

ქართულ-ოსური კავშირი “იბერ-ირონი”

სამხრეთ ოსეთის პოლიტიკურ-  
სამართლებრივი სტატუსის კონცეფცია

სამხრეთ ოსეთის პოლიტიკურ-სამართლებრივი სტატუსის  
კონცეფცია – მაია ცაბოშვილის საერთო რედაქციით.  
ქართულ-ოსური კავშირი “იბერ-ირონი”, თბილისი, 2005

გამოცემულია ბრიტანეთის საბჭოს დახმარებით

Conception of political-legal status of the Republic of South-Ossetia  
Maia Tsaboshvili (ed.), Georgian-Osetian Union “IBER-IRONI”,  
Tbilisi, 2005

Published with the support of the British Council

## Table of contents

General Statement.....	19
Political-legal status of the Republic of South-Ossetia in the context of territorial structure.....	20
Political-legal status of the Republic of South Ossetia.....	20
Elections.....	21
Agreement on definition of authorities.....	24
Appendix on military issues.....	27
Appendix on economic issues.....	28
Agreement on Restitution.....	28
Guarantor of political-legal status of the republic of South Ossetia.....	29

## General Statement

**1.1.** The Conception does not represent a final document defining frames and mechanism of regulation of South Ossetian Conflict in details. It is to some extent, directing desirable efforts and basically focuses on contextual difficulties (status, territorial structure, definition of authorities and etc.) of settling the issue. It is obvious, that making amendments to the conception and its adjustment to political requirements is expected.

**1.2** Considering the importance of the steps taken forward, authors of the Conception underline the circumstance that the Conception presents a political and legal basis of relations between Georgian and Ossetian people, should be taking into consideration a long-term tradition of successful living together in the initary state. Besides it focuses on goodwill and responsibility of Georgian and Ossetian side representatives in decision-making in the process of mutuality and should create a background for dynamic development of relations between the two people on the high political, as well as social-cultural levels.

**1.3.** The issue of political status of South Ossetia is closely linked to problems of Abkhazian political issue and their separate consideration is almost impossible. Admitting distinctiveness of Abkhazians and granting them different, a far more high-level self-governmental status, in comparison with Ossetians is unacceptable. This step will lead to tension on the Ossetian side. Thus the political-legal status of Ossetians and Abkhazians should be defined simultaneously and on the same level.

**1.4.** In the process of defining political status of South Ossetia, authors tried to consider likely requests of the Ossetian side at maximum, which on the one hand serve for persuading the Ossetian side to conduct negotiations and on the other, to avoid arising contra-productive issues.

**1.5.** The concept - Autonomy should not be identified with the Soviet understanding of autonomy and does not present a political administrative unit, but a trait to act and make decisions independently within definitely set frames by constitution.



## 2. Political-legal status of the Republic of South-Ossetia in the context of territorial structure

### 2.1. Initial Principles

**2.1.1.** Georgia presents a state space, only it has a status of subject of international law and its partition is unacceptable apart from cases considered under Standards of International Law.

**2.1.2.** State sovereignty of Georgia covers its entire territory and is based upon, direct and democratic elections held on the whole territory of the country. State borders of Georgia are recognized by international society after gaining independence in 1991. It is inadmissible to change borders of Georgia, detach definite territories, to join other state or establish relations of any other type.

**2.1.3.** Granting special political status to South Ossetia in the composition of Georgia is not considered as a separate issue and presents one of the defining parts of state structuring sphere.

**2.1.4** Granting special status to South Ossetia should be responding to cultural-political requirements of Ossetians and not in any case violate rights of Georgian or other citizens residing on the Ossetian territory.

**2.1.5.** Special status of South Ossetia with its content should not be inferior to status of other special subject (Abkhazia), and with this viewpoint should not be creating a feeling of discrimination between Ossetians on the one hand and pre-condition for separation of Georgia on the other.

## 2.2 Political-legal status of the Republic of South Ossetia

### 2.2.1 Basic Principles

**2.2.1.1** The basic principle of territorial structure of Georgia is an asymmetric federal system which is based upon granting horizontal autonomy and subsidiarity<sup>1</sup> principles, consists of central government of the federation and component subjects of the federation: subjects of special status (**conditionally and in the future republics**

1 Where the local government fails to execute its rights and responsibilities, central government could be set into operation.

of Abkhazia and South Ossetia), and subjects of federation (e.g : Ajara, Samegrelo-Svaneti, Shida Kartli, Mtianeti and etc)<sup>1</sup>.

**2.2.1.2** Subject of special status i.e. components of federation (Republics of Abkhazia and South Ossetia) are sovereign<sup>2</sup> and have signs of statehood: executive, legislative and legal government. Have a national anthem, state emblem and constitution. Government of South Ossetia has an independent source of legitimating - population of South Ossetia.

**2.2.1.3.** Territory and official name (**it is necessary to outline Ossetian character of the territory in the name! Georgian and Ossetian equivalents are admissible, e.g.: to jointly use South Ossetia-Tskhinvali region**) of South Ossetia is defined by either constitution of the Republic of South Ossetia or by a special agreement between government of the republic of South Ossetia and the central government. The issue of internal territorial structure of the republic of South Ossetia is defined by the constitution (**for absolute protection of interests of unitary state of Georgia and Georgian citizens ethnically residing on the territory of South Ossetia, preliminary agreement with the central government on the issue of internal territorial political structure of South Ossetia will become essential**).

**2.2.1.4** from the viewpoint of intensification, improvement of relations with the central government and other parties, as well as conducting consultations on various issues and cultural- social activity, the Republic of South Ossetia is authorized to open its representation with its manager and staff in the capital of Georgia - Tbilisi.

**2.2.1.5** A person residing on territory of South Ossetia is a citizen of Georgia.

**2.2.1.6** Georgian and Ossetian are regarded as official languages (record keeping) on territory of South Ossetia. As for the definite issue of using Georgian and Ossetian languages in the administrative fields, as well as problems with the Russian language, it will be subject of a separate agreement.

### 2.2.2 Elections

**2.2.2.1** Elections on the territory of South Ossetia are held on the same principle as on the entire territory of Georgia (open, direct, democratic and etc) are not based

1. Administrative-territorial structure of the federation subjects, defining rights and responsibilities with the center, participating in the legislative authorities and distributing government branches - are the issues not discussed exclusively and additionally here and can be defined by a separate document.

2. Limited sovereignty, which is based on the principle of nations' interstate self-determination.



on ethnic or religious distinction principles and are expressing will of all citizens residing on the territory of South Ossetia.

**2.2.2.2** Periodicity of electing, composition and working principles of the parliament of the Republic of South Ossetia are defined directly by the legislation of the republic of South Ossetia and do not bare any signs of discrimination of citizens residing in South Ossetia.

**2.2.2.3** The republic of South Ossetia as a consisting subject of the federation (and not a member-state) enjoys additional rights unlike other subjects of the federation without any special status:

- ✓ The right of veto in the lower house of the parliament of Georgia (*the First veto*).
- ✓ The right of veto in the higher house of the parliament of Georgia (*the Second veto*).

#### **2.2.2.3.1 First Veto**

In the process of discussing the points, in the lower house of the parliament of Georgia, directly linked to issues of South Ossetia, 2/3 of votes of parliamentarians and among them 2/3 (or other constellation) of votes of parliamentarians elected from the territory of the republic of South Ossetia is required for taking decision.

#### **2.2.2.3.2 Second Veto**

If overcoming the first veto, the issues directly linked to the Republic of South Ossetia, will be directed for discussion to the upper house of the parliament of Georgia - the Senate. The Senate requires 2/3 of the senate members' votes for taking decision.

**2.2.2.4** The Votes of the senate could be defined as a vote of separate members, or a total vote of representatives of the federation subjects, presenting 2/3 of the representation members' votes. In all cases, 2/3 (or other constellation) of votes of the representatives the Republic of South Ossetia is required for taking decision.

- ✓ If the principles of the veto fail to be adopted, the decision taken by the parliament (in any structure it will be set up) of Georgia will come into force only after their ratification by the parliaments of the subjects of special status of the federation.

- ✓ If establishing a two-house parliament in Georgia, the number of subjects of special status of the federation and the voting rule will be defined preliminarily on the basis of a separate agreement, which will be part of either restored constitution of Georgia or will be approved as a separate constitutional law.

**2.2.2.5** In the process of discussing issues connected with federalism in the parliament of Georgia and the federation subjects (possibly meaning only subjects having special status - Abkhazia and South Ossetia) in order to avoid extra conflicts and saving time, a Federalism Committee is established where parliamentary representatives of subjects and federation center as well as lawyers-consultants will be presented on a parity basis (equal quantity). The preliminary discussions, consultations and joint decision-taking on the above-mentioned issues will be carried out by the Federalism Committee.

**2.2.2.6** Constitution of the Republic of South Ossetia and all legislative acts should be in correspondence with the constitution and legislative acts of the federal republic of Georgia. Any decision, taken by the parliament of Georgia, should not be against "**agreement on definition of authorities**" concluded between the central government and subjects of special status of federation, as well as **constitutional law on federal structure of Georgia**.

**2.2.2.7** Constitutional order defenders and controlling bodies of state of Georgia are supreme and constitutional courts of Georgia (Abkhazian and Ossetian members could be also enrolled). In case of violating the principles of definition of authorities, the injured party (the center or the federation subject) has a right to appeal an act of dispute to the above mentioned instances. Upon receipt of appeal the act of dispute will be terminated. All disputes are reviewed timely and in shortest periods of time.

**2.2.2.7.1.** Authority of the president of Georgia to introduce a special presidential government in any of the country regions, could be spread on subjects of special status of federation only in case when constitutional order, brought into correspondence with the constitution of Georgia of subjects of special status of federation and constitution of Georgia in general, are strongly violated, and only after decision taken by the constitutional court<sup>1</sup>. This article will come into force after certain period of time.

---

<sup>1</sup> this article will come into force on the basis of agreement between the parties and only after certain period time.



## 2.2.3 Agreement on definition of authorities

2.2.3.1 Relations between the central government of Georgia and government of South Ossetia are defined by federal "Agreement on definition of authorities". According to this agreement, a list of authorities is defined, which is only in the competence of South Ossetian government and the authorities belonging to joint competence and those authorities that belong to the sphere of responsibility of the central government of Georgia only.

2.2.3.2 So-called "economic constitution" is an organic part of this agreement – a document defining economic relations, which together with other issues additionally covers special, economic measures agreed between the center and the local government in the post-conflict zone (free economic zone or tax exemptions, subsidies, loans and etc), restitution issue, as well as a mechanism of collecting and identifying accurate distribution of taxes and duties.

2.2.3.3 The issue of definition of authorities denies the principle of hierarchy standards, those relating to federation standards and underlines exclusivity of the field of rights and responsibilities of federation subject, as well as the center authorities and interference of others in the above field.

2.2.3.4 The agreement on definition of authorities, firstly considers fidelity principles of inviolability of unitary federal state in respect to Georgia and all its regulations or further amendments should be corresponding to this condition.

2.2.3.5 "Agreement on definition of authorities" could be restudied upon request of any of the parties, under consent of the second party and by adopting (ratifying) a relevant legislative act in Georgia and a local parliament.

2.2.3.6 The constitution of South Ossetia defines (can define) a name, state borders, national symbols, (flag, anthem, state emblem) inter territorial partition, structure of government bodies, functions, rights and responsibilities, organization of legal system, economic and financial systems of South Ossetia.

*On the current stage from the standpoint of bringing Georgia in correspondence with the constitution it is expected to resolve issues of the said spheres on the basis of agreement reached with the central government (having constitutional force) or a separate constitutional law.*

Example:

2.2.3.7 The following belong to the competence of South Ossetia:

- Local government;
- Social security;
- Health care, sanitarian service and drugstores, orphanages and homes for the disabled and elderly;
- Culture, traditions, historical and scientific heritage;
- Archives, libraries, museums, publishing house, printing business;
- Education-science (should be preliminarily agreed with the center!!!);
- Sport;
- Tourism, resorts, nature reserves and parks;
- It is possible to grant South Ossetia in foreign relations, the right to participate in cultural, trade-economic relation spheres of regional organizations (by prior agreement with the center!!!);
- It is possible to establish private police system with the precondition of defining the form of relation with the center in advance;
- Financial system – central bank, financial-budgetary system, internal taxes-duties, property and income (reaching a separate agreement with the center for creating a policy of their collection and distribution is mandatory);
- Markets, exhibitions, casinos, lotteries and other entertainment business;
- Public order defense and traffic police;
- Traditional holidays and national festivities (**should be agreed in advance!!!**);
- Awards and titles of South Ossetia;
- Internal election system;
- Development of legal system and legislation in the following fields (environment protection; internal administrative competence-execution, responsibility; local economic resources, banking-credit and insurance regulation; energy sector, civil and entrepreneurship law);
- Historical heritage (**only under agreement with the center!!!**);
- Internal automobile and railway roads, airports and airdromes, transport, communications;
- Inter republic television and radio broadcasting;
- Nature- Environment protection, natural resources;
- Urban construction, residual construction, architecture, planning, urban planning;
- Internal industrial and maintenance systems (equipment), entrepreneurship, handi-



- craft, consumer defense, professional alliances;
- Agriculture, farming, livestock farming, veterinary business, forest – forestry, pastures, hunting;
- Ground waters, hydraulic buildings, channels, irrigation systems, fishing in rivers and lakes;
- Statistics;
- Status of civil servants of the republic of South Ossetia;
- Meteorological service.

### **2.2.3.8 Fields of competence of the central government of Georgia:**

- Ensures freedom of Georgian people, major human rights and liberty, independence of country, integrity, national security, cultural diversity and strong democratic development;
- Status of state borders, regime and security, security of air space;
- National self-defense, security, armed forces, military industry and weapon trading;
- Issues of war and armistice, establishing and introducing regimes of emergency and military situations;
- Foreign policy and international relations;
- Foreign trade, customs, tariffs;
- National finances, state loans, emission;
- National statistics, identification of public and exact time;
- General railway, road and air communications of national and international importance;
- Joint energy system and regime, telecommunication; post;
- Airdromes of national importance, air space, transit and air transport control;
- Pardons and amnesties (**it is possible to transfer the right on local pardon and amnesty to the government of South Ossetia**);
- Fighting with terrorism, organized criminal groups, investigation;
- Citizenship.

**2.2.3.9 Joint governance spheres, where the supreme state bodies of Georgia and the government bodies of the republic of South Ossetia, are given special legislative and executive powers respectively.**

- Major human rights and independence, emigration–immigration, entering-leaving Georgia, temporary or permanent stay of foreign citizens or non-citizens of Georgia;
- Banking, credit, insurance, taxation spheres;
- Principles, standards, geodesy, cartography;
- Education sphere: programs, attestation and accreditation of secondary and higher education institutions, academic, scientific, professional ranks and degrees;
- Intellectual property;
- Trade, criminal law, civil law, administrative law, spheres of penitentiary and procedural law;
- Land, fossil and natural resources;
- Pharmaceutical materials.

**2.2.3.10** For meeting set aims and objectives better, as well as reaching high level of working coordination, between the federation center and ministers in charge of different fields of the federation subjects, conferences between ministers are held once a year. (covering all fields is not required and thus we could identify the following: Education, internal security, economics: finances, agriculture, transport, sport).

## **2.3 Appendix on military issues**

Considering the importance of military issues and “sensitivity” for both sides at the same time, the following steps could be taken forward:

**2.3.1** To release citizens of South Ossetia of Ossetian nationality from military duties of Georgia on a temporary basis, until representatives of both sides do not deem necessary to abolish this regulation.

**2.3.2** Subunits of Georgian military armed forces will not be placed on Ossetian territory on a temporary basis, apart from a number of exceptions (has to be separately agreed between the parties).

**2.3.3** Considering the legitimate right of Georgia, in terms of providing state borders’ control, dislocation of Georgian border guards in limited number on the border of Georgia (during a transitional period). A second version of this sentence is also acceptable, i.e. joint functioning of border authorities of South Ossetia and Georgia on the border on initial stage.

## **2.4 Appendix on economic issues**

Appendix on economic issues consists of Agreement on definition of economic relations, having a constitutional legal force – based on the “Economic Constitution” on the one side and Agreement on Restitution on the other.

### **2.4.1 Economic constitution**

**2.4.1.1** Defines in details competences of economic business (social, banking, financial-monetary, credit, insurance, foreign economic relations, grant, subsidization, providing social solidarity and execution of separate programs) between the central government and the federation subjects.

**2.4.1.2** Accurately sets mechanism and distribution regulation on collection of taxes and duties, as well as special economic activities (free economic zone or tax benefits, subsidies, loans and etc) agreed by the government of South Ossetia and the federation center in the post-conflict zone.

#### ***Example:***

Republic of South Ossetia has its own financial-budgetary system consisting of the following resources:

- ✓ Taxes and duties, totally or partially transferred to the competency of the republic of South Ossetia;
- ✓ Inter republic taxes, duties and special payments,
- ✓ Amounts issued by central solidarity fund and other direct transactions, based on a financial-social solidarity principle;
- ✓ Incomes received from property of the republic of South Ossetia;
- ✓ Income received from credit operations;

and etc.

### **2.4.2 Agreement on Restitution**

Agreement on Restitution will be based upon law on restitution and additional articles agreed between the central government of Georgia and government of South Ossetia. It covers:

- Restitution subject;
- Restitution committee establishment issue, its functions and duties (registra-

- tion, collection of materials, decision making, supervision of implementation process, defining persons having restitution right);
- Mechanism/form of restitution implementation (return of property, right, compensation, setting definite terms of restitution implementation).

## **3. Guarantor of political-legal status of the republic of South Ossetia**

**3.1** International experience could be referred to in the process of assigning international guarantor to the political-legal status of a territorial unit (with a certain period of time).

**3.2** Any state (or group of states), international organization or both together, could be granted as guarantors.

**3.3** The working style of guarantors is defined on the basis of consultations between the parties and a mutual agreement.



## **2.4 Appendix on economic issues**

Appendix on economic issues consists of Agreement on definition of economic relations, having a constitutional legal force – based on the “Economic Constitution” on the one side and Agreement on Restitution on the other.

### **2.4.1 Economic constitution**

**2.4.1.1** Defines in details competences of economic business (social, banking, financial-monetary, credit, insurance, foreign economic relations, grant, subsidization, providing social solidarity and execution of separate programs) between the central government and the federation subjects.

**2.4.1.2** Accurately sets mechanism and distribution regulation on collection of taxes and duties, as well as special economic activities (free economic zone or tax benefits, subsidies, loans and etc) agreed by the government of South Ossetia and the federation center in the post-conflict zone.

#### ***Example:***

Republic of South Ossetia has its own financial-budgetary system consisting of the following resources:

- ✓ Taxes and duties, totally or partially transferred to the competency of the republic of South Ossetia;
- ✓ Inter republic taxes, duties and special payments,
- ✓ Amounts issued by central solidarity fund and other direct transactions, based on a financial-social solidarity principle;
- ✓ Incomes received from property of the republic of South Ossetia;
- ✓ Income received from credit operations;

and etc.

### **2.4.2 Agreement on Restitution**

Agreement on Restitution will be based upon law on restitution and additional articles agreed between the central government of Georgia and government of South Ossetia. It covers:

- Restitution subject;
- Restitution committee establishment issue, its functions and duties (registra-

- tion, collection of materials, decision making, supervision of implementation process, defining persons having restitution right);
- Mechanism/form of restitution implementation (return of property, right, compensation, setting definite terms of restitution implementation).

## **3. Guarantor of political-legal status of the republic of South Ossetia**

**3.1** International experience could be referred to in the process of assigning international guarantor to the political-legal status of a territorial unit (with a certain period of time).

**3.2** Any state (or group of states), international organization or both together, could be granted as guarantors.

**3.3** The working style of guarantors is defined on the basis of consultations between the parties and a mutual agreement.