

THE POWER OF ‘DIVINE COMMANDS’ AND THE IMAGE OF A NEUTRAL STATE

Legal Dimension of Church-State Relationship in Georgia

By

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Abstract

The Church-state interplay as well as the religion-politics linkage has always been a subject of controversy. The Secularization thesis according to which the modernization process would inevitably bring secularization and a decline in religiosity was challenged many times in light of the religious upsurge in modern societies. Georgia is among the countries which experienced a profound upheaval of religiosity in the public sphere after the dissolution of the Soviet Union. Even though one can notice the tension between the Church and the state time to time, the interplay between the two normally presents itself as a cooperation.

The research has multiple purposes. First, it aims at providing the legal analysis of the legal framework on the status of the Georgian Orthodox Church and religious freedom. Second, it seeks to explain the influence of the Church on the law-making process. Third, depicting the tension between the Church and the Constitutional Court is one of the main foci of the research.

Finally, the thesis seeks to assess the legal dimension of the Church-state relationship in Georgia through the prism of the doctrine of state neutrality and constitutional secularism. It is argued that the lack of coherent and comprehensive legal framework and the discriminatory treatment of the state towards different religions and confessions in Georgia challenges the neutrality of Georgian state. On the other hand, the Georgian Orthodox Church does not always have a final say on legal matters pertaining to the social or religious issues. Whereas the executive and legislative bodies largely reflect the popular sentiments, the Constitutional Court tends to act in a clearly counter-majoritarian manner and upholds the principle of equality by the law.

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Introduction

In July 2017, Giorgi Kvirikashvili, the then prime minister of Georgia elaborated on the relations between the state and the Georgian Orthodox Church (GOC) at the opening of Georgian Patriarchate's hotel "Sno". He stressed "the tremendous power" of the Orthodox Church and explicitly stated:

Our statehood and our Church are as interlaced with each other, as Saint Nino's cross was with her braid. Therefore, despite that the Church and the State are independent, secularism in its classic concept is inappropriate in Georgia and we think that the model of our country is unique in the world (ISFED, 2017)

What Kvirikashvili meant by the "classical concept" of secularism is somewhat opaque. Nevertheless, the relationship between Church and state in Georgian case certainly has its distinctive tenets both in normative and empirical senses. Since the restoration of independence in 1991, the Orthodox Church has enjoyed increasing political influence and power. The previous literature on the relationship between the Church and the state predominantly focused on the Church's influence on the public opinion, the formation of national identity and the role of the Church in the history of the country (e.g. Alasania 2009, Andronikashvili and Maisuradze 2010, Chitanava 2015,), thus examined the issue in political, social and historical contexts. The aim of the research is to shift the focus on the legal dimension of the Church-state interplay in Georgia.

The research first introduces the research puzzle and main methodology and elaborates on the importance of the research of the legal aspects of the Church-state interplay in Georgia. Given the central question, the research employs within-case level of analysis and combines several methods, including the conceptual analysis of the categories of secularism and state neutrality, historical analysis, legal analysis of the current legislation and the rulings of the Constitutional court. In addition, given the lack of literature, the empirical part of the research employs the in-depth, semi-structured interviews with independent experts,

politicians, constitutionalists and religious leaders from Georgia. Chapter One elaborates on the theoretical framework employed in the research. It examines rather controversial and intrinsically linked conceptions of secularism and state neutrality. I present secularism as a classical concept which encompasses three interrelated aspects: the separation of the Church and State; freedom of religion and belief and state's neutral attitude towards different religions and confessions. Chapter Two provides a short historical background of the relationship between state and Church in Georgia. The time frame for the historical analysis starts with the overview of the 19th century's political developments and political thought on the Church-religion linkage and ends up with the analysis of the current political development. The purpose of the historical analysis is to depict the conjectural causality which explains the increasing political and legal power of the Georgian Orthodox Church. Chapter Three engages in the analysis of the law-making processes and ensuing legislation that regulates the relationship of the state and the existing religions in the country. Here I elaborate on the Constitution and the Constitutional Agreement between the Church. Furthermore, chapter examines the policies and laws which demonstrate the influence of the Church. Chapter Four provides an insight of the recent rulings which were followed by the tension between the GOC and the Court. Taking the popularity of the Church in Georgian populace into consideration, this tension often presents itself as a counter-majoritarian difficulty. If both the executive and legislative bodies of the government tend to overlook the principle of neutrality and secularism entrenched in the Constitution, the Constitutional Court frequently acts in a counter-majoritarian fashion and upholds the principles of equality and state neutrality.

A. Research Puzzle

The literature which focuses on the legal elements of the Church-state relations is rather scarce (e.g. Begadze 2017, Meladze and Mumladze 2016, Tsintsadze 2007). The work papers, publications and reports pertaining to the religious discriminations, governmental policies and legislation on religious matters provide the unit of analysis for the research (e.g. reports of the *Tolerance and Diversity Institute* and *Human Rights Education and Monitoring Center* (EMC)). In my research I aim at shifting the focus to the legal dimension of the interplay between the Georgian Orthodox Church (GOC) and the state not only by providing the legal analysis of the framework regulating the relationship but also depicting the tension between the Church and the Constitutional Court. By shedding light on this tension and analyzing the impact of the Church on the lawmaking process of the country the research provides a more comprehensive understanding of the Church-state relationship in Georgia. Whereas the influence of the Church on the lawmaking process is significant, its decisions are not always final. To evaluate the policies where the Church passed through its positions and the ones in which it failed to impose its ideas to the decision-makers is one of the main foci of the research.

The Orthodox Christianity is a religion of the overwhelming majority of Georgian citizens (83.1%) (The Religion and State Project, 2014). The popularity of Orthodox Christianity as well as the Georgian Apostolic Autocephalous Orthodox Church has been demonstrated by numerous studies. According to IRI public opinion survey of 2018, 84% of respondents assess the work of Georgian Orthodox Church positively. Although, popularity of the Church has been in decline, it still remains the most trusted institution in the country. The respondents favor the performance of the church over the performance of the Georgian armies (83%), Georgian media (68%) and the police (IRI 2018). Whereas the Orthodox

Church is the most trusted institution of the country, religious minorities in Georgia experience systematic discrimination and intolerance (EMC 2016). Religious minorities, such as Jehovah's witnesses, Baptists, Pentecostals, and Muslims "have reported discrimination and hostility, including from Georgian orthodox priests and adherents, and are insufficiently protected by the state" (Freedom House 2019).

It is against this empirical background that the thesis focuses on the influence of the Georgian Orthodox Church on the lawmaking process in the framework of the doctrine of state neutrality and the principle of secularity. The purpose of the thesis is to scrutinize the legal practice of Church-state relationship in Georgia in light of the contemporary theory on secularization and state neutrality. Apart from depicting controversies and ambiguities in the legislation which regulates the Church-state relations, the research posits that there is a significant lack of precise and foreseeable rules which would define the state's policy towards religions and Churches in Georgia. Furthermore, the research seeks to cast light on the contradictions between the existing laws, which arguably provide a room for interpretation and maneuver.

B. Methodology

Numerous theories attempt to explain the peculiarities of church-state relations in transitional states, including the post-Soviet ones. Inglehart and Norris point out that according to the traditional secularization thesis "religiosity has gradually decayed in Central and Eastern Europe for the same reasons that operate in other industrialized societies" and maintain that the erosion of the salience of religious values or habitual churchgoing would be expected in societies which go through the transition from "poorer agrarian to more affluent

industrial states” (Inglehart and Norris 2004, p.113). However, they argue that the consequences of the official repression of religion in the Soviet Union varies greatly from one country to another and in some cases the consequences of the repressions have been proved to be completely counter-productive (Inglehart and Norris 2004, p.112). In her comparative qualitative research on Russia, Belarus and Ukraine, Irena Borowik (2002) states that religious practice in these orthodox countries is similar to the most secular Western European societies. According to Borowik, the process of” atheization” produced a spontaneous process of secularization in Eastern Europe after its interruption (Borowik 2002, p. 506).

Taking previously mentioned adamant trust of Georgian citizens for the Georgian Orthodox Church, this hypothesis is at very least questionable. Moreover, the characteristics of church-state relations and the religious policies in post-Communist and post-Soviet countries vary greatly. Table 1 provides the comparison among 8 post-communist Eastern European countries, 6 of which were part of the Soviet Union and four of which are the Eastern Partnership initiative members.

Summary	Georgia	Armenia	Ukraine	Romania	Moldova	Russia	Belarus	Serbia
Total Population (2015) ¹	4,200,269	3,010,275	43,890,075	21,616,761	3,357,294	141,316,456	9,098,260	7,260,705
Area in square miles	26,911	11,484	233,032	92,043	13,070	6,601,668	80,155	29,913
Life Expectancy from birth, in years (2015) ²	73.0	74.2	71.2	70.9	71.4	66.6	73.6	75.5
Gross National Income per capita, in current international dollars (2016) ²	9,450.0	9,000.0	8,190.0	22,950.0	5,670.0	22,540.0	17,210.0	13,680.0
Official Religion(s) (2015) ³	Orthodoxy	Orthodoxy	Christianity	None named	Orthodoxy	Orthodoxy	Orthodoxy	None

Indexes	Georgia	Armenia	Ukraine	Romania	Moldova	Russia	Belarus	Serbia
RAS3 State Regulation of Majority or All Religions Summary (0-10, lower means less regulation) ⁴	1.1	0.5	2.6	1.1	2.8	3.0	4.7	0.9
RAS3 State Discrimination of Minority Religions Summary (0-10, lower means less discrimination) ⁴	3.4	4.8	1.1	2.9	2.0	6.1	7.1	2.0
RAS3 State Funding of Religion Summary (0-10, lower means less state funding) ⁴	6.0	3.0	1.0	6.0	1.0	4.0	2.0	7.0
RAS3 Societal Discrimination of Minority Religions Summary (0-10, lower means less discrimination) ⁴	4.2	3.4	2.6	3.2	2.6	4.2	2.1	1.0

Table 1: Compare Nations. Source: The Association of Religious Data Archives

Apparent drastic differences between the level of secularization in these countries and the ways in which states and Churches interact and cooperate calls the generalizability, and thus the external validity of such hypotheses, into question. One can see, for instance, significant differences between the cases of Georgia and Armenia. Although orthodoxy represents a dominant religion in these countries, state funding of religion is twice as much in Georgia as in Armenia. Likewise, the difference in societal and state discrimination scores between the countries is apparent (The Religion and State Project, 2014; Compare Nations). In a similar vein, the level of state funding of religion is significantly higher in Georgia than in Russia (6.0 in Georgia, 4.0 in Russia). On the other hand, state regulation of dominant or all other religions is lower in Georgia (1.1) than in Belarus (4.7). While minority religions are more discriminated by the state in Belarus than in Georgia (3.4- Georgia; 7.1), they experience more societal discrimination in the latter as compared to the former (4.2 Georgia, 2.1

Belarus). The only country from the selection in which state funding of religion superseded the Georgian state expenditures on religions is Serbia. But in contrast with Georgia, Serbia has not declared an official religion.

In addition, Table 1 shows that the church-state relations in Georgia significantly differ from the church state relations in two Eastern Partnership countries- Ukraine and Moldova. Although these three are rather similar in their levels of democratic development both Georgian society and state are seemingly more discriminatory than Moldovian and Ukrainianese.

These abundantly obvious and even striking differences strengthen the importance of a single case study which employs a within-case level of analysis. The spatial boundary of the research is Georgia and the temporal boundary is the time period for historical analysis is the between the declaring the independence of democratic republic of Georgia in 1918 until present-day. Having opted for a single case analysis, and given the character of the subject and central question, I will need to combine several methods. I start with a conceptual analysis of the categories of state neutrality and secularism. This will be done by critical close reading of the relevant works in political theory. The goal of this theoretical exercise is to come up with the working definitions of state neutrality and secularism that will be used throughout the thesis. Furthermore, I will apply a historical analysis. In order to explain why and how the Georgian Orthodox Church has gained considerable power, one should analyze the genealogy of the relationship between the Church and the state. While elaborating on how the relationship between the Church and the state is regulated by the law, I will apply the legal analysis of the relevant legal framework, which includes the Constitutional Agreement and the anti-discrimination law. Moreover, in order to depict the political power of the church, the content-analysis of the statements, sermons and epistles of the Catholicos Patriarch Ilia II and the speeches of prominent Georgian politicians will be used in the

research. Another method the research employs for obtaining information on the current and historical developments of Church-state relationship in Georgia is conducting the interviews. One reason that I chose interview as a method is that, as previously noted, that the legal dimension of Church-state interplay is not expanded in previous literature.

As I mentioned above, the previous literature stresses the influence of the Orthodox Christianity and the Orthodox Church on the formation of Georgian national identity. Merab Ghaghanidze argues that even though 19th century and 20th century ethno-nationalist sentiments, were by no means based on the church, in the 21st century the Church and its membership became the fundament of ethno-nationalism (Ghaghanidze 2016, p. 156). In a similar vein, in their article “Secularization and Its Vicissitudes in Georgia” Andronikashvili and Maisuradze suggest that while secularization is vital for the formation of a modern secular nation-state, the secular project of the 19th century which was directed towards the future was replaced by “national-religious syncretism” (Andronikashvili and Maisuradze 2010, p.15). One can see that the close linkage between Georgian national identity and Orthodox Christianity, as well as the Orthodox Church is the outcome of historical processes. The present thesis posits that the dramatic replacement of the 19th century’s narrative with ethno-religious nationalism adopted by the Church, as well as the Soviet legacy, are directly related to the reasons as to why the Constitutional Agreement was adopted and why the Church has become politically influential. Furthermore, it should be noted that the reason as to why the Church gained significant political and legal power is its perceived role in the formation of the Georgian national identity and consciousness. As Kakachia argues, the Church became a powerful symbol of the sovereignty of the country and therefore its stance on moral, ideological and political issues carries a significant weight (Kakachia 2014, p.2).

As for the legal aspect, the paper composes of three main dimensions. First, it presents and analyzes the relevant constitutional and legal provisions, including the

Constitutional Agreement and the anti-discrimination law. It elaborates on the lack of the coherent and comprehensive legal framework and equal treatment of different religions. Second, the research seeks to show how the Church impacts the lawmaking process in the country. One of the examples elaborated here is the anti-discrimination law, Third, the thesis elaborates on the tension between the Georgian Church and the Constitutional Court of Georgia and focuses on the its decisions, including the ones pertaining to the law on agricultural land ownership, on the legalization of cannabis and on the certain provisions of the tax code challenged by several religious organizations in Georgia. All these decisions of the Constitutional Court were followed by the explicit discontent of the Church.

Chapter 1 – Theoretical Framework

One of the main goals of the research is to explain whether the influence of the Georgian Orthodox Church on the lawmaking process and the “outstanding role” it is granted by the state hampers the principle of state neutrality. The doctrine of state neutrality holds that a state must not promote or enforce the forms of life which it considers as favorable or ethically worth pursuing. Considering that state neutrality is a highly controversial category, it is crucial to delve into its definition. In general, the doctrine of state neutrality entails the impermissibility for a state to promote certain forms of life which it considers ethically valuable and worth pursuing. State perfectionism, in contrast, according to Kymlicka, envisages improving people’s lives by promoting the replacement of less valuable options by more valuable ones (1989, p. 895).

Liberal neutrality entails the notion that the state should provide a neutral framework within which “different and potentially conflicting conceptions of the good life can be

pursued” instead of promoting its own particular ideas or punishing the alternative ones (Kylimcka 1989, p.883). The question is, in what sense and on what grounds can neutrality of state be justified and endorsed. In this regard, the neutrality of justifications and the neutrality of effects are distinguished. The former holds that a justification of s policy ought to be neutral (Gaus 2009, p. 81). This justification should not exploit differences in citizens’ evaluative standards of the conceptions of the good (2009, p. 92). Neutrality of effects, on the other hand, holds that a policy is neutral if it is “reasonably expected [of it] to not favor or disfavor any particular conception of the good, either in terms of its popularity or desirability” (Cordelli 2017, p. 36).

Neutrality is widely accepted to conflict with state perfectionism and is defined as the rejection of the thesis that a state can legitimately enforce the ways of life which it holds valuable or discourage ones which it considers worthless (Patten 2011, pp.249-250). In contradiction with these two rival understandings, Alan Patten provided a novel understanding of neutrality - the neutrality of treatment, which envisages equal accommodation of conflicting conceptions of the good by state practices and institutions (Patten 2011, p.251).

Patten provides a schematic representation of a state’s policy in order to depict difference in neutralities of different senses:” With intentions I, the state adopts policy P, which can be expected to have effects E”. Accordingly, neutrality in intentions sense focuses on the I dimension of the policy making process, whereas the proponents of the neutrality of effects rest their focus on E dimension. In contrast, the neutrality in treatment sense looks at the P dimension (Patten 2011, p. 254).

Further engagement of the state neutrality is beyond the scope of this paper. It can be argued, however, that in terms of the practical implication, none of these understandings of the state neutrality can be the ultimate and decisive one. In the case of Georgia, state

neutrality in all senses of justifications, effects and treatments seems to be questionable considering that the state policies hamper the principle of equality and there is a drastic difference between the roles which the different religion institutions play in Georgian society. Furthermore, it is unclear why the role, arguably played in the history of Georgia, of the Orthodox Church ought to guarantee it legal privileges today. This argumentation was provided by the Constitutional Court of Georgia, which will be discussed below.

1.1 State Neutrality and Secularism

The relationship between the Church and state has always been a topic of debate, questions of which are: should a state be separate and independent from the Church? If and to what extent is the Church-state collaboration possible in liberal constitutional democracies? The linkage between concepts of state neutrality and secularism seems to be intuitive. Secularism, which entails the separation of Church and state, calls for the neutral treatment of the state towards different religions, confessions and beliefs. David Pollock argues that the state, the law and the public institutions we all share must be neutral towards different religions and beliefs: “Laws, government and institutions that do not impose or assume any religion or belief on the part of any individual citizen leave the individual free to hold any religion or belief, or none” (Pollock 2011). He maintains that secularism is the best guarantee of freedom of religion or belief, however, it is the enemy of religious privilege (Pollock 2011).

Pollock is not the only scholar who views the principle of state neutrality as a necessary condition for secularism. Janos Kis endorses the notion that a constitutional state should be neutral in matters of religion and suggests that state neutrality can serve as the only

sound justification for the separation principle. (Kis 1994, p. 3). An alternative justification can be the rejection of soundness and relevance of religious belief. This, on the other hand would be a highly problematic providing that the establishment of the truth regarding religious teaching may lead to “sharp and irresolvable conflicts”, hence undermining stability. Furthermore, Kis maintains that under such circumstances a coalition-building would be prevented (Kis 1994, p. 4).

In a similar vein, Andras Sajo considers secularism as a necessary condition for constitutionalism. According to him sustaining public order requires a considerable extent of secularization. In his words, “constitutionalism exists only where political powers do not ground their public affecting decisions on transcendental concerns” (Sajo 2009, p.2401). Sajo points out the two conditions which the constitutionalism is grounded on_ the human faculty of reason and the popular sovereignty (Sajo 2008, p.605). The first denies acceptability of “divine reasons” and endorses the need for public reason in law, the second denies any source of the law which is not secular (Sajo, p.605). Sajo explains that the strong religions tend to impose their “versions of salvation on the rest of society by creating general rules”, thus the “divine commands” can be accepted to extend to the governmental conduct outside the respective religious community (Sajo 2008, p.606).

This paper posits that the doctrine of state neutrality enjoys supremacy over the doctrine of state perfectionism and represents an essential condition for proper functioning of a constitutional democracy the central tenets of which is the equality by the law.

1.2 Secularization Thesis Revisited

Liberalism has had a neutralist bent since its beginnings (Kis 2012). In 1689 in “The Letter Concerning Toleration” John Locke, widely considered as one of the founders of liberalism, argues that the commonwealth is a society which serves “procuring, preserving and advancing their own civil interest” such as life, liberty, health... He maintains that one needs to exactly distinguish between the civil government’s business and the one of the religions and “settle the just bounds” that will lie between these two (Kis 2012, p. 218). Locke holds that the care of the soul “is not committed to the civil magistrate” but to an individual. He considers imposing one’s religious beliefs on others morally impermissible (Kis 2012, pp. 218-219)

The main reason based on which the first liberal thinkers justified the separation of church and state was the crucial importance of the personal autonomy_ the capacity of individuals to decide which is the good life for them. John Stuart Mill, for instance, rejected the presence of one objective conception of good life and argued that “over himself, over his own body and mind, the individual is a sovereign” (Mill 1859, p. 78).

Philosophers of Enlightenment and later thinkers believed that modernization would bring about the decline in religion (Berger 2008, p.23). Even though the thinkers had different positions on the role of the religion in the public sphere, they agreed that the modernization would inevitably result in secularization¹. Berger suggests that these authors were mistaken, and that modernization did not cause secularization, but pluralization, which

¹ Berger brings the examples of Durkheim and Weber. He suggests that while Durkheim saw secularization as a positive phenomenon, for Weber perceived it as an imprisonment of a modern man in the “iron cage” of rationality (Berger 2008,23).

by no means entails the decline in religion². Furthermore, Berger distinguishes between three types of secularism: first one is differentiation, which refers to the institutional differentiation of the roles of the state and religion and their separation. This means that “the state is not hostile to religion but draws back from direct involvement in religious matters and recognizes the autonomy of religious institutions” (Berger 2008, p.24). The second type of secularism envisages the privatization of religion and views religion as a “strictly private matter”. According to Berger, this type of secularism, at least as long as the public role of religion is concerned, is hostile to religion. It is, in his words, “characterized by anti-religious animus” (Berger 2008, p. 24). The third type of secularism is especially malevolent to religion. It both serves its privatization and repression of religion. Berger warns that these typologies, albeit being useful, present oversimplification of the reality. One might argue that the separation can be attributed with the privatization, as well, or can become its condition. In addition, the line between the second and third type of secularisms may not always be obvious and easy to be drawn.

Jose Casanova challenges the privatization thesis and argues what the world is witnessing “deprivatization” of religion, which entails the refusal of religious institutions to “accept marginal and privatized role... restrict themselves to the pastoral care of the soul” and asking questions pertaining to the relation between public and private, while challenging claims of markets and states (Casanova 1994, p. 5).

Another relevant account on secularization is proposed by Jonathan Fox, who also places the validity of secularization thesis under scrutiny. However, in contrast with Berger³ (2009), Fox questions applicability of the secularization thesis to the Western states and

² Resurgent Islam and evangelical Protestantism, as well as the growth of orthodox church in Russia and orthodox Judaism in America are some of the examples with which Berger demonstrates that the modern world by no means become entirely secular.

³ Casanova himself cites Berger (2009), according to whom, the secularization theory is still applicable to the central and western Europe.

defines political secularism as an ideology or set of beliefs which advocate that “religion ought to be separate from all or some aspects of politics and/or public life” (Fox 2016, p. 156). He suggests that in modern world, there is a constant struggle and competition between secularism as an ideology on the one hand, and religions, on the other, while each of these camps have their own victories and defeats (Fox 2016, p.160). Government religious policy, on its side, is a consequence of this continuous competition between religious and secular forces. Fox suggests that a government religious policy is an outcome of competition between secular and religious political actors in society, while each of them are aspiring to impact and shape state policies (Fox 2016, p.159).

Andras Sajo admits that there is an upsurge of religiosity in the modern world but does not see secularism as hostility towards religions. In his reading, the term “secularism” does not entail the positions pertaining to the “truth” or proper place of religion in society. Instead, it is a feature of constitutionalism which entails a “legal arrangement that does not follow considerations based on the transcendental or the sacred” (Sajo 2008, p.107).

I accept the argument that secularization does not necessarily entail a decline in religiosity and that religion has not really become a private matter. This thesis posits that secularism and the principle of secularity are composed of three interrelated dimensions. The first is the separation of the Church and state, thus the separation of their affairs. However, as Sajo rightly argues secularism in constitutional law assumes the states take over the social functions which were used to be the duty of “churches” or that they are privatized (Sajo 2008, p. 609). The second dimension composes of the neutrality towards all religions, which enables existence of pluralism, the core feature of constitutional democracy. The third dimension is the freedom of religion and belief which directly related to the second dimension and the principle of equality. The research posits that in a secular state everyone is

entitled freedom to decide on their beliefs and religions, thus imposing one particular religion or belief to individuals is impermissible.

Chapter 2 – Between struggle and cooperation: historical background of Church-state relationship in Georgia

The Georgian Orthodox Autocephalous Church played a crucial role in the formation of the national identity of the country. Its influence was crucial on society, culture, economics and politics (Kakachia 2004). According to Dimitry Gegenava, the cooperation between the Church and the state assumed different forms throughout the history of Georgia - sometimes the Church enjoyed its supremacy over the state and sometimes the interests of the latter prevailed (Gegenava 2018, p. 257).

The conversion to the Christian faith traces back to the fourth century A. D. The Church of proto-Georgian state of Kartli was originally recognised in 486AD under the umbrella of the church in Antioch (Hug 2015, 6). After the Russian annexation of Georgia between 1801-11, Georgian Orthodox Church became an exarchate of the Russian Orthodox Church. In 1860s the idea of secularization was introduced by the Georgian elites of that time. The government of social-democratic republic of Georgia of 1918-1921 adopted strictly secular policies (Gegenava 2018, 256) In 1921 Georgia was annexed by the Bolshevik army. Following the fall of the Soviet Union, the Orthodox Church and Orthodox Christianity started to play a significant role in social, political and legal matters in post-Soviet Georgia.

In the following paragraphs I will first examine the 19th century secular discourse, initiated by the Ilia Chavchavadze and the political elite of that time and elaborate on the religious policy of the independent Georgian republic of 1918-1921. Afterwards, I will revisit

the dynamics of Church-state interplay in the Soviet Georgia. Finally, I will focus on the developments of Church-state relationship and the revival of religion in post-Soviet Georgia. Finally, I will attempt provide an explanation as to why the Georgian Orthodox Church has gained increasing political and legal power.

2.1 The 19th century secular discourse and strict secularism in the democratic republic of Georgia (1918-1921)

From the 1850s on many sons of Georgian impoverished princely families started pursuing secular education offered by the Tsarist Russia (Reisner 2009, p.40) They later were referred as ‘Tergdaleulebi’, which means “those who have drunk the water from the river Terek” (Reisner 2009, p.40) Crossing the river which is a symbol of the geographical and cultural boundary between Russia and Georgia became a symbol of overcoming boundaries in the process of a new national identity formation (Reisner 2009, p.36). In this period, the Georgian Orthodox Church ceased to play the crucial role in terms of the political legitimization (Reisner 2009, p.40). *The Tergdaulebi* aimed at promoting integration of the different regions and social classes into a standardized culture which would provide a basis for the unification of the Georgian nation (Reisner 2009, p.44). As Reisner maintains, the culture based on religion and tradition were to be completely reformed, which was a beginning of a “gradual, often unperceived and unintended secularization” (Reisner 2009, p.45). One of the accomplishments of this 19th century national movement was the formation of “the Society for the spreading of literacy among Georgians”, which aimed at promoting the secular education (Reisner 2009, p.45).

It is essential that in Ilia Chavchavadze’s opinion, religion was not the crucial point for the formation of national identity. In his article “Ottoman Georgia” Chavchavadze argues that the unity around faith or language cannot bring and unite people together as much as the

commonality of history can. Chavchavadze refers to the Muslims living in Adjara as Georgian brothers, proudly states that religious tolerance is ingrained in the mindsets of Georgians and maintains that Muslims living in Georgia belong to the Georgian nation (Chavchavadze 1877).

10 years after the murder of Ilia Chavchavadze, the autocephaly of the Georgian Orthodox Church was regained in 1917, a year before the independence of the country was declared. The government adopted a strict religious policy, which implied abolishment or nationalization of seminaries, prohibiting teaching religion at public and private schools, deprivation of the rights of civil registry for the Georgian Church and adoption of a decree which expropriated the treasure and property of the Church (Gegenava 2018, p. 260). The Constitution adopted in 1921 declared separation and independence of the Church and the state, stated that no faith shall enjoy special privileges, prohibited the allocation of money from the state or local municipality budgets for religious purposes (Chapt. 16 Art 142-144) (Chitanava 2015 p.40).

2.2 Church-state relations in Soviet Georgia

In his report to Genoa conference in 1922, the then Patriarch of Georgia, Ambrosious Khelaia referred himself as “the only true edifier”, “the spiritual father of the nation”, who can fully understand the sorrow and pain of his occupied nation, which, as Ghaghanidze argues, expresses the ambition of the Church to replace the destroyed state (Ghaghanidze 2016, p. 156). It is notable that the Patriarch Ambrosious Khelaia appealed to the Conference with the hope that the members of the League of Nations would persuade Russia to restore independence and sovereignty of Georgia (Chitanava 2015, p. 40). Therefore, the purpose of his letter was entirely political. After his appeal, in 1923, Patriarch Ambrosious was arrested.

Despite continuous persecution, the Georgian Orthodox Church resisted the Communist regime until the Patriarch's death in 1927. The Church fell under strong Soviet influence in the 1930-40s. (Chitanava 2015, p.40). This attitude gradually changed under Stalin's rule when the Church was regarded as a part of a national or empirical heritage, which required and deserved protection (Ghaghanidze 2016, p.156). Even though Stalin's policy towards religious institutions did not envisage the persecution and the Church acquired formal institutional recognition in this period, the Church did not represent an independent institution and the Soviet totalitarianism "permeated deeply into the religious system" (Chitanava 2015, p.40).

After Stalin's death, this model was again replaced with the one directed towards discrimination and persecution of the Churches (Ghaghanidze 2016, p.159). This situation changed in the late years of Soviet Union, after Mikhail Gorbachev became the General Secretary in 1985. As Walter Sawatsky argues, the perestroika of Church-state relationship in the Soviet-Union involved "a de-emphasis of the contradiction between official state atheism and religion" and rejecting the "ideological dogma" that in communism religious consciousness would entirely disappear (Sawatsky 1989, p.14) As John Anderson suggests, if a distinctive religious policy was absent in Brezhnev's years, in 1987-88 the liberalization process started and by 1991" it was possible to speak with little qualification of the existence of freedom within the Soviet Union" (Anderson 1994, p.137). Hence, the nature of the Soviet religious policy shifted from the conflictual to a cooperative model (Anderson 1994, p.137). After this shift from "overt hostility to a more cooperative relationship" of Church and state, religious organisations were often viewed as potential partners, as the political elites realized that seventy years of repressive religious policy did not bring about expected

consequences and religion did not disappear from people's consciousness (Anderson 1994, p. 180).

Severe attacks on religions in the Soviet Union did not imply the absence of religious practice and eradication of religiosity (Dragadze 1993). As a result of the anti-religious policy in the Soviet Union, the arena of religion was shifted from public to private sphere (Dragadze 1993, p.150).

2.3 THE UPSURGE OF RELIGIOSITY POST-SOVIET GEORGIA AND THE CRISES OF SECULARISM

The period following the restoration of independence in Georgia was marred by ethnic wars in Abkhazia and South Ossetia, an armed rebellion against the country's first democratically elected government, and an interval of warlordism and semianarchy (Freedom 2003). The non-communist government of Georgia, elected in 1990 was led by "keenly religious president", Zviad Gamsakhurdia (Dragadze 1993, p. 154). In this period Christian images and symbols started to replace the communist ones (Dragadze 1993, p.154). Paradoxically, even though Ilia Chavchavadze promoted secularism, he was canonized by the Georgian Orthodox Church in 1987 and his famous trinity "Language, Fatherland, Faith" has been considered as the basis of independent Georgian state (Gabisonia 2012, p.66). In his famous speech of 1990, Zviad Gamsakhurdia offered a completely religious narrative of the Georgian nation:

"Do not give way to perversity and hypocrisy today, on this holy land, where the souls of our ancestors are looking down to us, where the all luminous Merab Kostava and Ilia Righteous, crucified by us are looking at us from the heavenly Georgia... The Georgian nation had been walking on the path of Christ... We neglected Ilia and gave preference to

Barrabas... We neglected Christ and chose the way of Barrabas _ the path of social-democrats and the others. This is the reason of our disaster.” (Youtube.com, ”Zviad Gamsakhurdia-26th of May, 1990”)

Gamsakhurdia aimed to ensure “the moral rebirth of the nation and reunification of the church and the state” (Berglund and Blauvelt 2016, p.16) Besides, he branded the Georgian national movement a popular religious movement” (Berglund and Blauvelt 2016, p.16). Maisuradze and Andronikashvili suggest that the term ‘Heavenly Georgia’ mentioned by Gamsakhurdia introduced by the Patriarch Ilia II and applied by Gamsakhurdia indicates the nationalization of the Church as it represents transposition of Georgian historical space into a sacred one. (Andronikashvili and Maisuradze 2010, p.14) The authors maintain that this entails a symbolic reference to an ideal state “following the eschatological catastrophe of the loss of statehood which, on its own, was a reflection of the idealized medieval Georgian state” (Andronikashvili and Maisuradze 2010, p. 14).

The upheaval of religion continued after Eduard Shevardnadze was elected as a president of the country in 1995. Before his presidency, in 1992, Shevardnadze was baptized by the Georgian Orthodox Church (AP News,1992). Shevardnadze was inaugurated in Svetitskhoveli Cathedral, which aimed to strengthen his political legitimacy, as symbolizing the revival of the form of state representation (Andronikashvili and Masiuradze 2010, p.15).

On the same year, in 1995 the Constitution of Georgia was adopted with a paragraph referring to the Constitutional Agreement (oftentimes referred as Concordat), signed in 2002. The Constitutional Agreement granted the Georgian Orthodox Autocephalous Church a unique legal status. All religious groups apart from it had to register themselves either as foundations or as unions. Therefore, whereas other religious communities had to register themselves as civil organizations to the ministry of Justice, the only formally recognized

Church in the territory of the country was the Georgian Orthodox Church (Lorusso 2013, p.3). Lorusso explains that Shevardnadze was under societal pressure and had to meet the requests of the identification of the Church and the state (pp. 3-4). It should be noted that during Shevardnadze's presidency, the religious intolerance was exceptionally severe. In 1999-2004, a growing tendency of religious extremism erupted in Georgia, such as criminal acts of radical religious organizations against various non-traditional religious groups. Basil Mkalavishvili, a former Orthodox priest renounced and excommunicated by the Orthodox Church of Georgia committed brutal attacks on members of non-traditional religious organizations along with his followers (Tsintsadze 2007, 256). Between 1999 and 2004 some two hundred crimes took place, including physical violence, destruction of places of worship and burning of religious literature (Lorusso 2013, 4). Mkalavishvili's raids remained largely unpunished until he was sentenced in 2005 (Lorusso 2013, p. 4). While Georgia became an arena of religious extremism, the government "played a role of either instigator or merely an observer" (Meladze and Mumladze 2016, p. 73).

After the Rose Revolution in 2003 Saakashvili's government came to power. The third president of Georgia, inaugurated in 2004, was aiming at modernizing and westernizing Georgia. The 2003 Rose Revolution was widely considered as an attempt to make a radical break with the Soviet past (Aphrasidze 2016, p.114). The new ruling elite was arguably standing for the secular values and opposed the active role of the Church in Georgian politics. Nevertheless, after the political crises which emerged in November 2007 the government started to increase funding of the Church from the state budget (Aphrasidze 2009, p.10). Increase of the state budgetary funding further strengthened the GOC and increased its political power. In 2009 the Church received 25 million Gel from the state budget, while the state expenditures for the Church constituted 9.5 million Gel a year before (Aphrasidze 2009,

p. 10). One reason for the dramatic increase of the state funding on the GOC was that Saakashvili realized the importance of the Church's support (Aphrasidze 2009, p.11).

However, this support does not necessarily entail any similarity between the value systems of the Church and the government. Eka Chitanava argues that even though Saakashvili's government formally embraced the Georgian Orthodox Church, the ideological clash between the two was obvious (2015, p. 148). This discrepancy became even more apparent after Russo-Georgian war in 2008 after the Patriarch Ilia II publicly criticized the President for failing to avoid the war. In his words "the captain of a ship must lead his vessel, being able to maneuver and escape reefs" (Chitanava 2015, p.47). The Patriarchate was the first to have official contact with the Russian authorities shortly after the war. In November 2008, the GOC delegation visited Moscow and met with Russia's Deputy Foreign Minister, Grigory Karasin (Chitanava 2015, p.48) The following month, during a 45-minute meeting with Russia's president Dmitri Medvedev, the Patriarch made it clear that politicians would not be able to undermine the unity of Georgia and Russia, two "brethren" countries (Chitanava 2015, p. 48).

The parliamentary elections of October 2012 brought a new government of 'Georgian Dream' in power. Bidzina Ivanishvili, the new prime minister of the country, who according to the revised Constitution represented the head of the government stated that 'problems existed' in the Georgian Orthodox Church and these problems should be a subject of public discussions (civil.ge, 2012). Ivanishvili further maintained that although he acknowledged the importance of the Orthodox Christianity in the Georgian culture, the Church should be independent from the state (civil.ge, 2012).

Shortly after the elections and transfer of power numerous religious conflicts emerged in different regions in Georgia (EMC, 2016). According to the assessment of the Non-

governmental organizations in Georgia, the government failed to respond adequately to the human rights violations and intolerance, unfolded in these religious conflicts (EMC, 2016).

Furthermore, the civil sector contended that the Georgian government did not take adequate measures against the aggressors in May 2013. On the International day against Homophobia and Transphobia thousands of Georgians protested in the capital Tbilisi against gay rights rally being held. They broke through the police barricades and carried stinging nettles with which to beat the activists of the rally. Before the rally, the Patriarch of Ilia II had urged the governmental authorities not to allow the gay pride rally to take place proclaiming that it would be a "violation of the majority's rights" and "an insult" to the Georgian nation (BBC, 2014). This single case demonstrates the drastic power of the church to mobilize the masses.

It should be noted that before being elected as a president, the current president of Georgia, Salome Zourabichvili condemned the involvement of religious figures in the political process: „I can not understand, how the Church can participate in the election campaign to such a great extent. Whenever this happens, I will express my strong protest as a president who is responsible to obey the Concordat” (Tabula, 2019). Months after having been elected as a president, on 29th May Zourabichvili stated that she would walk the path of St. Nino. It is widely regarded that St. Nino brought Christianity to the Georgia in the 4th century (Tabula, 2019). In Zourabichvili’s words, such paths would elucidate that Georgia is part of Europe (Tabula, 2019). On the day of St. Nino’s commemoration, Zourabichvili led the procession of the believers.

2.4. Church, Religion and Conflicting Discourses

The historical analysis shows that the Church-state relationship in Georgia went through different phases. The 19th century national movement acknowledged the importance of religion in the history of Georgia. Nevertheless, instead of considering religion as the most important factor for the unification of the nation, it promoted secular education. After gaining the independence from Tsarist Russia, the government of democratic republic of Georgia (1918-1921) declared strict secularism. This phase of church-state relationship resembles the French model of the state, which in Berger's words, "originated in the anti-Christian animus of the continental Enlightenment and was politically established by the French Revolution" (Berger 2008, p.24).

Church-state relationship in Soviet Georgia, excluding the Stalin's rule and the 80s, falls into the third category of above-elaborated Berger's triadic classification, which is characterized by the malevolence to religion. Furthermore, although the Soviet anti-religious policy was seeking to make religions absent both from public life and the individual consciousness, the Georgian society in the Soviet Union did not completely lose religiosity. Instead, the religion in Soviet Georgia largely privatized.

The period after the dissolution of the Soviet Union represents a critical juncture in the Church-state relationship in Georgia. The relationship between the state and the Church in the post-Soviet Georgia does not seem to correspond any of the versions of secularism, introduced by Berger. Nevertheless, the period of modernization which occurred after the Rose Revolution was a critical juncture in terms of the protection of religious freedom and promotion of secularism. Saakashvili's government attempted to secure the institutional differentiation and separation between Church and state. However, this process of secularization did not imply what Berger referred as "anti-religious animus" (2008, p. 24). On the contrary, the government did not provide resistance to the

functioning of the Georgian Orthodox Church as an independent community, a “specialized institution”, as Berger puts it (2008, p.24).

The historical analysis shows that one cannot draw the inference that the idea of Georgian statehood was entirely founded on religious grounds and excluded secularism. Maisuradze and Andronikashvili depict the clash of the discourses which was present in the formation of the Georgian national narrative. Georgian national identity itself is linked with 19th century secular model proposed by Ilia Chavchavadze and the idealized medieval Georgian statehood which” bears traces of a Soviet historicism of Stalinist vintage” and is directed towards the past (Andronikashvili and Maisuradze 2010 p. 282).

To conclude, the analysis of the processes through the lenses of historical discourses, elucidates that the secular project of social-democratic government of 1918-1921 has been dramatically replaced by the ethno-religious nationalism and the symbols forged within the 19th secular national discourse (trinity of the language, fatherland and faith) and ‘usurped’ by the new ethno-religious narrative, as advocated both by the political leaders and the Georgian Orthodox Church.

Chapter 3 Legal Status of the church and its Involvement in Lawmaking

3.1 The Constitution of Georgia and Religion

In the following section I will examine the constitutional provisions pertaining to the freedom of belief and religion and Church-state relationship. It is argued that the Article 8 which regulates Church-state relation in the constitution includes controversial claims. Besides, the section shows that the international actor, namely the Venice Commission,

advisory body of the Council of Europe can considerably influence the constitution-making process.

The main legal framework that defines the status of religions in Georgia is the Constitution. Enacted in 1995, the Constitution of Georgia went through three comprehensive amendment processes (2004, 2010, 2017) and more than 30 corrections. The preamble of the Constitution declares that the will of the Georgian citizens is to establish a democratic social order, economic freedom, and a legal and a social state “drawing on the centuries-old traditions of the statehood of the Georgian nation and the historical and legal legacy of the Constitution of Georgia of 1921” (Const. of Georgia, Preamble). Freedom of religion and belief is entrenched in several passages of the Constitution, guaranteeing equality of all persons regardless of their religious affiliation. The Anti-discrimination clause of the article 11 states:

All persons are equal before the law and any discrimination on the grounds of race, color, sex, origin, ethnicity, language, religion, political or other views, social affiliation, property or titular status, place of residence, or on any other grounds shall be prohibited (Const. of Georgia. Art 11).

The 8th article of the Constitution, which regulates the relationship between Church and state in Georgia declares:

Along with freedom of belief and religion, 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. The relationship between the state of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia shall be determined by a constitutional agreement, which shall be in full compliance with the universally recognized principles and norms of international law in the area of human rights and freedoms (Const. of Georgia Art.8).

One might argue that the 8th Article of the Constitution contains several controversial claims. First, it declares that Georgia is a secular state as it affirms independence of the church from the state and freedom of belief and religion is upheld in the article. On the other hand, it acknowledges the “special role” to the Orthodox church, which

renders the compatibility of these claims, thus the overall coherence of the provision questionable.

It should be noted that the 8th article provided a replacement of the 9TH article of the 1995 draft of the Constitution, which reads as follows:

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 (Const. of Georgia. ed. 1995. Art.9. Sec1.)

This amendment was assessed as a backslide in the protection of religious rights by the non-governmental organizations in Georgia. Tolerance and Diversity Institute (TDI) fairly noted that the Article 8 of the Draft Constitution of 2017 considered freedom of belief and special role of the Orthodox Church equally (TDI, 2017) As the organization maintained in the statement, the article “creates the grounds for the assumption that the State restricted freedom of belief and religion through recognizing the role of the Orthodox Church that is a step towards deterioration of the standards in terms of rights” (TDI, 2017).

The 8th article is not the only provision of the new constitutional draft of 2017 which has been the subject of sharp criticism. The parliament of Georgia changed the formulation of the provision on the freedom of religion. In the consolidated version of the Constitution. Article 16 declares the freedom of belief, religion and conscience (Const. of Georgia Art 16. Sec. 1). Furthermore, the article provides restrictions on these rights:

These rights may be restricted only in accordance with law for ensuring public safety, or for protecting health or the rights of others, insofar as is necessary in a democratic society” (Art. 16.Sec. 2).

The only legitimate aim for restriction of the freedom of religion and belief which the initial edition of the Constitution (Before the amendment process of 2017) provided was the infringement of the rights of others:

Freedoms listed in this article may not be restricted unless expression thereof infringes on the rights of others (Art. 9. Sec. 3 Constitution of Georgia (1995 draft before 2017 Revision).

Following the 2017-year amendment process, the Venice Commission recommended the parliament of Georgia to explicitly recognize the “freedom of religion” in the Draft Article 16 (Venice Commission Draft Opinion in the Draft Revised Constitution; Opinion 876/2017). Furthermore, the Commission offered the extension of legitimate aims for restriction of right of freedom of belief and conscience, such as those listed in the Article 9 ECHR.⁴

The Parliament added a number of new legitimate aims to the draft Article 16 (3), such as national security and public safety necessary for the existence of a democratic society, preventing crime, administering justice or protecting the rights of others (Venice Commission, Opinion on the Draft Revised Constitution Opinion, 876 / 2017). Following the recommendation of June 2017, the parliament added the following amendment: “These rights shall be restricted only in accordance with the law, with purpose of ensuring state or public security, preventing crime, healthcare, and administration of justice or protection of rights of others that is inevitable for democratic society” (TDI, 2017).

The Venice Commission replied in its opinion of September 2017 that the legitimate aims contained in the 9th article of ECHR including the national security “are not legitimate aims in the sense of paragraph 2 of Article 9 ECHR, which is to be strictly interpreted, meaning that the legitimate aims in the second paragraph of Article 9 ECHR may not be extended by way of interpretation to other notions” (Venice Commission, Opinion 876 / 2017). The Commission recommended redrafting the article in light of the second paragraph of Article 9 ECHR (Venice Commission, Opinion 876 / 2017, Art 39).

The NGOs maintained that the provision on restrictions in the draft amendments to the Constitution weakens the standards of protection of freedom of belief, religion and conscience. The Parliament took this recommendation into consideration and added “public

⁴ “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety for the protection of public order, health or morals, or for the protection of the rights and freedoms of others” (ECHR, Art.9 Sec.2).

safety, protecting health” to the “the rights of others” as legitimate aims of the restriction of the rights envisaged in the first section of the 16th article.

Although the Constitution stresses ‘outstanding role’ of the Church in the history and its amendments of 2017 brought more of a backslide rather than an improvement in terms of the religious freedom protection, the legal framework still provides protection of religious freedom. However, a more problematic part of the legal dimension of the Church-state relationship is the presence of the Constitutional Agreement between Church and state, its constitutional status and the content which, as the Thesis holds, conflicts with secularism and state neutrality.

3.2 The Constitutional Agreement and its status

The Church-state relationship is specified in the Constitutional Agreement of 2002 (often referred as “Concordat”), between the state of Georgia and the Georgian Apostolic Autocephaly Orthodox Church. The Orthodox Church is the only religious institution with which such an agreement is signed. It is intuitive that signing the legal document with one religious organization challenges the principle of state neutrality. However, one has to note that the content of the Constitutional Agreement which is full of opaque and discriminatory claims is more problematic than the presence of the agreement *per se*. It is also problematic that the Constitutional Agreement, which only exists between the Orthodox Church and the state, is the second highest act in the hierarchy of norms, according to the Georgian

legislation.⁵ The supremacy of the Constitutional Agreement over other normative acts is introduced in the Constitution:

The legislation of Georgia shall comply with the universally recognised principles and rules of international law. A treaty or international agreement of Georgia, unless it comes into conflict with the Constitution or the Constitutional Agreement of Georgia, shall take precedence over domestic normative acts (Const.of Georgia. Art 6. Sec.2).

The idea of adoption of the Constitutional Agreement was a subject of a controversy. Whereas the then Chairman of the Parliament was a big supporter of the Agreement, the opponents argued that signing the contract already entailed granting special status to the GOC, which would create a discriminatory environment (Meladze and Mumladze 2016, pp.79-80) Supporters of the Constitutional Agreement stressed the role of the Church in the history of the country, its status of a ‘moral guardian’ (Meladze and Mumladze 2016, p.81). Besides, the public’s confidence in the Church in the light of the prevalent distrust towards politicians of that time was emphasized (Meladze and Mumladze 2016, p.82). As for the opposition, according to the Member of the Parliament of that time, Mikheil Naneishvili, given present legislative conditions, copying European tradition of agreements between Churches and states into Georgian reality would not be relevant (Meladze and Mumladze 2016, p.82).

The constitutional status of the agreement arguably “granted de-facto and in some cases de-jure privileged status to the Georgian Orthodox Church” (Meladze and Mumladze 2016, p.94).

The draft of the Constitutional Agreement was sharply criticized by the Venice Commission. According Commission’s member, Hans-Heinrich Vogel’s commentary, the legal status of

⁵ According to the organic law, the following hierarchy shall govern legislative acts of Georgia, constitutional agreements and international agreements and treaties of Georgia:

- a) the Constitution of Georgia, the Constitutional Law of Georgia;
- b) the Constitutional Agreement of Georgia;
- c) international agreements and treaties of Georgia;
- d) organic laws of Georgia;
- e) laws of Georgia, decrees of the President of Georgia, the Rules of Procedure of the Parliament of Georgia (Law of Georgia in normative acts, Art.7 Sec.3.)

the Constitutional Agreement is undefined. It was argued in the comment that the document was not either a constitutional law based on the constituent power of the sovereign (unlike the Constitution of Georgia, as maintained in its 5th Article), nor did it represent a “concordate-style treaty between subjects of international law” (Venice Commission, Vogel, 2001).

In a similar vein, Antonis Maniatakis, the Venice Commission expert criticized the Constitutional Agreement on the ground of its legal status and recommended replacement the term ‘constitutional’ with ‘statutory’. As the document maintains: “The term ‘constitutional’ implies that the agreement has constitutional authority, thus it has the same place in the hierarchy of laws with the constitution and can only be altered with a revision of the Constitution” (Venice Commission, Maniatakis, 2001). Maniatakis fairly argued that the constitutional nature of the Agreement would imply Church’s constitutional status, equivalent to the State. Therefore, the character of the agreement would become constituent and the Church would seem to “exercise the constitutive power...” (Venice Commission, Maniatakis, 2001). Furthermore, Maniatakis explicitly stated that the agreement of such legal status between the Church and state is against the principles of secular state as its provisions are considered to have the same place in the hierarchy of legal norms within the Constitution (Venice Commission, Maniatakis, 2001). He maintains that the agreement with this legal status would be justifiable only if the patriarchate of Georgia was an international legal entity, like Vatican, which is not the case for Georgia (Venice Commission, Maniatakis, 2001).

This recommendation pertaining to the change of a legal status of the Agreement between the Georgian Orthodox Church and the state was not taken into consideration. Apart from the legal status, Maniatakis maintained that the state has a legislative power and can decide on all ‘secular issues’, while the Patriarchate may regulate with its own acts the “spiritual issues” (Venice Commission, Maniatakis, 2001). However, according to the Constitutional

Agreement, the patriarchate is entitled to draft curricula and change teacher's appointments. Their dismissal is also Church's competence (Const. Agreement. Art. 5 Sec. 1). Hence, the Constitutional Agreement empowers the Church to engage in the decision-making on secular issues, as well.

In the Venice Commission report, the question of state neutrality is raised (Venice Commission, Maniatakis, 2001). Although the independence of the Church from the state is stressed, the Concordat proclaims the dominant position of the Orthodox Christianity. The preamble of the Concordat stresses that Orthodox Christianity is one of Europe's traditional confessions and the religion of vast majority of Georgians (Const. Agreement, Preamble). As established above in the thesis, according to the state neutrality principle, encouraging, promoting or endorsing certain conceptions of the good or certain ways of life is impermissible. This particular clause, however, declares superiority of the Orthodox Church and seeks to provide justification for the Constitutional Agreement. Thus, it is particularly problematic in the light of neutrality in justification sense, which entails impermissibility for a state to promote certain forms of life which it considers worth pursuing or valuable. Another critically assessed provision of the Constitutional Agreement is the 11th article pursuant to which the state acknowledges the material damage of the Church and takes responsibility to partly compensate the damage. As Meladze and Mumladze rightly point out, it is unclear on what the state relies while calculating the damage. Besides, the amount of the obligation and the final date for the remuneration remain undefined (Meladze and Mumladze 2016, pp. 88-89).

In addition, Article 4 which declares that the economic activities of the church, including, production, delivery and import or donations, as well as "non-economic property and land premises" shall be duty free (Art 4. Sec 5). This rule does not apply to other religious

organizations in Georgia which is discriminatory, and this discriminatory treatment does not have a sound legal justification.

It is worth noting that amending the constitutional agreement calls for the mutual agreement of both sides- the Parliament of Georgia and the Holy Synod of the Georgian Orthodox Church (Art 7. Sec 2). In case of such consent between the parties, amending the Constitutional Agreement requires votes of at least three-fifth of the total number of the Members of the Parliament (Cont. Art 45. Sec 3.) As a comparison, a constitutional law shall be considered adopted if it is supported by at least two thirds of the total number of the Members of Parliament (Cont. Art 77. Sec. 3). Apart from the support of the two thirds of the MPs, for amending the constitution nation-wide public discussions (Art. 77. Sec. 2) and approval of the president is needed (Sec.2-3). Amending the Constitution in Georgia has never presented an insurmountable difficulty, although the constitutionalism notoriously requires that amending the Constitution ought to be much more difficult than any other legal acts. As noted above, within less than 25 years the Constitution of Georgia has been through four major amendment processes and more than 30 relatively corrections, which proves that Georgian government could easily amend the Constitution. Hence, it can be argued that amending Constitutional agreement is much more difficult than amending the Constitution.

Notably, the Concordat confers the absolute immunity for the Patriarch from criminal prosecution (Art 1. Sec 5), which is quite a controversial provision. Georgian lawyer and the Chairman of the New Political Center _ Girchi Iago Khvichia does not consider the provision problematic as it is completely symbolic (Iago Khvichia, personal interview). In contrast, Vakhushti Menabde considers 5th article of the Constitutional Agreement highly problematic, as the Patriarch is the sole individual who enjoys such absolute and unconstrained immunity. Therefore, Menabde contends that the Patriarch stands markedly above the law and the political authority (Menabde 2016, p.131).

Even if the immunity of the Patriarch does not cause any factual problems, there is no legal justification for such a provision. Therefore, this clause is also in contradiction with the principle of state neutrality.

Given the constitutional status of the document, the absence of such agreements with other religious institutions or organizations in the country and the privileges and mandates it grants to the Church, it can be concluded that the document is at odds with constitutional secularism and state neutrality.

3.3. STATE AGENCY FOR RELIGIOUS ISSUES

As it is mentioned above, after the power transfer in 2012, severe religious conflicts emerged in different parts of Georgia (Such as Nigvziani, Tsinskaro and Samtskaro). As a response to these confrontations, the Government of Georgia established the state Agency on Religious Affairs, which became a centralized governmental body working on the religious issues, which operates under direct supervision of the prime minister (EMC, 2016, p.8).

The declared functions and missions of the Agency include developing projects of legal documents in order to eliminate legislative gaps in the sphere of religion, adopting recommendations on construction of Cult buildings and providing recommendations for the Government of Georgia to support tolerant environment and tolerance in civil society (Religion.geo.gov) Furthermore, according to the statute of the agency, its function is to provide recommendations of goals and objectives defined by the Constitutional Agreement between the Georgian Orthodox Church and the state (Ordinance of the Government of Georgia N177of February 19 2014, on establishment of LEPL -The state agency for Religious Issues and Approval of its statute).

Establishment of the agency which aims at combating religious confrontations ostensibly should indicate government's political will for protection of freedom of religion

and sustenance of a tolerant environment. Nevertheless, it is dubious if the Agency fulfils its declared missions in practice. According to the EMC 2016 report, a significant part of the resources of the agency was spent on transforming the legal framework and engaging in the affairs of the religious organizations instead of efficiently responding the instances of religious freedom violations (EMC, 2016, p.68). It is maintained in the report that the Agency does not have a consistent policy for the prevention of religious extremism and radicalization (EMC, 2016, p.73) The report notes that the policies of Agency are based on strict control over religious organizations (EMC, 2016, 73). It is further maintained in the report that the Agency has issues of independency and horizontality of making decisions and it is less focused on the pluralism and religious neutrality (EMC, 2016, 11). In her personal interview, Rusudan Gotsiridze, the bishop of the Evangelical Baptist Church of Georgia refers the Agency as a ‘Soviet-style entity’ and an unofficial branch of the State Security Service of Georgia and solely represents a mechanism of a government to control over affairs of religious organizations: ”whenever they intervened in the religious conflicts, they always played a destructive role. This is an extremely intolerant organization” (Rusudan Gotsiridze, Personal Interview).

3.3. Victories and Failures of the Orthodox Church

As argued above, the Church-state relationship in Georgia predominantly presents itself as a cooperation and as a ‘mutual affection’ as one of the respondents Baptist Bishop, Malkhaz Songhulashvili referred to it (Malkhaz Songhulashvili, personal interview 03.06.2019). However, I suggest that the thesis proposed by Jonathan Fox (2002) that a government policy in western democracies is an outcome of an intense competition between

secular and religious actors holds in the Georgian case of law-making, thus the tension between secular and religious actors is present in the legislative process. The following sections seek to demonstrate compatibility of these seemingly conflicting claims in Georgian case.

There are plenty of instances in which the Georgian Orthodox Church could impose its positions over the public officials and legislatures. One of the last instances is passing the bill on the establishment of the Day of Allotment of Georgia to Mother Mary – “a phrase agglutinated into a single word in Georgian – წილხვდომილობა, Tsilkhvdomiloba” (Eurosianet.org, 2019). The legend that the Virgin Mary and the disciples drew lots in Jerusalem to divide the lands where they would spread Christ’s word after his ascendance to heaven, is deeply ingrained into the Georgian national narrative (Eurosianet.org, 2019). Notably, for the justification the bill refers to the medieval text: “The Lord appeared to the [...] heavenly queen and commanded that she stays in Jerusalem but send Andrew the First-Called in her stead with his icon not wrought by hand” (Eurosianet.org, 2019). Elene Khoshtaria noted that this particular case demonstrates, how opaque Georgian Church-state relations are. In this case the Church has not even made an official statement (Elene Khoshtaria, personal interview, 15.09.2019). On the other hand, it should be noted that the law was not followed by any opposition by the majority of Georgian populace given that this legend is deeply-rooted in Georgian national narrative.

In the case on agricultural land ownership, which is elaborated in the following section, the Church, in fact, “ordered” the state to suspend the Constitutional Court’s rulings and the tension between the Church and state on the one hand and the Constitutional Court, on the other, ended up with amending the Constitution. This is not the only case when the Church’s exhortions significantly contributed to the constitutional amendment.

A year after clerics attacked on activists on the Day against Homophobia in 2013, the Patriarch established a ‘Family Purity Day’ (Tabula 2014). One of the messages sent by the Church was that the rally promoted same sex marriage and the institution of the family was attacked. In the framework of 2017 year amendment process, marriage was defined in the Constitution as a union between man and woman (Const. Art 30. Sec. 1).

Although the influence of the Church on legislative process is obvious, it does not mean that it has a final say on all issues. In a personal interview, a Georgian constitutionalist, Levan Ramishvili pointed out that the Georgian Orthodox Church will remain a strong institution as long as it enjoys public support (Levan Ramishvili, personal interview, 1.06.2019). Accordingly, its positions will impact on the decision-making process inasmuch as the Georgian populace is adamantly supportive to it. Ramishvili brought up the topic of abortion as an example. The Georgian Orthodox Church repeatedly demanded prohibition of abortion. In his Easter epistle of 2013, the Patriarch of Georgia Ilia II stated “Today, given the worrisome demographic situation in the country, the government has to adopt adequate regulation to ban abortion...” (Radiotavisupleba 2013). The bill on the ban of abortion was introduced in 2017 in the parliament but was not supported by the Human Rights Committee (Tabula 2017). It should be noted that the abortion rates in Georgia has been high and banning abortion has never been a popular idea given the high levels of abortion (IDFI 2014).

Another issue the Church failed to impose its position on the law making is the one pertaining to the initiative regarding introducing constitutional monarchy. In June 2017, the Patriarch of Georgia, Ilia II proposed the idea on restoration of monarchy in Georgia. He stated that constitutional monarchy would bring peace to the Georgian nation (Liberali 2017). This was not the first time when the Patriarch expressed his sympathy for the monarchy.

Following this initiative of the Patriarch, the Chairman of the Parliament, Irakli Kobakhidze scheduled a meeting with the Patriarch and stated that every word of the prelate of the Church

has a special importance. Furthermore, Kobakhidze noted that the constitutional monarchy excludes the presence of president's institute (Tabula, 2017). The then Prime minister of Georgia, Giorgi Kvirikashvili, assessed the initiative positively but noted that such decision required broader societal consensus (Tabula, 2017). In a similar vein a depute of that time and the current president and the then a member of the Parliament, Salome Zourabichvili praised the Patriarch for his initiative. She proclaimed that restoring monarchy is the only way on the way of the European integration and restoration of territorial integrity” (Tabula, 2017). However, the idea of restoration of monarchy does not enjoy much popularity in Georgia. According to NDI Public survey (2019) only 2% of the interviewed supported monarchy or autocracy (NDI, 2019). Therefore, the initiative of the Church was never reflected in the legislation.

In these cases, the congruence of the Church's preferences and positions with the popular will serve a sufficient condition for the Church to pass throw its initiatives. However, one needs to note that the presence of the multifaceted power struggle and competition among various actors. The process of drafting the anti-Discrimination Law, which the next section elaborates, depicts the tension between secular and religious authorities and their interests.

3.5. Anti-Discrimination Law and the Outcome of secular-religious competition

The process of drafting anti-Discrimination law is particularly interesting from the perspective of the competition and power struggle. The Parliamentary discussions on the Draft of the Law on Elimination of All Forms of Discrimination were bound up with the turbulence and fierce opposition from the Georgian Orthodox Church. Regardless of this opposition, the antidiscrimination law which aims at the elimination of all forms of

discrimination including the discrimination on the grounds of the belief and the religion, was passed in May 2014 with 115 votes to one. One of the main reasons and incentives for the adoption of the law was to make Georgian legislation more EU compatible and move ahead to the visa liberalization (Sakellaraki 2014). Drafting of the law was recommended in The European Neighbourhood Policy (ENP) Country Progress Report. As one of the major recommendations reads as follows:

adopt comprehensive anti-discrimination legislation; ensure that the rights of people belonging to minorities, including religious minorities, are respected. Condemn instances of hate speech, attacks and violence against persons belonging to minorities; send clear messages of zero tolerance towards such behavior (EU Annual Report on Human Rights and Democracy in the World, 2017).

Therefore, not only the internal, but international actors were interested in drafting the law. On 28 April 2014, the Patriarchate called on the Parliament to postpone the adoption of the anti-discrimination law. Ilia II, the Patriarch of Georgia required the involvement of the Church and the society in the process of drafting the law. He maintained that this would prevent rushed actions and make reaching the consensus possible (Tabula 2014).

Reference to sexual orientation and gender identity was regarded especially problematic. This was seen as legalization of ‘Sodomy’ by the clerics who at the same time warned MPs about losing public support if they agreed upon the adoption of the law (Transparency International Georgia, 2014). Eventually, the Law passed only in the acceptable form for the Church. According to the final draft the direct discrimination can be justified if it “statutory purpose of maintaining public order or morals” (Art 2. Sec.1). This claim was regarded as a compromise of the state with the Church.

According to Elene Khoshtaria, the same bill would probably not pass nowadays because nowadays the ranking of Bidzina Ivanisvili is much lower back then (Elene Khoshtaria, personal interview 15.09.2019). In the same vein, Iago Khvichia told me during the personal

interview that to his information, Bidzina Ivanishvili called members of the Parliament personally and called them for supporting the bill. Therefore, one cannot simply infer that adopting the Law happened due to the ENP recommendation, because the former prime minister who arguably still is the most influential figure of the country played a crucial role. In her persona, interview, a lawyer of Transparency International Georgia, Tamar Tatanashvili, noted that the struggle over the law continues and the right-wing, nationalist groups in the parliament tend to raise the question of amending or annulling the law (Tatanashvili, Personal Interview, 13.05.2019).

Chapter 4 The Tension between the Constitutional Court and the Georgian Orthodox Church- the problem of counter-majoritarianism

The purpose of the following Chapter is to depict the tension between the Georgian Orthodox Church and the Constitutional Court of Georgia. It is abundantly clear that positions of the Georgian Orthodox Church often reflect the popular will. In the same vein, public opinion tends to be influenced by the statements of the GOC. I will try to demonstrate that the rulings of the Constitutional Court of Georgia tend to contradict majoritarian sentiments and preferences, which leads to the tension between the GOC and the Constitutional Court.

Before moving to the discussion of the relevant cases, this introduction provides a brief insight in the authority and legal status of the Constitutional Court. The Constitutional Court of Georgia was established in 1996 (Constcourt.ge). According to the Constitution, this

institution has a final say on the constitutionality of legal acts, thus its decisions are not subject of review:

A judgment of the Constitutional Court shall be final. An act or a part thereof that has been recognised as unconstitutional shall cease to have legal effect as soon as the respective judgment of the Constitutional Court is made public, unless the relevant judgment envisages a later time frame for invalidating the act or a part thereof (Const. Art.60. Sec.5).

Notably, all three branches of the government participate in the appointment of the Constitutional Court judges: three of nine judges are appointed by the President, three elected by a majority of at least three fifths of the total number of the Parliament's members, and three judges appointed by the Supreme Court (Cont. of Georgia, Art.60. Sec.2). Such division among governmental branches in terms of their participation to appoint judges is part of the separation of powers in the Georgian constitutional system and provides a tool for preventing the concentration of power. Hence, it serves to secure the independence of the Constitutional Court. The fact that the Constitutional Court's decisions are becoming subject of a wider social debate and explicit discontent of the government (Transparency International, 2016) indicates that it tends to act in a counter majoritarian manner and enjoys a significant level of independence. The following sections elaborate on four legal cases which were accompanied by the tension between the Georgian Orthodox Church and the Constitutional Court.

4.1 Religious Organizations V. Parliament of Georgia

The Constitutional Court of Georgia granted two complaints of religious associations on July 3, 2018 (TDI, 2018). They challenged certain provisions of the Tax Code and the law on State Property of Georgia violated Article 14 of the Constitution and created a discriminatory environment for religious organizations. According to the Tax Code of Georgia, the construction, restoration and painting of churches and cathedrals commissioned by the Patriarchate of Georgia are exempt from VAT (Value Added Tax) without the right of

deduction (Tax Code, 168, 2). In a similar vein, according to the Law of Georgia on State Property, by a decision of the Government of Georgia, the title to state property could have been transferred free of charge to the Georgian Apostolic Autocephalous Orthodox Church apart from the internally displaced persons from the occupied territories of Georgia (Law of Georgia on State Property (**Article 6³**)).

The respondent, the parliament of Georgia, stressed that the differentiated treatment served the legitimate purpose of protecting cultural heritage and recognizing the historical role of the GOC entrenched in the 9th article of the Constitution (Constcourt.ge). The Court responded that since the contested rule on tax privileges is aimed at legal relationships established after this provision took effect, bestowing privileged status to the Orthodox Church does not have a firm and genuine link with its historical significance:

A constitutional provision that acknowledges the outstanding role of the Georgian Apostolic Autocephalous Orthodox Church does not imply the outright bestowal of any privileges upon this particular church; this would vitiate the essence of the constitutional right to equality. Such constitutional recognition is connected with the church's historical importance and does not serve to establish legal privileges for Orthodox Christianity in the present day (Venice Commission Report, 2018).

As argued above, the reference to the 'outstanding role of the Georgian Orthodox Church' leaves room for interpretation, however, its presence does not intuitively imply the dominant position and privileges the Church should be entitled to. The Constitutional Court claimed that creating the privileged legal state for the Orthodox Church is not the purpose of the Constitution. Furthermore, the Court declared that the property list which is transferred to the Georgian Orthodox Church is not conditioned by any historical circumstances. The Court concluded that on the bases of the challenged regulation and by decision of the Government, the Orthodox church may be granted any type of property, submit to privatisation (Constcourt.ge). However, this decision does not establish any direct causal link between the recognition of the historical role and the privileges it is bestowed by the disputed provisions. Hence, according to the Court the differentiated treatment which the challenged regulations

created unjustified discrimination and contradicted the constitutional right to equality. The Constitutional Court stressed two remedies for the present discriminatory treatment, abolishing the privileges granted to the Church altogether or extending them to other religious organizations as well (Constcourt.ge).

This ruling of the Constitutional Court was not left unanswered by the Patriarchate. The Secretary of the Patriarchate, Deacon Mikheil Botkoveli, stated that dominant religions exist in every country and such dominant religion is orthodox Christianity in Georgia which has contributed tremendously to Georgian state building. He maintained that the special role of the Church is acknowledged by the Constitution (Radiotaisufleba, 2018). In Botkoveli's words, some of the organizations only appeared in the late 20th century and have no contribution to the state-building at all (Radiotavisufleba, 2018). However, these rulings of the Constitutional Court were not followed by a wide societal debate and the Parliament has to consider the rulings and amend the legislation accordingly.

This decision is relevant in light of the state neutrality principle in both justification and effect senses. The comment pertaining to the 2nd section of the 9th Article declares that the Orthodox Church's privileges cannot be justified legally, as the special role of the Church in the history of Georgia does not provide a legal justification. Apart from this, these decisions serve to prepare the ground for the equal, non-discriminatory environment for all religions so that the law does not have a disparate impact on the religious affairs.

4.3. Controversy over the Law on Agricultural Law Ownership

The decisions of the Court pertaining to the ownership of the agricultural land of foreign citizens was one of the decisions which were bound up with controversy and discontent from both the Church and the Parliament.

Between 2012-2018, the Constitutional Court of Georgia discussed three cases pertaining to the Law on Agricultural Land Ownership.⁶ On April 14, 2011, a citizen of Denmark, Heike Kronquist, challenged specific regulations of the Law on “Ownership of Agricultural Land”, according to which individuals registered abroad were not obliged to ‘alienate’ agricultural land parcels in their ownership within six months after origination of title to the land to a citizen of Georgia household or legal person registered in Georgia (Law of Georgia On Agricultural Land Ownership (Art 4. Sec. 1(1)) In June 2012, the Constitutional Court ruled the regulation unconstitutional (Constcourt.ge, 2018).

As a response on the Court’s decision, in June 28, 2013, the Parliament introduced a moratorium, which banned the sale of agricultural land to foreign citizens. This moratorium was declared unconstitutional by the Constitutional Court on June 24, 2014. The parliament temporarily suspended the operation of the rule which allowed foreign citizens to own agricultural land in Georgia under certain provisions of the Law on Agricultural Land Ownership in 2017 (Venice Commission, 2019). This suspension was intended to last until the constitutional changes came into force on 16 December 2018, which did not allow foreign citizens to own agricultural land except for the exceptional (Venice Commission, 2019) The Constitutional Court found the disputed regulation identical to the law which prohibited foreign citizens from acquiring ownership of agricultural land in Georgia and which was originally declared unconstitutional on 26 June 2012. Therefore, before the revised Constitution went into force, the foreign citizens were entitled to acquire Agricultural land property (Venice Commission, 2019).

⁶In my Bachelor Thesis (submitted in February 2018) I argued that amending the Constitution following the Constitutional Court’s decision according to which the provisions banning ownership of agricultural land on foreigners indicated the feeble counter majoritarianism of Georgian Constitutional Review.

The Patriarchate repeatedly criticized the Court for declaring the ban on alienation of the agricultural land on foreign citizens unconstitutional. In its official statement of 2018, the patriarchate blamed the Constitutional Court of Georgia for creating tension and turbulence in the people and acting against the national interests of the country (Imedi, 2018).

Previously, in 2014, Ilia II officially stated that the Constitutional Court's decision was an attack on the statehood. The Patriarch called the Government to take measures and draft the legislation which would prevent "undermining consequences" (Tabula 2014). This statement was followed by the moratorium in 2017 (later held unconstitutional), which banned alienation of agricultural land on foreign citizens before the revised Constitution went into force.

Notwithstanding the fact that according to the Constitution, Constitutional Court's rulings are not subject to review, by amending the Constitution, the Parliament, in fact, ultimately 'overruled' the Court's counter-majoritarian decisions. Apart from the tremendous influence of the Church, one has to note that the public opinion was congruent with the demand of the Church, which explains to a great extent why the demand of the Church appeared to be compelling over the decision of the Constitutional Court.

4.3. Legalization of Marijuana

Another landmark Court decision which revealed tension between the Church and Constitutional Court is the one on the use of Marijuana. The Constitutional Court declared provisions of the Administrative Offences Code imposing administrative responsibility for the non-prescribed use of marijuana unconstitutional (Venice Commission, 2019). The Court declared that the restriction of the use of marijuana is not proportionate given the threats emanating from an individual use (Venice Commission 2019). According to the Court's

ruling, the use of marijuana is protected by the constitutional right to free development of one's personality, as guaranteed by the 16th article of the Constitution (Venice Commission, 2016). Notably, the rule was challenged by leaders of the Libertarian party 'Girchi'. As the head of the party, Iago Khvichia, noted in his personal interview, the Church had a tremendous influence on the drug policy in Georgia, although drug policy does not represent a religious issue. However, as Khvivhia maintained, the Church always expressed its position and not only in this particular case, but in general, supported repression instead of freedom (Iago Khvichia, personal interview, May 11, 2019).

Church's opposition to the Marijuana legalization was indeed very strong. Following the Court's ruling, the Patriarch, Ilia II claimed that those who pushed for drug legalization exercised hostility towards the nation (Georgiatoday 2018) He referred to the legalization decision as a huge mistake and assumed that the decision makers were under political pressure (Georgiatoday 2018).

After the announcement of the Court's decision, Georgian Orthodox clerics spoke out against the judges, demanding the complete abolition of the Constitutional Court. Archpriest Andria Jagmaidze made a statement on behalf of the Georgian Orthodox Church, saying the four judges of the Constitutional Court "had no right" to make such an important decision on behalf of 4 million Georgians (Georgiatoday 2018). He further maintained that existence of a Constitutional Court is not necessary for a democratic state and added that the Georgian Patriarchate planned to appeal to the Georgian government to abolish the Constitutional Court (Georgiatoday 2018).

These protests of the Church resonated on the political establishment, as well. Several days after the Patriarch's statement, the Chairman Irakli Kobakhidze stated that the ruling party would start discussions on the bill which would limit Constitutional Court's decision-making

power in the sphere of the drug policy (1tv.2018) However, such regulation has not been drafted or initiated yet.

All in all, this historical case depicts the tension between the secular and counter-majoritarian institution, namely the Constitutional Court and the most important religious institution in Georgia, the Orthodox Autocephalous Church. The power of the Church to block or impose certain political decisions is arguably extensive, however, this decision of the Constitutional Court shows challenges the perceived 'de facto veto' of the Church.

These legal cases show that the thesis proposed by Fox holds in case of Georgia, as the legislative process and government's secular or religious policies are outcome of the influence of intense competition between secular and religious actors.

Conclusion

The Church-state relationship in post-Soviet space has captivated attention of numerous scholars. The revival of religiosity in Georgia and the power and influence of the Church has been predominantly examined in political, societal and historical contexts in the previous literature. The purpose of this research was to shift the focus to the legal aspects of the issue and assess the Church-state relationship through the category of the constitutional secularism, the main element of which is the neutral approach of the state to different religions, beliefs or denominations present within its administrative borders. Given the conceptual disagreement on the concept of secularism, the present thesis came up with the working definition of secularism and introduced it as a classical concept composed of three conditions: 1. State neutrality 2. Separation between the Church and the state. 3. Protection of religious freedom. The research intended to demonstrate the dominance and influence of the Georgian Orthodox Church in both legal and factual senses. Although freedom of religion,

belief and consciousness is enshrined in the Constitution, the supreme law along with the legal framework includes conflicting claims pertaining to the status of the Georgian Orthodox Church. On the one hand, this is directly linked to the legacy of the Constitution of the Democratic Republic of Georgia (1918-1921) and the emergence secular discourse which traces back to the 19th century political development. On the other hand, the legal ambivalence represents a consequence of the late Soviet policy directed towards the cooperation with Churches as well as the religious revival in post-soviet Georgia.

As the major finding of the historical exercise employed in the thesis goes, the religion served as a source of the legitimacy in Georgia after the disassociation of the Soviet Union. The political leaders addressed the Georgian Orthodox Church and increased their support for this religious institution when their political popularity was in wane or the legitimacy of their establishment fell into question.

It should be noted that the law-making process has been bound up with the multifaceted power struggle, in which besides the parliament and the Church, the civil sector, namely the non-governmental organizations and international actors, such as the Venice Commission, have played significant roles. Despite Church's popularity and ubiquitous presence in all domains of public sphere its demands and requirements pertaining to the legal process have not always been decisive. For instance, although the Patriarch repeatedly proposed an initiative of the establishment of constitutional monarchy in Georgia, this initiative has never been reflected on the law. The Church has also been stipulating legal prohibition of abortion, which has not resonated on either. In contrast, the anti-discrimination law passed only in the acceptable form for the Church, after significant changes had been made. Besides, the GOC demonstrated its capacity to mobilize the public on the 17th of May on the International Day of Homophobia. Provision pertaining to the definition of marriage is also one of the 'accomplishments' of the Church, as well the ban on the ownership of

agricultural land for foreign citizens. Interestingly enough, Constitutional Court's decision which declared discriminatory provisions of the tax-code unconstitutional, generated discontent of the GOC, however, this decision has not been challenged by the parliament or the wider public. As for the initiatives on banning abortion and restoring the monarchy, they were not widely supported by the populace. The Church's demonstrated capacity to mobilize masses on the Day Against Homophobia and initiate amendments to the anti-Discrimination Law whereas the levels of homophobia and xenophobia, and the intolerance, in general, which have been high.

The research suggests that high social relevance of the particular controversial issues, and the congruence of the public opinion with the Church's position _ each often serves as a necessary condition for the Church to pass through its initiatives and decisions. However, given the fact that the legislative procedure in Georgia is marred by the intense power struggle and competition between secular and religious actors, it cannot be inferred that the 'Divine Commands' on legal matters ordered by the Church are inevitably reflected on the actual practice or policy.

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