

CHURCH-STATE RELATIONS IN GEORGIA: LEGAL FRAMES AND GENERAL OVERVIEW

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Summary. This paper concerns the relations between the Church and the state in Georgia. The author indicates the system of these relations. He analyzes the constitutional foundations of religious freedom in Georgia and legal status of religious organizations. In particular, he analyzes the regulations concerning the Georgian Orthodox Church in the context of tax exemptions, privileges and compensation.

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INTRODUCTION

Systems and models of Church-state relations frequently stipulate the level of democracy in country. There is only thin abutment between cooperation and unconstitutional favoritism and most of all it takes place in “New Democracies”. Georgia has a long history of Christianity and during many ages Orthodox Church and Georgian state had a Byzantine model of “Symphony”. But after Russian occupation and 70 years of Soviet Bolshevik regime, Georgia woke up in the era of confusion and ambiguity.

Georgian state and Orthodox Church had signed the constitutional agreement¹, which regulated only foundations of their relations and there are few legal norms of different acts concerning religious organizations. This article aims to describe Georgian model of Church-state relations, basic standards for religious entities and analyze important legal problems, concerning the functioning of religious organizations in Georgia.

¹ Constitutional Agreement was signed in 14 October 2002.

I. CONSTITUTIONAL FOUNDATIONS OF RELIGIOUS FREEDOM IN GEORGIA AND SYSTEM OF CHURCH-STATE RELATIONS

Constitution of Georgia declares freedom of conscious and belief². It defends and guarantees not only individual religious freedom, but also collective, organizational form of conscious³. These ideas don't have only constitutional bases; they are interpreted and used by the constitutional court of Georgia, which has very impressive (for 20 years old institution) case law in this sphere.

Despite the Soviet regime, which had explicit anti-religious direction and 3 years of independence (1918-1921), when the government enforced *Laïcité*⁴, church and state were cooperative and aimed to work together, to be the main social institutions of nation. Now there is no official or state religion in Georgia; officially it is a secular country, with the principles of separation of Church and state⁵. On the other hand, the system is cooperative with religious organizations. In 2001 parliament adopted constitutional amendments: new content of the Art. 9 gave opportunity to the state to make constitutional agreement with Georgian Orthodox Church; concordats of the Holy See inspired this model of cooperation.

Georgian system of Church-state relations is a cooperative secularism, with the intention of state to have close collaboration with religious institutes and privilege status of the Orthodox Church. In practice this model has many problems and some legal scholars think it can be even discriminative. Many spheres of Church-state relations are not regulated and there is no any special law about religious organizations.

II. LEGAL STATUS OF RELIGIOUS ORGANIZATIONS

Georgian legislation gives two legal forms for religious organizations to choose. Everyone can be registered as Non-Profit Making Legal Entity

² Constitution of Georgia, Art. 19.

³ L. Izoria, K. Korkelia, K. Kublashvili [et al.], *Comments on the Georgian Constitution. Fundamental Human Rights and Freedoms*, Meridiani publishing house, Tbilisi 2005, pp. 111–112.

⁴ See: D. Gegenava, *Main Aspects of Church-State Relations (1917-1921) and first Constitution of Georgia*, in: *Democratic Republic of Georgia and Constitution of 1921*, eds. D. Gegenava, P. Javakhishvili, Prince David Institute for Law, Tbilisi 2013, pp. 179–181.

⁵ Constitution of Georgia, Art. 9.

(NPMLE) and make their activities⁶. The registration procedure is very easy and Agency of Public Registry doesn't make difficulties for applicants. The other form is Legal Entity of Public Law (LEPL) and specific applicants could choose it. Georgian Apostolic Autocephalous Orthodox Church was the first religious organization that was given LEPL status by the Constitutional Agreement⁷. "Traditional" religions didn't want to be registered as any others and they refused NPMLE form, until 2011, when the parliament adopted amendment in the Civil Code and gave to representatives of these religions opportunity to another status (LEPL)⁸. Now only religions, which were historically close to Georgia and are recognized by the EC states' legislation, have alternatives and ability to choose LEPL form⁹. Despite of being Legal Entities of Public Law, such religious organizations are not under public law, they have autonomic private regime and are excluded from the sphere of the Law on LEPL¹⁰.

There is no any definition what the "historically close" or "recognized by the EC state's legislation" means. Authentic interpreter is the Agency of Public Registry, and it has discretion to make registration of religious organizations. Legislation should be more clear and explicit to prevent difficulties and misunderstandings during acting.

III. CONSTITUTIONAL AGREEMENT AND GEORGIAN ORTHODOX CHURCH

In 2002 Georgian state and Georgian Apostolic Autocephalous Orthodox Church signed Constitutional Agreement, which has 12 articles and makes general frames for their relations. Numbers of articles and content were more, but after opinions of Venice Commission and its members, signers discussed and agreed to change the draft¹¹.

⁶ See: Civil Code of Georgia, Arts. 27–38.

⁷ Constitutional Agreement between Georgian State and Georgian Apostolic Autocephalous Orthodox Church, Art. 1(3); see: J. Khetsuriani, *Constitutional Basis of Georgian Church*, "Human and Constitution" 2 (2002), p. 13.

⁸ 5 July 2011 Law of Georgia on "Amendments to the Civil Code of Georgia".

⁹ Civil Code of Georgia, Art. 1509¹(4).

¹⁰ *Ibidem*, Art. 1509¹(5).

¹¹ Opinion on the Draft Constitutional Agreement between the State of Georgia and the Apostle Autocephalous Orthodox Church of Georgia, CDL (2001) 65, European Commission for Democracy Through Law (Venice Commission), Strasbourg, 28 June 2001; H.H. Vogel, *Comments on the Draft Constitutional Agreement between the State of Georgia and the Apo-*

Constitutional agreement guarantees separation of Church and state, recognizes Georgian Orthodox Church as independent institution and its historical dimension for the country¹². Catholicos Patriarch has a high level official status and is imprescriptible¹³. Constitutional agreement has articles concerning status of priests, property of the Church and restitution of damages made by the Russian Empire and Soviet Union, some norms regulate protection and restoration of cultural heritage.

The agreement has a lot of legal and technical problems that make it practically not usable document¹⁴. Many norms are not implemented in legislation and none of the signers is going to use them. Both parts act in accordance with each other's opinion and unfortunately, it is not always right from the view of constitutional law or common sense.

IV. TAX EXEMPTIONS, PRIVILEGES AND COMPENSATION

1. Tax Exemptions and Privileges

Tax Code of Georgia regulates religious activities and makes special tax exemptions for religious entities. Constitutional agreement broadens tax privileges for the Georgian Orthodox Church. According the Tax Code, "religious activity" is defined as activity of duly registered religious organizations (associations) aimed at disseminating religion and belief¹⁵. The activity of the enterprises of those religious organizations (associations) that publish religious (religious service) literature or produce objects of religious significance shall be treated as religious activity; the activity of these organizations (associations) or of their enterprises that is related to the sale (dissemination) of religious (religious service) literature or objects of religious significance; as well as the use of funds derived from such activity to perform religious

stle Autocephalous Orthodox Church of Georgia, CDL (2001) 63, European Commission for Democracy Through Law (Venice Commission), Strasbourg, 28 June 2001.

¹² Constitutional Agreement between Georgian State and Georgian Apostolic Autocephalous Orthodox Church; see: K. Korkelia, N. Mchedlidze, A. Nalbandov, *Compatibility of Georgian Legislation with the Standards of the European Convention on Human Rights and Its Protocols*, Bakur Sulakauri Publishing, Tbilisi 2004, p. 202.

¹³ Constitutional Agreement between Georgian State and Georgian Apostolic Autocephalous Orthodox Church, Art. 1(5).

¹⁴ See: D. Gegenava, *Some Technical and Legal Problems of the Constitutional Agreement*, "Journal of Law" 1 (2016), pp. 158–168.

¹⁵ Tax Code of Georgia, Art. 11(1).

activity. Religious entities have status of “organization”¹⁶, which differs from “companies”¹⁷ and they are under special legal regime¹⁸. By systemic analyze of articles 21, 30 and 96 of Tax Code can be said, that religious organizations have profit tax exemption. But profits from the sale of crosses, candles, icons, books and calendars used by the Patriarchate of Georgia for religious purposes are exempted from profit tax¹⁹, any other organizations should pay this. Supply by the Patriarchate of Georgia of crosses, candles, icons, books, calendars and other liturgical items used only for religious purposes and construction, restoration²⁰ and painting of churches under commission by the Patriarchate of Georgia are exempted from VAT without the right of deduction²¹. Other religious organizations don’t have such exemptions and this is the object of constitutional claim that is being reviewed by Constitutional Court of Georgia²². Patriarchate of Georgia is in the “Golden List”²³ and it has privileges in the process of export and import of its property²⁴. Restoration or construction of temples for the Georgian Church, also making paintings for them are also excluded from VAT²⁵.

Property (including leased property) of religious organizations, beside the land and the property used for economic purposes, is excluded from taxes²⁶. Art. 206(1.E) of the Tax Code doesn’t exclude Georgian Church from property tax and this opposites Art. 6(5) of the Constitutional Agreement, which excludes Church from all taxes. According the hierarchy of normative acts, constitutional agreement has much higher power then tax code²⁷, and because of this the church doesn’t pay property tax for its lands. Tax code should be amended and made in compliance with the higher legal act.

¹⁶ Ibidem, Art. 30(1)(a).

¹⁷ Ibidem, Art. 21.

¹⁸ Ibidem, Art. 9(2)(d).

¹⁹ Ibidem, Art. 99(1)(d).

²⁰ Ibidem, Art. 168(1)(v).

²¹ Ibidem, Art. 168(2)(b).

²² See: <http://constcourt.ge/ge/news/2015-wlis-9-oqtombers-saqartvelos-sakonstitucio-sasamartloshishemovida-sarcheli.page> [accessed: 6.06.2018].

²³ Instruction on Movement and Form of Goods in the Customary Territory of Georgia, Adopted by No. 290 Order of 26 July 2012 of the Ministry of Finances of Georgia, Art. 90(2)(z).

²⁴ Ibidem, Art. 89(1).

²⁵ Tax Code of Georgia, Art. 168(2)(b)

²⁶ Ibidem, Art. 206(1)(e).

²⁷ Constitution of Georgia, Art. 6; Law on Normative Acts, Art. 7.

2. Property

During XIX and XX centuries Russian Empire, Democratic Republic of Georgia and then Soviet Union confiscated most part of properties of religious organizations and communities. Process of restitution began only in 90s of XX century, when Empire of Evil was destroyed and Georgia became an independent country.

In 12 April 1990 council of ministers of Georgian Socialist Soviet Republic adopted resolution and returned property to the Georgian Church²⁸. According the resolution all the cultic buildings in the territory of Georgia, with their real estate and movable property, were recognized as property of Georgian Church²⁹. The Church was permitted to enumerate and list all orthodox churches and their property, according to the rules and traditions of Church³⁰. Constitutional agreement once more recognized orthodox churches, temples, ruins, monasteries and land, where those were located, as the property of the Church³¹. Unfortunately this process become uncontrolled and provoked serious problems. These problems are about cultic buildings, land and transfer of property. After that many buildings, lands, including agricultural lands and real estate were given to the Orthodox Church just in symbolic price (1 GEL)³². This is an ongoing process. According Georgian legislation, Georgian Church is among those recipients, which can get state property freely³³.

Transferring cultic and religious building is very sensitive question. Armenian and Roman Catholic Churches now claim for some temples and buildings that were given to Georgian Church in the beginning of 90s³⁴. They demand to take some of the churches, which in their point of view we-

²⁸ No. 180 Resolution of 12 April 1990 of Council of Ministers of GSSR on Religious Fairs; J. Khetsuriani, *Constitutional Basics of Georgian Church*, p. 14.

²⁹ No. 180 Resolution of 12 April 1990 of Council of Ministers of GSSR on Religious Fairs, Para. 3

³⁰ Ibidem, Para. 4.

³¹ Constitutional Agreement between Georgian State and Georgian Apostolic Autocephalous Orthodox Church, Art. 7(1).

³² See: Study of Religious Discrimination and Constitutional Secularism in Georgia, Tolerance and Diversity Institute, Tbilisi 2014, pp. 30–31.

³³ Law on State Property, Art. 3(1)(2)(5), Art. 6³

³⁴ Study of Religious Discrimination and Constitutional Secularism in Georgia, p. 19; L. Isakhanyan, *Analysis of Legal Issues Related to the Armenian Diocese in Georgia*, in: *Freedom of Religion in Georgia and Armenia*, Regional Conference on the Freedom of Religion or Belief, Conference Report, July 2013, eds. E. Chylinski, D. Chkhartishvili, European Centre for Minority Issues – Caucasus, Tbilisi 2013, p. 21.

re not orthodox and were mistakenly transferred to Georgian Church. Government of Georgia created special organ – State Agency for Religious Affairs to regulate interreligious and Church-state relations. It has special jurisdiction and responsibility to make recommendations for the government about cultic and religious buildings and property³⁵; also, it plays role of mediator and takes part in the resolution of disputes and questions that can arise in the interreligious relations³⁶.

The government must be involved in the process of resolution such disputes to identify historic ownership and owners of the disputed property. The agency should work with parties; make own historic and legal research, file adequate recommendations to the government. Unfortunately disputes on already transferred property are very difficult and sensitive. The state had to make decision about transferring the religious and cultic buildings more carefully, but this was done in the end of Soviet era, so the process was uncontrolled. Now any interruption can evoke irreparable results. Religious communities, Agency for Religious Matters and other governmental institutions should work together to solve all the questions regarding the property disputes. Every religious entity should be given their own historic buildings and lands, if it is not possible because of objective reasons, state must give alternative equivalent property. And after that parliament must make changes in legislation and amend the Law on State Property to prevent transferring any kind of property to the Church.

3. Compensation

According the results of the resolution of council of ministers of GSSR, Georgian state partly compensated and returned the property. That's why the provision of the constitutional agreement about material compensation looks so illogic and inadequate. Art. 11(1) of the constitutional agreement provides, that Georgian state has obligation to make compensation even for the time of losing national independence. This statement is against the official national policy of Georgia, which refused any legacy of Soviet Union and recognized 1921-1991 periods as an annex and occupation³⁷. Georgia, as an independent country was the victim of Soviet occupation and totalitarian regime,

³⁵ Statute of the LEPL State Agency for Religious Affairs, Adopted by Resolution of 19 February of 2014 of the Government of Georgia, Art. 2(1)(i).

³⁶ *Ibidem*, Art. 2(k), Para. 4.

³⁷ See: Act of Restoration of Independence of Georgia, 9 April 1991.

as religious and any other communities. Taking obligation to compensate crimes and offenses by Soviet Union or Russian Empire is nothing but obligation of one victim to another one. This provision must be removed from the agreement.

The state created special commission according Constitutional Agreement. Commission aimed to research the question of compensation, forms and methods of payment³⁸. The commission didn't do anything; it didn't make any draft of normative act or recommendation about compensation³⁹.

Officially compensation is not given to Georgian Church, but it is financed by the state, directly from the state budget. In 2002-2013 Georgian Church got more than 160 million GEL⁴⁰. It doesn't include finances from the municipal budgets⁴¹. Neither state nor Georgian Church calls this financial aid compensation, but both of them agree in practice that this is partly compensation. In favor of this interpretation is the fact, that Government of Georgia adopted resolution on compensation for four religious communities⁴². There is no such resolution regarding Georgian Church⁴³ and it means the Church is supposed to be compensation receiver, so it doesn't need special legal act, it has been involved in the state budget through many years.

Position of Georgian Government is complimentary, but no adequate. Of course, every nation should take responsibility on its past, to have privilege of moving in future. But this must be in compliance with state policy. Georgia had to compensate only damage made in the time of independence (1918-1921). Democratic Republic of Georgia implemented very aggressive secular policy and it harmed all religious groups. Even in this case sum of compensation must be accounted and every transfer of property or budget funding should be called compensation.

³⁸ Constitutional Agreement between Georgian State and Georgian Apostolic Autocephalous Orthodox Church, Art. 11(2).

³⁹ No. 8289 Correspondence of 17 August 2015 of the Administration of the President of Georgia.

⁴⁰ Study of Religious Discrimination and Constitutional Secularism in Georgia, p. 25; Transparency International – Georgia, An Overview of the Public Funding Provided to the Georgian Patriarchate, 4 July, 2013.

⁴¹ Study of Religious Discrimination and Constitutional Secularism in Georgia, p. 25; Tolerance and Diversity Institute (TDI), State Funding to Strengthen the Orthodox Faith, 18 February, 2014.

⁴² No. 117 Resolution of 27 January 2014 of the Government of Georgia.

⁴³ *Ibidem*, Art. 2(1).

CONCLUSION

Every nation chooses that model of Church-state relations, which is more adequate for the country. This choice is based on history, social, political and sometimes economical factors. Georgian state always cooperated with religious entities and even Russia or Soviet Union couldn't change it. Despite this cooperation there are too many questions that requires answers and solution.

Georgia must create non-discriminatory environment for all religious groups, appropriate tax exemptions and legislation, which will be used especially for religions and by religious entities. There is a need of amendments to the legislation, but first of all the whole nation, country and citizens in general, should decide what is the last destination of Church-state relations, what role should both of them play and then create thin, but solid wall between them. In the long run wall of separation doesn't mean just the huge wall that isolates two social institutions, but the wall with many windows⁴⁴ and opportunities to help each other for better life.

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⁴⁴ See: R.B. Locklin, *The Many Windows of the Wall*, "Constitutional Law Review" 5 (2012), pp. 72–92.

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RELACJE KOŚCIÓŁ-PAŃSTWO W GRUZJI:
PORZĄDEK PRAWNY I ZARYS OGÓLNY

Streszczenie. Artykuł dotyczy relacji między Kościołem i państwem w Gruzji. Autor wskazuje system tych relacji. Analizuje konstytucyjne podstawy wolności religijnej w Gruzji oraz status prawny organizacji religijnych. W szczególności analizuje unormowania dotyczące gruzińskiego Kościoła prawosławnego w kontekście ulg podatkowych, przywilejów i kwestii odszkodowawczych.

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Słowa kluczowe: relacje Kościół-państwo, Gruzja, demokracja, gruziński Kościół prawosławny