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# THE ISSUE OF REGISTRATION OF RELIGIOUS ORGANIZATIONS IN THE GEORGIAN LEGISLATION

## ABSTRACT

The issue of registration of religious organizations within the legal framework of Georgia was considered as a perpetual problem. Permanent legal reform and fluid political process contributed to the stalemate on this matter. Having completed in 2011, the reform unanimously was recognized as a satisfactory condition by religious minorities. The article aims at describing the reform's background and its implementation process, as well as legal status of the reform. Authors consider present legislative status as one of the most liberal among the European Union and COE member states.

## INTRODUCTION

Alongside an adoption of the second constitution of independent Georgia[1], the legislative base has also expended with geometrical speed. An attempt to fill the vacuum has grown into hysteria and ended with an adoption of hundreds of laws in a short period of time. Most of them have been not only inconsistent with one another, but even mutually exclusive. An issue of registration of religious organizations, and its regulation, which was determined by the Civil Code, has also turned out to be in the same situation. However, in the near future it became apparent that the proposed formula has

[1] The first Constitution of Georgia (1921); the second Constitution of Georgia (1995).

become a kind of irresoluble equation for religious groups and instead of granting with legal status, it was used for their direct or indirect persecution.

An issue of registration of religious organizations is a reflection of the coexistence of the two institutions. The first is state's attitude towards freedom of religion, the second – a model of the relationship between church and state. In the first case, the Constitution establishes freedom of religion in a wide standard, and in the second case, understanding the content of the constitution is still spurring us into controversy.

This article reviews the problem of the legal status in the 90s, in view of the existing situation in Georgia and those legal reforms, which have been related to the issue of the status of religious organizations up to the present time.

# I. THE ISSUE OF REGISTRATION OF RELIGIOUS ORGANIZATIONS IN THE EUROPEAN COUNTRIES AND THE US

The regulation of an issue of registration of religious organizations is quite uneven in various EU member states. Registration model depends on traditional factors, historical experience and the growing impact of international and regional systems.

Traditionally, we can even lay the blame on Christian European states in terms of the relationship between church and state for favoritism, as it is frequent to have a different and encouraging attitude towards traditional churches[2], being supported at the legislative level; however, in recent years this tendency gives place to de-establishment movement, which will be discussed bellow.

**a) Roman law – Basics**

As many other legal institutions in Europe, so the search for the basics of a legal status of religious organizations, leads us to the Roman law. The first corporations were established in Ancient Rome, which can be considered as a forerunner of the modern legal entity. The Law of the Twelve Tables is familiar with some types of corporations, associations or communities; they include: "municipia", which for Roman lawyers was known under the denomination of local self-government formations[3];

2 The word "traditional" refers to the churches, which have longer history of existence in a state than other ones. The term itself is problematic and is often used in a derogatory context.

3 Bryan Walker, J. T. Abdy, The commentaries of Gaius and Rules of Ulpian By Gaius, DomitiusUlpianus, (The Lawbook Exchange, LTD, New Jersey, 2005) p. 416.

"populous romanus", that is the Roman citizens, who had united rights about the various interests as well as communities with religious goals (sodalitates, collegiasodalicia). According to the commentaries of Gaius, religious organizations had the right to draw up their constitutions by themselves and were obliged to obey the law in their activities. However, the Roman law was not familiar with the modern concept of legal entity, for example, the property, owned by corporations was considered as equity ownership for all stakeholders.

### b) Medieval lawyers and preconditions for creating religious organizations in continental Europe

"Collegia"[4] was taken by medieval glossators from the Roman law as a model unification system and started to develop a new institution, based on it. Although, until civilists (specialists in civil law) considered a legal entity as an independent subject, canonists had already begun using the new term quite actively in relation to churches. They arranged it for various organizations, monasteries and even for the whole church. As Ernst Hartwig Kantorowicz indicates, the ancient designation of „universitasfidelium", confirms that there was a great desire among canonists to acquire organological and anthropomorphous nature as well as the form of legal entity of church[5].

In 1245, Pope Innocent IV convened the first Council of Lyon, a meeting in which he pointed out that it was inadmissible to treat churches as ordinary individuals, because they did not have the souls and were the figments of the mind[6]. The Pope's speech did not in the least aim at the creation of a new legal institution. Nonetheless, his appraisal became a motivation for canonists' new researches and after a while the conception of "persona ficta" was brought in, which quickly spread among lawyers. Finally, a well-known representative of the Post-Glossatorial School – Baldus, under the influence of Bartolus and Accursius texts, formulated the basic principle – „fiction imitates nature", which eventually completed a concept-processing about legal entity; religious organizations were offered a separate status of legal entity from clerics[7].

The Reformation era also had an impact on modern tradition of registration in Continental Europe. Luther's doctrine of "rejuvenated" symphony used to imply separation of civil and canon laws as well. With the help of this doctrine, the reformation gained the law, brought into being by state and

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4 Paul G. Kauper and Stephen C. Ellis, Religious Corporations and the Law, Michigan Law Review, Vol. 71, No. 8 (Aug., 1973); p. 1503.

5 Ernst Hartwig Kantorowicz , The King's two bodies: a study in mediaeval political theology (Princeton University Press, New Jersey 1957); pp. 307-309.

6 „cum collegium in causa universitatisfingaturuna persona, fingunturenimeaedem personae cum praedecessoribus, capitulum, quod estnomenintellectuale et res incorporalis" .

7 Ernst Hartwig Kantorowicz , The King's two bodies: a study in mediaeval political theology (Princeton University Press, New Jersey 1957); p. 309.

Protestant churches did not also oppose the existence of secular legal space[8]. In spite of the fact that any recognition of registration was unacceptable for the Holy Roman Church, since it considered itself as an entity of “divine law”, it had to comply with a new order and seek new ways to regulate its relations with states. One of the forms of the relationship between the state and the Roman church had become the system of concordats.

The system of concordats should be mentioned separately. A Concordat is the oldest form for regulating relations between a state and a church and maybe even the most common form of “registration” of the church in the Middle Ages. Concordat’s equalization to registration certainly carries a conditional meaning; however, the purpose of a Concordat was to settle the issues, such as property relations and autonomy of a church which was the common goal for different registration institutions. Concordats were concluded through various ways, including treaties, exchange of notes, protocols, agreements, Modus Vivendi[9] etc.

**c) Registration of religious organizations and common law systems**

The common law system has established an interesting model of relationship between the Anglican Church and the state. Forming a legal entity, became the protective measures for churches from state intervention. Establishment of churches and conditional registrations were happening too fast. The church had no special status and its further activities were carried out without state intervention[10]. Such form of relationship had its interesting background and in order to understand its drift, it is necessary to follow this issue very closely.

Frederick Pollock and Frederic William Maitland underline the need for regulation of property relations,as one of the foundations for the creation of the institution for registration. Often it was difficult for a state to define the property owners of clerics and for this reason, there had been frequent cases, when the property of bishops were considered to be heirless and handed over to the king. The formation of churches as legal entities, had resolved such problems in their favor and the property of bishops used to remain in the ownership of a church[11].

[8] O’Donovan Oliver and Lockwood O’Donovan Joan, From Irenæus to Grotius, A Sourcebook in Political Thought, (Michigan, 1999); p. 583.

[9] Maurizio Ragazzi, Multiculturalism and Church-State Concordats in Multiculturalism and International Law, Sienho Yee & Jacques-Yvan Morin (ed) (Martinus Nijhoff Publishers, Boston 2009); p. 702.

[10] W Cole Durham Jr, “Facilitating Freedom of Religion or Belief through Religious Association Laws”in Facilitating Freedom of Religion or Belief: A Desk book (Koninklijke Brill NV, Leiden 2004 ); p. 334.

[11] Frederick Pollock and Frederic William Maitland, The History of English Law Before The Time of Edward I (Liberty Fund, Indianapolis, Indiana 2010 reprint, originally published 1898); pp. 502-505.

Another important factor implies an introduction of private charitable associations. The first widely accepted form of registration in Common law system was Charitable Trust, enabling the trustees to manage the common property. Times were changing and an impact of a powerful sovereign spread to non-registered Charitable Trusts and it became compulsory for them to get some kind of permit from a state.

As James Fishman describes, registration in the form of Charitable Trust was the best solution for churches, since a permit for registration of Charitable Corporation was issued by the Queen, while in case of registration in the form of Charitable Trust, according to the law adopted in 1601, the registration process was much easier at the local level[12].

### d) The system of registration of religious organizations in the US

There are two major prerequisites for the registration of religious organizations in the US: a high degree of freedom of religion and the principle of separation of church and state. At first glance, these two factors stipulate the resolution of a technical registration issue with the widest possible range of choice and minimum participation of a state. At the outset churches in the US like England, had the form of the Charitable Trust[13], although over time, the American Law has been evolved and currently the analysis of the registration model offers an interesting reality to us.

Religious unions can use various forms of registration the most common among them are:[14]

1. Non-registered union
2. Corporation sole
3. Nonprofit religious corporation
4. Nonprofit Corporation
5. Charitable or religious trust
6. Profitable corporation

According to the 2004 survey, 87% of the organizations on this list were registered as religious nonprofit corporations[15]. The law, which defines a status of the concrete denomination, operates in fifteen states of the US. This tradition endures under European influence and W. Cole Durham

[12] Fishman, James J., "The Development of Nonprofit Corporation Law and an Agenda for Reform" (1985). Pace Law Faculty Publications. Paper 71, p. 620.

[13] G.G. Bogert& G.T. Bogert, The Law Of Trust and Trustees (rev. 2d ed. 1979).

[14] Williams Rhys H. and John P.N. Massad, Religious Diversity, Civil Law and Institutional Isomorphism in Religious organizations in The United States: A Study of Legal Identity, Religious freedom and the Law, ed. James A. Serritella et al. (Durham: Carolina Academic Press, 2004); p. 111-128.

[15] Ibid. p. 126.

Jr. compares it to the models of Italy and Spain but unlike those countries, in The United States any interested organization can enjoy the status, determined by these law[16].

However, in compliance with the legislation of the US, regardless of a registration form of religious organizations, several conditions are equally valid, such as: a short time of registration, minimum number of founders, a simple declaration regime instead of licensing; the registration does not automatically generate tax privileges[17].

Proceeding from a state attitude towards a registration process, there are two different types: facilitation and control regimes; in the first case a state stands with minimum function, whilst in another one, it plays the role of "caring father" and tries to take an absolute control over organization's activity. Of course, the principle of equality is differently implemented in these disparate models. Facilitation regimes are creating more possibilities for equality, while under control regime there is much more tendency of giving privileges to various churches[18].

Registration regimes, operating in the European countries, in this classification are listed among control regimes. However, as the reforms that have been carried out in recent years indicate that the situation is changing gradually and the states are likely to move from control function on to the facilitation regime. The judgment of the Constitutional Court of Germany serves as an example, according to which, the status of legal entity of public law, granted to religious organization (generally, so called "traditional" churches), would no longer be a prerequisite for a privileged status[19]. Reforms that have been executed in the Scandinavian States, in the last two decades, through de-establishment movement[20], is the part of the same drift, which has made the status of the Lutheran church equal to the status of other religious organizations.

[16] W. Cole Durham Jr, "Facilitating Freedom of Religion or Belief through Religious Association Laws" in Facilitating Freedom of Religion or Belief: A Desk book (Koninklijke Brill NV, Leiden 2004 ); p. 337.

[17] Ibid. p. 339.

[18] Ibid. p. 339.

[19] The German Constitutional Court's judgment, on the case of Jehovah's Witnesses, according to which the Berlin Federal Administrative Court's decision on dismissal a registration of Religionsgemeinschaft der Zeugen Jehovas en Deutschland, on the grounds that their doctrine repudiates "Jesus' earthly origin" and thereby, indicates that, the supporters should avoid the obligation to participate in elections is considered as non-constitutional. In its historic judgment, the court directly pointed out that the court's function is not to examine the contents of religion, and in this way to interfere with its internal activities. In considering the issue of registration, investigated factual circumstances should not be the content of religion. Die Verfassungsbeschwerdebetrifft die Voraussetzungen, unterdeneneine Religions gemeinschaftnach Art. 140 GG i. V. m. Art. 137 Abs. 5 Satz 2 der Verfassungvom 11. August 1919 (Weimarer Reichsverfassung, imFolgenden: WRV) den Status einerKörperschaft des öffentlichenRechtserlangenkann. 2000/19/12.

[20] The term is introduced contrary to the model of "establishment" and designates the separation of church and state.

# II. A PROBLEM OF REGISTRATION OF RELIGIOUS ORGANIZATIONS IN GEORGIA

A problem of registration of religious organizations under the Georgian Legislation was unsettled, until the Civil Code of Georgia entered into force in 1997[21]. The Georgian Constitution says nothing about the registration. There was only general clause about freedom of religion and the role of GAAOC[22] in the original version (Articles 9, Art. 19)[23].

An adoption of Civil Code of 1997 is considered as a first attempt of regulating registration issues of religious organizations. According to paragraph "e" of Article 1509[24], religious associations, as well as political parties, were created for achieving public objectives and their status had to be defined as a legal entity of public law. However, the legislative base at that time did not determine activity forms of a legal entity and a question of registration and financial matters.

Law of Georgia on Legal Entities under Public Law was passed by the Parliament of Georgia in 1999, two years later after the adoption of the Civil Code of Georgia[25]. According to above mentioned law, legal entities of public law were established either under this law and bylaw or under a special executive ordinance[26]. Special needs for religious organizations were not determined in the Law of Georgia on Legal Entities under Public Law and the question of their registration remained uncertain.

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21 Law of Georgia – Civil Code of Georgia. The Parliament of Georgia – 26.06.1997/ https://matsne.gov.ge/ka/document/view/31702.

22 Georgian Autocephalous Apostolic Orthodox Church.

23 The 1995 Constitution of Georgia:
"Article 9
The State shall declare absolute freedom of belief and religion. At the same time, the State shall recognize the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the State.
Article 19
1. Everyone has the right to freedom of speech, thought, conscience, religion, and belief.
2. No one shall be persecuted because of his/her speech, thought, religion or belief, or be compelled to express his/her opinion about them.
3. Freedoms listed in this article may not be restricted unless expression thereof infringes on the rights of others."

24 Law of Georgia – Civil Code of Georgia. The Parliament of Georgia –1997/https://matsne.gov.ge/ka/document/view/31702.

25 Law of Georgia on Legal Entities under Public Law. The Parliament of Georgia – 28.05.1999 / https://matsne.gov.ge/ka/document/view/19204.

26 Article 5 – Acquisition of legal status
2. A legal entity under public law may be established under:
a) law;
b) an ordinance of the President of Georgia;
c) an administrative act of a state government body, as directly provided by law.

There was not a special law on religious organizations as well. Although the establishment of a religious association as a legal entity of public law was based on the level of principles, the technical issues of registration and control was not specified; it made the actual process of establishment of associations really impossible (before and after adoption of the Law on Legal Entity under Public Law).

Moreover, according to Article 199 (1) of the Code of Administrative Offences of Georgia[27] which dates back to the Soviet period, a penalty would have been imposed on religious associations, if they had avoided registration. It is also noteworthy that we could not find even a single occasion, when fines were imposed on unregistered religious organizations. This provision had existed until the major reform in 2005.

In such conditions of legislative vacuum, religious groups were trying to find the way out and solve the problem of registration, which was fundamentally related to their effective activities[28].

In search of a solution, religious organizations have tried to exercise the opportunities of registration, accessible for charitable organizations and to register as a non-entrepreneurial legal entity, "union" (non-commercial legal entity). In the years 1998-1999 Tbilisi District Court registered eleven of such organizations[29]; however, this solution did not provide any guarantees for the status, as it was proved by the 1999 court's decision.

The Member of the Georgian Parliament, Guram Sharadze, and a political organization – "Georgia Above All" – filed a lawsuit and requested the District Court to ban the Union of Jehovah's Witnesses, the case turned into a major pitfall for mentioned religious group and had negative effect on other

[27] The Code of Administrative Offences of Georgia – Article 199. Violation of the Law on Religious Associations: "1) The avoidance by leaders of religious associations of registering an association with the state government bodies shall entail a penalty of the two minimum wages."

[28] In the years 1997-2003, there were multiple suspensions and seizures of imported property, literature and articles for ritual purposes of religious organizations, by the State Customs Department of Georgia because the recipient was not registered in the proper form. The journal "Tavisupleba" 2003; N6(18), the 2002 report about Human Rights protection in Georgia (Human Rights Review 2002 – N1), Liberty Institute; Tbilisi; 2003.

[29] The case Union of Jehovah's Witnesses of Georgia and others v. Georgia"; 16 August, 2001. Christian Union "Grace of God"26.07.1999; 28.05.98; the Georgian branch of Order of Regular Clerks Ministers to the Sick (Camillians) 28.05.98; the branch of the order of St. George warriors in Georgia12.01.99; "Union of God-Children of Georgia" 10.04.1998; Christian Democratic Union of Women 12.05.1999; Christian Community – Union – International Movement 12.03.1999; Registered Union "Orthodox" 29.04.1999; Union "Parish" 12.05.1998; Union of Disabled Persons of Orthodox Christians of Georgia 23.05.1998; "ღვთის ასამბლია" 06.11.1998; The Christian-Democratic Movement of Georgia 25.03.1999; Christian Community "Vine" 25.03.1999. The international community, "the Holy Land" 12.03.1999;
Official data reception is complicated due to the problems existing in the State Archives at that time.

groups as well[30]. An applicant was asserting that the union was dangerous to the society as it was engaged in anti-national activities and was putting the mainstream religious community – the Orthodox Christians – in jeopardy because of their anti-biblical teachings[31]. The District Court did not uphold the applicant's reasoning[32].

The Court of Appeal reversed the lower court's decision[33] and annulled the registration of the religious union of Jehovah's Witnesses, as to be inconsistent with existing legislation. The court grounded its judgment on the fact that: "for the time being, there is no special law, regulating the religious life in Georgia" (unofficial translation). The judge considered that the revocation of a registration would not have a negative impact on the right to freedom of religion guaranteed by Article 19 of the Constitution. The court also asserted that leaving them without a legal status, would create no problems and for that reason their religious practice could not be prohibited.

The Supreme Court has confirmed the position of the Appellate Court and broadly interpreted the reasoning[34]. The court decided that this particular organization was a religious association in its essence and activities, which had gained the status of a legal entity under private law (the status of an association), while an activity of a religious organization would have been justified only within the framework of the status of a legal entity under public law, prescribed by law; irrespective of the fact, whether law actually provides for registration. In paragraph 4 (9) of the motivation part of the decision the court indicated:

"As it is envisaged by Article 1509, §1("e"), an application of organizational and legal forms of legal entities under private law is not permitted until the law prescribes the rules for an establishment, organization and activity of religious associations, as legal entities under public law."

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30 The judgment of the Chamber of Civil, Enterprise and Insolvency Affairs of the Supreme Court of Georgia; no. 3j/599; Tbilisi, 2001.

31 The European Court on Human Rights; the case Union of Jehovah's Witnesses of Georgia and others v. Georgia; 16 August, 2001.
There were some unfounded and bizarre allegations attached to the case:
"Jehovah's Witnesses attempted to poison the Tbilisi bread supply with a mixture of sperm, urine and stools."
"Even worse incident occurred in the village of Tkviavi (Gori region). The newborn baby was suffocated and dropped into the toilet in the yard; the sacrifice had to be made in that way.
"It was accepted as a fact that in the same village, that women and children jumped from the roof of the house to join the Jehovah's spirit. This had caused the death of many people."(unofficial translation).

32 The judge of the District Court had discussed Articles 9, 11 and 14 of the European Convention on Human Rights and Fundamental Freedoms. However, the court reached its decision based on Article 26 of the Georgian Constitution (the right to form associations) and Article 31 of the Civil Code of Georgia. The judgment of the District Court; Tbilisi, 29 February, 2000.

33 The judgment of the Tbilisi Court of Appeal Chamber of Civil, Enterprise and Insolvency Affairs; 26 June, 2000.

34 The judgment of the Chamber of Civil, Enterprise and Insolvency Affairs of the Supreme Court of Georgia; no.3j/599; Tbilisi, 2001.

The court referred to the same logic, concerning the branch of Jehovah's Witnesses, since their goal was religious practice, the court considered that, it had no right to operate within the regulations of the branch, prescribed by the Civil Code of Georgia.

According to the decision, religious organizations under no circumstances were allowed to register their representatives in Georgia. However, the restriction did not had immediate effect on other organizations[35].

In response to these events, "Human Rights Watch ", in its 2002 Annual Report, stated:

" Emboldened by inaction or complicity of prosecutors and police, and by a February Supreme Court decision to deregister the Jehovah's Witnesses as a legal entity in Georgia, the frequency of mob attacks rose in 2001..."[36].

Finally, the case concerning the registration of Jehovah's Witnesses was brought to the European Court of Human Rights, and in May 2015, the case was successfully completed in favor of the applicant. The court confirmed the violation of Articles 9 and 11 of the Convention by the state[37].

Having taken into account the fact that the 1997 registration rules did not work properly, some religious associations were trying to change the reality because of the concrete challenges they had been facing. "It is very difficult for us to construct a church, because the Catholic Church is not a legal entity in Georgia," – stated the Bishop Gabriel Bragantini, the Head of the Catholic Church in western Georgian city of Kutaisi[38].Representation of The Holy See started preparatory work on the draft agreement between Vatican and Georgia, immediately after the visit of Jean Paul II to Tbilisi in 1999[39].

"An interstate agreement between Orthodox Georgia and the Vatican cannot be regarded as expedient,'' the Catholicos-Patriarch of All Georgia Ilia II stated at a conference on 18 September,

[35] "There are at least eight (8) religious branches, which are not registered by the Court or the Ministry of Justice on the base of the same legislation." the case Union of Jehovah's Witnesses of Georgia and others v. Georgia; The European Court on Human Rights; 2001.

[36] The European Court on Human Rights – the case of 97 Members of the Gldani Congregation of Jehovah's Witnesses & 4 Others v. Georgia (application no. 71156/01).

[37] The European Court on Human Rights – "the case Union of Jehovah's Witnesses of Georgia and others v. Georgia" (application no.72874/01).

[38] "Failed agreement increases controversy"; see Daily news online – Civil.ge; 1 October, 2001 http://www.civil.ge/geo/article.php?id=4876.

[39] "Georgia says no to treaty with Vatican" see Daily news online – Civil.ge; 19 September, 2003:http://www.civil.ge/eng/article.php?id=496.

2001[40]. Eventually, in 2003 the Georgian Government yielded to pressure from the GAAOC and canceled plans to sign an interstate agreement with Vatican, which aimed at defining the legal status of the Catholic Church[41] and The President of Georgia simply denominated this fact as "misunderstanding".[42]

Representative of the Holy See expressed his regret over the failed agreement: "mainly, it is the Catholic community of this country that will suffer as a result of this failed agreement "who do not have any rights or legal status".[43]

In 2002 the state attempted to fill up the legislative vacuum. Three different draft laws were submitted to the Parliament.[44] (The draft law on "Freedom of Conscience and Religious Associations" prepared by the Ministry of Justice; the draft law "On Legal Entity of Public Law" On Introduction of Changes and Amendments to the Law of Georgia", elaborated by the Parliamentary Committee for Legal Affairs and Administrative Reforms and the draft law "on Religious Associations" prepared by the Institute of State, Law and Religion, which intended to regulate the functioning, registering and controlling rules of religious unions.

According to all of three draft laws, a religious union was considered as a legal entity of public law. None of the proposed package of amendments was embraced by the legislative body.

It should be emphasized that during that period the GAAOC demanded to make the division of religious organizations into three categories in the following order: First category would have been granted to them, as to the privileged community; the second category – to the other traditional beliefs (Catholicism, Judaism, Islam, Armenian Church) that would have had the right to exist in Georgia and the third one – to other religious denominations under severe controlling mechanisms or even in the perspective of posing the prohibition of their activities.[45]

[40] Ibid.

[41] The minister of foreign affairs of the Holy See, Archbishop Jean-Louis Toranmade quite a strict statement on the failed last-minute agreement, whilst the Georgian Patriarchate welcomed this fact. – "Failed agreement increases controversy"; see Daily news online – Civil.ge; 1 October, 2001 available at: http://www.civil.ge/geo/article.php?id=4876.

[42] Ibid.

[43] Ibid.

[44] Conference materials: Law on Religion – Georgian Young Lawyers Association (GYLA), 2002.

[45] Ilia State University – "The role of the GAAOC in the formation of national identity", 2013.

At the same time, the Constitutional agreement was concluded between the Georgian State and the GAAOC[46] which, alongside with all other privileges, had recognized the religious association as a historically established legal entity of public law and full-fledged legal entity of public law.[47]

"3. The Church is historically established person of public law, a fully-fledged entity of public law, recognized by a state, which carries out its activities in accordance with the Church (Canon) Law, present Agreement, Georgian Constitution and Georgian Legislation" (unofficial translation).[48]

At that time, the Georgian Apostolic Autocephalous Orthodox Church was the only religious union, which gained the status of the legal entity under public law, protected by Georgian Legislation. The status of this union was especially supported by the rights and possibilities, laid down in this document: an exemption of Orthodox clergymen from military service, introduction of Orthodox chaplains into the armed forces and prisons, authority of awarding educational documents and academic degrees, an opportunity to create free environment for business, an opportunity of the return of historical heritage and so forth.

## III. IN PURSUIT OF A SOLUTION

After the 2003 "Rose Revolution", the protection of religious minorities became a priority for a new government. Nevertheless, the problem of registration was not resolved over night.

In 2004 Pentecostal congregation[49] appealed to the Constitutional Court of Georgia and contended against the constitutionality of Article 1509 (e) of the Civil Code of Georgia. The plaintiff stated that Civil Code was in violation of the principle of freedom of religion protected by the Constitution. They invoked Article 39 of the Georgian Constitution[50] and having indicated "the Declaration on the

46 Around 84% of Georgian citizens consider themselves perish of the GAAOC The National Statistics Office of Georgia. The 2002 general population census in Georgia; available at http://www.geostat.ge/index.php?action=page&p_id=677&lang=eng.

47 The Resolution of the Parliament of Georgia on the Approval of the Constitutional Agreement "Between the Georgian State and the Georgian Apostolic Autocephalous Orthodox Church"; Tbilisi, 27.11.2002. available athttps://matsne.gov.ge/ka/document/view/41626.

48 ibid. Article 1(3).

49 The Constitutional Court – the citizen Nikolai Kalutski v. the Parliament of Georgia, no. 300, 2004.

50 "Article 39
The Constitution of Georgia shall not deny other universally recognized rights, freedoms, and guarantees of an individual and a citizen that are not expressly referred to herein but stem inherently from the principles of the Constitution; the Constitution of Georgia".

Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief" substantiated an existence of the right to registration.[51]

Before the Court reached its judgment, The Parliament of Georgia had passed an amendment to the Civil Code (06.04.2005) and revoked the aforementioned clause.

In its 2005 annual report, the Public defender's Office observes, that an amendment to Article 1509 of the Civil Code of Georgia should be embraced as a positive news, whereby a state allows religious organizations to register as legal entities of private law[52], notwithstanding that an abolition of the clause of the Civil Code did not fully resolve existing legal problems.[53]

Some religious organizations had challenged the legitimacy of the existing regime of registration and demanded to enjoy an equal status with the Patriarchate as shown in the Public Defender's report:

"Still, this is not the ultimate solution to the problem, since some religious organizations – in particular, the Armenian Apostolic Church, the Catholic Church and some others say that they do not want to be registered as legal entities of private law, because all forms of registration that are currently available – a union or foundation – cannot fully reflect the specifics of a religious association" (unofficial translation).

The Orthodox Church, for its part, was also appealing to the malfunctioning legislative base. For instance, in 2006 it viewed a construction of the "Assyrian Cultural Center" in Tbilisi, led by Assyrian clergyman Padre Binyamin, unfounded: "Notwithstanding who is the owner of the building, it is unlawful as there are no legal bases to regulate the operation of the religious organization and the construction of the religious building".[54]

It should also be noted that in 2005, one more amendment was made to the Civil Code of Georgia and new Paragraph "f" was added to Article 1509, which once again affirmed the Patriarchate's status of the legal entity under public law:

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51 The United Nations General Assembly (UNGA), resolution no. 35/55; 25 November, 1981.

52 The Public Defender of Georgia – Annual Report 2005.

53 "At this point this problem for religious associations is still unsolved as the leaders of the Catholic Church, the Armenian Apostolic Church and the Lutheran-Evangelical Church refuse to acquire the status of a legal entity under private law. It is unacceptable for them to register as a union or foundation, more especially as the GAAOC enjoys the status of the legal entity under public law. Consequently, they request either the adoption of a law on religious unions or conclusion of an agreement between the state and different religious denominations and to tackle the problem in this way..." The Public Defender of Georgia – Annual Report 2005; (unofficial translation).

54 The statement of the Georgian Patriarchate –18 September, 2006; the Public Defender's report; 2006.

"Article 1509 – Legal Entities under Private and Public law;
1. The following shall be regarded as legal entities under public law defined by the Civil Code:
f) The Legal Entity created by Constitutional agreement ..."

The Religious Council established with the Public defender's Office, held a number of meaningful meetings, regarding the procedures of the registration of religious unions, resulting in reconciliation of certain positions. In the end, organizations presented to the state their concept about a regulation of the legal status of religious associations. It included the possibility for associations to choose their status. This did not have to cause the creation of hierarchy and the state did not have to have the opportunity to control their activities.

This issue drew an attention of the Council of Europe, when in 2011 the Parliamentary Assembly of Council of Europe said it was "concerned by the lack of a proper legal status of, and legal protection for, denominations and faiths other than the GAAOC."

The resolution called on Georgia to "adopt a specific law on religion that would offer proper and equal legal status and protection to all faiths and denominations in the country".[55]

## IV. NEXT STAGE OF THE REFORM – LIBERAL REGIME OF REGISTRATION

On 1 July 2011, a legislative initiative on amendments to the Civil Code was submitted to the Parliament of Georgia by MPs Todria, Taktakishvili and Tsiklauri.[56] The initiative intended to add subparagraph "g" to Article 1509 of the Civil Code of Georgia, under which, the religious associations "having a close historical link with Georgia", also would have been regarded as legal entities under public law. Subparagraph "g" was also accompanied by enumeration of religious unions, accepted by legislators as having a historical link with Georgia.[57]

According to the first submitted explanatory note of this proposal, "the draft law was prepared on the grounds of a necessity of improving the legislative regulation of a legal status of religious

[55] Daily news online – Civil.ge; Tbilisi, 11 July, 2011; available at: http://civil.ge/eng/article.php?id=23728;
[56] The Parliament of Georgia; The legislative initiative "On amendments to the Civil Code"; no. 07-3/467/7; available at: http://www.parliament.ge/ge/law/7494;
[57] g) Religious associations having a close historical link with Georgia
g. a) The Roman Catholic Church;
g. b) The Armenian Apostolic Church;
g. c) The Muslim community;
g. d) The Jewish community;
G. E) Evangelical Baptist Church.

associations in Georgia. Specifically, under the existing law, the status of religious unions, such as: the Roman Catholic Church, the Armenian Apostolic Church, the Muslim community, the Jewish community, Evangelical Baptist Church, having traditional ties with Georgia, is not adequately regulated.[58]

The same document states that "the provisions related to a status of the legal entity under public law, set forth in the Georgian Legislation, shall apply to those associations respectively.

After that, a second hearing was held on July 5, where the project was substantially changed. The list of religious organizations disappeared from subparagraph "g", while the rule of registration of religious unions was defined additionally[59] by the Article 15091[1].

At the second hearing, after the remarks had been made by the Committee, they settled on the following opinion: enumeration of religious unions had to be struck out; the Article 1509[1] had to allow to register as legal entities of public law (LEPEL) not only religious groups included in the first draft law, but all those unions, which had historical ties with Georgia, as well as the religious denominations recognized as a religion by the member states of the Council of Europe.[60]

For the third hearing new provisions emerged in the draft law on making amendments to the Civil Code, according to which Paragraph "f" of Article 1509 had also changed and acquired a new formulation:

"1.The following shall be regarded as legal entities under public law defined by the Civil Code:

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58 Ibid;

59 Article 1509[1] 1. Religious associations may be registered as legal entities under public law;
2. The first paragraph of this article shall not limit the right of religious associations to be registered as non-entrepreneurial (non-commercial) legal entities provided in this Code, also to conduct the business as non-registered unions provided in this Code;
3. The Legal Entity under Public Law (LEPL) – National Agency of Public Registry within the Ministry for Justice of Georgia shall conduct the registration of religious associations;
4. The Legal Entity under Public Law (LEPL) – National Agency of Public Registry within the Ministry for Justice of Georgia may register as a legal entity under public law a religious denomination having a historical link with Georgia or a religious denomination recognized as a religion by the legislation of the member states of the Council of Europe;
5. The Law of Georgia on Legal Entities under Public Law shall not apply to a religious association registered as a legal entity under public law;
6. The procedures prescribed for the registration of non-entrepreneurial (non-commercial) legal entities shall apply to the registration of the religious associations provided in this article and their rights shall be defined by Chapter Two of Section One of this Code.

60 "Opposition Parties Condemn Religious Groups' Legal Status Law"; see Daily news online – Civil.ge; Tbilisi, 6 July, 2011; available at: http://www.civil.ge/eng/article.php?id=23708 .

f) The Legal Entity under Public Law (LEPL) – Georgian Apostolic Autocephalous Orthodox Church recognized under the Constitutional Agreement of Georgia;[61]

In determining a status of religious communities, legislative body once again underscored the special importance of the status of the Orthodox Church.

These changes have provoked various reactions in the society. Parliamentary and non-parliamentary opposition of that time, which believed, the new legislative regime was "dangerous" for the Patriarchate, responded in protest against a package of amendments.[62]

As regards the position of religious communities, most of them endorsed a new type of registration for a religious congregation. Since 2011 religious organizations have preferred to register as a legal entity of public law (LEPEL).

In this case, the activity of the legal entity of public law shall be determined as a noncommercial legal entity under Civil Code of Georgia. Although there was no difference between a legal status of the two, religious organizations rated the status of a legal entity of public law, quite relevant.[63]

"It has been several years since we exist in Georgia, but we refused to register legally, because we think the church should not be established by a person. We believe that the church is established by God and it cannot be legal entity of private law, thus you or I cannot be founders. Now, we are glad about this amendment," Mgr. Giuseppe Pazotto – bishop of the Catholic Church in Georgia told the HRH Tbilisi (2011).

The Armenian Apostolic Church, which has not been registered for years, also welcomed these amendments: "We are glad for those amendments, but we do not know yet how it will work in practice. Now we are preparing our documentations and soon we are going to apply to the National Registry for registration," – said a main spokesperson at Armenian Apostolic Church Mari Arakelova. It should be noted that after the changes have been made, in spite of diversity of choices, religious associations on all occasions are registered as legal entities of public law. In 2011-2013 the status of a legal entity of public law was gained by the twelve religious unions.[64]

[61] The Human Rights House Tbilisi (HRH); the statement of bishop of Catholic Church in Georgia Giuseppe Pazotti, 2011. available at: http://humanrightshouse.org/Articles/16973.html.
[62] Assessment of the Needs of Religious Minorities of Georgia; Tolerance and Diversity Institute (TDI), 2013.
[63] Ibid .
[64] Previous version referred to "entity recognized under the Constitutional agreement".

# V. NEW LAW, OLD CHALLENGES

Proceeding from the analysis of historical preconditions, it can be noted that a registration issue for religious organizations, which on the surface, holds only technical character, actually is connected with a few fundamental interests:

a) the need to establish a secure institution to support collective proceedings in the community;
b) the need to protect property rights;
c) the need to acquire social and political status;

At this point, Georgia demonstrates the modernity of this classification. The reform of the registration system of religious organizations in Georgia was induced exactly by those three factors. Tackling formalities is a huge step forward in terms of protection of religious minorities; however, when the problem of property disputes and fair tax system still remain unresolved, it is difficult to talk about an effectiveness of the whole system. After the 2012 elections, the very first legislative initiative, concerning religious communities, has broadened the privilege of the Patriarch of the GAAOC by authorizing him to award academic degrees of "theological institutions".[65] This step, in terms of equal treatment of the churches, cannot really be evaluated as a big success as the prescribed privilege is limited to the GAAOC only.

The rules and regulations of state funding for churches remain problematic as well. Even though, state funds are allocated to several religious communities presently, rather than solely to GAAOC in the past, the standards are still unclear and majority of organizations are excluded from the program.[66] An issue of equal treatment still persists here.

Georgian model of registration of religious associations stands as an interesting innovation for Continental Europe; however, forms of institutionalized discrimination deter full enjoyment of the opportunities presented by the system of legal recognition and state the need for further reform.

[65] The introduction of the amendments to the Law of Georgia on Higher Education; date of adoption 28/12/2012; initiator – MP ZviadDzidziguri; available at:https://matsne.gov.ge/ka/document/view/1810416.

[66] The Government Resolution of 13 March, 2014, no. 437 on partial compensation of damages inflicted on religious organizations in Georgia during the Soviet Regime. It was decided to allocate the amount of money to the following religious organizations: Muslim community, Jewish community, Roman Catholic Church in Georgia, Diocese of the Armenian Apostolic Church in Georgia; available at https://matsne.gov.ge/ka/document/view/2282674.