

**M.B. GORGOSHADZE**

*Murman Bekhadir Gorgoshadze, Candidate of Philosophical Sciences, Professor of Faculty of Law of Batumi Shota Rustaveli State University*

## **THE ESSENCE AND PLACE OF THE PREAMBLE IN THE STRUCTURE OF THE NORMATIVE-LEGAL ACT**

The preamble, as a structural unit of the normative act, has less attention from the researchers and practitioners. However, the preamble plays an important role in the structure of a normative act, its provisions are distinguished by direct action, they have both sensible and normative load. In some cases, the provisions of the Preamble are covered by the principles of legal norms and obligations of the State on which the legislation is silenced. So researching its essence, place and role is one of the most important issues. These issues are dedicated to this article.

“The preamble” is derived from the Latin language and the precise translation means the forerunner, predecessor. In the law, the “Preamble” will refer introduction part of to the legal act, any important document, international agreement, agreement or declaration.

In general, the preamble of the law or other important document was of great importance. The preamble should have been justified by the law, the argumentation of its main ideas and starting principles. By means of the preamble, the law was to bring the general attitudes and performances, which were commonly shared in society. While it was important to focus on religion, the preamble mainly loaded by religious content. Legislator tried to show the divine origin of the law and indicated in preamble, that the law is drawn up by the government, but deducted by “inspiration of God” and desire of justice. While it became even more important to show that the constitution and laws are the will of the people, they began to record the formulation in the preamble.

The preamble may have a legal act with different legal force, according to the item 2 of the article 16 of the Georgian law about “normative act” of October 22, 2009 does not consider the preamble as mandatory structural unit. According to this item “the normative act may have the preamble”. If the normative act is under the law, it must be indicated in the preamble for the execution of which normative act was issued. It will be indicated in the preamble of normative act the legal ground of its acceptance—the name of law, its article, item, sub-item and so on. The reference of legal basis promotes the perception of the logic of the legislation in relation to the country’s legal system”<sup>1</sup>.

According to the tradition the preamble is necessary for normative acts of principle importance for the state and the public. For constitution, it is one of the typical structural units and “in many cases the Constitution has the leading content of his purpose as a preamble”<sup>2</sup>. “The Constitution starts its introduction part – the Preamble”<sup>3</sup>.

The preamble indicates the real source of constitutional powers and thus this binds the government. Hence it is the basic text of the constitution Conceptual-ideological and Value-fundamental grounds. Present provisions defined and confirmed as well in the main part of constitution, as in real practice. The provisions of preamble are legal criteria of the constitutional norm.

The preamble of the constitution provides the basic norm – goals, norm, principles, legal values and people’s spiritual ideas, which is underpinned by the text of the Constitution and the state policy is directed towards its implementation<sup>4</sup>. It is a kind of political declaration about the importance and purpose of the normative act<sup>5</sup>. In The Preamble of the Constitutions the present “principles of declaratory character<sup>6</sup> are transmitted by high style, it has ceremonial character and is calculated on emotional action. For this purpose, it is used relevant legal fictions of population awareness level in constitution preamble. The preamble also indicates socio-political, legal circumstances that are based on the adoption of the constitution.

Along with changing the political situation in the country, changes in the Preamble of the Constitution indicate its major political-legal significance.

The preamble is not divided by separate articles<sup>7</sup>. In it, as well as in other parts of the normative act, it is possible to make changes and additions.

The preamble somewhat connects all provisions given in normative act, binds them by legal and political ideas, so it is possible to understand the meaning of essence and thought presented by the legal act. Some researchers believe that the true purpose of the Preamble is to show the nature and scope of the powers defined by the constitution<sup>8</sup>.

The purpose of the Preamble is to define the purpose of the Act, the goals, objectives and motives of which it represents the preamble, therefore, in the content of the Preamble, the elements expressing the literary-artistic style, which, as a rule, do not appear in the main text of the normative act. Involvement in the Preamble of **the goal** (the goal is the final result of which the legislator plans to achieve), **motive** (motive encourages people for active action and makes their life thoughtful and consistent activity) and **task** (the task is to find the problem, the solving of which this normative act requires) has psychological character and is derived from human nature.

In particular, people are trying to satisfy their demands from establishing a goal, by creation of certain logical chain. Therefore, during the execution of the law he wants to know not only what is “what” and “how” but also for “why” and “for what”. Hence, determining the purpose, objective and motivation of the normative act, especially determining motivation, are of great importance. The preamble allows that the will of legislator in the preamble should be motivated optimally<sup>9</sup>.

In the Preamble of the constitution are expressed different views about normativeness of present provisions. Some people think that the preamble does not have a normative purpose and it does not have direct legal consequences<sup>10</sup>, but maybe considered during explanation of provisions<sup>11</sup>. Some think that “the preamble, as a legislative technical method of expressing the norm, is increasingly used in law-making practice”<sup>12</sup>. Most authors indicate the normative nature of the Preamble<sup>13</sup>. Some think, that normally, the preamble of the constitution is not a norm of law, but in case of explanation and use it has normative meaning, and in case if in the preamble indicated the rights and freedoms of people (for example, as in French Constitution of 1946) it may have the same legal significance as the basic norms of the constitution<sup>14</sup>. There are studies that confirm the practice of use preamble by the constitutional courts<sup>15</sup>.

The preamble of the Constitution may include the following essential components:

- a) Information about the framers of the Constitution;
- b) State and public world outlook mood expressing provisions;
- c) The provisions of the organization and functioning principles of the state bodies;
- d) Provisions indicating historic heritage;
- e) Emotional impact provisions;
- f) The goals, objectives, motive determining provisions;
- g) Value orientation determining provisions;
- h) The provisions underlining the uniqueness of the country;
- i) The provisions determining place and role of the given state in the international space and international relations;
- j) Provisions indicating state governance, territorial arrangement or political regime;
- k) Provisions with conceptual-ideological load;
- l) The provisions containing Constitution adoption form<sup>16</sup>, (in case of adopting constitution by Octroyed, Contract, or the Founding Authority).

Based on the above, we can talk about the role and purpose of the Preamble:

- a) Assist the legislator to thoroughly and fully explain the importance of the normative act, focus on the actual issues of legal regulation;
- b) By determining the goals and objectives of the normative act, the Preamble officially constitutes the constitutionality of the goals and objectives set out in the judicial act, and in fact instructs the norm creator and performer to take into consideration during the creation and execution of the norm. The Constitution of Georgia states the following goals and objectives: Establishment of democratic social order; Establishment of economic freedom; Building social and legal state; Ensuring universally recognized human rights and freedoms; Strengthen state independence; To establish peaceful relations with other people<sup>17</sup>;
- c) Facilitates declaring the statutory provisions of the normative act and fulfilling its will without compulsion, as long as develops belief in normative act addresses in the necessity of the implementation of this Act;
- d) Binding legislative subjects from adopting wasted, unnecessary acts.

During preamble drafting in Georgian legislation more or less common mistakes are made:

**a) Instead of motivating introduction in the preamble, we often encounter information introduction**, for example “The preamble of the Law of Georgia regarding Internally Displaced Persons (IDPs) we read”: „*This law is based on the Constitution of Georgia and universally recognized principles of international law, determines Internally displaced person – refugee legal status, recognizing as a internally displaces person,*

granting IDPs status, Grounds and rules of suspension, termination and deprivation, legal, economic and social guarantees of the IDP, his/her rights and obligations”;

**b) Mostly in the preamble is given only the purpose of the normative act, information and not motive. For example, the Preamble of the Organic Law of Georgia on “Economic Freedom”** “According to the Constitution of Georgia and the Georgian law, citizens of Georgia establish guarantees of economic rights and freedoms of the present and future generations. Economic rights and freedoms are a part of human rights and freedoms that can be restricted only in accordance with the rules and rules established by the Constitution and law of Georgia.

*The state guarantees economic rights and freedoms that are based on the development of society, welfare of people and long-term, stable growth of the economy.*

*Freedom is the fundamental principle of economic policy that is expressed in the small size of the government, in the macroeconomic policy and low taxes.”*

**c) Statutory provisions are included in the preamble, in particular, definition standards.** For example, we read in preamble of Georgian law on “animal world” “Animal world is one of the main components of the natural environment. Georgia’s animal world is the most important part of the country and the biological diversity of the world. It has a special place in maintaining the protection and sustainability of biosphere, as well as satisfaction of the spiritual and material needs of Georgian citizens and in upbringing process of future generations. The animal world within Georgia’s terrestrial territory, airspace, territorial waters, continental shelf and special economic zone is the national wealth of Georgia and it protects the state.”

**d) The preamble is not separated and it is attached to the main part.** For example, Law of Georgia on the Georgian National Academy of Sciences“

„part I  
General provisions  
Preamble

Georgian National Academy of Sciences is the oldest Georgian academy – successor of Gelati and Ikalto academies, High level intellectual development attribute of the state, scientific advisor of the government of Georgia, scientific achievement of international importance and the association of persons with high scientific and civic authority.“

**e) The preamble is numbered as the article.** For example, the resolution of the Government of Georgia “On Approval of the Rules for Conducting Activities on Occupied Territories of Georgia”.

*Rules for conducting activities in the occupied territories of Georgia*

**Article 1. Preamble**

The Government of Georgia is fully aware of the importance of the involvement of international and local organizations and the international community in the settlement and transformation of the co-operation in Abkhazia and the Tskhinvali region/South Ossetia, as stated by “in the action plan of Engagement strategy”.

Therefore, the preamble is an important structural unit of the normative-legal act in functional terms. It is definitively ensuring the realization of the ideological function<sup>18</sup> of the law and the legal norms of a political-legal idea. Indicates the circumstances which have led to the adoption of a normative-legal act and to achieve the goals and objectives which are intended to be achieved through a given normative act. The preamble helps us to fully understand the actuality of the normative act, its expediency and socio-political importance. With the help of Preamble, the legislator gives more authority to the normative act and delivers optimally motivated information to the recipients, thus making psychological impacts on them.

<sup>1</sup> *Levan Bezhashvili*. Legislative Technology (Methodological Manual of Lawmaking), Tb., 2012, p. 99 (in Georgian).

<sup>2</sup> *Otar Melkadze*. Constitutionalism, Tb., 2005, p. 51 (in Georgian).

<sup>3</sup> *Zaza Rukhadze*. Constitutional Law of Georgia, Batumi, 1999, p. 41 (in Georgian).

<sup>4</sup> *Malkhaz Nakashidze*. The Basis of the Constitution of Georgia, Batumi 2006, p. 34 (in Georgian).

<sup>5</sup> *Levan Bezhashvili*. Legislative Technique (Methodological Manual of Lawmaking), Tb., 2012, p. 98 (in Georgian).

<sup>6</sup> Constitutional Law, by Avtandil Demetrashvili edition, Tb., 2005, p. 69 (in Georgian).

<sup>7</sup> Normography: theory and methodology of lawmaking / Y. G. Arzamasova Edition, M., 2007, p. 222 (in Russian).

<sup>8</sup> *Robert Longley*. Importance of the Preamble to the US Constitution // <https://www.thoughtco.com/preamble-to-the-us-constitution-3322393>

<sup>9</sup> *Kashanina T.V.* Legal Technique, M., 2007, p. 213–214 (in Russian).

<sup>10</sup> *Malkhaz Nakashidze*. Fundamentals of the Constitution of Georgia, Batumi 2006, pp. 34 (in Georgian); *M.V. Baglai*. Constitutional Law of the Russian Federation, Moscow, 2007, p. 75 (in Russian).

<sup>11</sup> Constitutional (State) Law (Reference), Compiler Paata Cognisladze, Tb., 1998, p. 67 (in Georgian).

<sup>12</sup> *Levan Bezhashvili*. Legislative Technique (Methodological Manual of Lawmaking), Tb., 2012, p. 99 (in Georgian).

<sup>13</sup> *Ebzeev B.S.* Direct action of the Constitution of the Russian Federation // Jurisprudence, 1996, № 1, p. 10 (in Russian).

<sup>14</sup> Constitutional (state) law of foreign countries. In 4 volumes. T. 1–2. Otv. Ed. B.A. Strashun, M., 1995, pp. 56–57 (in Russian).

<sup>15</sup> Antonenko V.M. Preambles of Constitutions and Their Legal Importance // <http://xn——7sbbaj7auwnffhk.xn—p1ai/article/10021> (in Russian); K.B. Курсакова. Preamble of the Constitution of Russia: the meaning and expression in the decisions of the Constitutional Court of the Russian Federation // [https://interactive-plus.ru/ru/article/18160/discussion\\_platform](https://interactive-plus.ru/ru/article/18160/discussion_platform) (in Russian).

<sup>16</sup> Otar Melkadze. Constitutionalism, Tb., 2005, p. 52 (in Georgian).

<sup>17</sup> Constitution of Georgia of August 24, 1995 (in Georgian).

<sup>18</sup> Denisov S.A. Legal Romanticism in Teaching Questions of Legal Technology // Legal Engineering, 2009, № 3, p. 163 (in Russian).

### Summary

#### **Gorgoshadze M.B. The Essence and the Place of the Preamble in the Structure of the Normative-legal Act.**

The paper sets out the essence of preamble, displays its place and role in the structure of the normative act. The structural and conceptual characteristic of the preamble are given. The focus is made on the peculiarities of the Preamble of the Constitution, indicated in Georgian legislation, in the opinion of the author, on some mistakes made in the preamble.

**Key words:** The essence of the preamble; Presumption of Preamble; Components of Constitution Preamble; Mistakes made in drawing up the preamble; Preamble normativeness.