

**RAZHDEN ARSENI DZE -
MINISTER OF JUSTICE OF GEORGIA
AT THE DAWN OF GEORGIAN CONSTITUTIONALISM**

*The Constitution of the Democratic Republic of Georgia
is impressed with Razhden Arsenidze's seal of culture and knowledge.*

Noe Tsintsadze

“Chveni Droshta”, Paris, 1965, No 43, p. 6

Razhden Arsenidze (1880-1965) was a prominent representative of the first Democratic Republic of Georgia and Georgian emigration.

The first constitution of the Democratic Republic of Georgia is imbued with Razhden Arsenidze's ideas. It was his intellectual legacy that was preserved in the first constitution.

However, the authorship of the Act of Independence of 26 May 1918 would suffice to occupy a worthy place in the centuries-long history of Georgia.

The life and multi-faceted activities of Razhden Arsenidze have been well studied¹. However, his contribution, as an outstanding lawyer, is still not properly appreciated. As a person, legal scholar, statesman, and legislator, he played a prominent role in the development of the legal system of the first Republic of Georgia and the drafting of the first Constitution of Georgia². He also made an important contribution not only to the development of the content of law but also to its legislative techniques³.

Our aim is not to fully describe and assess Razhden Arsenidze's merits in the legal field. Within the framework of this publication, we seek to demonstrate, at least partially, his role in drafting the first Constitution of Georgia. It is safe to say that Razhden Arsenidze is the drafter of one of the model *concepts* of this most important document in the history of Georgia. Many provisions of the Constitution were based on his views.

1. *Guram Sharadze*, Under Foreign Sky, Book 3, Tbilisi, 1993.

2. He was Minister of Justice of the first Democratic Republic of Georgia, member of the National Council and the Constituent Assembly of Georgia, Chairman of the Constitutional Commission and the Legal Commission of Georgia.

3. As a member of the Regulatory, Editorial and Arts Commissions of the Constituent Assembly, as well as a sub-committee of the Constitutional Commission.

To study his ideas, we generally use the following sources: his book *The Democratic Republic*, which was published in 1917, and was preceded by all the works that constituted a conceptual basis for the constitution of the first republic⁴; *the verbatim records* of the meeting of the Constitutional Commission of the Democratic Republic of Georgia, in which Razhden Arsenidze's highly qualified position concerning the provisions of the Constitution is clearly indicated; and *the comments* in individual chapters of the draft Constitution, the author of which is Razhden Arsenidze himself. The fact that he was invited to comment on the future basic law (the reader will see this when reading the theses of the two chapters – “Parliament”⁵ and “Executive Authorities”⁶ – of the draft Constitution⁷) speaks of his extensive academic and doctrinal expertise in constitutional matters. It may be said that he laid the foundation for the interpretation of constitutional norms in Georgia, as well as for *the provisions of the constitution* which were incorporated on the basis of Razhden Arsenidze's ideas, on the one hand, and were written directly by him, on the other. He is the author of the two chapters of the first Constitution of Georgia: “Parliament” and “Executive Authorities”⁸, which were originally referred to as model drafts⁹.

Razhden Arsenidze attached particular importance to the drafting and adoption of the country's Constitution. This is evident from his own words: “The ups and downs of state institutions depend on the ups and downs of this Constitution. It therefore deserves our redoubled attention”.

Razhden Arsenidze's ideological spirit goes hand in hand with the Constitution of the Democratic Republic of Georgia. The most important and principal issue to be resolved by the Constitutional Commission was the political regime and governance, concerning which Razhden Arsenidze's position was clear: a “democratic republic”, and not a republic, because “republic” only determines the form of the state, while “democratic” determines its content. Therefore, in the book published in 1917, he demanded that “republican” be combined with “democratic”, and this was reflected in the very first article of the first constitution, according to which the form of political structure was a democratic republic. Paragraph 1 of Article 3 of the current Constitution of Georgia is worded in the same spirit: Georgia is a democratic republic. His negative attitude towards monarchy is expressed in his words: “The people do

4. For example, *Noe Zhordania*, Social Democracy and the Organisation of the State of Georgia, 1918. *Konstantine Mikeladze*, Constitution of the Democratic Republic and the Parliamentary Republic, 1918. Pavle Sakvarelidze (who wrote under the pseudonym of *N. Sakareli*), Letters about the Political Organisation of Different Countries, 1920. *Giorgi Gvazava*, Basic Principles of Constitutional Rights, 1920, and others.

5. National Archives of Georgia, Fund 1833, File 182, Sheet 50-61.

6. National Archives of Georgia, Fund 1833, File 76, Sheet 14-20.

7. The word “theses” is used, as well as “legal comments” and “interpretation” (source: National Archive of Georgia, Fund 1833, File 76, Sheet 27).

8. Draft of the Constitution of Georgia, General Provisions. The Iveria, 27 December 1919.

9. See “Parliament”, Model draft (National Archives of Georgia, Fund 1836, File 420, Sheets 48-49). “Executive Authorities”, Model draft (National Archives of Georgia, Fund 1833, File 728, Sheet 97-101).

not need a king”, “A wise king, just as a brainless one, is a great misfortune for the people”, “Our goal is an order without a king”, where the throne is abolished and all governance is in the hands of those elected by the people, i.e. a “republican order”¹⁰ which was declared a “permanent and immutable form” by the first Constitution.

Razhden Arsenidze’s negative attitude was particularly evident towards two institutions within the state’s political system. These were *the bicameral parliament* and *the president*. In his opinion, in a democracy, the bicameral system “has absolutely no influence”, “it is useless or directly harmful for the people”, “it is a complete nonsense and beating the air”, “it is a brake for progressive legislation”, “it complicates the state mechanism”, “it is an enemy of social legislation”, “it contravenes the democratic principle” and “requires only expenses”, “a bicameral republic cannot be called a democratic republic”. Razhden Arsenidze also presented his additional arguments against a bicameral parliament at the meeting of the Constitutional Commission on 28 February 1919, where he once again spoke against the institution, stating that it was typical only to federal states¹¹. Notably, the members of the Commission, while speaking against a bicameral parliament, mainly relied on Razhden Arsenidze’s position. A bicameral system was eventually rejected by the Constitution of Georgia.

Razhden Arsenidze was the first to condemn the institution of president: “the right of the president derives from the right of the king”, “he is an elected king”, “a king is “chosen by God” and a president by the people”, “he can count on this trust and want to keep power forever, can’t he?”, “or why do we hold elections, campaigns, and waste time and energy? Is it to give one person an honourable and well-paid job?”, “a president is absolutely unnecessary... he will prove the master of the people”, “he will cause unnecessary expenses, and his parades, palaces, balls, etc. will be a burden on people’s pockets”, “a president will be useful to the bourgeoisie rather than the wider democratic society”, and therefore “we want the republic without a president”. At the meeting of the Constituent Assembly of Georgia on 17 December 1920, Razhden Arsenidze supported the issue of granting some powers of a president to a chairman of the government¹². Hence, the institution of president was rejected by the first Constitution of Georgia.

Razhden Arsenidze touches on the issue of direct and representative legislation (democracy). In his opinion, direct legislation is “the most democratic”, but as this is not possible today due to the large number of people, “the only means of legislation is legislation through representatives”. This opinion was reflected in Article 46 of the first Constitution, which stated that “the representative body of the Republic of Georgia is the Parliament of Georgia”.

10. The articles published by him in the earlier press about a democratic order are of interest. In one of his letters he notes that “our goal is to establish a democratic republic” (The Talgha newspaper, 1 August 1906).

11. National Archives of Georgia, Fund 1836, File 46, Sheet 13.

12. “The Ertoba” newspaper, 24 December 1920.



In order to “give the state system a truly democratic character and protect the interests of the people”, it is necessary to undertake an initiative, and “if a certain part of the population demands it, a bill can be submitted to the people for a decision through a referendum”. Article 64 of the first Constitution contains a similar provision, stipulating that if thirty thousand voters request it in writing, parliament must submit a newly adopted law to the people for a referendum. It is influenced by the doctrine that prevailed in the 19th century, according to which parliament is a supreme body which “acts and speaks on behalf of all the people and the state”. A provision with such content is contained in Article 52 of the first Constitution, which states that “the power of ruling belongs to the whole nation. Parliament, under this Constitution, exercises the nation’s power of ruling”.

The first Constitution of Georgia fully shares Razhden Arsenidze’s views concerning the issue of a supreme executive entity, in particular, the parliamentary system of governance: “a responsible ministry or parliamentarianism”, “we want a ministry that will be elected by parliament itself and be responsible before it”.

During his time in exile, Razhden Arsenidze’s work was marked by his particular interest in historic monuments of Georgian law. In 1963, he devoted a very interesting work to the legislation of King Vakhtang VI. The author showed his modesty by using the word “discussion”¹³ in the title of this work. However, this is not just a discussion, but a scholarly work on a monument which is called the crown of Georgian legal thinking. His activities in this area were not limited to the publication of scholarly works. He gave lectures on these issues in Paris, making Georgian legal heritage very popular abroad.

The time has come for the Georgian State to pay tribute to Razhden Arsenidze’s outstanding contribution to the development and strengthening of Georgian legal and political thinking, the independence of Georgia and the Georgian State. We are hopeful that Tbilisi City Council will once again take a special interest in the invaluable contribution of the son of his fatherland, loyal to his country, and give his name to one of the streets of Tbilisi.

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13. Discussion of the Legislation of King Vakhtang VI, Paris, 1963.

HOW THE ACT OF INDEPENDENCE OF GEORGIA WAS DRAFTED

The Bolsheviks struck a fatal blow against the February-March Revolution. They seized the government by force of arms, against the will of the overwhelming majority of the people. This manifested in the Constituent Assembly elections, which they held after they had taken over the government. Despite the violence of the Bolsheviks, the vast majority of the people did not trust them. In the Constituent Assembly, less than a third of deputies were Bolshevik. The large majority was comprised of opposing Socialist-Revolutionaries, Social-Democrats, Liberals and representatives of other parties.

The Bolsheviks dissolved the Constituent Assembly instead of stepping down, and proclaimed a minority dictatorship. From here, anarchy and civil war broke out all over Russia. Only the Caucasian peoples were able to escape the turmoil, as they were hardly influenced by the Bolsheviks. A Transcaucasian government was formed from representatives of the three most populous nations – Georgians, Armenians and Azerbaijanis – which governed the country in agreement with workers’ and peasants’ councils. A legislative body, the Transcaucasian Sejm, was soon established in Tbilisi on the basis of the Constituent Assembly elections and began implementing socialist reforms. The Sejm succeeded in establishing internal order and preventing an anticipated raid by the Bolshevik troops coming from the Ottoman frontiers.

However, after a few months of work, the issues of external orientation and the influence of external forces led the Caucasus off the path of unity and undermined it.

Under these very circumstances, on 25 May 1918, the National Council, composed of representatives from the self government bodies of all parties and cultural and civil society organisations of Georgia, decided to declare the independence of Georgia, to establish its own government in order to respond to friend or foe. For this purpose, the National Council set up a Legislative Commission and tasked it with drafting an act of independence.

The Commission met on the same day. We started work in the afternoon. We were in a hurry because this was a meeting of the National Council which had undertaken this historic mission. We were in a hurry, but the act had to be thoughtful, momentous, worthy of its great purpose; the rights of newborn citizens had to be taken into account; and we could not leave out the rights of the national minorities living in our territory. And all of this had to be



worded briefly, concisely, clearly. This was why, every word caused debate, arguing, clashes of opinions; every phrase was formulated with great diligence. In the end, battles and clashes were settled by agreement, by unanimity; what was received was received from everyone. There could be no room for dissension and discontent at this great decisive moment. We all were feeling that, although no one had dictated it to us... We were fighting and hurrying because we had received a 72-hour ultimatum from the Ottoman Porte which expired the next evening. Transcaucasia no longer had the capacity to resist and respond. While the Ottoman Empire stood over us with ready weapons. They, emboldened by the shameful Treaty of Brest-Litovsk and the collapse of the Russian army, threatened us with depriving us of the Districts of Kars, Batumi and Ardagani.

All the parties unanimously agreed on declaring independence. But listening to the voice of the people, who had a huge impact throughout the country, was still necessary. The Commission was sending questions to all the local organisations that were close to the people. The Commission considered it imperative to hear their opinions beforehand; and from every part, from every town, from every county, unanimous responses kept coming:

We agree!

We are with you!

Independence for Georgia!

Similar responses came from all the parties. Thus, the issue of the independence of Georgia won the first referendum.

This was on 25 May 1918, Saturday. The Commission received this information, and we were happy and continued work with more energy. It got dark... The work was not finished yet... We met for lunch and discussed the work again, and pored over every idea of the text; and the Bureau of the National Council, and its Presidium, was waiting for us, and for the draft prepared by us, so that it could adopt the final text and present it to the Council the following day. At midnight, we finished our work on the draft, and two members, Giorgi Gvazava and Pavle Sakvarelidze, immediately rushed to the meeting of the Council Bureau to complete that night this urgent but very challenging duty.

After midnight, the Bureau adopted the final version with some amendments, and it was publicly announced in the White Hall of the Palace on Sunday, 26 May.

Who would then think and care about drawing up the minutes of the Commission meeting and checking them! Yes, the draft was written down, but I don't know whether it was stored anywhere or lost in the mists of time. This is why I am providing you with this information. None of those who took an active part in drawing up and implementing this act, which has now become a historical act, and whose names are preserved in my memory, are among the

living. Almost all of them have joined the pantheon of our ancestors. I would like to mention two of them.

Kote Abkhazi, a great, intelligent patriot, who initiated the transfer of all assets of the nobility to the Georgian nation, thus securing a material and organisational basis for the revival of our nation. The trials he had suffered made his name immortal in the fight for Georgia of 26 May. And the great President of Georgia, Noe Zhordania, the one who proclaimed the Act of Independence, was taken by a cruel death in January 1953.

Let us keep their memory and their names in our hearts. With deep feelings but unwavering faith and courage, we were approaching the moment of resuming a two-thousand-year independent existence after being without a state for one hundred and seventeen years. Our feelings are strong today as well, as I recall those moments. Then, the nation accomplished its ends. It saved itself from danger by becoming its own master. We believe the nation will save itself today as well from the abominable onslaughts of communism.

RAZHDEN ARSENIDZE

Minister of Justice
of the Democratic Republic of Georgia
25 May 1958, Munich