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CONSTITUTIONAL AGREEMENT: HISTORY, PUBLIC DISCUSSIONS AND IMPACT ON THE PROTECTION OF THE RIGHTS OF MINORITIES IN GEORGIA

ABSTRACT

Relationship between the state and the church is one of the central issues in a history of law reform in terms of the protection of human rights as well as approximation of Georgia with western institutions. There are many questions related to the insurance of equal treatment of different churches by the state. There are a number of examples of unequal treatment as well as laws, which institutionalize the practice of inequality. Constitutional Agreement between the state of Georgia and the Autocephalous Orthodox Church of Georgia signed in 2002 and its role in the formation of legislative frames is key and therefore also at the center of discussion.

Our article aims to describe, based on the analyses of legislation, court practice and public discussions, what expectations existed with respect to the Agreement prior to its adoption and what legislative impact the Agreement between the state and the Orthodox Church had on the rights of minorities.

1. INTRODUCTION

Protection of freedom of religion has become a serious challenge for Post-Soviet Georgia. Civil confrontation, occupation, security problems, economic crises – all of these created a fertile ground for violence and search for “stranger”, “enemy”. After Soviet dictatorship, religious

groups, previously “without voice”, soon appeared in the public space. By the end of 90s, Georgia became an arena of confrontation and religious extremism¹. During the persecution of religious minorities the state played the role of either instigator or merely an observer.

In parallel to the persecution, the state significantly limited the legal status of religious minorities². The said processes is documented and described in detail in a number of human rights reports and surveys³.

In response to the repressive policy, civil society groups were trying to exercise the initiatives of freedom of religion considering the western experience. This tendency was justified if we consider that western orientation was openly declared to be a priority for the Post-Soviet, new Georgian democracy from its very first days of independence⁴.

Sharing the Western experiences was also supported by the influence of international mechanisms such as Council of Europe, European Court of Human Rights, International Religious Freedom Act⁵, etc. These instruments are of great importance and establish a strong legal and political ground for the protection of religious freedom.

Speaking about the protection of the rights of religious minorities does not loose relevance until nowadays. The problem of equal rights, special privileges granted to the Orthodox Church remains one of the issues of discussion between lawyers, political scientists and sociologists. Public debate about the relationship between the state and the church is rather painful, and unfortunately, is not accompanied by a comprehensive academic literature. Relevance of this debate has increased by the claim submitted to the Constitutional Court demanding establishment of an equal tax regime for all religious organizations. The present work aims to analyze an existing legal

¹ Report of the Liberty Institute – “Human Rights Review” 2002-2003.

² Giorgi Meladze, Giorgi Noniashvili – Religious Organizations in Georgian Legislation, Constitutional Law Review, 2016.

³ 1) U.S. DEPARTMENT of STATE – country reports on human rights practice: <http://www.state.gov/j/drl/rls/hrrpt/1999/330.htm>; <http://www.state.gov/j/drl/rls/hrrpt/2000/eur/760.htm>; <http://www.state.gov/j/drl/rls/hrrpt/2001/eur/8256.htm>; <http://www.state.gov/j/drl/rls/hrrpt/2002/18366.htm>; <http://www.state.gov/j/drl/rls/hrrpt/2003/27838.htm>; <http://www.state.gov/j/drl/rls/hrrpt/2004/41682.htm>;

2) Reports of the Liberty Institute – “Human Rights Review”, 2002-2003

3) Keston Institute - <http://www.keston.org.uk/kns/2002/knsindex.shtml>; <http://www.keston.org.uk/kns/2001/knsindex.shtml>;

⁴ Tarkhan-Mouravi Gia, Georgia’s European Aspirations and the Eastern Partnership, pg. 52, from The Making of Modern Georgia, 1918-2012: The First Georgian Republic and Its successors, Jones F Stephen (Ed.) 2014, New York.

⁵ International religious freedom act adopted 1998.

relationship between the state and the Orthodox Church and investigate its legal effect on other religious organizations in Georgia. By doing this, we will try to continue the debate, bring together the main arguments and present our vision about the Constitutional Agreement with respect to the legislation.

2. PRIVILEGED STATUS OF THE CHURCH AND INTERNATIONAL STANDARDS OF HUMAN RIGHTS

In political science it is popular to classify the relationship between the state and the church according to the criteria such as: intensity of intervention by the states and quality of autonomy, quality of the protection of religious freedom, ease of allowance of religious expression in the public space, etc. Different authors offer different models of classification, though, in all such systems, we can find the form of the relationship between the state and church when the state distinguishes one of the religious organizations and empowers it with the special privileges. Such regimes are named differently by authors. In our Article we will use two terms: established church and state church – as the concepts to describe a close relationship between the state and the church, when the state creates a privileged legal status for only one, in our case, for Autocephalous Orthodox Church of Georgia.

In spite of the fact, that the “Papacy Wars” in Western Europe and “Symphony” model of Byzantium offers different modes of relationship between the state and church, in both traditions we can observe an attempt to gain privileged status from the state. Today, it becomes increasingly difficult to compare experience of the relationship between the state and the church in Europe with any previous period. The modern processes are directed to equalize the legal status of communities and churches with different religious views though we still face existence of social privileges which is often criticized. Completely new direction of criticism is offered by Jeroen Temperman in his article “Are State Churches Contrary to International Law?”, in which the author argues that up to 40 states which offer a variety of special privileges to one of the church in any form, at the same time restrict the rights of minorities. Therefore privileged regimes are contrary to international human rights standards. His argument continues the reasoning of Nussbaum and Brugger, that any form of promotion of any church necessarily effects on the public policy⁶ and creates an internal pressure on the society, some kind of fear “not to become isolated from the society”, which forces actors, including the state, to identify themselves with the privileged Church⁷.

⁶ Marta C. Nussbaum, *Sex and Social Justice* (Oxford University Press, 2000), p. 103.

⁷ Winfried Brugger, *On the Relationship between Structural Norms and Constitutional Rights in Church-State Relations*, in Winfried Brugger and Michael Karayanni (eds), *Religion in the Public Sphere: A Comparative Analysis of German, American and International Law* (Springer, 2007) p. 52.

Temperman offers an argument that granting privileged conditions to the church should be considered as proselytism which will be incompatible with the international instruments⁸. The author criticizes existing practice of relationship between state and church in European countries and substantiates that existence of even symbolic status, free from real privileges, is still dangerous for freedom of religion.

In spite of the fact, that institutional denominational favoritism⁹ is gradually replaced by the process of disestablishment, Temperman argues, that existence of privileged status carries a discriminatory content and refers to the argument given in the Report of Special Reporter on Religious Freedom, that: “when the state gives a place to one of the religions in its constitution, the law terminates the protection of ethnical and religious diversity and opens the door to the flood of arbitrary and religiously motivated intolerance.”¹⁰

We will finish the review of the arguments with the main argument which runs as a red line through the whole discussion: “it is impossible to get rid of the negative effects of the state church. The debate that the state church might not violate the human rights standards loses its ground and remains only as a theoretical exercise of the mind.”¹¹

Existence of a privileged status of the church is acknowledged by lawyers to be a dangerous condition for the religious freedom. The problem of equality is addressed in the report on religious freedom produced by the OSCE. The process to eliminate differences called disestablishment is gaining momentum in the Nordic countries and the United Kingdom, an aim of which is a gradual removal of the traditional privileges and creation of an equal environment for churches. With this regard, Georgia has also made significant reforms and introduced a liberal registration regime offering an equal legal status to all the church¹².

Despite this reform, issue of privileged conditions of the Autocephalous Orthodox Church of Georgia remains relevant in the legislative system as well as administration of public policy. Activists and speakers on this issue often refer to the Concordat as a determining factor of a privileged

⁸ Jeroen Temperman, *Are State Churches Contrary to International Law?*, Oxford Journal of Law and Religion, Vol 2, N1 (2013) p. 130.

⁹ Johan D van der Vyver, *The relationship of Freedom of Religion or Belief Norms to other Human Rights*, in Tore Lindholm and others (eds), *Facilitating Freedom fo Religion or Belief: A Deskbook* (Martinus Nijhoff Publishers, 2004) 85, 105-06.

¹⁰ Report of the Special Rapporteur on freedom of religion and belief, A/HRC/10/60 (2011) p. 18.

¹¹ See note 11, p. 143.

¹² Giorgi Meladze, *Giorgi Noniashvili – Religious Organizations in Georgian legislation*, Constitutional Law Review, 2016.

status. This opinion is arguable as this church had a “special status” during and after the Soviet Union, before adoption of the Concordat. Example for this is a property granted by the state free of charge as well as factual immunity to the violent groups associated with the church during the religious “pogroms” in 1997-2002. Despite this, the Concordat has a great importance in terms of institutionalization of the relationship between the state and the church in the legislative system of the state.

3. PREHISTORY OF THE ADOPTION OF THE CONCORDAT AND ARGUMENTS IN GEORGIA

The debate about the legal regulation of the relationship between the state and the church started in the first years of independence. The model offered by the interest groups at the first stage about the adoption of a special law on religion went to first hearing in parliament and after publication in the official newspaper “Republic of Georgia” disappeared from the agenda and was lost in the archives¹³.

Despite this, work was still continued in small groups and was given a new energy by the idea of granting a high status to the Autocephalous Orthodox Church of Georgia and signing a Constitutional Agreement by the end of 90s.

Print Media Review gives us a good impression about the opinions stated on the constitutional agreement. Politicians, scientists, civil activists, priests and journalists equally engaged in the public discussion and a number of arguments were expressed in favor or against the constitutional agreement.

Part of the arguments were legalistic. In particular: what kind of legal instrument the contract is? Whether or not it is in compliance with the spirit of the Constitution? Is it contrary to the principles of international law?

The main argument of the opponents was an issue of granting a special status and leveling the church with the state. “The main thing that causes the protest about this project is that Autocephalous Orthodox Church of Georgia is one of the institutions in the society which... considers it as a super institution aimed at ensuring the wellbeing of the members of the given society and elevates it to the level equal to the state”¹⁴, noted philosopher Zurab Tchiaberashvili in his letter published in 2000.

¹³ The draft was published on June 5, 1994 in the Republic of Georgia.

¹⁴ Philosopher Zurab Tchiaberashvili – “The State of Georgia and the Orthodox Stalinism” –January 29 – February 7, 2000, newspaper Europe N13.

Authors also underlined unconstitutional nature of the contract: “...under the Constitution Orthodoxy is declared as a special religion, which is non-democratic¹⁵” – however, there have been also opponents against this opinion. The Vice Speaker of the Parliament Gigi Tsereteli disagreed with the opinion, according to which the state and the church were becoming the organizations with an equal status: “in order for the state to sign a contract with the church, it is necessary to make an amendment to the constitution. However, signing the Constitutional Agreement does not mean the simultaneous existence of two “states” in the country¹⁶.

His position was shared by the Parliamentary Secretary of the President John Khetsuriani: “the most welcomed way for two independent subjects to come to an agreement is signing a contract. By this contract the Orthodoxy will not become privileged. This will be a reflection of the reality in a legal language”¹⁷.

Negative positions were expressed by the priests of the Autocephalous Orthodox Church of Georgia as well, their statement read: “we hope that the public officials in the government will make a reasonable and fair decision and will refrain from signing constitutional agreement with the Patriarchate as under this contract the government violates its own constitution.”¹⁸

Negative position was expressed by professor Shukia Apridonidze: “as we see, so called “constitutional agreement” with its content and expected results is nothing but unconstitutional, more “earthly” than a permissible deal. It should be stated clearly and without ambiguity that such “deal” not only does not mean anything, moreover – undermines the true consent in Georgia as it is contrary to the personal interests of every citizen as well as the whole country’s national interests.”¹⁹

Theologian Teimuraz Dedabrishvili expresses his opinion against the contract: “giving constitutional weight to the Agreement between the State and the Patriarchate means that it will take precedence over international agreements between two countries (also called “ordinal international agreements”) in the legislative hierarchy. It appears that with the form of the constitutional agreement

¹⁵ Professor Valeri Loria – “The Parliament Signs a Contract with the Church on March 15” – February 22, 2001, newspaper Resonance N 050 (2181).

¹⁶ Vice Speaker of the Parliament Gigi Tsereteli – “The Parliament Signs a Contract with the Church on March 15” – February 22, 2001, newspaper Resonance N 050 (2181).

¹⁷ Parliamentary Secretary of the President John Khetsuriani – “The Parliament Signs a Contract with the Church on March 15” – February 22, 2001, newspaper Resonance N 050 (2181).

¹⁸ Protosingelos Archimandrite Ioane, Head of the church of St. Serapion Zarzveli Archimandrite Giorgi; Priest Kirion; Hieromonk Angia; Hegumen Gabriel of the Monastery of St. Maksime Aghmsarebeli; Head of Tbilisi church of Assumption of Mary Priest Gelasi; Priest Zurabi; Deacon Alexandre; Head of Kutaisi church of St. Nikoloz David “The State Should not Sign an Agreement with the Patriarchate” March 12, 2001 – newspaper Resonance N 064 (2199).

¹⁹ Professor Shukia Apridonidze – newspaper Republic of Georgia as of March 14, 2001.

we face “extraordinary” unprecedented “international” agreement. As a modern state consists of three main components: government, territory and people (citizens) and the Patriarchate, including its members, is a part of the third component, it appears that part of this component is considered as an “international subject” by the state (!)... Organization consisting of its citizens living on its territory and controlled by it, turns out to be an “international subject” to him (and only to him) (!) while this subject is not even registered by the state yet. But nonregistered organization does not even exist for the state, is it?! (According to the article 1511 of the Civil Code of Georgia, religious organization, including the Patriarchate, which is not registered as a legal entity of public law until January 1, 1999, is revoked under the law). It turns out that the state considers the part of its own part, which is not even visible for it, as an “international subject” legally equal to itself (!).”²⁰

Mikheil Naneishvili, member of the Liberal-democratic party, the Member of Parliament is in favor of this argument: “this constitutional agreement is a rough political mistake as it is unconstitutional... Under this agreement, the other sovereign body appears in the role of the state and this is called the state within the state”.²¹

“Now we face an issue of how the relationship between the two independent subjects, the state and the church, should be regulated. It is known worldwide that an optimal way to determine the relationship between the independent subjects is a contract, according to which the contracting parties express their will and agree about the destiny of the relationship” – wrote John Khetsuriani. According to him, the risk caused by the contracts should have been balanced by the Constitutional Court.²²

According to his opinion, practice of signing such contract should not apply to other churches and this precedent should remain as an exception: “Georgian Orthodoxy has a special historical significance and the state cannot sign the contract with other churches”²³ ...the author develops this opinion also in one of his interviews, where he points out that: “the said agreement between the state and the church is the last constitutional norm. This will be the last agreement related to the religious issues”.²⁴

²⁰ Teimuraz dedabrishvili “Post-communist Government and the Church are Sharing the Government!!!” – April 4, 2001 – the newspaper Resonance N 089 (2220).

²¹ Liberal-democratic Party – Mikheil Naneishvili – May 16, 2001 newspaper Republic of Georgian N116.

²² Doctor of law professor John Khetsuriani – “The State and the Church” February 27, 2001 newspaper Georgian Republic N47.

²³ The Parliamentary Secretary of the President John Khetsuriani – “The Parliament Signs a Contract with the Church on March 15” – February 22, 2001, newspaper Resonance N 050 (2181).

²⁴ President of the Constitutional Court of Georgia John Khetsuriani – October 10, 2002 newspaper Resonance N 276 (2761).

The Lutheran church was skeptical about the constitutional agreement, which was expressed in its letter addressed to the State Chancellery²⁵. “The document itself is good and timely. We hope that determination of the status of the Orthodox Church will be beneficial for not only the Orthodox people but the whole nation. Despite this, existence of religious law is very important and we hope that the Orthodox Church and the state will take care of creating favorable conditions for us as well and enable us to grow”²⁶ – wrote the representative of the Catholic Church. However, despite skeptical attitudes, several churches: Catholic, Lutheran, Islamic, Jewish, Baptist and Armenian Orthodox churches expressed their support and signed memorandums of understanding with the Georgian Orthodox Church. The agreement was supported by up to thirty nongovernment organizations²⁷. For those who supported, arguments were diverse, some would argue that similar contract needs to be elaborated with every church²⁸. For part of the politicians adoption of the constitutional agreement became a part of their political program.²⁹

The society’s views also differed in terms of legal content of the Concordat. “I consider mistaken even the idea of the Concordat” – wrote Zurab Tchiaberashvili – “...when the Concordat was adopted in the European Countries between the state and the Catholic Church, it was an agreement between the specific state and the other state, in particular with Vatican. This happened because in the given state, Spain or France, the Catholic Church represented the Catholic Church of Rome. In our case, the Georgian Orthodox Church has an autocephaly. In other words, it is not a part of the Orthodox Church existing outside the territory of Georgia, but an independent institutional mechanism. Therefore, it turns out that Georgia as a state signs an agreement with the subject existing inside it and makes this subject equal to the state. Such practice does not exist in Europe as it is wrongly stated by the supporters of the Concordat.”³⁰

However, influential politician and Chairman of the Parliament of Georgia Zurab Zhvania was a fierce supporter of the contract: “today there does not exist a country which does not regulate its relationship with the traditional religion. The system of Concordat exist in many European

²⁵ „Agreement between the State and the Church is Ready” – January 20, 2001 newspaper Resonance N 007 (2138).

²⁶ Bishop of the Cathilic church Fr. Jouzepe Pazoto – October 19, 2002 newspaper Resonance N285 (2770)

²⁷ Head of the interfractional group created for the preparation of the constitutional agreement between the state of Georgia and the Autocephalous Orthodox Church of Georgia Giogi Tsereteli, March 10, 2001 newspaper Republic of Georgian N 57.

²⁸ Interview with the representative of the Liberty Institute Levan Ramishvili.

²⁹ Head of the Cristian-Conservative Party Shota Malashkhia – “ Political Battles on Religious Issues” – October 5, 2002 newspaper Resonance N 271 (2756).

³⁰ Philosopher Zurab Tchiaberashvili – “The Patriarchate Is Going to Sign an Agreement with Other Confessions” – January 24, 2001 neswpaper Resonance N 021 (2152).

countries, this is the case in the new European countries, and agreements are signed practically everywhere.”³¹

Argument of Zhvania was not shared by the representatives of the university community: “when the logical question related to the analogy and precedents was asked, none of the examples were given. An agreement (or contract) signed by Mussolini on behalf of the state of Italy was named as a model event by the representative of the Patriarchate! (As far as I know, by this agreement the state declared the Catholicism as a state religion in fact) As they say, no comment.”³²

Supporters of the contract were trying to connect the idea of the contract to the determination of the constitutional status of the church. For them, the contract was a legislative tool that could be used to “establish” the state religion: “nowadays, in many countries the state religion is acknowledged in the constitution, including in countries well-known for us: the Great Britain, Denmark, Greece, etc. where the rule of law was established a long time ago and human rights are also sufficiently protracted³³”. Introducing an argument about the state religions showed once again that, there was a desire to grant the status of the state religion to the Georgian Orthodox Church using the contract.

Based on the review of the materials available in media, we can conclude that arguments of supporters of the contract were developed into two directions: Georgian Orthodox Church has a special role in the country and signing the contract would not cause violation of someone’s rights.

Opponents’ arguments were the following: signing the contract was already meant granting of special status, which created a discriminatory environment. The contract was legally and politically faulty instrument to regulate the relationship with the church; adoption of the agreement would cause a confrontation in the society. The following statement given by the Patriarch of the Orthodox Church might be considered as an example of a call for confrontation and conflict: “as you know, we have problems and the church also faces them. We believe that, thanks to god, we will be able to sufficiently address the sectarian proselytism and at the same time, contribute to the protection of the population in terms of moral”³⁴. Therefore, it was clear that despite optimistic

³¹ Chairman of the Parliament Zurab Zhvania – “Extended Bureau Meeting of the Parliament on March 10” March 13, 2001 newspaper Republic of Georgian N 59.

³² Professor Shukia Apridonidze – March 14, 2001 newspaper Republic of Georgian N60.

³³ Doctor of law professor John Khetsuriani – “The State and the Church” February 27, 2001 newspaper Republic of Georgian N47.

³⁴ Catholicos-Patriarche of Georgia Ilia II – “The Idea Dreamed for Centuries Becomes a reality” October 16, 2002 newspaper Republic of Georgian N 251-252.

attitudes, voiced by political spectrum³⁵, the contract might become a new ground for confrontation in society.

4. ADOPTION OF THE CONSTITUTIONAL AGREEMENT AND ITS LEGAL ANALYSES

The debate about signing the contract between the state and the church was continued in the parliament. In 2000, at the autumn session, different projects were discussed in the fractions and committees, though the records of the proceedings where opinions expressed by the participant parties would be described in detail, have not been found in the Parliament's archive. Our review is based on the session discussion held on March 30, 2001 where results of the work were presented by the Head of Organizational Commission of the Public discussion and interfractional group, Member of the Parliament Gigi Tsereteli. The parliament made amendments to the constitution at this session, according to which articles 9 and 73 were amended. Previous version of article 9, which included only one paragraph and stipulated the following: „The State shall declare absolute freedom of belief and religion. At the same time, the State shall recognise the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the State“. The second paragraph was added to the text, according to which: “relations between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia shall be governed by Constitutional Agreement. Constitutional Agreement shall be in full compliance with the universally recognised principles and norms of international law, specifically in terms of human rights and fundamental freedoms (30.03. 2001 N826)“. Article 73 of the Constitution was added by the following paragraph: “b) conclude a constitutional agreement with the Apostolic Autocephalous Orthodox Church of Georgia on behalf of the State of Georgia;”

The speaker indicated that the ground for these changes was a historical significance of the church: “... the primary spiritual institute of our country, fighter for its independence, for its statehood, guardian of the nation's moral ...” most arguments were related to the analyses of the historical role of the church and as head of the working group he was referring, quoting the words of Ilia Chavchavadze that the church was: “a political cornerstone to gather, unite different parts of the country and indeed, unity of the faith meant the unity of the nation”.

³⁵ President of Georgia Eduard Shevardnadze – The Idea Dreamed for Centuries Becomes a reality” October 16, 2002 newspaper Republic of Georgian N 251-252 “Today's victory, I do not afraid of this word, I believe, is indeed a moral and spiritual victory of our nation, his Holiness, and the President, which will contribute to the reunification of the country and unity of people and its cohesiveness.”

The speaker lists different memorandums and contracts which were signed with nongovernment organizations and different churches about religious issues and based on which they supported the initiative of the contract. According to the presentation, initiated version of the contract consisted of 50 articles which was decreased to 24 articles by the time of constitutional amendments. Further discussions were planned to ensure the full protection of human rights and to ensure that religious freedom would not be restricted for any religious community.

The only position against the adoption of the Contract was expressed by the Member of the Parliament Mikheil Naneishvili who noted that copying European tradition into Georgian reality would not be relevant considering the existing legislative conditions. In his opinion, purpose of Concordats was to regulate the relationship between states, which initially put us before a false reality as Georgian Orthodox Church had not had any similar legal status. Therefore, it could not be the contracting party. His position was rejected by the absolute majority.

Discussions about the amendment to article 73 were brief. The Parliamentary Secretary of the President John Khetsuriani expressed his position and explained the reason why the full name of agreement was specified in article 73: “a 1) conclude a constitutional agreement with the Apostolic Autocephalous Orthodox Church of Georgia on behalf of the state of Georgia;”. By this amendment, exclusivity of the agreements was underlined and the possibility for other religious communities to share this precedent was excluded. 180 Members of the Parliament participated in voting and all of them supported the constitutional amendments.

Parliamentary discussions were continued on October 22, 2002 when the issue related to the contract between the state and the church was considered at the plenary session. By this stage, the President had already signed the contract and the Parliament formally confirmed the conclusion of the contract by its resolution.

Majority of the arguments were repeated, though the Member of the Parliament Vakhtang Rcheulishvili added one more argument related to the maintenance of the state stability. He argued that considering the distrust of people toward the political institutes, the church remained the subject having the public's confidence and it could avoid civil confrontation. He also referred to the need for a peaceful transition of power, in the process of which the church had an important role and thanked to the Patriarch of Russia for the recovery of the relationship between Georgia and Russia.

Different opinions were expressed about article 6 of the agreement. For the part of speakers the article was dangerous, though the majority considered that the amendment should be read in the

context of international human rights. The members of the Parliaments also discussed the restitution of the church's property lost during the soviet occupation and Russian tsarism and referred to the high importance to perform this obligation (see. the summary remarks of Zurab Zhvania). Parliament finally approved the agreement with 203 votes. No one in the audience was against.

4.1 legal analysis of the constitutional agreement

The document consists of introduction, 12 articles and definitions of terms which includes 28 paragraphs. It is noted in the preamble that the Autocephalous Orthodox Church of Georgia is “an Apostolic See and is inseparable part of the World Orthodox Church”, vast majority of Georgian population are Orthodox Christians, Orthodoxy has an exclusive role in the history of Georgia and it is represented by Catholicos-Patriarch of Georgia in the relationship with the state. Part of these provisions were criticized by the politicians³⁶ as well as some priests.

“...There are a number of religious groups called Orthodox, Christians doctrines of which contain contradictory contents about the principal issues. Modern democratic country should not want, cannot and neither has the right to determine, in this multitude, which religious community is a follower of a true Orthodox faith and which should be promoted (if, of course, it has such a desire). In this case, talking about several exceptions is impossible in principal as if the government choses only one from the religious communities and grants it privileges as an exception, it will turn out that the state does this arbitrarily, upon its personal interests, without prior investigation whether or not the favored religion is true.

When the state speaks about the religion of the Georgian nation – Orthodoxy, first of all, religious communities which follow the Orthodox religion should be determined. So the state should examine the religious doctrine of its favored religion and not only the title as nowadays several religious groups consider themselves as Orthodox.

“...According to the above mentioned, it would have been fair if the state had not interfered with the holy church and theological problems and had not taken a responsibility to determine who is and who is not Orthodox in Georgia. Especially, if it does not have a special state institution to determine this”...³⁷

³⁶ Politician Irakli Tsereteli – “The Patriarcate Rejected Once Again the Christ and the Only Saving Religion – Orthodox Christianity” – March 9, 2001 newspaper Resonance N 064 (2194).

³⁷ Protosingelos Archimandrite Ioane, head of the church of st. Serapion Zarzveli Archimandrite Giorgi; Priest Kirion; Hieromonk Angia; Hegumen Gabriel of the Monastery of St. Maksime Aghmsarebeli; Head of Tbilisi church of Assumption of Mary Priest Gelasi; Priest Zurabi; Deacon Alexandre; Head of Kutaisi church of St. Nikoloz David “the state should not sign an agreement with the Patriarchate” March 12, 2001 – newspaper Resonance N 064 (2199).

“...Consideration of the Patriarchate by the state as a religious subject could be considered as an interference with the theological issues, the competence and the right of which the state does not have”.³⁸

The said debate is relevant today as well and opinions about weakening the borders and constitutional standards (article 9 of the Constitution) between the state and the church are expressed time to time in a public space³⁹.

Based on the analysis of articles of the constitution, there are several basic principles revealed, such as:

- Inter-independence;
- Responsibility of the state to restitute the property of the church;
- Cooperation between the state and the church on the issue of common interest.

4.1.1 Principle of Inter-independence

This principle is set out in the first article of the agreement and it is not defined in the definitions of terms. Therefore, it should be defined according to the content of the constitution. In this case, article 9 of the constitution will be relevant, which stipulates: “The State ...shall recognise independence of the Apostolic Autocephalous Orthodox Church of Georgia from the State”. Extended content of the constitution’s provision is given in the agreement in which not only the independence of the church is protected but separation of the state from the church is also underlined.

Principle of autonomy of the church is also a part of the principle of inter-independence, which implies the existence of “special immunity” for the Catholicos-Patriarch, adjusting to the church’s interests (dismissal from the military service), though, business activity, except producing ecclesiastic goods was banned to the church (article 6).

³⁸ Protosingelos Archimandrite Ioane, head of the church of st. Serapion Zarzmeli Archimandrite Giorgi; Priest Kirion; Hieromonk Angia; Hegumen Gabriel of the Monastery of St. Maksime Aghmsarebeli; Head of Tbilisi church of Assumption of Marry Priest Gelasi; Priest Zurabi; Deacon Alexsandre; Head of Kutaisi church of St. Nikoloz David “the state should not sign an agreement with the Patriarchate” March 12, 2001 – newspaper Resonance N 064 (2199).

³⁹ Different positions existing in the society were shown at the time of initiation of the constitutional provision about family.

However, it is difficult to determine the scope of the principle of inter-independence and we might rather talk about „creeping” reality than the frames strictly ensured by law. Grounds for evaluation is given by the analysis of the legislation as well as public policy which will be discussed in detail in the next section.

4.1.2 Restitution of the property

Under the agreement, the state has recognized the damage to the church during the tsarism and soviet regime and also a historical-cultural heritage within and outside the country to be the church’s property. Immovable property and the lands with active or inactive, or even the ruined religious buildings and chapels on it, were declared as the property of the church..

Under the said agreement the principle of restitution of property was introduced for the first time in Georgian legislation. In spite of the fact, that the special commission necessary for the restitution has not been created yet, the church has already been given a number of real estate and this process is still underway.

Researchers had noted about the difficulty of this process before adoption of the Concordat: “appropriation of orthodox churches, monasteries, despite their ecclesiastic purposes will not be resolved so easily, especially because, they often are built by the consent and using the financial resources of the public officials, including kings, feudals and others and descendants of those persons might have the right on them or to the sufficient compensation.”⁴⁰

Authors fairly notice that, initiating the process with only one church caused a discriminatory attitude toward a number of other churches existed in Georgia and owned different types of property. The representative of the Catholic Church has also referred to this problem: “we also have such properties in Georgia and neither we should be oppressed, the law might not be two – it is always one⁴¹. However, researchers also noted the other side of the problem: “it is true that, nowadays, “the state of Georgia” is an owner of a specific property expropriated from Georgian Patriarchate, but it does not mean that the state should be responsible for the vandalism against Georgian Orthodox Church. This was done by the Soviet Union and its legal successor Russia responsible for the crimes committed during 1921-90. Therefore, Georgian Patriarchate should seek the compensation as well as acknowledgment of material and moral damage to them.”⁴²

⁴⁰ Professor Shukia Apridonidze – March 14, 2001 newspaper Republic of Georgian N60.

⁴¹ Bishop of the Catholic church Fr. Jouzepe Pazoto – October 19, 2002 newspaper Resonance N285 (2770).

⁴² Philosopher Zourab Tchiaberashvili “the state of Georgia and Orthodox Stalinism” – January 29, 2000 newspaper Europe N13.

The idea of a “historical ownership” is connected to the property issues enshrined in article 8 of the contract. According to this principle, the State recognizes ecclesiastic treasure protected by State security (kept at museums and treasury) to be in possession of the Church (except those owned privately). Critics pointed out that such precedent would create the situation, when other subjects would also have the same interest to restore their “historic property”: there are a lot of goods, manuscripts, etc. which is not originated from Georgia in our museums and treasury. It is not difficult to foresee what happens if all historic owners, including representatives of ethnical and confessional communities demand possession of such exhibits. In that case, we will not be able to avoid international court with worse financial resources”⁴³ – Shuqia Apridonidze points out.

Among other issues already discussed, calculation of the damage is also a problematic issue. Calculation of this is also impossible. This complexity makes the issue of implementation of this obligation unclear. Under the contract, it is difficult to determine what is the total cost of the damage and when the damage should be considered as finally remunerated. Such criteria are not specified in any other legislative or policy document.

When discussing property relations, it is important to refer to the paragraph 6 of article 6 of the Concordat, around which a legal dispute arose before the Constitutional Court. Under this paragraph, the State upon agreement with the Church issues permissions and licenses on using official ecclesiastic terminology and symbols, also producing, importing and delivering ecclesiastic goods. This paragraph was appealed by Zurab Aroshvili, representative of “Orthodox Church in Georgia”, who argued that this paragraph restricted the constitutional right of the freedom of religion. The Constitutional Court in its ruling (N^o2/18/206) as of November 22, 2002 explained that the said norm applies only to the terminology, symbols, etc. of the church which is the party to the contract. Therefore, representatives of other confession could freely use their own symbols, terminologies, produce ecclesiastic goods, etc.

4.1.3 Principle of cooperation

The contract specifies a number of fields on which the state and the church declare their intention to cooperate. The field of education is separated and several standards are determined by the contract:

- Voluntary to learn about orthodox religion;
- Recognition of the scientific degrees issued by the religious institutions;
- Supporting educational institutions of the Church’s.

⁴³ Professor Shukia Apridonidze – March 14, 2001 newspaper Republic of Georgian N60.

This principle of cooperation is based on the voluntary and dispositional principles, which implies that there are opportunities for cooperation but the parties are not obliged to come to such agreements.

Usually, there are many dispositional norms in the contract, which give an opportunity to the state to change different agreements with the church and public policy decisions.

5. CONSTITUTIONAL AGREEMENT AND THE PROBLEMS OF RELIGIOUS MINORITIES

The Constitutional Agreement determined the privileges for the Orthodox Church not only in the legal sense but gave it a big advantage in the political context. Authors argue, that one of the major grounds for the problems facing the religious minorities is caused by the fact that the Constitutional Agreement exists solely for Autocephalous Georgian Church. Hereby we should note that formalist reading of the text and its interpretation by using the textual, grammatical and lexical methods will not be helpful to measure the political effect of the contract. However, if we use a teleological method to interpret the contract, it will be clear, that its authors and supporters aimed at granting a special status to the church and this is proved by the positions expressed by them at the preparatory stage as well as events occurred after adoption of the contract. The first have already been discussed in the previous chapters and now we will briefly review the reality after adoption of the contract.

5.1. Exceptional legal and Political status

“God bless” is accepted in the Christian world and it is written in the constitution that we are Christians and the religion is now at the Constitutional level and I do not understand, what you are talking about”⁴⁴ – judge Tabaghua well-expressed the disposition which is universally shared in the political and public institutions. Despite neutral nature of the constitutional regulation, the fact of signing the contract has been perceived by the state as granting a special status.

Researchers explain that granting the privileges to the church had political purposes: “every authority, from Eduared Shevardnadze to Bidzina Iva nishvili used the church’s support as a tool for legitimation as well as to balance-maintain the political processes. Clear example of this might be resignation of Shevardznadze, when he declared his resignation, there was a mass demonstration

⁴⁴ Judge of Tbilisi Court of Appeals Besarion Tabaghua said this phrase when hearing the case of a dismissed employee of the ProCredit Bank on December 21, 2015 – Journal Tabula, January 21, 2016.

outside, Catholicos-Patriarch entered the building and publicly gave a blessing to Shevardnadze as a son of his spiritual nation to remain at the position.⁴⁵

Usage of the church as a source of legitimation during the political crises has already become a tradition. In spite of the fact that, relationship between the church and the state during 2003-07 made many people think that the process of “disestablishment” was about to approach, the situation changed in 2007. When the president resigned during the political crisis and returned to the power through the election, the state radically changed its attitude to the Orthodox Church, which is evidenced by the budget in 2009 when the church was financed by more than 25 million GEL while this budget in the previous year was 2.5 times less.

Participation of the representatives of Orthodox Church in the official ceremonies, meetings with the diplomatic delegations to Georgia as well as meetings of high state officials with the Patriarch where “consensuses” on the public policy issues were made between the parties, shows the high political importance and status of the church. This is also evidenced by the resolution N 176 of the Government as of 2015, according to which, upon nomination by the Catholicos-Patriarch, 40 employees of the church can take advantage of the “service passports” and Catholicos-Patriarch, Head of foreign affairs service, Chorbishop, head of Georgian Orthodox Eparchy of Western Europe, and head of “Service for Pilgrims” religious tourism of the Patriarchate can take advantage of the “diplomatic passport”⁴⁶. The said opportunities are the special privileges for the state officials⁴⁷, though as we see usage of these privileges are also granted to the representatives of the institution independent from the state.

5.2. Financing of religious organizations

Providing financial support to church from the state budget is already a tradition. The allocation of funds rises several questions: is it lawful to allocate funds to the church from the state budget? Is provision of the finances an expression of the state’s good will or a legislative obligation?

Under article 11 of the Constitutional Agreement, the state acknowledges the material and moral damages of the church and undertakes an obligation to compensate. It remains unclear on what the

⁴⁵ Kristine Margvelashvili – impact of the church: political processes and elections in Georgia. Religion, society and politics in Georgia, Caucasus Institute for Peace, Democracy and Development, Tbilisi 2016, pg. 7.

⁴⁶ Resolution of the Government N 176 on the approval of the procedures for the issuance of service passport, annex N1 Subparagraph t).

⁴⁷ Resolution of the Government N 176 on the approval of the procedures for the issuance of service passport, annex N2, Subparagraph s).

state relies when calculating the damage. The question remains: if budget funding is a part of the compensation, which was pointed out several times by both parties, then it is interesting what the amount of this obligation is and when it will be finally remunerated as we have already mentioned.

The Government of Georgia made a decision under its resolution as of January 27, 2014⁴⁸, to compensate the material and moral damages to four other religious communities as well who suffered during the soviet period. Under article 3 of this resolution, the damage should be compensated for those religious organizations registered as a legal entity of public law by January 27, 2014. These are: Islamic, Jewish, Roman-Catholic and Armenian Orthodox church. The resolution was criticized by the civil organizations as well as Public Defender. Public defender points out in his report that this resolution should also apply to other religious organizations, as not only the religious organizations determined by the resolution as of January 27, 2014 are victims of Soviet repressions⁴⁹. The questions asked above are also relevant to this resolution and we believe that existing rules of financing not only does not equalize the religious organizations, but forms a new basis for discrimination, which is also indicated in the statements made by non-governmental organizations.

A number of reports of the Public Defender were devoted to the financing of religious organizations as a problematic issue⁵⁰. Numbers of the previous year are the most impressive. In particular, “in 2013 funds allocated to the church constituted 29 220 349.7 GEL, 13% of this money was allocated from the local self-government budgets⁵¹, is should also be noted that after examination of the documents (under which the funds were allocated to the Patriarchate) of 41 municipalities, in more than half (52%) cases, objectives of financing was not clear for the self-government unit.”⁵² Results are more deplorable with respect to the objectives of transferring immovable property. In particular, in nine cases (86%) out of ten, objectives of making transfer of immovable property is unclear⁵³. Updated data is provided by the Tolerance and Diversity Institute research, according to which during 2014-15 the funding exceeded 32 million⁵⁴.

⁴⁸ “On some activities connected to the partial compensation for the damages of the religious communities existing in Georgia during the Soviet totalitarian regime”.

⁴⁹ Report 2015 of the Public Defender – <http://www.ombudsman.ge/uploads/other/3/3512.pdf>

⁵⁰ 1) Second half of 2009 report of the Public Defender – <http://www.ombudsman.ge/uploads/other/0/83.pdf>;
2) Report 2012 of the Public Defender – <http://www.ombudsman.ge/uploads/other/0/86.pdf>;
3) Report 2013 of the Public Defender – <http://www.ombudsman.ge/uploads/other/1/1563.pdf>;

⁵¹ Human Rights Education and Monitoring Center (EMC) and Tolerance and Diversity Institute (TDI) – „practice of the religious organizations by the central and local governments”, 2014.

⁵² Human Rights Education and Monitoring Center (EMC) and Tolerance and Diversity Institute (TDI) – „practice of the religious organizations by the central and local governments”, 2014.

⁵³ Human Rights Education and Monitoring Center (EMC) and Tolerance and Diversity Institute (TDI) – „practice of the religious organizations by the central and local governments”, 2014.

⁵⁴ The organization published the results of the survey on July 14, the survey is available at the organization’s web-page: www.tdi.ge.

5.3. Preferential tax regime

Tax Code of Georgia regulates taxation of the activities of religious organizations. According to the Code, religious activity is not considered as an economic activity. Therefore, different rules of taxation apply to it. For the purposes of taxation, Religious activities shall be considered to be the activities of a religious organization (association) registered according to an established rule purpose of which is to spread confession and religion. Activity of those enterprises of religious organizations (associations) to publish religious (religious service) literature or produce religious items; the activities of these organizations (associations) or their enterprises connected with the realization (dissemination) of religious (religious service) literature or religious items; as well as the use of the funds received from the above activities for performing religious activities.

Profit received by the Patriarchate of Georgia from the sale of the crosses, candles, icons, books, and calendars used for religious purpose is exempted from corporate income tax⁵⁵. Under article 168 of the Tax Code, the supply of a cross, a candle, an icon, a book, a calendar, and other religious items by the Patriarchate of Georgia that are used exclusively for religious purposes are exempted from VAT. Under the same article, construction, restoration, and painting of cathedrals and churches with the order of the Patriarchate of Georgia are also exempted from VAT;

Under article 206 of the Tax Code, property of religious and other organizations which is not used for economic activities as well as structures considered as historical, cultural, and/or architectural monuments are exempted from property tax.

Reference to the patriarchate separately creates a discriminatory environment which is pointed out by the Public Defender: „the Tax Code of Georgia establishes a regulatory regime for one specific church which creates unequal environment for other religious organizations⁵⁶. Report of the U.S. Department of State has the same content: “privileged legislative and tax status of the Georgian Orthodox Church remains to be a problem⁵⁷.”

Because of the said privileged condition of Orthodox Church, eight religious organizations (Caucasus Apostolic Administration of Latin Catholics, Evangelical-Baptist Church of Georgia, Georgian Muslims Union, Faith of Gospel Church of Georgia, Trans-Caucasus Union of Seventh Day

⁵⁵ Article 99 of the Tax Code of Georgia.

⁵⁶ Second half of 2008 Report of the Public Defender – <http://www.ombudsman.ge/uploads/other/0/80.pdf>

⁵⁷ Report of the U.S. Department of State 2012 – <http://www.state.gov/j/drl/rls/irf/2012religiousfreedom/index.htm#wrapper>;

Christian-Adventist Church, Word of Life Church of Georgia, Holy Trinity Church, Christ Church) applied to the Constitutional Court on October 15, 2015 and requested tax privileges enlisted in the Tax Code to be considered as unconstitutional according to the article 14 of the constitution. The case is still to be decided by the court.

5.4. Persecution on the religious grounds and the problem of effective response

Violence against religious minorities has a systemic nature. Facts of verbal and physical violence against specific religious groups are frequent. The problem discussed in the Ombudsman's 2004 report still persists and is considered to be very serious in the report published in 2015.

Jehovah's Witnesses, the Muslim community, Evangelical-Baptists, Anglican Church, this is an incomplete list of religious organizations which are raided and whose property, religious goods are damaged, etc. If by 2005 the number of facts of violent remained within ten and until 2012 the annual data did not exceeded 20 cases, after 2013, only in one year when a number of well-planned raids occurred with the involvement of the state against Muslim community in Nigvziani, Tsintskaro, Cikhisdziri, Samtatskaro, Tchela – the number of persecutions doubled. For instance, during 2014 reporting period, the Ombudsman became aware about up to 45 cases of persecution, verbal and physical abuse and discrimination against Jehovah's Witnesses. All of these cases are fully documented in the annual reports of the U.S State Department too⁵⁸.

Violence on religious grounds is accompanied by the failure of the state authorities to respond effectively, which often has an encouraging effect for those committing violence. We observe the failure of effective responses from the law-enforcement agencies, as well as the investigation and the courts.

In all reports of the Ombudsman, which refer to the violence on the religious ground, signs of inadequate response from the state has a central role⁵⁹. Considering the fact, that Georgia has a

⁵⁸ U.S. DEPARTMENT of STATE – country reports on human rights practice:
<http://www.state.gov/j/drl/rls/irf/2012religiousfreedom/index.htm#wrapper>;
<http://www.state.gov/j/drl/rls/irf/2013religiousfreedom/index.htm#wrapper>;

⁵⁹ 1) for example, Kvarელი incident as of November 19, 2010 "Inability to access the results of investigation conducted by Police on the raid against Baptist church – Report 2010 of the Public Defender – <http://www.ombudsman.ge/uploads/other/0/84.pdf>;
 2) Nigvziani incident as of November 2, 2012 "security of muslim prayers was not ensured by the law enforcement bodies - Report 2012 of the Public Defender – <http://www.ombudsman.ge/uploads/other/0/86.pdf>;
 3) Tchela and Mokhe incidents were law enforcement bodies are likely to be guilty – Report 2014 of the Public Defender – <http://www.ombudsman.ge/uploads/other/3/3509.pdf>;

very negative experience in terms of religious violence, we should understand that any ineffective step taken by the state creates a precondition for the escalation of violence as it was during 1998-2003.

One of the most relevant and continuing problem refers to the teaching of religion at schools which becomes a ground for the persecution on religious ground. This issue is discussed in almost all reports of the Ombudsman from 2004 to 2015. Proselytism at the public school, indoctrination, exhibition of religious symbols in the school space for nonacademic purposes are just a few of the problems.

There are a frequent facts of violence and manifestations of hatred expressed by teachers against non-orthodox pupils⁶⁰.

European Commission against Racism and Intolerance (ECRI) in its report 2010 on Georgia stated directly that “pressure by teachers against children who do not belong to the majority religion remains to be a problem”.

The method and content of religious studies at the general education schools rises also concerns. Things thematically connected to the religion is perceived by the pedagogues as the teaching of “God’s law”⁶¹ and focus is made on the information spread by the Georgian Orthodox Church.

5.5. Facts of the seizure of property of religious minorities

Ongoing property disputes between churches are one of the most significant issues which clearly demonstrate the discrimination against religious minorities. Majority of religious organizations have not received historical heritage. In the best cases, usage of the property by them is regulated under individual agreements with the state, which imposes the right to use the property. Religious organizations often factually hold the property without any legislative regulation. Guaranties for

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- ⁶⁰ 1) incident at the public school N2 in Telavi: “there was the facts of humiliation by the teachers of the school against the pupils because their perents were Jehova’s Witnesses – First half of 2007 Report of the Public Defender <http://www.ombudsman.ge/uploads/other/0/77.pdf>
- 2) The teacher baptized the pupil whose perents were members of Jehova’s Witnesses as an Orthodox Christian against his will in 2012, Oni – Report 2012 of the Public Defender – <http://www.ombudsman.ge/uploads/other/0/86.pdf>
- 3) Chumlaki public school incident „the pupil became a victim of physical and verbal abuse several simes because of the Evangelical-Baptist religion” – Report 2013 of the Public Defender – <http://www.ombudsman.ge/uploads/other/1/1563.pdf>
- ⁶¹ 2004 Report of the Public Defender – <http://www.ombudsman.ge/uploads/other/0/72.pdf>.

the Georgian Orthodox Church to return historical properties is included in the Constitutional agreement, resolving the property issues of other denominations remains dependent to the state's good will. For instance, Muslims community claims the mosques located at Aghmashenebeli Street N100, Kobuleti and 5 mosques in the regions of Adigeni and Akhaltsikhe⁶².

The problem is exacerbated by the facts of forceful "seizure" of religious buildings of minority religious organizations. The Ombudsman's report 2005 refers to the property, which is owned by the Georgian Orthodox Church, but historically it was the property of minorities⁶³: "Armenian church demands returning of 6 churches in Georgia, all six are historically Armenian and were Georgian Orthodox Church have not started a liturgy yet⁶⁴. Information about these said six Armenian churches and generally, about the disputed properties, are systematically marked in various international reports⁶⁵.

The Catholic Church also actively requests the churches seized during the Soviet period to be returned. Part of the property seized during the Soviets is still in the state's ownership and the Catholic Church cannot use the property. Disputes Between the churches arose in 90s. Nowadays, Orthodox Churches operate in the Catholic Churches in Kutaisi, Batumi Akhaltsikhe and Gori. The Catholic parish in Kutaisi initiated legal claim to demand the property but the Supreme Court refused to satisfy the claim and recognized the Catholic parish as an unauthorized party⁶⁶.

The problem discussed exists for two decades and is not resolved yet.

⁶² Second half of 2009 Report of the Public Defender – <http://www.ombudsman.ge/uploads/other/0/83.pdf>.

⁶³ Hereby the Ombudsman recommends the Minister of Culture of Georgia to settle urgently the issue related to returning the churches back, historical origin of which is not questionable, to the Apostolic Church of Armenia and to create a competent commission in order to study the origin of other churches. At this stage, the issue of returning the following churches might be settled the most urgently: Norasheni (Tbilisi, Leselidze street) and Surbnishani (Akhaltsikhe), which will be the sign of good will and the beginning of dialogue. – <http://www.ombudsman.ge/uploads/other/0/73.pdf>.

⁶⁴ Fr. Nareki – journal Liberal, August 6, 2009.

⁶⁵ U.S. DEPARTMENT OF STATE – country reports on human rights practice: <http://www.state.gov/j/drl/rls/hrrpt/2004/41682.htm>; <http://www.state.gov/j/drl/rls/hrrpt/2005/61649.htm>; <http://www.state.gov/j/drl/rls/hrrpt/2006/78813.htm>; <http://www.state.gov/j/drl/rls/hrrpt/2007/100560.htm>; <http://www.state.gov/j/drl/rls/hrrpt/2008/eur/119080.htm>; <http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136032.htm>; http://www.state.gov/j/drl/rls/irf/2010_5/168312.htm; <http://www.state.gov/j/drl/rls/irf/2011religiousfreedom/index.htm#wrapper>; <http://www.state.gov/j/drl/rls/irf/2012religiousfreedom/index.htm#wrapper>; <http://www.state.gov/j/drl/rls/irf/2013religiousfreedom/index.htm#wrapper>; <http://www.state.gov/documents/organization/236738.pdf>;

⁶⁶ Report of the Public Defender, 2006 – <http://www.ombudsman.ge/uploads/other/0/76.pdf>.

6. CONCLUSION

Constitutional Agreement established the frame of relationship between the state and the church. Despite declaratory nature, constitutional status of the agreement granted a de-facto and in some cases, de jure privileged status to the Georgian Orthodox church. Cooperative attitude set out in the text of the Agreement excludes representatives of other churches from such relationships and if it still happens anyway, it is based on the general legal framework which leaves the possibility of a double interpretation and therefore is not sustainable. Based on the constitutional agreement the Georgian Orthodox Church maintains the privileged status which ensures its participation in the process of public policy determination although such direct provision does not exist in the Agreement. “Fluid” constitutional standards need additional explanation for further implementation of the Agreement as it is a fact, that interpretation made by the constitutional court in 2002 has not had an effect on the practice of public institutions and could not create an equal environment for the relationship between the state and religious organizations. Moreover, the contract strengthened the ground for the legalization of informal privileges existed before as well as for granting the status of the “state religion” to the Georgian Orthodox Church” which is contrary to the principle of “separation of the state and the church” protected by the constitution.