

## CONSTITUTIONAL THEOCRACY IN CONTEXT: THE PARADIGM OF GEORGIA KARLO GODOLADZE

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“When the chair of the human rights committee says that ‘our statement on the human rights violations will not go over what the patriarch has said’? It’s a theocracy. It’s quite dangerous. We don’t want to turn Georgia into next Iran.”

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The whole analysis of the Georgia’s Theo-constitutional landscape shows that there are vivid arguments to evaluate such a societal system as constitutional theocracy. Georgian case fully satisfied on the one hand formal constitutional and on the other side practically theocratic discourse. This paper exemplified and analytically described formal constitutional framework of Georgian polity, which is sound by its essence, but as case perceptions confirmed, in practice this solid constitutional grounds thoroughly undermined by orthodox theocratic narratives and particularly its implemented institutions.

**Keywords:** Constitutional theocracy, Georgia, State and religion narratives, Secular discourse trends.

### Introduction

As renowned American scholar and constitutionalist Sanford Levinson once eloquently said modern constitutionalism is nothing more than a kind of “civil religion”.<sup>1</sup> If we perceive this essential definition and one of the last trends of modern constitutional discourse – constitutional theocracy<sup>2</sup> then it is appropriate to consider this phenomenon in societal context. On the one hand pure liberal, constitutional democracy is nothing more than the rationalized discourse based limited government which fundamentally stands on the core constitutional principles and postulates. Vice versa theocracy thoroughly undermined the essence of real constitutional dimension. Thus at this very environment and starting position this paper is an attempt to view and perceive the very peculiar case - Georgia through the above mentioned prism and lenses.

The main aim of this paper is to investigate Georgian case and answer purely to such a question category: what is interrelationship with Georgian state and the Georgian Apostolic Autocephalous Orthodox Church? What is real scope of influence on the state decision-making by the latter institution? Is this serious threat regarding deconstruction and undermining constitutional framework? Or what actor

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<sup>1</sup> Ran Hirschl and Ayelet Shachar. The New Wall of Separation: Permitting Diversity, Restricting Competition. *Cardozo Law Review*. Volume 30 Number 6 2009; pg. 2535

<sup>2</sup> See Ran Hirschl *Constitutional Theocracy*; Harvard University Press, Cambridge, Massachusetts. London, England 2010

is Georgian Orthodox Church with the liberal state? And finally are there any real opportunities to undermine the public reasoning process of secular state<sup>3</sup> and constructed real orthodox theocracy? Clearly we want to find the answers above mentioned questions by the line of constitutional theocracy doctrine, which in our standpoint has its original dimension in Georgia's social, political and legal environment.

The article has the following structure. First, we describe the formal constitutional framework of Georgia, particularly by the 1995 Constitution which was fundamentally revised one more times. After touching Georgia's mighty Orthodox Church, as influential British Broadcasting Corporation (BBC) described it<sup>4</sup>, we present as far as possible the real formal picture of this institution in Georgia's constitutional landscape. After that we analyze the heritage which was received by the Georgian state regarding ecclesiastical issues from the Soviet Union. In the concluding part of this research paper, we discuss current trends regarding church empowerment with the relationship of State and conclude with the future constitutional directions of Georgian society. Essential question is where to? E.g. is it real aspiration of Georgian people to build its original liberal democracy? And what are the lessons learned from past two decade's polity, state building experience in Georgia?

This article is based on factual building materials such as academic articles, newspapers, and interviews, expert analyzes and organically normative text of the Georgian constitutional and legislative acts and statutes. We will try to describe real picture of this vital issue and go into the depth of the problem. Because we fundamentally understand that real existence of constitutional democracy is essentially dependent on the free public space, which is free from the irrational or transcendental concerns.<sup>5</sup> Vice versa there is no space for "Non-Believers" or "New Comers", such as constitutional scholar of standing reputation Dieter Grimm stressed, there are situations in which the only rational alternative is adaption of real secular order or emigration.<sup>6</sup>

### **Georgia's Constitutional Framework Regarding Freedom of Religion**

According to the Constitution of Georgia which is common legal and political ground of all legislative or secondary formal order, 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. 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 recognized principles and norms of international law, specifically in terms of human rights and fundamental freedoms.<sup>7</sup> (Article 9 of the Constitution)

Another decisively important and controversial document (through the prism of human rights and especially related to minority issues), which exclusively regulated the legal status of Apostolic Autocephalous Orthodox Church of Georgia is Constitutional Agreement, the so-called concordat,

<sup>3</sup> See Andras Sajo. *Constitutionalism and Secularism: The Need for Public Reason*. *Cardozo Law Review*. Volume 30 Number 6 2009; pg. 2401-2429

<sup>4</sup> See BBC News Europe. *Georgia's mighty Orthodox Church* <http://www.bbc.com/news/world-europe-23103853> (last visited May 2, 2015)

<sup>5</sup> See Andras Sajo. *Constitutionalism and Secularism: The Need for Public Reason*. *Cardozo Law Review*. Volume 30 Number 6 2009; pg. 2401

<sup>6</sup> See Dieter Grimm. *Conflicts Between General Laws and Religious Norms*. *Cardozo Law Review*. Volume 30 Number 6 2009; pg. 2369

<sup>7</sup> See Constitutional Law of Georgia No 826 of 30 March 2001 – LHG I, No 9, 10.4.2001, Art.33. Available at LEPL Legislative Herald of Georgia, Ministry of Justice of Georgia [https://matsne.gov.ge/index.php?option=com\\_idmssearch&view=docView&id=30346&impose=translationEn&lang=ge](https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=30346&impose=translationEn&lang=ge) (last visited May 2, 2015)

between the Georgian state and latter institution.<sup>8</sup> According to the preamble of this statute, Georgian State which reestablished its historic place in the civilized world recognized that Autocephalous Orthodox Church of Georgia is an Apostolic See and is inseparable part of the World Orthodox Church. It is Autocephalous since the 5<sup>th</sup> century and its spiritual-administrative center is the city of Mtskheta; Patriarch's other cathedrals are also Tbilisi and Bichvinta.<sup>9</sup> Next paragraph of preamble stated that Orthodox Christianity – one of Europe's traditional confessions – historically was the state religion in Georgia, which has formed centuries-old Georgian culture, national weltanschauung and values; vast majority of Georgian population are Orthodox Christians; the Constitution of Georgia acknowledges exclusive role of Apostolic Autocephalous Orthodox Church in the history of the Nation and asserts its sovereignty from the State.

Article 1 of this so-called concordat determined that the State and the Church confirm their readiness for cooperation for the well-being of the population of the country in accordance with principle of reciprocal sovereignty. The State and Church are able to conclude agreements also in other fields of their mutual interests. Appropriate legislation should be created to this effect.<sup>10</sup> The Church is historically established subject of public law, avowed by the State and vested as Legal Entity of Public Law, which carries out its functions in accordance with the Church (Canon) Law, present Agreement, Georgian Constitution and Georgian Legislation. The Council of the Church, Georgian Catholicos-Patriarch, Holy Synod and Patriarchy of Georgia (in the person of Vicarious and Secretary) do represent Georgian Church without any special warrants; in legal affairs, only Georgian Catholicos-Patriarch will confer warrants. Georgian Catholicos-Patriarch enjoys immunity. The Great Church Feasts as well as Sundays, as a rule, are declared holidays.

The basic clauses of the Constitutional Agreement include the following content: the Concordat grants special status of "entity of the Public Law" to the Orthodox Church of Georgia;<sup>11</sup> The Catholicos-Patriarch of the Georgian Orthodox Church enjoys immunity, the privilege that do not have the leaders of other religious groups or organizations; all major orthodox holy-days are state holidays, whereas other religious holidays, are not recognized as holidays;<sup>12</sup> the State shall support protection of confession and Church secrets, a priest shall be obliged to keep information he gets as a confessor;<sup>13</sup> the State shall recognize a wedding ceremony held by Church according to the law, during legal charges wedding registration data submitted by Public Register shall be accepted;<sup>14</sup> all Ecclesiastics shall be free from draft, Georgian state in compliance with Orthodox Church shall provide creation of priest institution at

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<sup>8</sup> This legal act adopted on October, 22 2002 by the resolution of the Parliament of Georgia. After the long time controversies, between civil sector activists and proponents to such type of law

<sup>9</sup> Unfortunately there is no official state translation of this statute, thus all translation errors and gaps belongs to the author

<sup>10</sup> See also regarding legality of concordat; Human Rights Centre; State of freedom of religion in Georgia since the adoption of Constitutional Agreement between Government and the Orthodox Church of Georgia; Religious Freedom Report; 2008; pg. 5-7. <http://humanrights.ge/admin/editor/uploads/pdf/ReligionReport.pdf> (last visited May 2, 2015)

<sup>11</sup> On July, 5 2011 the Georgian legislative body, Parliament amended the Civil Code of Georgia. According new regulation all religious organizations was given the right registered by their discretion, as organizations of legal entity of Private Law or legal entities Public Law. But there are some controversies and critics about these legislative amendments in Georgia. See also <http://www.humanrights.ge/index.php?a=main&pid=13892&lang=eng> (last visited May 2, 2015)

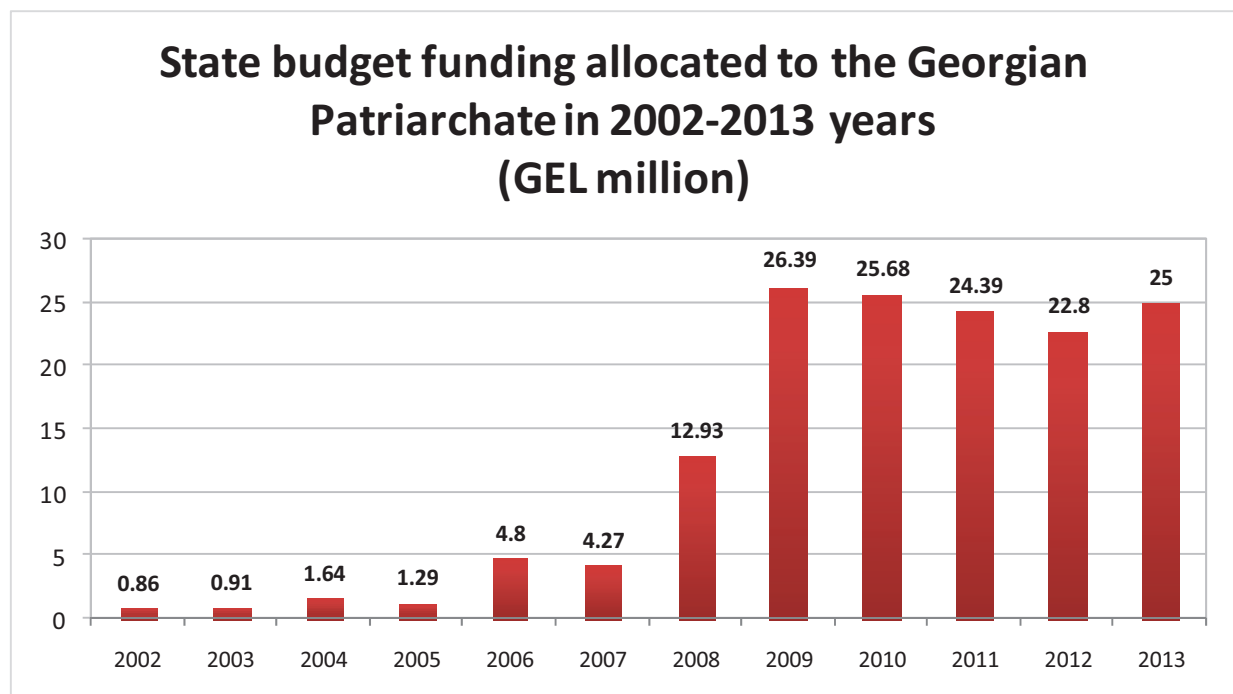
<sup>12</sup> The only exception from this rule was the decision of Government of Georgia in 2010; According to the content of this decision Novruz Bayrami recognized as the state holiday. It is appropriate to note that after this governmental decision there were controversial opinions in the spectrum of Georgian society. This fundamentally described problems regarding tolerance culture in country

<sup>13</sup> See Constitutional Agreement between State of Georgia and Georgian Apostolic Autocephaly Orthodox Church. [http://www.patriarchate.ge/\\_en/?action=eklesia-saxelmcifo](http://www.patriarchate.ge/_en/?action=eklesia-saxelmcifo); Article II (last visited May 2, 2015)

<sup>14</sup> *Ibid.*, Article III

armed forces, prisons and jails, the State shall adopt proper legal acts, Georgian State and Autocephaly Church shall be authorized to exercise joint social programs for the population.<sup>15</sup>

Article V of the so-called concordat regulated the interrelationship in educational spheres with State and Church. Educational institutions shall teach orthodox religion upon their choice. Curriculum drafting and changing, also teachers' appointment and dismissal shall be the subject and discretion (competence) of Orthodox Church. The Georgian State and Church shall mutually and equally accept diplomas, certificates and scientific degrees issued by educational institutions according to the rules determined by law. Beside that the State and Orthodox Church shall be authorized to launch joint educational programs and State shall support functioning ecclesiastic educational institutions.<sup>16</sup> After the Georgia's Rose revolution (November 22-23, 2003) new government step by step increased the budgetary costs regarding Georgian Orthodox Church and nowadays it is equal 25 millions of Georgian Lari (GEL).<sup>17</sup> The main critics related the non-transparency of official state budgetary funds regarding Patriarchate institution.<sup>18</sup>



(Source: Transparency International Georgia)<sup>19</sup>

<sup>15</sup> Ibid., Article IV

<sup>16</sup> Ibid., Article V

<sup>17</sup> See detail information regarding public finances of Georgian Patriarchate; Transparency International Georgia; An Overview of public financing provided to the Georgian Patriarchate; <http://transparency.ge/en/blog/overview-public-financing-provided-georgian-patriarchate/>; (last visited May 2, 2015)

<sup>18</sup> It is appropriate to note that according to the official statements and press releases of Georgian Patriarchate the public finance of Orthodox Church is transparent and basically it spend to the service of Church educational institutions. Thus Orthodox Church fully disagree the position of Georgian civil and non-governmental institutions regarding public finances transparency of the latter actor

<sup>19</sup> See more at Democracy & Freedom Watch; Reporting on the State of Georgian Democracy; New report shows state funding of Georgian Church; <http://dfwatch.net/new-report-shows-state-funding-of-georgian-church-44822> (last visited May 2, 2015)

All ecclesiastic property shall be protected by Georgian legislation. Apostolic Autocephalous Orthodox Church of Georgia shall own, possess, and manage its non-ecclesiastic property according to ecclesiastic norms and acting under Georgian law. All ecclesiastic goods produced, imported, and delivered by Church, also donations, non-economic property and land premises shall be duty free. Georgian State in agreement of Orthodox Church shall issue permissions and licenses on using official ecclesiastic terminology and symbols, also producing, importing and delivering ecclesiastic goods.<sup>20</sup> The State shall recognize orthodox Churches, monasteries (acting or non-acting), their remains and land premises they are built on all over Georgia to be in possession of Church. Security, care and utilization of all aforementioned buildings and premises shall be determined by state authorities concerned according to the acting legislation and in compliance with Orthodox Church.<sup>21</sup>

Georgian State shall recognize ecclesiastic treasure protected by state security (kept at museums and treasury, those except owned privately) to be in possession of Church. The abovementioned (except sacral reliefs) as a part of the National Treasure shall be joint property being subject to acting law.<sup>22</sup> According to the wording of the article 9 of the Concordat State and Church shall jointly protect and care for security and protection of ecclesiastic buildings and treasure of historic-architectural and archeological-architectural values. The State in compliance with Orthodox Church shall adopt additional rules on utilization of ecclesiastic treasure for museums and treasuries, also projects for rehabilitation, restoration, conservation or painting of churches of cultural and historic values under to acting law.<sup>23</sup> The another obligation of Georgian State is to negotiate with other states on protection, care ownership of all Georgian orthodox churches, monasteries, remains, other ecclesiastic buildings, and ecclesiastic items being on their territories.<sup>24</sup>

According to the formulation of the article 11 of the concordat Georgian State shall acknowledge material and moral damage to Church during the losing state independence in XIX-XX centuries (especially in 1921-1990), when Georgia was part of the Soviet Union; the State shall take responsibility to partly compensate material damage;<sup>25</sup> second paragraph of aforementioned article formulated as follow there shall be formed a target commission within one month after the signing of present concordat. The commission shall study compensation forms, amount, terms; property and land plots transfer procedures and other details, and make drafts of proper legal acts.<sup>26</sup> Final article of the so-called concordat determined the enactment and signing procedures of this document; formally it enacted after the signature of the President of Georgia and Patriarch of all Georgia in October 2002.<sup>27</sup>

It was clear and brief description of current legal framework between Georgian state and Georgia's Orthodox Church shows that despite this fundamental regulation there are not any other obstacles or regulations which fundamentally affected the freedom of religion in the polity. In sum it is soundly clear that Georgian legislation regarding freedom of Religion respected the fundamental standards and human rights paradigms. On the other side it is also luminous that in practice there are obvious problems regarding implementation such a fundamental constitutional principles: equality and secularity. Both principles are fundamental values and cornerstone in genuine constitutional democracy; in the next

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<sup>20</sup> See supra note 13; Article VI

<sup>21</sup> Ibid., Article VII

<sup>22</sup> Ibid., Article VIII

<sup>23</sup> Ibid., Article IX

<sup>24</sup> Ibid., Article X

<sup>25</sup> Georgian authorities hands the state property to Orthodox church by nominal price and this was the tendency of last period Georgian church-state politics; see the decision of Georgian government <http://www.tabula.ge/en/story/82679-govt-hands-over-state-property-to-orthodox-church-for-gel-1>; decision of Prime minister of Georgia; (last visited May 2, 2015)

<sup>26</sup> See supra note 13; Article XI

<sup>27</sup> Formal date of the resolution of Parliament of Georgia regarding above-mentioned concordat was October 22, 2002 (Signatures by the President and Patriarch were performed on October 12, 2002)



chapters we shall perceive state-church historical relationships, cases about abovementioned topics and analyzing current dimension of Georgian state.

### **State-Church Historical Relationships and Soviet Legacy**

Apostolic Autocephalous Orthodox Church of Georgia has ancient roots in the history of Georgian polity and nation. After the fourth century Orthodox Christianity was the central and pure genuine part of Georgia's identity; thus it was state official religion. After the year 1010, official title of leader of this institution is Catholicos-Patriarch of all Georgia;<sup>28</sup> after 5<sup>th</sup> century Georgian Orthodox church gained autocephaly and latter institution functioned as autonomy Holy See before 1811, when autocephaly of the Georgian Church was abolished after the annexation of Georgia by the Tsarist Russian Empire.<sup>29</sup> After that Georgian Orthodox Church was the local part of Russian Orthodox Church and fully subjected by the canon jurisdiction of Russian Orthodox Holy Synod.<sup>30</sup>

The only period when Georgian state and Georgian Orthodox church had equal and legally based frame (before Second Republic of Georgia from 1991 up to date) was the time of First Republic of Georgia (1918-1921years). By the perspective of modern constitutional, secular state there was very interesting constitutional framework between State and Church during the aforementioned time. The core and fundamental document which basically determine the interrelationships of the State and Church institutions was first Constitution of Georgia. This document adopted on February 21, 1921 and such Georgian and foreign scholars and officials noted correctly was one of the most progressive legal and political act by the prism of twentieth century constitutionalism.<sup>31</sup>

Chapter XVI of the Constitution of Georgia 1921 focused Relations State and Church. According to the wording of the Article 142 the State and the Church are separate and independent from each other. Article 143 declared that no confession or creed enjoys special privileges. The last article of this chapter related the budgetary issues of the Church institution. Under Article 144 it is forbidden to make any levies from the budget of the state or local self-government bodies for the needs of any religious order.<sup>32</sup> If we perceive this constitutional framework it is completely clear that common constitutional paradigms such as state neutrality regarding religious issues and principle of secularity guaranteed under the supreme political-legal act of First Republic of Georgia. Undoubtedly these constitutional regulations fit into the prism of modern constitutional state and fully satisfied its values and essence.

As distinguished constitutional scholar Ran Hirschl pointed out correctly, today in modern political and legal theory (we perceive constitutionalism as interdisciplinary tool based on large extent of political and legal doctrine and environment) there are nine models covered relations of State and Religion.<sup>33</sup> Georgian Orthodox Church during the period of Soviet Union fully fit to the first category modality, from the aforementioned nine dimension matrix. This model naturally is atheism, conception that without problems found in pure Communist regimes, such it was Soviet Union and its local part Soviet Georgia. As Hirschl noted accurately the main character such regime type was the State strict policy to fully eliminate, eradicate religion from both private and public spheres and realms.<sup>34</sup> The starting point of

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<sup>28</sup> See Georgian Secularism Between Modernization And Democratization: Minority Issues And Social Cohesion; Marilisa Lorusso; Analysis No. 174, May 2013; ISPI Online Papers; pg. 2-3

<sup>29</sup> See supra note 27; pg. 3

<sup>30</sup> Ibid., pg. 3

<sup>31</sup> See George Papuashvili; The 1921 Constitution of the Democratic Republic of Georgia Looking Back After 90 Years; Publication of the Constitutional Court of Georgia; Batumi 2012; pg. 6

<sup>32</sup> See The 1921 Constitution of Democratic Republic of Georgia; Publication of the Constitutional Court of Georgia; Batumi 2012; pg. 33-77

<sup>33</sup> See Ran Hirschl; Constitutional Theocracy; Extant Models of State and Religion Relations; Harvard University Press; Cambridge, Massachusetts, London, England; 2010; pg. 26-40

<sup>34</sup> Ibid; pg. 26

Soviet rules at this realm, was the imprisonment of the Catholicos-Patriarch of all Georgia Ambrosi Khelaia and after that fully fought against clergy and Church institutions a whole.<sup>35</sup>

After the establishment of Soviet Georgia and look after deconstruction of the first Democratic Republic of Georgia, all religious policy issues determined by Kremlin, as western scholars observed precisely.<sup>36</sup> By the viewpoint of the Soviet leadership the Georgian Orthodox Church perceived as a supporter of ethnic separatism and organically real obstacle to the integration of the Georgian ethos into the Soviet state system.<sup>37</sup> Soviet state confiscated the property of the Church institution and demoralized it in the public eyes. During the period of soviet rule latter institution suffered enormous damages. As we pointed out modern Georgian State take responsibility to partly compensate this material damage.<sup>38</sup> There was proper combination of atheism propaganda, terror and practical elimination of the believers in Soviet social, political and legal realms.<sup>39</sup> In sum, it was pure, genuine legalization and authorization of the “Blasphemy Policy” from state which fully denied freedom of religion and faith, as the major pillar of modern constitutional discourse.

Since the collapse of Soviet Union, the Georgian Orthodox Church launched real fight for the recognition as the autocephalous institution and finally on 25<sup>th</sup> of March 1990 World Patriarch, Patriarch of Constantinople confirmed it.<sup>40</sup> After that, practically Georgian Orthodox Church has gained both sacral and legal independence and enhanced the reputation of the latter institution in Georgia’s political and social landscape.<sup>41</sup> Another great victory in the local Georgian arena was the above mentioned so-called concordat, virtually was the solid achievement of Orthodox Church, because the civil sector fundamentally disagree the adoption and elaboration such an exclusive legal regulation.<sup>42</sup>

As Georgian and foreign scholars noted correctly, post-independence period of Georgia affected all challenges that is well known in political science theory. First of all it was civil war, after that conflicts with Georgia’s great “neighbor” Russian Federation and practically these events constructed pure weak starting position for the state-building.<sup>43</sup> During these periods Georgian Apostolic Autocephalous Orthodox Church established as the evident powerful institution which has real ambition to define Georgia’s identity and affected national politics. These ambitions were fundamentally tangible in the

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<sup>35</sup> Patriarch Ambrosi Khelaia was the primary opponent and warrior against Soviet system and whole Soviet occupation. He sent distinguished statement to the Genoa International Peace Conference (1922) in which articulate the fate of Georgian Statehood and called the international society to help Georgian State defend its sovereignty and independence from Soviet annexation

<sup>36</sup> See S.F. Jones; Soviet Religious Policy and the Georgian Orthodox Apostolic Church: From Khrushchev to Gorbachev; [http://www.biblicalstudies.org.uk/pdf/rcl/17-4\\_292.pdf](http://www.biblicalstudies.org.uk/pdf/rcl/17-4_292.pdf); pg. 294 (Last visited May 2, 2015)

<sup>37</sup> *Ibid*; pg. 293

<sup>38</sup> See supra note 24; Article 11 of the so-called Concordat

<sup>39</sup> See supra note 35; pg. 294

<sup>40</sup> See Marilisa Lorusso; Georgian Secularism Between Modernization and Democratization: Minority Issues and Social Cohesion; ISPI Online Papers; Analysis No. 174, May 2013; pg. 3

<sup>41</sup> Results of the last research opinion polls in Georgia confirmed the higher authority of the Orthodox Church institution. See International Republican Institute (IRI) poll results on Georgia released; <http://agenda.ge/news/11621/eng>; (Last Visited May 2, 2015); see also Political Ratings in NDI-Commissioned Poll; <http://www.civil.ge/eng/article.php?id=27616>; <http://www.civil.ge/files/files/2014/PoliticalRatings-NDIpoll-August-2014.pdf>; (Last Visited May 2, 2015); according to this opinion polls the real rating of Orthodox Church and Patriarch is more than 90 percent

<sup>42</sup> See more regarding so-called concordat issue; Karlo Godoladze; Constitutional Changes in Georgia: Political and Legal Aspects; Constitutional Law Review; Volume 6; pg. 48-68; [http://constcourt.ge/files/journal\\_eng\\_2013.pdf](http://constcourt.ge/files/journal_eng_2013.pdf); (Last Visited May 2, 2015)

<sup>43</sup> See Ghia Nodia, “Georgia’s Identity Crisis”; Journal of Democracy; Vol. 6/1, January 1995; See also Giorgi Meladze & Karlo Godoladze; Instrumentalization of the Constitution: Story of post-revolutionary constitution-making; Accepted research paper for the 9<sup>th</sup> International Congress of Constitutional Law; <https://www.jus.uio.no/english/research/news-and-events/events/conferences/2014/wccl-cmdc/wccl/papers/ws11/w11-meladze&godoladze.pdf>; pg. 2 (Last Visited May 2, 2015)

second part of 90ies when sectarian violence<sup>44</sup> and genuine physical attacks was ordinary lifestyle in Georgia's social and political existence.<sup>45</sup> The main actor and inspiratory for such a great violence was Orthodox Church and Georgia's state institutions were out of real actions; because they fundamentally feared the higher legitimacy and popularity of Patriarchate. It was typical pattern of failed state which did not ensure the equality and security of its citizens, despite their beliefs and faiths.<sup>46</sup>

According to the common global or local opinions, the situation regarding freedom of religion and particularly the sectarian violence issue has ended in Georgia after the landmark date of the polity's modern history the "Rose Revolution" and its consequences. One of the most serious outcomes of the Georgia's velvety revolution was the improvement of the freedom of religion and success regarding the practical implementation of this fundamental right.<sup>47</sup> But the full accomplishment of the religious neutral state and free public space is still problematic in the Georgian political and legal landscape. In spite of the prosecution of main actors of the "sectarian violence" problems related to real free expression of the religious belief and problems non-tolerance with religious minority groups still exist in Georgian society. It is pure noteworthy that the main "feeding source" of such perceptions is truly Georgia's Orthodox Church. As international analysts put it correctly 'the country is undergoing a delicate political transition in which populist temptations or conservative involutions might further fuel unnecessary social confrontations'.<sup>48</sup>

### **Current Trends Prism: Case by Case Perception**

October 1, 2012 is the real turning point in the current history of Georgian polity and statehood, 'the parliamentary elections saw a change of power through the fundamental instrument of democracy for the first time in the history of Georgian republicanism'.<sup>49</sup> It was not only local Georgian success it also has regional dimension by the side of practical implementation of rule of law paradigm and genuine constitutionalism in South Caucasus region.<sup>50</sup> Nevertheless it is early to conclude the end of transitional prototype period in Georgia and begin the thinking about consolidative constitutional (liberal) democracy. One of the main reasons is Georgia's "Orthodox Identity Narratives" and the trends which construed post-sacral election periods in the polity.

<sup>44</sup> See more regarding this issue at [http://www.religioustolerance.org/rt\\_georg.htm](http://www.religioustolerance.org/rt_georg.htm); Religious Intolerance in the Republic of Georgia; (last visited May 2, 2015)

<sup>45</sup> See Meladze & Godoladze; Instrumentalization of the Constitution: Story of post-revolutionary constitution-making; pg. 2; See also Liberty Institute Human Rights Report, 2002. According to the report more than 800 facts of physical attacks and property destruction were documented during 1999 up to 2002

<sup>46</sup> See details regarding abuses and violence Pierre Vischioni; Religious Minorities in Georgia; REPORT; UNHCR & UNAG; pg. 46-59; December 2006

<sup>47</sup> See more details regarding this topic; Forum 18 – 2006.11.10; IHFHR 2006; USSD 2006; USCIRF 2006; USSD 2005; HRW 2006; FH – NIT 2006; Freedom House –FW 2006; AI 2005; HRIDC 2005; Forum 18 – 2005.11.25; USSD 2004; UNCHR 2005; Public Defender 2005- 1; Public Defender 2005 – 2; Public Defender 2006 – 1; See also supra note 44; pg. 49

<sup>48</sup> See concluding part of the research Marilisa Lorusso; Georgian Secularism Between Modernization and Democratization: Minority Issues and Social Cohesion; ISPI Online Papers; Analysis No. 174, May 2013 pg. 9-10 Virtually any research regarding this Theo-political situations in modern Georgia fully fit into such a concluding category

<sup>49</sup> See more The Georgian Electoral Dilemma by Karlo Godoladze; Tabula Magazine; available at <http://ftp.tabula.ge/en/story/74511-the-georgian-electoral-dilemma> (last visited May 2, 2015)

Canan Atilgan & David Aprasidze; End to An Era Transfer of Power in Georgia; KAS International Reports; 12|2013 pg. 69-88 available at [http://www.kas.de/wf/doc/kas\\_36413-544-2-30.pdf](http://www.kas.de/wf/doc/kas_36413-544-2-30.pdf) (last visited May 2, 2015) See also OSCE Office for Democratic Institutions and Human Rights; Georgia – Parliamentary Elections 1 October 2012; OSCE/ODIHR Election Observation Mission – Final Report; available at <http://www.osce.org/odihr/98399?download=true> (last visited May 2, 2015)

<sup>50</sup> It is appropriate to note that in South Caucasus region and broadly Eastern Partnership states only Moldova has the experience of the peaceful electoral transition of the power



For Georgian Scholars it is visible that one important factor in the victory of oppositional coalition called “Georgian Dream” was Georgia’s Orthodox Church.<sup>51</sup> After the election days Georgian Patriarchate fully affected the politics regarding religious expression and official authorities are unable to act in accordance to the constitutional framework. The pure paradigmatic case with respect to constitutional theocracy in Georgia was May 17, 2013, at this day thousands of parishioners, according of information The New York Times more than 20,000 and official clergymen from Georgia’s Orthodox Church attacked and prevented LGBT rights activists from carrying and implementing through peaceful rally at the Tbilisi city center against homophobia and transphobia.<sup>52</sup>

According to the official statement of Minister of Labor Health and Social Affairs of Georgia 28 people were send to the hospital, among these two were journalists. As for the responsibility of Georgian State to ensure peace and order during the event, state officials and particularly policemen failed, thus they did not prevented aggression and ensured the implementation of their primary duty.<sup>53</sup> It is evidently clear that according international standards maintenance of peace and order is the state’s primary obligation, as the executive director of LGBT organization called Identoba, or Identity Irakli Vacharadze puts it, Georgia’s new government had no willing to apply real rule of law paradigm against to such a popular and powerful institution as the Orthodox Church of Georgia. As he indicated, key members of Georgia’s representative body the parliament, including the head of the Human Rights and Civil Integration Committee, have declared obedient to the policy of Georgian Patriarchate. According to Vacharadze it has only one meaning, “When the chair of the human rights committee says that ‘our statement on the human rights violations will not go over what the patriarch has said’? It’s a theocracy. It’s quite dangerous. We don’t want to turn Georgia into next Iran.”<sup>54</sup>

One of the interesting dimension of the outcomes of the 17<sup>th</sup> of May events in Georgian context was May 24, 2013 when the societal rally held in Tbilisi city center by slogan “No to Theocracy”, participants of the demonstration demanded the authorities held accountable those who violated fundamental rights and attacked against peaceful remonstrates. But the Georgia’s Orthodox Church supporters took place near the venue of “Not to Theocracy” and demand to banning “LGBT propaganda”.<sup>55</sup>

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<sup>51</sup> See supra note 49; Atilgan & Aprasidze; pg. 84; In terms of constitutionalism Georgian Patriarchate authorized and legitimized incumbent government of Georgia recognized it as “Pro-Georgian” (not explicitly but implicitly called electorate to vote for coalition “Georgian Dream”) because church was fully against President Saakashvili’s pro-western and liberal government, perceived it as “Anti-Georgian”

<sup>52</sup> See more at <http://dfwatch.net/georgian-church-mobilized-thousands-against-lgbt-event-35461> Georgian Church mobilized thousands against LGBT event (last visited May 2, 2015); [http://www.nytimes.com/2013/05/20/world/europe/georgian-officials-react-slowly-to-anti-gay-attack.html?\\_r=1&](http://www.nytimes.com/2013/05/20/world/europe/georgian-officials-react-slowly-to-anti-gay-attack.html?_r=1&)

Slow Response by Georgians to Mob Attack on Gay Rally (last visited May 2, 2015)

<sup>53</sup> See more at <http://www.npr.org/blogs/parallels/2013/07/30/204511294/GEORGIA-CHURCH-ANTI-GAY-RIOT> Anti-Gay Riot in Tbilisi Tests Balance Between Church, State (last visited May 2, 2015)

<sup>54</sup> See supra not 53; See also at <http://www.tabula.ge/en/story/72224-identoba-calls-on-citizens-to-send-letters-to-mp-beselia> Identoba Calls On Citizens To Send Letters To MP Beselia; Source: Tabula (last visited May 2, 2015); See more at the regional dimension of the topic at <http://www.rferl.org/content/orthodox-church-stifling-reforms/24997466.html> Orthodox Churches Fight Back As Eastern Europe Pushes To Modernize, Secularize; Radio Free Europe – Radio Liberty (last visited May 2, 2015) See more about Parliament statement on anti LGBT violence at <http://dfwatch.net/parliament-passes-statement-on-anti-lgbt-violence-82016-21345> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Parliament passes statement on anti LGBT violence; (last visited May 2, 2015)

<sup>55</sup> See more at <http://www.tabula.ge/en/story/71492-no-to-theocracy-rally-in-pictures> “No to Theocracy” Rally In Pictures; Tabula Magazine (last visited May 2, 2015); As regarding so-called “propaganda” see more at <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282013%29022-e>. European Commission For Democracy Through Law (Venice Commission) On the Issue of the prohibition of so-called “Propaganda of Homosexuality” in the light of recent legislation in some member states of the council of Europe; Strasbourg, 18 June 2013; Opinion 707/2012 (last visited May 2, 2015)

Formally Georgian Patriarchate, according to the briefing Church spokesman, fully separates itself from violence, but explains that in a country such as Georgia where vast majority of citizens are orthodox Christians, such type of rallies are perceived as the clear propaganda of homosexuality, thus causes “justified protest”. As spokesman indicated “organizers did not take into account anything and selected a time and location which were related to historical memories and emotional traditions, which became additionally irritating and provocative factors”.<sup>56</sup> Another pure constitutional theocratic fact in this context was the official statement of Patriarch of all Georgia, the day before LGBT rally, appealing to the state authorities to withdraw the permission to hold the demonstration.<sup>57</sup> In consonance constitutional theocracy paradigms it is obvious phenomenon when transcendental forces and institutions influenced over the agenda of public business and undermine the main value in genuine constitutional democracy, free public discourse and its implemented actors.

Another case by the perception of Georgia’s constitutional theocracy was Minaret conflict in the village of Chela, in southern Georgia. Here Georgian authorities dismantled a minaret at the end of summer 2013, this led conflict between Muslims and Christians. Clear theocratic and homophobic messages were used by the side of state officials against Muslim minorities, as one of the interlocutor and participant of the aforementioned event put it correctly at the police office he was told that “Georgian Muslim does not exist”, “when I arrived at the investigator with my lawyer he told me that Georgians must only be Orthodox.”<sup>58</sup>

As European Commission, High Representative of the European Union for Foreign Affairs and Security Policy stressed out in its report titled Implementation of the European Neighborhood Policy in Georgia Progress in 2013 and recommendations for action: “there have been several cases of violent protest to prevent representatives of people belonging to religious minorities and LGBTI activists from exerting their constitutional rights of self-expression and freedom of religion. Serious incidents involving predominantly Christian communities preventing Muslims from praying peaked in August with the removal by police of a minaret on questionable legal grounds. The minaret has since been rebuilt after the local council gave approval in November. The authorities have not done enough to prevent violent outbreaks of islamophobia and homophobia. A law on anti-discrimination drafted by the Ministry of Justice, incorporating the multi-discrimination approach that includes ‘gender identity’ and ‘sexual orientation’, will be submitted with some delay to the parliament and further amendments by the cabinet. The adoption of such a law envisaged for late March 2014 is expected to prove controversial.”<sup>59</sup>

It is not surprisingly that the main opponent and warrior against adoption and elaboration of the new anti-discrimination law was Georgia’s Orthodox Church.<sup>60</sup> Ministry of Justice of Georgia prepared aforementioned statute vis-à-vis comprehensive negotiations and deliberations with several international

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<sup>56</sup> See more at <http://dfwatch.net/georgian-church-explains-its-position-on-the-may-17-events-44009> Georgian Church explains its position on the May 17 events; Democracy & Freedom Watch Reporting On The State Of Georgian Democracy (last visited May 2, 2015)

<sup>57</sup> See supra note 56; Reaction of speaker of parliament of Georgia was quite adequate, he said that it was surprised when he read the Patriarch’s statement. “I do not think this type of statement could bring any positive to life of statehood, because it was pretty obvious that the government could not prohibit anything after this call.”

<sup>58</sup> See details at [http://dfwatch.net/minaret-conflict-in-chela-georgia-still-unresolved-23762\\_Minaret](http://dfwatch.net/minaret-conflict-in-chela-georgia-still-unresolved-23762_Minaret) conflict in Chela, Georgia, still unresolved; Democracy & Freedom Watch Reporting on The State of Georgian Democracy (last visited May 2, 2015) See also regarding other religious conflicts during periods of 2012-2013 at <http://dfwatch.net/group-criticizes-georgia-for-handling-of-religious-conflicts-57907> (Group criticizes Georgia for handling of religious conflicts) Democracy & Freedom Watch Reporting (last visited May 2, 2015)

<sup>59</sup> See European Commission High Representative of the European Union for Foreign Affairs and Security Policy; Joint Staff Working Document; Implementation of the European Neighborhood Policy in Georgia Progress in 2013 and recommendations for action; Brussels, 27.3.2014 SWD(2014) 72 final. Available at [http://eeas.europa.eu/enp/pdf/2014/country-reports/georgia\\_en.pdf](http://eeas.europa.eu/enp/pdf/2014/country-reports/georgia_en.pdf) (last visited May 2, 2015)

<sup>60</sup> See more at <http://dfwatch.net/georgian-orthodox-church-opposed-to-anti-discrimination-law-24785-28275> Georgian Orthodox Church opposed to anti-discrimination law; Democracy & Freedom Watch Reporting on the State of Georgian Democracy; (last visited May 2, 2015)

and local non-governmental stakeholders. Finally, at the end of March 2014 the draft of the statute delivered to the parliament of Georgia. The essence of the document was fully based of the international actors' recommendations such as OSCE (Organization for Security and Co-operation in Europe) and UN (United Nations). Georgian NGO's also delivered the statement regarding the importance of the kind of regulation for the genuine Georgian context, as they put it: "the majority of discrimination cases remain without any legal responses. Due to the lack of the appropriate legal mechanisms, consideration of the possibility of an adequate response on discrimination cases through law sanctions is required for their elimination."

Georgian Patriarchate fully continued its behavior by the prism of constitutional theocracy standard; Georgian Patriarch published special statement in which he asked Georgian authorities to postpone the adoption of anti-discrimination law. As it was in the LGBT case, patriarchate fully declared violation and discrimination as unacceptable, but "having the terms 'sexual orientation' and 'gender identity' in a draft bill of such importance for the development of the country causes concern among people, because the personal rights of our citizens are equally protected nowadays by the current Georgian legislation". As religious leader explained believers 'fairly' consider non-traditional sexual relations as deadly sin. If we perceived the real content of these messages, it is clear that it practically fully undermines the whole essence, telos of the offered anti-discrimination statute.<sup>61</sup>

The parliamentary deliberation process was the demonstration of the Church's great influence over the public policy. As professor Ghia Nodia puts it, 'during the sitting of the parliamentary commission to discuss the draft antidiscrimination law, some people found it very "depressing" to see the hall of parliament dominated by "black" – i.e. the attendance of many clerics clad in black religious robes.'<sup>62</sup> By the terms of the genuine constitutional democracy it was another example how religious institutions attempt to influence over public policy and do not want to deliberate arguments pros and cons. As one of the most liberal member of the incumbent Georgian parliament Tamar Kordzaia correctly put it and declared statement at the parliamentary commission "you demand to punish me in this hall. If you do not like my being in this hall I am leaving the hall for your peace, but what happens here is pressure on parliament, which for me as a parliamentarian, is unacceptable."<sup>63</sup>

MP understands the importance of the free public deliberation which is released of any clerical or sacral pressure but unfortunately the other members disagree, for example head of Human Rights and Civil Integration Committee Eka Beselia said that the behavior of Kordzaia was incorrect. In sum the whole parliamentary hall dominated by the Patriarchate inspired narratives. As we indicated above it is authentic framework of the constitutional theocracy when public institutions are over the strict influence or domination by the sacral institutions or authorities. The main message of Church institution was clear Georgia do not want a Europe where 'homosexuality is legalized'.<sup>64</sup>

After one year of the 17<sup>th</sup> May events Georgian powerful religious institution and particularly Catholicos-Patriarch of all Georgia promoted statement to declare this day as the "day of strength of family and respect for parents" so-called 'Family Day'. As the religious leader elucidated: "Firmness and sacredness of family is a foundation of strength of the state" thus "infringing sacredness of family and declaring unnatural and prevent relations as natural is completely unacceptable for the majority of

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<sup>61</sup> See the detail analyses of the whole process of the adoption anti-discrimination law, also content perception at <http://transparency.ge/en/node/4390> Transparency International Georgia; New anti-discrimination law: challenges and achievements; TI Georgia June 17, 2014 (last visited May 2, 2015)

<sup>62</sup> See more at <http://www.tabula.ge/en/story/84312-religion-and-public-politics> Religion and Public Politics by Ghia Nodia; Tabula Magazine (last visited May 2, 2015)

<sup>63</sup> See at [http://dfwatch.net/orthodox-church-against-eu-in-georgian-parliament-57404-28332\\_Democracy](http://dfwatch.net/orthodox-church-against-eu-in-georgian-parliament-57404-28332_Democracy) & Freedom Watch Reporting on the State on Georgian Democracy; Orthodox Church against EU in Georgian parliament; (last visited May 2, 2015)

<sup>64</sup> See supra note 63. As the analyses of the Venice Commission indicated (see supra note 55) the main source such a homophobic messages are so-called Orthodox Churches and naturally Georgia's Orthodox Church are the organic part of this 'sacral' fight for souls

population of Georgia, regardless of religion. Of course it is also unacceptable for the Georgian Orthodox Church. But it does not mean that the church fights against those, who are damaged with this sin. On the contrary, it takes care of them is directing efforts to correct them.”<sup>65</sup> If we perceive this declaration, there is a clear continuation of the Janus style rhetoric, when on one side church condemned “unnatural” people (means the representatives of LGBT groups) and on the other side declared unacceptable of violation against such stakeholders. On the contrary the activists and leaders of Identoba declared multiple times that they did not plan any events or meeting to mark the International Day against Homophobia and Transphobia. Instead they launched the presentation of the new web-site at which all interested person have the opportunity to share pertinent information.<sup>66</sup>

As Identoba members indicated, developments regarding May 17 should also be viewed in the context of upcoming signing of the Association Agreement between Georgia and European Union (EU). Therefore according to the statement genuine pro-Russian forces and elements, including within the Orthodox Church of Georgia ‘find homophobia a good basis to mobilize people’ against Europe ‘which they equate with the ‘promotion of homosexuality and pedophilia.’ As they concluded ‘they depict the struggle for LGBT rights in the country as an imposed value of the ‘prevent west’. Therefore anti-LGBT rhetoric is heavily framed with anti-European and pro-Russian sentiments. In our assessment, for them, May 17 turned into a day when they could flex their muscles in front of Georgian government.’<sup>67</sup>

Identoba also analyzed the content of Patriarchate behavior respecting so-called anti-discrimination law and fully concluded that ‘the church announced the law as against Christianity and Georgian values. It tried to intervene in parliamentary discussions, by actively threatening MPs and by organizing several protests against the law in Kutaisi (parliamentary capital of Georgia)<sup>68</sup> and in Tbilisi. However, at that time the church was unable to create mass euphoria. That is why; they promised revenge and their representatives, after leaving Human Rights Committee hearing mentioned that the state would have to face consequences on May, 17<sup>th</sup>.<sup>69</sup> In sum if we perceived the battle regarding anti-discrimination law elaboration there was one fortunate feature which construed the whole picture as constitutional theocratic but not theocratic one, and this was the final adoption of anti-discrimination statute by side of legislature. As professor Nodia puts it, the Georgian Orthodox Church lost the second battle with secular government when the latter implemented above-mentioned legislation. The first case of explicit defeat of Orthodox Church was in 2011 when parliament of Georgia adopted piece of civil legislation according to all Georgian religious denominations received the legal possibility to register by their discretion, as Public or Private law entities.<sup>70</sup>

The main challenge is the practical implementation of the aforementioned anti-discrimination statute. As powerful Global think-tank Amnesty International put it; Georgian authorities are obliged to ensure that the country’s first anti-discrimination law becomes an “effective tool to combat discrimination.”<sup>71</sup>

<sup>65</sup> See more details at <http://www.civil.ge/eng/article.php?id=27237> ‘Family Day’, Rally Against Gay ‘Propaganda’ Planned for May 17; Civil.ge Daily News Online (last visited May 2, 2015) See also <http://www.civil.ge/eng/article.php?id=27241> Photos: Anti-Gay Rally on Anti-Homophobia Day; Civil.ge Daily News Online (last visited May 2, 2015)

<sup>66</sup> See the English version of this web page [http://www.17mai.si/archives/category/english\\_\\_](http://www.17mai.si/archives/category/english__) (last visited May 2, 2015)

<sup>67</sup> See Identoba’s Statement About Upcoming May 17<sup>th</sup> <http://identoba.com/2014/05/15/idaho/> (last visited May 2, 2015)

<sup>68</sup> Emphasis is ours

<sup>69</sup> See at <http://identoba.com/2014/05/15/idaho/> Identoba’s Statement about Upcoming May 17<sup>th</sup>. Posted on 15/05/2014 by Anna Rekhviashvili in English (last visited May 2, 2015)

<sup>70</sup> See supra note 11 about amendments of Civil Code of Georgia; See more at latter topic <http://www.tabula.ge/en/story/84312-religion-and-public-politics> Religion and Public Politics by Ghia Nodia; Tabula magazine; (last visited May 2, 2015)

<sup>71</sup> See more regarding position of Amnesty International at <http://www.tabula.ge/en/story/82571-amnesty-international-it-is-important-that-anti-discrimination-law-is-effective> Amnesty International: It Is Important That Anti-Discrimination Law Is Effective; Tabula Magazine (last checked May 2, 2015)



Secular government adopted the law but in practice the dominance of theocratic narrative and violation of human rights is the typical pattern of Georgia's political lifestyle. Thus this continuation trend fully satisfied the core of constitutional theocracy, in which the system is not formally theocratic but free and neutral public space is the tremendous trouble. As Global non-governmental organization with standing reputation concluded, it is decisive to 'take into consideration the concerns of civil society and offer a bill that would not only outlaw discrimination in paper, but would also enforce prohibition of all forms of discrimination in practice.'<sup>72</sup>

Finally as Amnesty International Report 2014/15: the State of the World's human rights put it precisely 'religious and sexual minorities continued to face discrimination and violence and in several instances were unable to exercise their right to freedom of assembly.' 'On 2 May, an anti-discrimination law was adopted but without provisions which had been included in an earlier draft. These would have introduced an independent oversight mechanism and financial penalties for violations. Reported incidents of violent religious intolerance increased. The authorities failed to protect the rights of religious minorities, address recurring violence and effectively investigate attacks.'<sup>73</sup>

Another constitutional theocratic saga related to such a neutral activity as was electronic music festival KaZantip. Prior to some month before the festival activity beginning Georgia's Orthodox Church issued an official statement and declared its dogmatic position against holding such enterprise in Georgia.<sup>74</sup> According to the church rationale, "Georgia is a country of ancient culture and it cannot become an encourager of promiscuity" as the statement explained 'KaZantip is visited by so many tourists from different countries of the world because of 'promiscuity', they are attracted by mass orgies, but not music or any cultural event or a desire of revival of our country.'<sup>75</sup> Orthodox Church also explicitly declared in this statement that it is not the interest of the Georgian people to choose such a way for the state development.

By the inspiration of the Church canonical rhetoric orthodox clerics as it was in other relevant cases planned to hold the big and massive demonstrations versus electronic dance music festival.<sup>76</sup> As one of the organizer and Archimandrite defined 'I also thought it was just entertainment and then I seriously looked into it, read their constitution, saw footage and I was astonished' as concluded virtually it was devil worship.<sup>77</sup> Naturally the main aim of the proponents of the above-mentioned approach was visible to prevent and curb music festival activity. By the slogan "KaZantip is immorality" protesters began their manifestation from the church in Anaklia (festival host place) and walked towards the formal location of dance music festival. They mentioned for 'protecting moral' and 'not to turn Georgia into Sodom and Gomorrah.'<sup>78</sup>

One of the most absorbing dimension state-church relationships during the whole period of the aforementioned saga characterized by the strong pressure of the latter actor to the state officials, as former head of Georgia's National Tourism Administration indicated Georgia's Orthodox Church directly

<sup>72</sup> See supra note 71 (concluding part of the statement)

<sup>73</sup> See more at <https://www.amnesty.org/en/documents/pol10/0001/2015/en/> Amnesty International Report 2014/15: the State of the World's human rights by Amnesty International contents - Georgia; February 25, 2015; (last visited May 2, 2015)

<sup>74</sup> See more details at <http://dfwatch.net/georgian-church-wants-music-festival-called-off-82917-30362> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Georgian Church wants music festival called off; (last checked May 2, 2015)

<sup>75</sup> See supra note 74; the argumentation of the Church statement

<sup>76</sup> See at <http://dfwatch.net/georgian-church-plans-big-demonstration-against-kazantip-17875-30542> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Georgian Church plans big demonstration against KaZantip; (last visited May 2, 2015)

<sup>77</sup> See supra note 76; focus on position of Orthodox Archimandrite

<sup>78</sup> See more at <http://dfwatch.net/georgian-conservatives-demonstrate-against-kazantip-93323-30741> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Georgian conservatives demonstrate against KaZantip; (last visited May 2, 2015)



demanded that he cancel an electronic music festival.<sup>79</sup> As former official explained representatives of the Georgian Patriarchate defined ‘that it is Sodom and Gomorrah, it will be a disaster and Georgia will lose Anaklia. That’s why Ukraine lost Crimea, because KaZantip was held there...’ According to the former head of Georgia’s National Tourism Administration, ‘I told them that now Georgia has an anti-discrimination law’ and the church, clerics, civil society and formal government all have their own place, ‘chaining these together will result in becoming Iran’. As he puts it, this Patriarchate action virtually did not influence to him, but it had its primary effect on the Minister of Economy of Georgia, who appealed not to hold such kind of event and organize another festival instead.<sup>80</sup> Finally former official also pointed out regarding business negotiations within Patriarchate representatives and President of KaZantip Republic, but these deliberations failed after the Church ultimately requested exclusive monopoly about festival water import, ‘what do you think, clerics are ordinary businessman. They have their own companies, do business and do not pay taxes.’<sup>81</sup> As we indicated correctly this Patriarchate behavior pattern fully satisfied core constitutional theocratic narratives, when public reason and secular order undermined by the mighty religious institutions and actors.

When we perceive the whole picture about minority issues it is pertinent to indicate the survey outcomes regarding minority rights protection in Georgia carried out by CRRC-Georgia for NDI (National Democratic Institute).<sup>82</sup> Respondents at NDI question (question 23) how important is the protection of minority rights to Georgia’s democratic development? 47 percent in August answered that it is important and 51 percent in April 2014. But when we analyzed the content questions about which minority groups come first in mind and how important is the protection of such groups? The whole picture changed because the most vulnerable and unsecured parts and groups of Georgian society received only 16 to 21 (religious minorities 21 %; sexual minorities (LGBT) 16%) percentage of support.<sup>83</sup> As Georgian local observers indicated, Georgians are split on minorities issues.<sup>84</sup> According to the research content only 4 percent of respondents in regards to the LGBT and 16% to religious minorities think that their rights protection in the polity is very important. Although it exceeds the scope of this research paper, but it is necessary to note that the outcomes of the abovementioned sociological research demonstrate real constitutional identity crisis in Georgia.

At the concluding part of this chapter we focused on several of other facts which illustrate tremendous troubles for Georgian religious minorities to exist in the polity. As we indicated above properly regarding Muslim minority existential problems, practically this trend continues to date. According to the Georgian leading non-governmental organization Tolerance and Diversity Institute (TDI) report, discrimination of religious minorities is dominant trend among government formal institutions and state public servants. TDI research team underlines the increase of the direct attacks against Muslims and Jehovah’s Witnesses, according research outcomes cons Jehovah’s Witnesses in 2012 there were 10 religious motivated offences; this number grew to 40 in 2013. Also, during this time

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<sup>79</sup> See more at <http://dfwatch.net/fired-georgian-tourism-official-says-he-was-pressured-by-the-church-30532-31178> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Fired Georgian tourism official says he was pressured by the Church (last visited May 2, 2015)

<sup>80</sup> See supra note 79; position of the Minister of Economy of Georgia

<sup>81</sup> See supra note 79; for the general understanding see also second chapter of the research - Georgia’s Constitutional Framework Regarding Freedom of Religion; so-called concordat clauses

<sup>82</sup> See details at <https://www.ndi.org/node/21850> National Democratic Institute Public Attitudes In Georgia: Results of An August 2014 Survey; the full text of the opinion survey available at [https://www.ndi.org/files/NDI\\_Georgia\\_August-2014-survey\\_Public-Issues\\_ENG\\_vf.pdf](https://www.ndi.org/files/NDI_Georgia_August-2014-survey_Public-Issues_ENG_vf.pdf) Public Attitudes In Georgia: Results of an August 2014 survey carried out for NDI by CRRC-Georgia (last visited May 2, 2015)

<sup>83</sup> See content questions 24 and 25; Supra note 82; (last visited May 2, 2015)

<sup>84</sup> See outcome analyzes of the NDI public attitudes survey at <http://dfwatch.net/georgians-are-split-on-minorities-issues-14461-28439> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Georgians are split on minorities issues; (last visited May 2, 2015)

there were several violent incidents in the eastern and western regions of Georgia.<sup>85</sup> Public Defender (Ombudsman) office of Georgia confirmed that there was a growth of religiously motivated incidents during aforementioned time, also as the media coordinator of the Ombudsman office appealed “clearly, the visibility of any tensions between different religious groups has been increased after 2012 and these cases are widely covered by media. Increased media coverage and discussion in the society over the issue of intolerance towards different minority groups can be also assessed positively, as it contributes to open public debates and awareness as well.”<sup>86</sup>

TDI also focused on the preferential legal treatment to the Georgian Patriarchate and indicated problems by the side of state servants, officials do not follow the fundamental constitutional principles such as secularity and equality to the law. Vice versa state officials and actors construed evaluations which were fully based on their personal religious affiliations,<sup>87</sup> which undermined constitutional functioning of the statehood. Research also concentrated on some transnational judicial actors help regarding implementing religious freedom in practice, according study one such an interesting exemplar was European Court of Human Rights (ECHR) and its decision about Jehovah’s Witnesses congregation.<sup>88</sup> As one of the researcher exemplified, this decision was the turning point towards perception of seriousness religious based violence by side of official state, judicial institutions.<sup>89</sup> Besides that it is important to focus on the effectiveness and activity of the new established State Agency on Religious Affairs (consultative body of Government of Georgia, particularly Prime Minister, with state budget of 4.5 million GEL)<sup>90</sup>, as the internal Georgian observers noted precisely there is problems about available public data and information and responsiveness of this agency officials.<sup>91</sup>

As we mentioned correctly above with regards to the constitutional identity crisis in Georgian context and landscape; other current researches confirmed this thesis and construed a revival trend in Georgia’s schools related to intolerance to religious minorities. According Human Rights Education and Monitoring Center (EMC) the environment in the Georgian public schools is practically intolerant and there are problems both teacher’s attitudes towards religious topics and school teaching literature. According research findings most of the teachers attitudes were discriminative by nature, “to be a Georgian is similar to being Christian”, “popularization of orthodoxy is my, as an orthodox’s duty”, “unfortunately we have pupils who are Jehovah’s Witnesses. I say “unfortunately” because for me it is unacceptable that Georgian is Jehovah’s Witness”.<sup>92</sup> As regarding school textbooks and studying

<sup>85</sup> See at <http://dfwatch.net/religious-minorities-in-georgia-shortchanged-due-to-prejudice-34905-31466> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Religious minorities in Georgia shortchanged due to prejudice; (last visited May 2, 2015)

<sup>86</sup> See supra note 85; position of PDO media coordinator

<sup>87</sup> See supra notes 85-86; <https://tdigeorgia.wordpress.com/2014/09/10/396/> Tolerance and Diversity Institute; Study of Religious Discrimination and Constitutional Secularism (last visited May 2, 2015) TDI research team focused on Shortfalls in Georgian Legislation; see also second part of present research paper Georgia’s Constitutional Framework Regarding Freedom of Religion

<sup>88</sup> See European Court of Human Rights; Case of 97 Members of the Gldani Congregation of Jehovah’s Witnesses and 4 others v. Georgia available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-80395#{"itemid":\["001-80395"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-80395#{) (last visited May 2, 2015)

<sup>89</sup> See the whole text of research Study of Religious Discrimination and Constitutional Secularism in Georgia; Tolerance and Diversity Institute; Tbilisi, 2014 available at <http://www.minorities-network.org/wp-content/uploads/2014/10/239348655-Study-of-Religious-Discrimination-and-Constitutional-Secularism.pdf> (last visited May 2, 2015)

<sup>90</sup> See more at <http://dfwatch.net/georgia-creates-new-agency-for-religious-issues-58462-26590> Democracy & Freedom Watch Reporting on the State of Georgian Democracy Georgia creates new agency for religious issues; (last visited May 2, 2015)

<sup>91</sup> See supra note 85; concluding part titled Mysterious agency

<sup>92</sup> See more at <http://dfwatch.net/bullying-in-schools-is-a-persistent-problem-in-georgia-60346-27726> Democracy & Freedom Watch Reporting on the State of Georgian Democracy Bullying in schools is a persistent problem in Georgia (last visited May 2, 2015)

materials representatives of the EMC research team exemplified that those aforementioned studying sources identified Georgian ethnicity with orthodox Christianity and perceived it as “us”, while “non-believers” perceived as “others”, thus in a genuine negative context.<sup>93</sup>

All in all so-called school indoctrination is not the new phenomenon in Georgian reality; virtually general education system does not allow social cohesion towards the principles construed by Georgian supreme political and legal act, Constitution. Therefore one of the fundamental pillars due to the implementation of constitutional secularism is fully undermined by sacral narratives and perceptions, state institutions for instance Ministry of Education received so many recommendations by side of NGO interlocutors in country but, the problem continued its existence.

This voyage across the Georgia’s constitutional theocracy societal environment comes to an end. We focused on constitutional identity problems, now we are going to illustrate this once again and perceive the so-called “Muslim Saga”, also conclude and identify the future constitutional directions of Georgian society. One of the most vivid exemplar constitutional identity crisis through the recent trends prism was the Kobuleti religious school case. Here local Christian parishioners opposed frontline Muslim minority’s decision to open a religious school in their neighborhood.<sup>94</sup> As Muslims exemplified they want to open new Muslim boarding school (madrassa), but as it was at the 17<sup>th</sup> May events orthodox majority prevented to implement this decision in practice. During the months of 2014 year orthodox “watchdogs” obstructed school building and patrolled during day and night. The result is visible; the school building is empty... But the apogee of this intolerance was at September 10, 2014 when a pig “was slaughtered here and its head was nailed to the door of this building.”<sup>95</sup> The reaction of the Georgia’s Orthodox Church was the same as it was in the previous cases, Holy See condemned and declared unacceptable aforementioned Islamophobic phenomenon in Kobuleti, but emphasized that it also perceived this case as provocation against the will of majority of population.<sup>96</sup> Virtually the rhetoric was eternity and unchangeable.

As one of the authoritative international institution Parliamentary Assembly of Council of Europe put it in its Resolution titled the functioning democratic institutions in Georgia “the increase of intolerant discourse and discriminatory acts against minorities, especially sexual and religious minorities, in Georgian society is of concern. The Assembly is concerned by the lack of effective investigation and prosecution of hate crimes against minorities. The authorities need to make clear that such behaviour will not be tolerated and that any perpetrators of violent or discriminatory acts will be prosecuted. There can be no impunity for such acts, irrespective of who committed them. All stakeholders, and especially representatives of political parties and institutions that hold high moral credibility in Georgian society, should refrain from divisive language and acts that could incite tolerance and adversely affect the situation of minorities.”<sup>97</sup>

Now turning to the main challenge of this paper - where to? Or what is the real choice of Georgian people? By the scientific terms there is no definitive and decisive answer, clearly we developed as far as

<sup>93</sup> See supra note 92; positions of EMC representatives; See also Religion in Public Schools An Analyses of Educational Policy from the Perspective of Religious Freedom; Human Rights Education and Monitoring Center; Tbilisi 2014; available at <http://emc.org.ge/2014/03/31/religion-in-public-schools/> (last visited May 2, 2015)

<sup>94</sup> See virtually every details about this incident at <http://dfwatch.net/kobuleti-where-muslims-are-not-welcome-88539-31496> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Minorities; Kobuleti, where Muslims are not welcome; (last visited May 2, 2015)

<sup>95</sup> See supra note 94; see also <http://dfwatch.net/locals-slaughtered-pig-outside-planned-madrassa-in-georgia-75567-31129> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Minorities; Locals slaughtered pig outside planned madrassa in Georgia; (last visited May 2, 2015)

<sup>96</sup> See the position of Orthodox Church at <http://dfwatch.net/georgian-orthodox-church-issues-statement-on-madrassa-incident-96424-31153> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Minorities; Georgian Orthodox Church issues statement on madrassa incident; (last visited May 2, 2015)

<sup>97</sup> See Parliamentary Assembly Council of Europe Resolution 2015 (2014) The functioning of democratic institutions in Georgia; Assembly debate on 1 October 2014 (32<sup>nd</sup> and 33<sup>rd</sup> Sittings) Text adopted by the assembly on 1 October 2014 (33<sup>rd</sup> meeting); available at <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21275&lang=en> (last visited May 2, 2015)

possible vivid picture towards constitutional theocracy paradigm, but the genuine answer depends on overall analysis of the constitutional identity in polity. As the findings of the Democracy & Freedom Watch discussion shows the internal Georgian experts also focused on problems of identity perception, also emphasized the government inadequacy against clear violation of the basic human rights substance. As Georgian theologian Beka Mindiashvili explained all in all identity perception is the main source of the problem, and this phenomenon fully covered all minority issues in the state, on the other side another obstacle was the passive position of formal officials and institutions.<sup>98</sup> It was typical that some insiders in Georgian reality focused on so-called Georgian “traditions”<sup>99</sup> thus justified and defended the behaviour of the Georgian patriarchate and other radical clerics, but when the human rights are at stake there is no arguments and no rationale accented contextual or majoritarian approach, as distinguished Australian constitutional scholar and theorist Luis Cabrera figuratively puts it “here, our culture, our tradition, has negated the rights of human beings, negated the rights of a particular group of people. That is what to the world we wanted to highlight...”<sup>100</sup>

### Concluding Thoughts – Quo Vadis?

The whole analysis of the Georgia’s Theo-constitutional landscape shows that there are vivid arguments to evaluate such a societal system as constitutional theocracy. Georgian case fully satisfied on the one hand formal constitutional and on the other hand practically theocratic discourse. This paper exemplified and analytically describe formal constitutional framework of Georgian polity, which is sound by its essence, but as case perceptions confirmed, in practice this solid constitutional grounds thoroughly undermined by orthodox theocratic narratives and particularly its implemented institutions.

To go back to the question and challenge we asked initially the answer would not be clear and precise. Instead of the full perceptions of Georgia’s constitutional identity there is no an option or possibilities to find clear answers by the side of pure scientific constitutional terms. Thus one of the most solid, comprehensive and coherent finding construed by the case study is the strong focus regarding real constitutional identity dysfunction in the polity. There are no lessons learned from the past post-soviet transition in Georgia. Early transition problems has ended after the Rose Revolution but the marginalization and discrimination of “non-believers” is typical a pattern and as research outcomes emphasized, solely enhanced after the first peaceful power transitions in Georgia. Fortunately Georgian system is not theocracy but as the interlocutors and activists of the most vulnerable groups underlined exactly, from ‘stool well-equipped clergy’ and pig’s head scenario to real theocracy stays only minor space. Quo Vadis? *Secundum rationem pro causa publica, manere minor spatio...*

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<sup>98</sup> See the findings of the discussion regarding religious intolerance in Georgia at <http://dfwatch.net/discussion-reasons-for-instances-of-religious-intolerance-20463-31173> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Minorities; (last visited May 2, 2015)

<sup>99</sup> See more about these contextual discourse at <http://dfwatch.net/respecting-human-rights-in-georgia-77460-23501> Democracy & Freedom Watch Reporting on the State of Georgian Democracy; Minorities; (last visited May 2, 2015)

<sup>100</sup> See Cabrera’s impressive work towards the problems related to global democracy and human rights relativism. Luis Cabrera (2015). *Diversity and cosmopolitan democracy: Avoiding global democratic relativism*. *Global Constitutionalism*, 4, pp. 18-48 available at <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=9538244&fileId=S2045381714000185> (last visited May 2, 2015)



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