova currently operates as a parliamentary republic. Although direct election of the head of state has been reinstated, only the method of selecting the head of state has been modified, not the powers. Since 2016, there have been two presidents, each of whom represented the opposition at that time. A survey by IMAS for the EU in August 2017 found that over 90 per cent of respondents supported the decision of the Constitutional Court that the President of the Republic of Moldova should be directly elected by the citizens not parliament (IMAS 2017). Currently, no political party in Moldova, in power or opposition, has any plans to change the method of electing the head of state or the form of government.

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4.2. ARMENIA

Constitutional reform was not driven by the objective of facilitating high-quality substantive discourse in the state's political machinery, but to maintain power in the hands of one individual by revising the method of the transfer of power. Thus, in the current system, all decisions are taken by the incumbent majority and there are no meaningful rights for the parliamentary minority, while there is a non-executive president as the ceremonial figurehead. The president has the status of mere observer in the entire process of the appointment of the prime minister. The constitutional regulations do not support any meaningful association between the president and the politically neutral bodies that must remain non-partisan.

As to its main function as constitutional guardian, there is no guidance or provision in the Constitution about which principles or values the president should protect while observing compliance with the Constitution, particularly when considering the constitutionality of individual appointments. Should the president consider the integrity and the professionalism of the candidates while assessing the constitutionality of the entire selection procedure? In February 2021, when the prime minister dismissed the Chief of Military General Staff after he attempted to intervene in political affairs, the president declined to approve the dismissal and considered referring the matter to the Constitutional Court. Submission to the Court would have prevented the dismissal and led to an escalation of the political crisis. This move was harshly criticized by the parliamentary majority and raised questions on the scope of the powers of the president as constitutional guardian. After a series of meetings with the main political actors, the president abstained from applying to the Constitutional Court and the dismissal took effect.

At the same time, however, the prime minister announced his intention to resign and organize snap parliamentary elections, thereby prompting speculation that the president had de facto initiated the snap elections. After winning the elections, the prime minister launched a process of review of the Constitution. The political debates and discussions within the Constitution Revision Council clearly demonstrated a consensus within the political spectrum to maintain parliamentary democracy in Armenia, while recognizing the need to reconsider the balance of powers and the status of the non-executive president. Apart from standard explanations, such as intra-executive conflict and the lack of political responsibility of the president in semi-presidential systems, along with the idea of 'no winners/losers' in parliamentary systems, another argument for maintaining the current political regime is that semi-presidential governance would be likely to end up with the consolidation of power around one person. A succession of post-election crises in Armenia since 1996 demonstrates how political elites did their best to keep the president in power. While under parliamentary democracy, those in power are more willing to listen to the public and make internal changes, including replacing the leader; more importantly, parliamentary democracy promotes the formation of different factions within the political majority and creates better conditions for securing a high quality of public discourse and

the fulfilment of two basic principles of parliamentarism—transparency and debate.

Having said that, the political elite recognizes that the transition from semi-presidential governance to parliamentary democracy remains incomplete (Hakobyan 2023a). In a parliamentary system, the relationship between the legislative and executive branches of power, including the checks and balances, are different and the dividing line is more emphasized between the political majority and the parliamentary minority. The regulations in place, particularly the electoral system adopted, do not facilitate a culture of compromise and agreement at the inter- and intra-party levels. Thus far, parliament has not displayed high-quality political discourse. Nor was the Constitution interpreted by the political majority in line with a shared political culture, but merely to advance its political will. Appointments to the politically neutral institutions established by the Constitution are made by parliament without any specific powers given to the parliamentary minority, while senior executive, diplomatic and military officials are appointed by the prime minister without any parliamentary procedure in place even to question those appointments. The current constitutional architecture is often labelled prime ministerial governance or incomplete transformation to a parliamentary democracy, and needs to undergo substantial change to ensure a high quality of public discourse (Hakobyan 2023b). In this regard, the constitutional reform process should seek to redress the balance of powers and reassess the role of the non-executive president. If the president does not have the necessary powers to be an efficient civic leader and constitutional guardian with a significant role in the formation of the non-political neutral institutions as established by the Constitution, then the need to maintain the Office of the President is likely to be questioned (Hakobyan 2023a).

The political elite in Armenia recognizes that the transition from semi-presidential governance to parliamentary democracy remains incomplete.

4.3. GEORGIA

Georgia's recent constitutional transition from a semi-presidential to a parliamentary system represents a pivotal moment in the nation's democratic journey. However, the nuanced intricacies of this shift reveal a complex array of factors that make the transition both promising and concerning. First, it should be noted that the change to indirect presidential elections diverges significantly from public sentiment, as polls have shown overwhelming support for direct presidential elections (Thornton and Turmanidze n.d.). Moreover, the electoral college system in a country without a decentralized model of local governance is concerning. Historically, the party controlling the central government in Georgia has had an unbroken record of winning local elections. Therefore, an electoral college under these circumstances essentially becomes a rubber stamp for the central power, eliminating the checks and balances traditionally offered by a presidential system (Goradze 2019).

In terms of the actual consequences of the transition, it is perhaps too early to draw any conclusions—not only because the amendments are recent, but

also because, as stated above, the constitutional reforms provide for a gradual transition, whereby the first post-reform presidential elections were still direct and the full transition is not scheduled to take place until 2024, when the first indirect elections will take place.

There have been several instances of tension between the president of Georgia and the executive, despite the president's limited powers and despite the president again being originally nominated by the governing party.

During this transitional phase, there have been several instances of tension between the president of Georgia and the executive, despite the president's limited powers and despite the president again being originally nominated by the governing party. One significant point of contention has revolved around the president's authority regarding the nomination and appointment of ambassadors. Specifically, on 10 June 2022, the Government of Georgia filed a constitutional complaint against the president of Georgia ([Government of Georgia 2022](#)) contending that the president's dismissal of ambassadorial candidates proposed by the executive government contravened the constitution ([Erkvania 2022](#)). While the government decided to withdraw its complaint in February 2023, after the president agreed to appoint the ambassadors proposed by the government, this did not mark the end of inter-branch conflict. In September 2023, the ruling party initiated an impeachment procedure against the president, in the first instance of such an action in the nation's history. The basis for this procedure was an alleged breach of the Constitution by the president concerning foreign visits within the EU and other countries without the prior consent of the government.

According to the Constitution (article 48), initiation of an impeachment procedure requires the endorsement of at least 50 MPs. The ruling party lacked the necessary parliamentary votes for impeachment, so it failed. However, this serves as another striking illustration of the government's firm stance on the scope of presidential powers under the new Constitution, emphasizing that the president should refrain from making significant decisions without obtaining prior consent from the government. This insistence on procedural conformity is particularly noteworthy given the incumbent's direct election, which confers a certain legitimacy from the direct mandate received from the electorate. Actors with direct electoral mandates will generally be more assertive in policymaking than those with indirect mandates, and in this context the president might have been inclined to assert her decision-making authority, even if such a stance appears to formally challenge constitutional provisions.

Another source of tension arose when the president exercised the power of clemency to pardon Nika Gvaramia, a well-known opposition journalist who had been incarcerated for over a year. This decision was made against the backdrop of significant pressure from the EU, the United States and various international non-governmental organizations, all of which advocated for Gvaramia's release ([Gavin 2023](#)).

While some concerns were raised about the transition away from the inter-institutional checks and balances of a semi-presidential system, the transition does offer some positive developments in terms of checks on the government, such as the incorporation of a question or interpellation procedure and the possibility for one-third of MPs to establish parliamentary investigative

commissions. However, these provisions are undermined by a lack of strong legislative guarantees for opposition engagement. Research by Transparency International Georgia suggests that government accountability to parliament remains a significant issue (Transparency International Georgia 2022a, 2022b). For instance, ministers often do not provide timely or complete answers to MPs, and the absence of key officials at committee sittings shows a disregard for parliament's oversight function.

As it stands, all the chairpersons of parliamentary committees are from the ruling party. This raises concerns about a monopoly on political discourse and policy implementation. One way to enhance democratic representation would be to grant specific rights and privileges to opposition parties, such as chairing certain significant committees or having a guaranteed percentage of speaking time in parliamentary debates. However, such provisions are notably absent from the recent changes.

In sum, Georgia's transition from a semi-presidential to a parliamentary system raises numerous concerns that question the quality and integrity of its evolving democracy. The elimination of direct presidential elections in favour of an electoral college will distance the presidency from a popular mandate, potentially enabling a concentration of power in the government. In addition, the change to a fully proportional electoral system mentioned above, although promising on the surface, in reality benefits larger parties at the expense of smaller ones and political pluralism.

These systemic alterations have already been put to a practical test, demonstrated in the tensions between the executive government and the president over issues such as ambassadorial appointments, which indicate a blurred separation of powers. The initiation of an unprecedented impeachment procedure against the president adds further complications and uncertainties. Overall, these developments suggest that the transition might enable an accumulation of power within ruling structures, which calls for continuing critical scrutiny both domestically and internationally.

Georgia's transition from a semi-presidential to a parliamentary system raises numerous concerns that question the quality and integrity of its evolving democracy.

Chapter 5

CONCLUSIONS

The three states, Moldova, Armenia and Georgia, have both commonalities and important differences in their recent constitutional transitions to parliamentary systems.

The three states have both commonalities and important differences in their recent constitutional transitions to parliamentary systems. First, it is important to recognize some similarities in the socio-political contexts of the three countries at the macro level, which influenced the constitutional culture. These factors influenced politics in the three countries in different ways, but the shared elements among the three countries include that all three emerged from a Soviet past, where political power was monopolized by one group, while at the same time all three were in the process of market liberalization and engaged in discussions on joining the EU, accompanied by debates about political liberalization.

Second, in terms of the starting point for the transition, all three countries transitioned from a system of premier-presidentialism, and in none of the three countries was the pre-transition constitution guilty of significant over-concentration of power in the president. Indeed, in Georgia the transition to a parliamentary system can be viewed as the final step in a long process of shifting power from the office of the president to the legislature, while in Moldova the Constitution provided few significant presidential powers by comparative standards of semi-presidentialism. Indeed, as discussed above, despite the direct election of the president, the Constitutional Court considered the system to be parliamentary. Nonetheless, various informal powers together with the political culture gave the president more power than might appear from a formal reading of the constitutional text.

Third, in all three cases the constitutional reforms were pushed through unilaterally by a party/coalition that found itself with a constitution-making majority in the legislature and used constitutional reform to further its political ends. At the same time, however, these changes were generally welcomed by external observers, including the Venice Commission.

Important differences should also be noted with regard to the scope of the constitutional reforms. In the case of Moldova, the amendments were

narrowly tailored to change the mode of election of the president but not much more, leaving the indirectly elected president with comparatively anomalous powers such as the discretionary power to call consultative referendums. In Georgia and Armenia, the changes have been far more holistic, bringing about changes to many other areas of the Constitution beyond the election and responsibilities of the president. It is too early to draw any conclusions regarding the consequences of the changes in Armenia, but in Moldova the design of the rules on the election of the president, which led to the dissolution of the legislature on several occasions, combined with the fact that the office still represented a political prize, represented a fatal flaw at the heart of the system that created serial dysfunction.

While all the reforms were unilateral, the drivers were not always the same. In Moldova, the context of the transition to parliamentarianism was one of cohabitation, with president and parliament vying for superiority through constitutional reform—a struggle that parliament ultimately won. In Armenia, on the other hand, the reforms were primarily driven by a president who saw his future as a prime minister, and was able to push through the necessary amendments as his own party dominated the legislature. In Georgia, the situation was more complex—the reforms were driven by the leadership of the governing majority but strongly opposed by a president who had originally been nominated by that party.

Lastly, one remarkable feature of the Georgian reforms is the long transition period, which has thus far led to ongoing tensions between president and government, perhaps in part due to the direct mandate of the president which is scheduled to continue until 2024.

While all the reforms were unilateral, the drivers were not always the same.

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About the authors

Sumit Bisarya heads International IDEA's Constitution-Building Programme, which produces global comparative knowledge, conducts policy advocacy in the field of constitution-building and provides technical support to in-country constitution reform programmes. He also serves as Head of Mission for International IDEA in the Netherlands.

In 2020–2021, he was seconded to the UN as the senior constitutions advisor for the Department of Political and Peacebuilding Affairs. Prior to joining International IDEA, he worked with the International Development Law Organization (IDLO) based in Rome, where he was manager of the IDLO's field programmes. He has designed, managed and implemented rule of law assistance programmes in Afghanistan and East/Horn of Africa (Ethiopia, Kenya, Somalia and South Sudan). Bisarya has been engaged in constitution-building assistance programmes in a range of countries and contexts, including Chile, Haiti, The Gambia, Kenya, Myanmar, Nepal, Somalia, South Sudan and Ukraine.

Sophio Asatiani is a distinguished human rights lawyer and a member of the Georgian Bar Association. Based in Tbilisi, Georgia, she currently serves as a Senior Project Officer at the Council of Europe, where she specializes in child protection frameworks and juvenile justice matters. Prior to this role, she led justice and human rights initiatives as the Human Rights Program Coordinator at the Open Society Foundation. Sophio has been instrumental in ground-breaking legal efforts, including Georgia's first class-action case before the Constitutional Court focused on covert surveillance mechanisms. Sophio is a visiting professor at Ilia State University of Georgia delivering courses on human rights and constitutional law. Sophio holds a Master of Laws degree in Human Rights from the Central European University and a Bachelor of Law from Georgian American University.

Giorgi Chitidze is a Programme Manager of the Human Rights Programme of the Open Society Georgia Foundation. As part of this role, he coordinates civil society activities in the field of justice, human rights, and the rule of law. Giorgi is currently a visiting professor at the Ilia State University and the University of Georgia where he delivers courses on human rights law, constitutional law, public law, public international law, and constitutional proceedings. He also serves as Editor-in-Chief of the journal *Constitutional Law Review* of the Ilia State University.

David Hakobyan is a Senior Research Fellow at the Institute of Philosophy, Sociology, and Law of the National Academy of Sciences of Armenia; he is currently a Member of the State Commission for Constitutional Reform in Armenia. David is a former Non-Judge Member of the Ethics and Disciplinary Committee of the Assembly of the Judges of Armenia (2020–2023). Davit has

an LLM Degree at University Paris 1 Pantheon-Sorbonne (France) and a PhD in International Law from the Yerevan State University.

Nana Kalandadze is a Programme Manager in International IDEA's Regional Europe Programme, where she leads the initiatives in the Eastern Partnership region, ranging from promoting electoral integrity, accountability of public institutions, support to constitution-building processes, and various other assistance initiatives.

Before joining International IDEA, Nana worked with Warsaw-based Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights, designing and implementing democratic governance initiatives focused on women's political empowerment and intra-party democracy in the OSCE region. Nana holds a master's degree in International Relations and European Studies from Central European University in Budapest.

Armen Mazmanyán is a scholar in comparative constitutional law based in Yerevan, Armenia. He has taught at the American University of Armenia since 2003 and acted as a visiting professor or researcher in several leading universities in Europe, the United States and Australia. He has advised on constitution-building and the rule of law in over 15 countries, and currently serves as a member of the State Commission for Constitutional Reform in Armenia. Armen holds a PhD in Law from the European University Institute (Florence, Italy).

Rodica Secieru is a legal expert with more than 15 years of expertise in public administration, constitutional adjudication and justice sector related matters, strategic planning and policymaking. In 2005–2019 Rodica served in roles such as a head of the cabinet of the Minister of Justice of Moldova (six years), and the secretary general and chief assisting judge of the Constitutional Court (seven years). She served as a member of the Venice Commission and of various committees of the Council of Europe. Since March 2019 she has been engaged in projects and expert missions for major development partners, focusing on constitutional reforms, public administration and EU integration. Rodica holds a master's degree from the University Montesquieu-Bordeaux 4, France.

Alexandru Tănase is a legal professional from Moldova and Romania. Alexandru has held several influential positions throughout his career, including serving as a judge and the President of the Constitutional Court of Moldova during 2011–2017, a member of the European Commission for Democracy through Law, and a member of the International Association of Constitutional Law. In recognition of his remarkable achievements, Alexandru received the prestigious title of Doctor Honoris Causa from the University '1 December 1918' of Alba Iulia, Romania, in 2014. A frequently published author, Alexandru currently serves as a Project Manager for the project 'Promotion of the Rule of Law in Central Asia' in Tajikistan at GIZ GmbH. He also holds the esteemed position of Special Adviser to the Constitutional Court of Ukraine.

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International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
+46 8 698 37 00
info@idea.int
www.idea.int

Despite widespread claims that parliamentary systems with an indirectly elected president produce better outcomes for democratic governance, constitutional reform to move away from a directly elected president to an indirectly elected president is extremely rare. In recent history, only three countries have undergone such a change in a civilian democratic context—Armenia, Georgia and Moldova. The transition in Moldova, which took place in 2000, was reversed by a court decision in 2016. The transitions in Armenia and Georgia are more recent and still in their early stages.

This Discussion Paper examines these changes to extract lessons learned. It has been drafted in large part by national experts who have played key roles in these changes. The Discussion Paper discusses the background and triggers for the transition, the textual changes to the constitutions and their consequences.