# Agreements Between State and the Churches: Model of Cooperation or Green Light to Privileges

***Examples from Spain, Italy and Georgia***

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# Table of Contents

# Abstract

The classical view about religion-state relations distinguishes between the state-church, the separation, and the cooperation models. This thesis will compare Spain, Italy and Georgia considered to have basic characteristic of the cooperation model. It will be asked whether these three countries have more similarities than differences and whether it is still justified to consider the arrangements similar to the one in Georgia under the cooperation model. For this, constitutional frameworks of these countries will be analyzed vis a vis sub-constitutional reality and practical standing of different religious organizations. Then, it will be argued that classification of the situation in Georgia as a cooperation model significantly departs from the rationale behind it. Namely, the cooperation model in Georgia is abused with integrating only one component of it, such as conclusion of agreements, and disregarding all other characteristics and the basic rationale behind it. While cooperation models may still survive in a more robust democratic states, the platform for special agreements with religions, is a dangerous one for state of dominant religious models, like Georgia.

# Introduction

The three models of state-religion relations - the state-church, the separation, and the cooperation models - are widely recognized. These are general categorizations, and reflect the distance between state and religion, in the former being the least and the latter the most. However, many state models entail aspects of all three. Determination which model a certain arrangement falls into is made based on the predominance of characteristics from each of these three models[1].

Cooperation model (also called hybrid) is most common in Europe. Most visible commonality between cooperative state models is existence of agreements which address matters of common interest. Spain, and Italy are seen as the classic examples[2].

This thesis will compare three countries considered to belong to cooperation models, Spain, Italy and Georgia. All these states have predominant population of single religious denomination. In case of Spain and Italy that is the Catholic Church, while in Georgia it is the Orthodox Church. In some way, all of them are very close to having established church[3]. Constitutions of Spain, Italy and Georgia do not declare religion of the State, but they indeed acknowledge the special role of the Catholic Church and the Orthodox Church respectively[4]. At the same time, they do affirm of



[1] Norman Doe, "The Scope, Sources, and Systems of Religion Law", In *Law and Religion in Europe: A Comparative Introduction* (Oxford: Oxford University Press, 2011), 39

[2] Ibid, 34

[3] Javier Martinez-Torron & W. Cole Durham, Jr, "Religion and the Secular State / La religion et l'Etat laïque", in *Religion and the Secular State: National Reports*, ed. Donlu D. Thayer (Madrid: Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense, 2015)

[4] Article 16 of the Constitution of Spain; Articles 7 and 8 of the Constitution of Italy; Article 8 of the Constitution of Georgia.

freedom of religion for all[5]. Besides, these constitutions guarantee the non-discrimination on grounds of religion[6].

All of them have the basic characteristic of the cooperation model. The state concludes agreements with religious organizations. However, in the thesis it will be asked whether these three countries have more similarities than differences and whether it is still justified to consider the arrangements similar to the one in Georgia under the cooperation model. For this, constitutional frameworks of these countries will be compared to actual sub-constitutional reality and practical standing of different religious organizations. As Norman Doe argues in his book, "whilst the models surface at the constitutional level, they are less conspicuous in sub-constitutional laws"[7]. Indeed, it is very difficult to determine the real character of the State-Church relations solely based on the constitutional provisions. Practice and legal culture do matter and can be conducive to grasp the actual picture.

Further, it will be argued that the cooperation model in Georgia is abused with integrating only one component of it, such as conclusion of agreements, and disregarding all other characteristics and the basic rationale behind it.

Cooperation between State and religion may reflect the recognition of the religion's public value, or it may be more focused on more pragmatic considerations such as that state collaboration with religion will lead to achievement of common goals. Thus, basic rationale behind cooperation is a



[5] Article 16 of the Constitution of Spain; Articles 8, 19 and 20 of the Constitution of Italy; Article 16 of the Constitution of Georgia.

[6] Article 14 of the Constitution of Spain; Article 3 of the Constitution of Italy; Article 11 of the Constitution of Georgia.

[7] Supra note 1, Norman Doe, 39

beneficial role of the religion in public life, the possibility of pursuing common goals, [8] which considering the goals of the state have to be public and not attached to beneficiaries based on their religious belonging. Moreover, as a rule, in cooperation systems, there are more than one religious organization that the state grants the privilege of concluding formal agreements with. Not only is the Georgian model short of these features, but also it is not free from the institutional influence of the Orthodox Church.

Although international law tends to view state-church arrangements similar to cooperation model permissible, so long as religious freedom is not infringed and equality protected, more secular, neutral, dialogue-based state-religion relations have to be preferred in the Georgian context.[9]While cooperation models may still survive in a more robust democratic states, the platform for special agreements with religions, is a dangerous one for state of dominant religious models, like Georgia.



[8] Ibid, 38-39

[9] Ibid, 29.

# 1. Spain

## 1.1 Social and Historical Context

Spain has the third largest Catholic population in Europe. Number of people that actually devote themselves to practicing Catholicism are relevantly low[10]. Surveys conducted between 2015-2017 years indicate significant decline in Christian affiliation[11]. As in Italy, Spanish State has been intertwined with the Catholic Church from the very beginning. Catholicism was Spanish state religion for very long time, with two brief periods of State becoming attached to the idea of strict secularity (1869 and 1932 Constitutions).

Political and social influence of the Church was regained in mid-twentieth century as Francisco Franco preferred to have united his power with the strong social institution- Catholic Church. He secured conclusion of the Concordat between the Holy see and the State of Spain in 1953. Spain declared itself to be the Catholic state[12]. During the Franco, the Catholic Church enjoyed overwhelming privileges. In fact, it was the only religious denomination holding the legal status. Only it could hold and acquire property. All other denominations were prohibited to advertise their worship services. Spanish State imposed the notion of the mandatory canonical marriages for those belonging to the Catholic church. The State paid salaries for priests, for building/reconstruction of the places of worship. The Catholic Church was exempted from tax burdens. The State censored



[10] Only 23% attend religious services at least monthly. Pew Research Center, Oct. 29, 2018, "Eastern and Western Europeans Differ on Importance of Religion, Views of Minorities, and Key Social Issues", 22

[11] Pew Research Center, Oct. 29, 2018, "Eastern and Western Europeans Differ on Importance of Religion, Views of Minorities, and Key Social Issues", 19

[12] Zoila Combalia& Maria Roca. "Religion and the Secular State: The Spanish Case." In *Religion and the State: National Reports*, ed. Donlu D. Thayer, (Madrid: Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense, 2015), 658

materials that was thought to be offensive to the Catholic Church. Only the Catholic Church had right to establish educational institutions. It had access to all the media platforms available. The Catholic religious instruction became obligatory at all educational levels [13].

The relationship between the Church and the State was, of course, mutually beneficial. For the sake of the reciprocity, the Church secured the regime to be 'god driven'. Thus, Franco's cozy relationship with the Catholic Church led Spain to embrace phenomenon called national Catholicism[14] and detaching the Church from political domain became quite challenging in the following years.

## 1.2 Constitutional Framework

The current constitution of Spain was adopted in 1978 when Franco's dictatorship was fully replaced by the new, democratic government. The change of regime brought novel approaches towards religious denominations, including the Catholic one. The Constitution elaborated new institutional framework regarding the State-Church relationships.

With the new Constitution, Spanish State started the process of secularization. Firstly, the State abolished the state religion. The Constitution guaranteed the equality of every denomination. Key



[13] Oscar Celador Angon, "Legal Aspects of the Financing of Religious Groups in Spain", *The Age of Human Rights Journal*, no. 2 (June 2014), 70

[14] Cathelijne De Busser, "Church-state Relations in Spain: Variations on a National-Catholic Theme?", *GeoJournal* 67, no. 4 (December 2006): 286

principles for state-religion relations determined by the Constitution are: religious freedom and equality, state secularity, neutrality and its cooperative policy[15].

According to Article 16 Paragraph 3 of the Constitution "No religion shall have a state character […]" meaning that Spain identifies itself as a secular State[16]. Freedom of religion is guaranteed by Article 16 Paragraph 1[17]. Not only is religious freedom a fundamental right, but as noted, it is one of the principles of the State. As Article 9 Paragraph 2 stipulates, "it is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life." Thus, the State has duty of active participation in furtherance of the freedoms and equality, including in the religious domain[18].

Positive or cooperative secularism is duty dictated by Article 16 Paragraph 3 of the Constitution, that prescribes the duty of the authorities to consider the religious beliefs of the Spanish society and act accordingly to maintain appropriate cooperation with 'the Catholic Church and other confessions.

As the Constitutional Court noted, "article 16.3 of the Constitution, after making a declaration of neutrality […] considers the religious component perceptible in the Spanish society and orders the public authorities to maintain the "resulting relations of cooperation with the Catholic Church and



[15] ibid, 284

[16] Supra note 12, Zoila Combalia & Maria Roca, 659

[17] 1978 Constitution, Article 16 Paragraph 1 of the Spanish Constitution: "Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law".

[18] Supra note 12, Zoila Combalia & Maria Roca, 659

with other denominations", thereby introducing an idea of non-denominational or positive secularism which "bans any type of confusion between religious and state functions" [19].

Therefore, Spanish State's pledge to neutrality principle does not lead to its indifference towards religion. Quite contrary, Spain must uphold the positive secularism precluding the lack of communication with religious denominations[20].

State's cooperation with religious denominations generally translates into conclusion of the special cooperative agreements between the State and the respective denominations. The text of the Constitution itself does not require regulating State-Church relationships specifically by conclusion of the agreements. In Spain, there is no textual basis to assert that conclusion of a special agreement is a right derived from the Constitution. Reaching the special agreement with the State is a privilege for denominations. Thus, concluding special agreements is not the only, but just one type of the cooperation.

## 1.3 Special Agreements Between the State and the Religious Denominations

Possibility to conclude the agreement of the cooperation is enshrined in Article 7 Paragraph 1 of the Organic Law of Religious Freedom (7/1980 of July 5). It refers to Article 16 Paragraph 3 of the Constitution (duty to take into account 'religious beliefs existing in Spanish society') and states that Spain "shall establish, as appropriate, Co-operation Agreements […]" with registered



[19] Judgement of the Constitutional Court of Spain N46/2001, February 15

[20] Supra note 12, Zoila Combalia & Maria Roca, 657, 660

denominations that hold "notorious influence" [or "well-known roots"] within society (emphasis by the author).

Proviso "as appropriate" indicates the wide discretion of the State to weigh when certain denomination has enough "notorious influence" and appropriateness worthy of cooperation. For purposes of illustration of the State discretion, the examples related to the Jehovah's Witnesses, Mormons, Buddhists and Orthodox serve well. Though it was determined all of them have "well-known roots", denominations could not transfer the negotiations into the cooperation agreements[21]. It must be noted, that community of Jehovah's Witnesses is considerably larger than the community of Jews that still managed to conclude the special agreements with the State.

Until 1992 the Catholic Church was the only religious denomination that had concluded the special agreement with the State. The Holy See secured conclusion of the new Concordat, that replaced the Concordat of 1953, two years earlier even before Spain adopted the Constitution of 1978. Moreover, it took only several weeks after the adoption of the Constitution, to conclude supplementary four agreements with the Spanish State. Agreements of 3 January 1979 respectively concern Legal Affairs; Education and Cultural Affairs; Economic Affairs; religious assistance to the armed forces and the military service of clerics and religious figures (all ratified on 4 December 1979; B.O.E. no. 300, 15 December 1979). These agreements are inseparable part of the Concordat.

It took the State 14 years to finally conclude cooperative legal documents with denominations other than Catholic one. In 1992 the State signed the respective agreements of cooperation with

[21] Elena Ervas, "The Agreements Between Church and State: The Italian Perspective", *The Brigham Young University Law Review* 2017, no. 4 (June 2017): 887

the Islamic Commission of Spain, Federation of Israeli Communities and the Federation of Evangelical Religious Entities[22]. It must be necessarily noted, that those groups paid high enough price for that privilege. Different churches had to unify to be considered as having "well-known roots". For instance, Protestant churches had united in one federation with non-protestant denominations like, Orthodox Church. Such arrangement led to certain complications, as even in a single denomination it happens to be very different Churches with wide range of transformations of certain religious belief[23].

Agreements of the cooperation were drafted according to the already existing Concordat of 1976 (except for the issues concerning fiscal duties). Hence, these special agreements likewise cover the civil effects of the religious weddings, tax benefits, right of religious assistance in the public centers and religious education.

Legal status of the Concordat differs significantly from agreements of cooperation that the State concluded with above-mentioned federations. While Concordat has status of international treaty, agreements of coloration are ordinary laws adopted by the legislative body[24]. Significance of the legal status is related to different discretion it grants to the State with regards to their termination: The State cannot terminate the Concordat without consent of the Holy see, whereas, the State can unilaterally terminate the cooperative agreements concluded with Muslims, Jews, and Protestants.



[22]Supra note 12, Zoila Combalia & Maria Roca, 661

[23] Ibid

[24] Francisco Colom González, "Political Catholicism and the Secular State: A Spanish Predicament", *Recode Working Paper Series*, no. 20 (December 2013): 10

Not only agreements have different legal status, but the benefits acquired by it differs in scope compared to the Concordat.

## 1.4 Three-Tier System of the State-Religion Cooperation

The Spanish State has elaborated so-called three-tier system with regards to the cooperation between the religious denominations and itself. Three different levels of cooperation produce different outcomes for the respective denominations.

### 1.4.1 The First Tier of State-Religion Cooperation

First level of cooperation between the State and the religious denominations in Spain, is conclusion of the special agreements (Concordat/Agreements of cooperation). Those denominations that were able to sign documents of the cooperation, enjoy the widest range of the benefits that State offers in state-religion relationship.

Beneficial arrangements with regards to the religious marriages, religious education and finances for those being on this level of cooperation will be discussed below.

*a) Religious Marriage*

As noted, the new Constitution of 1978 instituted new, cooperationist approach of the State towards religion and respective institutions. Legislation, including the Civil Code, was amended respectively to mirror this new dimension of their relationships. Alongside with civil marriage, the Civil Code grants recognition to the Catholic religious marriage too. Citizens are free to choose which model of marriage corresponds to their religious/non-religious beliefs. Article 59 *on*

*marriage performed in religious form*, stipulates "Matrimonial consent may be given in the form provided by a registered religious confession, in the terms agreed with the State or, in the absence thereof, in the terms provided by State legislation". Article 60 guarantees civil effect of marriages performed according to the Canon Laws[25]. Thus, without any preliminary authorization, people belonging to mentioned denomination, can transfer effects of their religious effects into the civil effects[26].

By virtue of concluded special agreements of 1992, this privilege became available to the Jews, Muslims and Protestants too. But, unlike the Canonical marriage, for people of these denominations preliminary proceeding - authorization by the officer at the Registry Office - is required to enjoy full civil effects[27].

*b) Religious Education in Public Schools*

Article 27 Paragraph 3 of the Constitution obliges the State to "[…] guarantee the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions". The Constitutional Court interpreted this right to apply not only to parents who wish to bring up their child according of the religious values, but to those parents too, who do not have similar wish.



[25] The Civil Code of Spain, Article 60: "A marriage performed in accordance with the provisions of Canon Law or in any of the religious forms provided in the preceding article shall have civil effect. The provisions of the following chapter shall apply as relates to the full recognition of such effects".

[26] But, for full acknowledgement, Article 61 requires registration of the marriage in the Civil Registry. For registration, it is only needed "the mere filing of the certification issued by the respective Church or confession" (Article 63)

[27] Supra note 12, Zoila Combalia & Maria Roca, 668

The State is responsible for ideologically neutral public schools as public schools must not become an arena for indoctrination[28]. As the Constitutional Court noted, "in a political legal system based on pluralism… all public institutions and in particular educational institutions should effectively be neutral". Teachers are bound by the obligation to refrain from teaching specific ideology[29].

Upholding this guarantee can be quite challenging since the Catholicism maintains very influential role in this sphere. Educational system introduced in 1985, immensely favors the Catholic schools (that are roughly 1/3 of the market of primary education)[30]. Moreover, the Catholic Church "[…] uses its social weight to put pressure on the government" to define public education not as "public service" offered by the State but as a fundamental right of parents (Article 27 Paragraph 3). Lobbying of this idea is really beneficial, as leads to allocation of the State finances towards subsidizing the Catholic schools[31].

Agreement of 3 January 1979 between the Holy See and the Spanish Government Concerning Education and Cultural Affairs states that "[…] education imparted in public teaching centers shall respect the values of Christian ethics". By virtue of that agreement teaching Catholic religion should be ensured on any level of studies in public schools "in conditions equal to those of the basic subjects".

All denominations that have a special agreement with the State, also have the right to ask for special religious classes in public schools. Whoever wishes to opt out, classes of Social and Civic



[28] ibid, 669

[29] Judgement of the Constitutional Court of Spain N5/1981, February 13

[30] Supra note 24, Francisco Colom González, 10

[31] ibid

Values/Ethical values could be an option[32]. In contrast to Italy, school itself chooses whoever to hire as a teacher of religious education (on the basis of the recommendation of the Church).

While those denominations with agreement of cooperation are free to disseminate their religious convictions in the classrooms (if it is on voluntary basis), they do not enjoy the same assistance from the State that the Catholic Church does. Firstly, in practice, it is quite challenging to arrange special classes. Secondly, while fiscal burdens related to Catholic education are fully covered by public funds, three other denominations that have special agreements with the state are responsible to cover costs by themselves unless there are minimum ten pupils in each class asking to attend the classes[33]. Only in that case, is the salary of the teacher funded from public funds.

*c) Financial aid*

As noted, Agreement of 3 January 1979 on Economic Affairs was concluded before the Catholic Church and the State. By virtue of Article 2 the State took responsibility to collaborate with the Catholic Church in the obtention of adequate economic support. One of the ways is prescribed in the same article "[…] the State may assign to the Catholic Church a percentage of the yield from income taxes […]".

In 1987, the government came to the agreement that 0,52% of the personal income tax of taxpayers who explicitly chose the Catholic Church as a beneficiary, would be assigned to the Catholic Church. unassigned share will be allocated for other social purposes than the religious ones[34].



[32] Supra note 12, Zoila Combalia & Maria Roca, 671

[33] Supra note 14, Cathelijne De Busser, 292

[34] Supra note 13, Oscar Celador Angon, 77

In 2007 this quota was increased to 0,7%. "This assignment covers approximately 25 percent of the Catholic Church's necessary budget in Spain"[35]. For instance, 249 million Euros was contributed using this mechanism in 2016[36].

Other religious denominations do not enjoy the benefit of direct subsidy. However, these identical agreements all prescribe significant tax exemptions. For instance, religious publications are free of tax; places of worship, community offices, institutions of religious training are free from paying real estate tax etc.

In response of the numerous discussions and petitions, in 2005 public entity - "Pluralism and Co-existence Foundation" - was established under the Ministry of Justice. Foundation is subsidized from the State budget. Main purpose of this foundation is to assist non-religious interests (cultural, educational and social) of religious denominations. To supplement this goal, foundation intends to raise awareness about religious minorities and facilitate their integration into society.

Beneficiaries of the foundation are only those denominations either with concluded agreements with the State or having "well-known roots"[37]. Other registered organizations are precluded from benefits granted by the foundation. Thus, the only way such religious groups can improve their fiscal condition, is by transforming into a non-profit organization. By doing so, religious organizations that truly are worse off, can be exempt from certain tax duties[38].



[35] Supra note 12, Zoila Combalia & Maria Roca, 666

[36] Karl Smallman, "Spain's Catholic Church sees tax income drop €1 million", Euroweekly, March 8, 2017. https://www.euroweeklynews.com/2017/03/08/spain-s-catholic-church-sees-tax-income-drop-e1million/#.XJ6ih5hKiUk> (accessed March 29, 2019).

[37] Supra note 13, Oscar Celador Angon, 78

[38] Ibid, 81

In conclusion, the Catholic Church can receive donations and has an exclusive privilege of direct financing (0,7% out of that taxpayer's income tax, that explicitly showed their will). Denominations with the special agreements (Jews, Muslims and Protestants) of with cooperation with the State and denominations having "well-known roots" (Mormons, Jehovah's Witnesses, Buddhists, Orthodox Church) also have the right to receive private donations. These denominations do not receive direct subsidies from the State, but they do gain financing through "Pluralism and Co-existence Foundation".

### 1.4.2 The Second Tier of State-Religion Cooperation

The Second level for cooperation is with the Churches, faiths and religious communities that acquired legal personality through procedure of registration maintained by Religious Entities Register of the Ministry of Justice (Article 5 Paragraph 1 of the Law 7/1980 of July 5).

For the purposes of the registration denomination must present "[…] an application together with an authentic document containing notice of the foundation or establishment of the organisation in Spain, declaration of religious purpose, denomination and other particulars of identity, rules of procedure and representative bodies, including such body's powers and requisites for valid designation thereof" (Article 5 Paragraph 2 of the Law 7/1980 of July 5).

Though registration is not a mandatory requirement, it grants the denomination full legal capacity and guarantees, it is indeed a precondition for reaching the special agreement with the State[39].



[39] Supra note 21, Elena Ervas, 885

The importance of the registration was highlighted by the Constitutional Court in the case concerning the Church of Unification (Moon Sect), that intended to register in Religious Entities Register. Their application was declined based on the argument that they were not a religious group for purposes of the law. Not only were they not taken seriously, but also, they were labelled as a "dangerous sect".

The Court noted, that freedom of religion being a fundamental right, is not strictly tailored only to traditional religions or religions that have "well-known roots". Therefore, the administrative authorities responsible for the registration have no discretion to deny denomination the right to register unless there is a basis prescribed the Royal Decree 142/1981 of January 9 ("Concerning the Organization and Functioning of The Registry of Religious Entities"). Such basis will only exist if the requisites stipulated in Article 3 (e.g. Rules of operation and representative Organisms, stating their powers and requirements for valid designation) are not duly met. Besides that, there is no discretion to deny the record in registry. Registering body has no authority to substantively scrutinize "the religious component of the entities". Authorities are only allowed to check procedural issues. Consequently, the Court highlighted the importance of religious freedoms and noted, that improper denial undermines freedom of religion "in its collective exercise modality"[40].

All registered religious denominations (but not having the special cooperative agreement with the State or without status of "well-known roots") are excluded from public funds and are dependent



[40] Judgement of the Constitutional Court of Spain N46/2001, February 15

on private donations[41]. Law regulates such donations the same way as it regulates donations made to charitable organizations[42].

### 1.4.3 The Third Tier of State-Religion Cooperation

Last and third level of cooperation is between the State and the denominations that are not registered in the Religious Entities Register. For certain reasons, not all the denominations or organizations are willing to register, but that does not deprive them of their constitutional protection. They do still have the right to freely enjoy their religious freedoms. Such entities do gain protection that general associations have.

"The associations and entities created and managed by the religious minorities for charitable-educational, medical and hospital or social service activities, also enjoy the tax benefits that Spanish State ordinary legislation on taxes applies to non-profit organizations, and those granted to private charitable organizations"[43]. In practice, this article led the State to confine fiscal cooperation to denominations that have special agreements[44].



[41] Supra note 13, Oscar Celador Angon, 82

[42] Ibid, 78

[43] Ibid, 81

[44] Santiago Canamares Arribas, "Religious Equality in the Spanish Constitutional System", in *Law, Religion, Constitution: Freedom of Religion, Equal Treatment, and the Law,* eds. W. Cole Durham, Jr., Silvio Ferrari, Cristiana Cianitto, and Donlu Thayer (Farnham: Ashgate Publishing Company, 2013), 311

## 1.5 Conclusion

Spanish system of cooperation leaves the state with discretion to assess whether certain religious denominations deserve to be treated similarly to the Catholic Church. The way to enjoy widest possible range of benefits, religious denominations is to have an agreement with the state, or at least be categorized as a denomination that has "well-known roots" in Spain. Process of assessment can become subjective and political, as the example of the Jehovah's Witnesses indicate.

Even if the State decides to cooperate with certain religious denominations, sometimes they have may have to compromise. For instance, minority or relevantly new denominations have to involuntarily unify with larger and older religious denominations in order to be considered as having "well-known roots", as benefits are contingent on such unification. Example of the unification of Protestant and Orthodox churches serves well to highlight the potential complications within the union as some denominations cannot agree on very significant issues.

No other religious denomination besides the Catholic enjoys the privilege of being directly subsidized with public funds. Moreover, minority religious denominations are not the beneficiaries of the "Pluralism and Co-existence Foundation" that was established, among others, to raise awareness about religious minorities and facilitate their integration into society. Thus, the major problem in Spanish state-church relations is lack of sensitivity towards third tier - minority religions, particularly the novel religious denominations in the Spanish context.

However, it will be fair to say that the three-tier system still is more likely to reflect religious pluralism, at minimum, relatively equalized positions of religious organizations in the first two-tiers leaves more space for potential inclusion of others as they gain societal recognition with time.

# 2. Italy

## 2.1 Social and Historical Context

Italy has the largest Catholic population in Europe. Population is predominantly Catholic, but it is hard to estimate approximate percentage of people that actually devote themselves to practicing Catholicism. Difficulty stems from the fact that national censuses do not cover questions on religious activities. It is believed that asking about religious activities would trespass the principle of secularity[45]. Despite non-clarity of statistical data, it can be asserted that number of people practicing religion in Italy is high, especially compared to other European states[46]. Moreover, some scholars also claim that Italy is a unique state in Europe, where in the end of the 20th century, sharp drop of the percentage of participation in church activities did not take place[47].

Besides naturally being the most powerful denomination with the largest number of followers, the Catholic Church's influence is intensified by the fact that that the Papacy locates itself in Vatican. As for the 2018, the highest level of public trust in institutions is projected in Pope Bergoglio



[45] Alessandro Ferrari & Silvio Ferrari, "Religion and the Secular State: The Italian Case", in *Religion and the Secular State: National Reports*, ed. Donlu D. Thayer ed. (Madrid: Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense, 2015), 445

[46] Maria Grazia Martino, ""We Need to Promote the Dialogue between Christians and Protestants": State, Church, and Religious Minorities in Greece, Italy, and Sweden", *Journal of Church and State* 54, no. 4, (December 2012): 541

[47] Pippa Norris and Ronald Inglehart. 2011. Sacred and secular: Religion and politics worldwide, 2nd ed. New York: Cambridge University Press, 73

(72%)[48]. As a result, independent from of statistical data, Vatican's influence on events taking place in Italy, is impressive[49].

Being such powerful is not result of the remarkable number of believers solely, but dual perception of the Catholicism. Interpreting the Catholicism being not only just religion, but part of the Italian cultural heritage and national identity, furthers its dominance over 'minor' religious denominations. According to Enzo Pace, Italy is "[…] paradoxical "Catholic model of secularism" that is founded on the social representation of Catholicism as the cultural basis of the nation's identity"[50]. Idea of Catholicism and symbols affiliated to it being part of the Italian identity, risks neutrality principle endorsed by the highest constitutional interpreter, the constitutional court itself.

Good illustration for that was the case of Doctor T. originated in 2005. Doctor T. is the judge who refused to perform the jurisdictional functions in courtrooms, where crucifixes were displayed. As an option, President of the tribunal, where Doctor T. was appointed, suggested him to fulfill his duties in courtrooms, where no crucifix was disposed. He rejected the offer strictly insisting to remove that religious symbol from all courtrooms. The disciplinary proceedings began, and he was dismissed by the High Council of the Judiciary (the constitutional body that ensures the autonomy of the judiciary). Fast forward to the 2011, Italian Supreme Court affirmed the ruling of High



[48]„How much do you trust the following organizations, associations, social groups, institutions?" Italy: Public Trust in Institutions, Statista, 2018. <https://www.statista.com/statistics/594561/level-of-public-trust-in-institutions-italy/> (accessed March 29, 2019).

[49] Supra note 45, Ferrari & Ferrari, 445

[50] Annalisa Frisina, "The Making of Religious Pluralism in Italy: Discussing Religious Education from a New Generational Perspective", *Social Compass* 58, no. 2 (June 2011): 272; Enzo Pace, "L'insigne faiblesse de la laïcité italienne", in J.-P. Willaime and S. Mathieu (dirs) Des Maîtres et des Dieux. Écoles et Religions en Europe, Paris: 2005, pp. 59–70

Council of the Judiciary as refusal of judicial performance 'infringed his institutional and professional duties of diligence and commitment to the exercise of his judicial functions'[51].

"This approach […] implies […] that religious and cultural needs are primarily interpreted not from the secular constitutional point of view, but rather from the point of view of the national – religious and cultural – Catholic tradition"[52].

The idea of supremacy of the Catholic Church partly stems from the tradition. From the very beginning, Italian institutions and the Catholic Church have been intertwined. Coordinated process of secularization during the unification of Italy (1860–1870), diminished the secular powers of the supreme pontiffs. Brief period of relative weakness was followed by the victory. Like his counterpart, Francisco Franco in Spain, Benito Mussolini thought to sustain his regime by endorsing the religion in public sphere. The one that was immensely empowered was not Fascist regime, but the Catholic Church as an institution. In 1929 Lateran Treaty was signed between the Kingdom of Italy and the Holy See[53].

Lateran Treaty proclaimed Catholic Apostolic Roman religion to be the only State religion[54]. Vatican was recognized as sovereign unit with exclusive jurisdiction (Article 4 of Treaty), while Rome was to be perceived to be Ethernal City of sacred character as the "centre of the Catholic world and place of pilgrimage" (Article 1). Italian State recognized the validity of Catholic



[51] Joint Civil Divisions of the Italian Supreme Court of Cassation, decision no. 5924, March 14, 2011, <https://www.altalex.com/documents/massimario/2011/03/23/funzione-giurisdizionale-astensione-crocifisso-illegittimita> (accessed March 29, 2019).

[52] Supra note 45, Ferrari & Ferrari, 448

53 Supra note 45, Ferrari & Ferrari, 448-449

54Article 1 of the Lateran Treaty (Conciliation Treaty) of February 11, 1929: „Italy recognizes and reaffirms the principle established in the first Article of the Statute of the Kingdom of 4 March 1848, according to which the Catholic, Apostolic and Roman Religion is the only religion of the State."

marriage: when administered according to Canon Law, divorce was not option (Article 34); instruction of Catholic religion in the public primary and secondary schools was emphasized to be the basis and the apex of public education (with books approved by the ecclesiastical authorities), teachers were to be appointed/revoked by the bishops empowered to do so (Article 36).

## 2.2 Constitutional Framework

After almost 20 years of Lateran Treaty being signed, Italy elected its First Republican Parliament and accordingly, the Republican Constitution of 1948. The new Constitution confirmed the Lateran Treaty as a source of regulating the relations between the State and the Catholic Church (Article 7 of the Constitution). On the other hand, the Constitution of 1948 introduced the basis for principles of religious freedom and equality.

Article 3 of the Constitution prohibits the discrimination among other bases on ground of the religion. Articles 7 and 8 of the Constitution set up arrangement of the religious freedoms between State and religious institutions as such. Article 7 guarantees separation between the Catholic Church and the State. Article 8 stipulates that all religious denominations are equal before the law. Unlike Articles 7 and 8 of the Constitution that are devoted to the institutional relationships between religious denominations and State, Articles 19 and 20 prescribe individual rights of freedom of religion Despite the fact that language of Article 19 is only limited to religious beliefs, it is interpreted being protective of all kinds of conscience, being it religious or not. Article 20, being conscious of past discriminations towards various religious denominations or their institutional bodies, maintains risk reduction by prohibiting discriminatory interventions.

The reality around Catholic Church is rather asymmetric to the academic concept of Italian laicità. As noted, Italy, manifestly, does not share concept of negative or hostile secularism, to the contrary, the constitutional court interprets Italian laicità to have positive and active character. Rational of this positive obligation is the principle of secularism as it "[…] implies not indifference of the State towards the religions but guarantee of the State for the safeguard of the freedom of religion"[55]. Moreover, Constitutional Court assesses this duty to be 'one the supreme principles of the constitutional order'.

## 2.3. Four-tier System of the State-Religion Cooperation and Special Agreements Between the State and the Religious Denominations

The State of Italy deems that for that state-religion relations should be regulated by the special agreements concluded between them. Unlike Spain, the text of the Constitution itself requires regulating State-Church relationships specifically by conclusion of the agreements. Both, Articles 7 and 8 of the Constitution implicate so-called 'bilaterality principle'[56]. "[…] the bilaterality principle requires the State to regulate all questions strictly connected with the specific needs of a specific denomination through these agreements"[57]. The Constitution envisages two systems to



[55] Constitutional Court of Italy, Judgement no. 203, 12 April 1989.

[56]Article 7 of the 1948 Constitution of Italy: The State and the Catholic Church are independent and sovereign, each within its own sphere. Their relations are regulated by the Lateran pacts. Amendments to such Pacts which are accepted by both parties shall not require the procedure of constitutional amendments. Article 8 of the 1948 Constitution of Italy: All religious denominations are equally free before the law.

Denominations other than Catholicism have the right to self-organisation according to their own statutes, provided these do not conflict with Italian law.

[57]Supra note 45, Ferrari & Ferrari, 452

do so: State's relationship with the Catholic Church is regulated with Concordat (Article 7 Paragraph 2), while agreement between the State and every other denomination are governed by *Intesa* (hereinafter, Special Agreements (Article 8 Paragraph 3)).

The Constitutional Court of Italy assessed the agreements have instrumental function, as "Concordats […] aim to recognise the requirements specific to each religious faith […], to grant them particular benefits or, as the case may be, to subject them to particular restrictions […] or alternatively to establish certain acts that are specific to the religious faith as relevant within the legal order"[58]. The Court also noted that "[…] it is not the conclusion of a concordat itself that enables equality between faiths […]" but the Constitutional framework itself stands as the guarantor [59].

The very unusual character of these agreements stems exactly from "bilaterality principle": once approved by the Parliament, there is only one possibility to modify or cancel them: new agreement should be made. The Constitution has sought to avoid the unilateral introduction of special agreements as unilateralism could lead to the discrimination.

First denomination to whom benefits of 'bilaterality principle' applied after new constitutional arrangement, was the Catholic Church. Agreement Between the Italian Republic and the Holy See (hereinafter Villa Madama Agreement) was concluded in 1984. Italy's long history holding state religion ended with it. Still, new Concordat reaffirms the exceptionality of the Catholic Church and states: "The Italian Republic, recognizing the value of religious culture and taking into account that the principles of Catholicism are part of the historical heritage of the Italian people, will

[58] Judgement of the Constitutional Court of Italy no. 52, 10 March 2016

[59] Judgement of the Constitutional Court of Italy no. 52, 10 March 2016

continue to ensure the teaching of the Catholic religion as part of the objects of the education system for any public non-university school of all levels and types[60]".

The Villa Madama Agreement has its significance not only for legal effects, but it is important as being major step towards secularization of the State. New Concordat surely weakened Catholic Church's privileges that Mussolini generously granted to it: no more state church status, Rome lost status of "sacred", compulsory religious instruction in public schools ended, from then on, church annulment of marriages must be confirmed by the state etc.

Still, the formal rearrangement that led to slightly weakened Church, did not result in elimination of all privileges[61].

The Villa Madama Agreement was gradually followed by conclusion of the special agreements with seven non-Catholic denominations: Valdesians (1984), the Christian Churches of the Seventh-day Adventists (1986), Assemblies of God (a Pentecostal Church, 1986), the Union of Jewish Communities (1987), the Christian Evangelical-Baptist Union (1993), and the Lutheran Church (1993), the Istituto Buddista Italiano Soka Gakkai (2015)[62].

Italian laicità, at least as an aspiration, embraces plurality, equality of all religious or non-religious beliefs and most importantly, requires the State to apply neutrality towards every belief[63]. Not only laicità refers to the State obligations, but it is also facilitator to an end itself: to build plural and democratic state. Regrettably, this understanding is not shared by every other state institution,



[60] Article 9 of the 1984 Agreement

[61] Supra note 46, Maria Grazia Martino, 539

[62] Supra note 21, Elena Ervas, 875-876

[63] Supra note 45, Ferrari & Ferrari, 446

including by the lower courts, legislative body or executive. Praised pluralism becomes scarcity as both political and governmental bodies are still functioning on the uncontested belief of superiority of the Catholic Church. Discrepancy between legal and social reality makes some scholars question the feasibility of the "Italia laica".

This historic, legal and social developments resulted Italian ecclesiastical law to be structured in four-tier system[64].

Supreme position is held by the Catholic Church, unsurprisingly.

An intermediate position is allocated to seven others, more or less, long-standing denominations that were able to successfully negotiate special agreements with the Italian State (Valdesians, the Seventh-day Adventists, Assemblies of God, Jews, the Christian Evangelical-Baptist Union, Buddhists).

"They are guaranteed a position equivalent, although not equal, to that of the Catholic Church […]"[65]. Like Catholic Church, they do get to have certain financial advantages (tax-deduction, donations, financing for their needs etc.).

*a) Religious Marriage*

Alongside with civil marriage, the State grants recognition to the Catholic religious marriage too. Citizens are free to choose which model of marriage corresponds to their religious/non-religious beliefs. Article 8 Paragraph 1 of the Villa Madama Agreement recognizes the civil effects 'for marriages contracted according to the norms of canon law' with reservation that religious marriage



[64] Ibid, 455-458

[65] Ibid, 457

will be registered in state register of births, marriages and deaths[66]. It must be noted, that civil effects of the religious marriage are produced after the religious ceremony, before it is registered. There is no need for the preliminary authorization.

By virtue of concluded special agreements, this privilege became available for every religious denomination that has signed the agreement with the State.

*b) Religious Education in Public Schools*

By Article 9 Paragraph 2 of the Villa Madama Agreement, the State took responsibility to maintain the Catholic education in Public Schools as 'principles of the Catholic Church are part of the historical heritage of the Italian people'. Mandatory religious education upheld with the previous Concordat was replaced by the option to opt out classes of the Catholic religious education. Some scholars claim that the possibility to be exempted from such classes, is illusory as the final decision on this is made by the school's director, and schools often do not provide for alternative educational classes.

Clearly, in some schools, leaving the classroom is not an option as it was illustrated in case of several students whose school-leaving qualification exam results suffered since they chose not to attend classes on the Catholic religion[67]. Regional Administrative Tribunal in Lazio decided in their favor. Resonance towards outcome was harshly criticized not only by the public and the Church itself, but by high officials, too.

While the Catholic religious education that is "must-have" subject in every public school (and opting out of class requires proactive measures taken by the pupils (or their guardians)), the

[66] Supra note 45, Ferrari & Ferrari, 460

[67] Supra note 50, Annalisa Frisina, 273

denominations that are in the special agreements with the State, are entitled to have relevant educational classes only if certain number of pupils or teachers demand it.

Whereas, all fiscal burdens related to the Catholic education in the public schools are covered by the State, denominations being in the agreement with the State are still responsible themselves to bear all fiscal burdens.

*c) Financial Aid*

According to the Article 3 of the Constitution, it is the duty of the Italian State to "[…] remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organisation of the country". Thus, State perceives itself as a guarantor of equality that should act positively to contribute to the needs of the citizens[68]. Plus, as already noted, Italian laicità is interpreted to be positive in nature.

Agreement of 1984 on Church Entities and Property (concluded between Italian State and the Catholic Church) designed the financial system of the cooperation. Despite the fact, that the law that enforced the Agreement (Law No 222/1985) is devoted to the financing arrangement for only Catholic Church, the State applies it to other denominations that have reached special agreements with the State.

Law No 222/1985 replaced the system, where all taxpayers, despite their religious affiliation, automatically were financing Catholic clergy. As for today there are two systems. First system, 'otto per mille' (eight per thousand) "[…]is a complex and uniquely-Italian solution to a common

[68] David Durisotto, "Financing of Churches in Italy", *Law & Justice - The Christian Law Review* 165 (2010): 160

European problem"[69]. Under this system, taxpayers must annually allocate 0,008% of their income tax to one of the following: Catholic Church; denominations that concluded special agreement with the State; the Italian State for the humanitarian purposes. According to the statistical data of 2016, 81.05% of allocations went to the Catholic Church[70].

'Otto per mille' gives taxpayer possibility to avoid direct allocation of their tax quotas for religious aims.

Second system creates possibility for taxpayer to set off donations from taxable income (up to 1,032.91 Euros) for the Catholic Clergy or relevant institutions of denominations, that have special agreements with the State [71].

While the second system proved to be complete failure even with regards to the Catholic Church, first system translates into very large amount of money allocated to the Catholic Church. For instance, in 2012 Catholic Church gained over 1.3 billion USD per 'otto per mille'[72].

The Catholic Church not only enjoys the direct finances of 'otto per mille' but receives indirect financial support too. Law No 222/1985 obliges the State to allocate part of their share from 0,008% quota "[...] for purposes of social interest or of a humanitarian nature to direct state management and, in part, for religious purposes with direct management of the Catholic Church"[73].



[69] Ibid, 159

[70] Leading ten recipients of the contribution otto per mille in Italy in 2016, Statista, 2016. <https://www.statista.com/statistics/714617/top-10-recipients-of-the-contribution-otto-per-mille-italy/> (accessed March 29, 2019).

[71] Supra note 68, David Durisotto, 162; Supra note 45, Ferrari & Ferrari, 459

[72] John L. Allen Jr. „US dollars lead the Vatican's pack in 'moral accounting'." Crux: Talking the Catholic Pulse, July 17, 2016. https://cruxnow.com/analysis/2016/07/17/american-money-flowing-vatican-packs-greater-moral-punch/> (accessed March 29, 2019).

[73] Law No 222/1985, Article 47.

Large share of the finances of Italian State gained by the 'otto per mille', is directed towards the Catholic Church. Consequently, curious result is obtained as the very law, that intended to overcome challenge of automatic financing of the Catholic Church from taxpayer's money, makes it possible to finance the Catholic Church from the same taxpayer's share who never intended to do so.

Unique privileges of the Vatican do not end here: it must be noted, that Catholic Church is also exempted from any fiscal duty on the real property as well as the other real properties specifically named in Lateran Treaty[74]. Thus, Vatican enjoys "[…] a fiscal paradise: no corporate income duties, no trade tariffs, no real estate taxes and a considerable amount of fiscal privileges"[75].

On November 6, 2018 The European Court of Justice ruled that in fact, Vatican owes Rome 5 billion Euros, as the Catholic Church never paid the *Imposta Comunale sugli Immobili* tax (local property tax payed to the Municipality, which was imposed on all owners before 2012) between 2006-2011 years. This decision overruled the previous decisions of European Commission (2012 and 2016), that referred to the "[…] "the impossibility of recovering the aid because of organisational difficulties" with respect to non-commercial bodies like schools, clinics and hotels". Through that litigation, non-religious business organizations intended to overcome drastic inequality between them and Vatican-owned businesses.



[74] Supra note 45, Ferrari & Ferrari, 458

[75] Annalisa Girardi, „When David Beats Goliath: The Five Billion Euros That The Vatican Owes Rome", Forbes, November 15, 2018. https://www.forbes.com/sites/annalisagirardi/2018/11/15/when-david-beats-goliath-the-five-billion-euros-that-the-vatican-owes-rome/#3da8f3746fc6> (accessed March 29, 2019)

Though this is a big step towards furtherance of equality, the new property tax *Imposta Municipale Propria*, that replaced *Imposta Comunale sugli Immobili*, is still source of unique privileges for Catholic Church. Relevant legislation categorizes economic and non-economic religious activities. Categorization is done in a way that in practice it greatly favors the Catholic Church, that has numerous non-religious holdings and businesses, like hotels and restaurants. Hence, Church businesses have clear privilege in commercial competition.

The third-tier is held by those denominations, that still could not or did not conclude the special agreements with the State. Since relationship of such communities with the State are not regulated by the special law deriving from the concluded agreement between them, and there is no general law equally applied to all religious denominations, Law that applies to them is Law N1159 of 1929. This is the law exclusively for organizations with religious ends. It is used as a tool to recognize group as a religious one. That status is indeed important, if the organization intends to at least start the negotiations about the special agreement with the state.

Denominations positioned on the third tier in a four-tier system (denominations without special agreements) have rather questionable possibility to ask the school to provide classroom for their educational purposes. A Prerequisite is a considerable number of pupils affiliated with that denomination and respectively, an agreement between the denomination and the Regional School Office.

The lowest position is held by the religious communities that happen to be relatively new denominations of Italy. For instance, Muslims are positioned on this level. Such denominations are not even recognized as a religious group. They do not really enjoy the cooperative nature of the secularism Italy manifests to hold. No law that regulates the religious sphere and benefits are

applied to such groups. Law that applies to them is the same that are applied to the organizations of the private law[76]. Consequently, this very last tier of cooperation is not cooperation at all.

## 2.4 Conclusion

Italian State, despite aspiring to the plural laicità, lacks the legislative basis for its stated purpose: neutrality towards all denominations and equality of the religions. There is no general law that regulates very substantive parts of the religion as an institution and as an individual right. Thus, rules towards denominations are inherently asymmetric: everything depends on the context, place of the denomination in a four-tier system, and goodwill of the State.

As noted, the Constitutional Court asserts that equality of the religious beliefs is not dependent on the conclusion of the Concordats as equality is guaranteed by the Constitution itself [77]. Practice sometimes points in another way: rights and freedoms of religion groups, and respective privileges granted to denominations are indeed dependent on the existence of special agreements. From the Constitutional perspective all of the denominations are equal, but some of them (those on the upper level of four-tier system) are more equal than others (those on the lower level of the four-tier system).

As already noted, Concordat or Intesa need to be concluded to 'recognize the requirements specific to each religious faith'[78]. Analyzing the texts of special agreements illustrates, that all the special



[76] Supra note 45, Ferrari & Ferrari, pdf 441-442

[77] Judgement of the Constitutional Court of Italy no. 52, 10 March 2016

[78] Supra note 17

agreements that are signed up to today, are similar and almost identical. Therefore, this "copy-pasted" *Intesas* are not perceived by the denominations [and groups affiliated to them] as a legal tool that facilitates their freedom of religious expression, but just as a political tactic of the State for legitimation[79].

Since there is no right for conclusion of the special agreements, the State enjoys discretion to decide which denominations are significant, large, suitable or appropriate enough to conclude agreements with. Certainly, denominations with fewer believers or supporters, newly established organizations or denominations that are subject to irrational fears by the public have to suffer. That being so, state discretion may become a basis of unequal treatment towards religious groups remaining outside the framework of special agreements, that can result in practical inequality of them as institutions, as well as individual believers belonging to them[80].



[79] Supra note 45, Ferrari & Ferrari, 454

[80] Supra note 45, Ferrari & Ferrari, 454

# 3. Georgia

## 3.1 Social and Historical Context

"Georgia is one of the most religious countries in the post-Soviet space"[81]. 89% of the Georgian population identifies as an Orthodox Christian[82]. As survey conducted in 2018 indicates, the most influential institution in Georgia continues to be the Georgian Apostolic Autocephalous Church (hereinafter Orthodox Church) with 84% of support[83] (that is 7% less than the support they had in survey of 2015[84]). According to the data, Georgia leads prevalent position among the Eastern European States, that believe their national culture to be the superior[85]. Culture predominantly includes the Orthodoxy of the State. Some even tend to conclude that "In Georgia religious identity and national identity are assumed as one […]"[86]. As Georgians tend to assimilate their national identity with the Orthodox religion, some Georgian scholars characterize the phenomenon as religious nationalism[87].

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[81] Ketevan Gurchiani, "How Soviet is the Religious Revival in Georgia: Tactics in Everyday Religiosity", *Europe-Asia Studies* 69, No. 3 (2017): 509

[82] Pew Research Center, Oct. 29, 2018, "Eastern and Western Europeans Differ on Importance of Religion, Views of Minorities, and Key Social Issues", 18

[83] International Republican Institute (IRI). "Georgia Poll: Perceptions of National Institutions Decline; Local Satisfaction Rises", May 29, 2018. <http://www.iri.org/sites/default/files/2018-5-29_georgia_poll_presentation.pdf> (accessed March 29, 2019).

[84] International Republican Institute (IRI). "Georgia Poll: Georgians are Less Optimistic, Continue to Desire Deeper Ties with the West, Wary of Perceived Russian Threat, Concerned Regarding Economy", March 31, 2015. <https://www.iri.org/sites/default/files/wysiwyg/iri_georgia_public_2015_final_0.pdf> (accessed March 29, 2019).

[85] Supra note 82, 8

[86] William Eastwood "Reframing national locality: religious minorities using history to transform local experience in Georgia", *National Identities* 17, no. 1 (2015): 28

[87] Giga Zedania, "The Rise of Religious Nationalism in Georgia", *Identity Studies in the Caucasus and the Black Sea Region* 3, (2011): 125

Unlike Italy and Spain, despite having history of intertwined relationship with the Church, before late 20th century, Georgia maintained policy of strict secularism: firstly, it was consciously chosen by the democratic government of Georgia, then it was part of atheism imposed by the Soviets.

Short-lived Constitution of Georgia in 1921 in the brief period of independence from 1918 before occupation of the Bolshevik Red Army, prescribed the State-Church separation (Article 142), prohibition of the special privileges with regard to any confession (Article 143) and prohibited to make any levies on the recourses of the state or the bodies of self-government for the needs of any religious order (Article 144).

During the internal conflicts of 1990ies in Georgia, the Church acquired the role to "heal" the nation. As some believe, partly because the Church was "[...]understood to be a reminder of Georgia's distinctiveness and as a symbol of resisting the wrongs inflicted by Moscow" [88]. Rising popularity gained it substantial influence over the state policies privileging them.

## 3.2 Constitutional Framework

After regaining independence in 1991, in 1995 Georgian Parliament adopted the Constitution, which drew on the legacy of 1921 Constitution. In 1995 "We, the citizens of Georgia" proclaimed the second and current Constitution drawing on the legacy of the Constitution of 1921. The new



[88] Stephen H. Rapp, "Georgian Christianity," in *The Blackwell Companion to Eastern Christianity*, ed. Kenneth Parry (Malden, MA: Blackwell Publishing, 2007), 152

Constitution of 1995 suggested very high level of protection and "[…] support for equality and tolerance for the diverse ethnic, religious, and racial peoples of the country"[89].

Freedom of belief, religion and conscience is guaranteed by the Article 16 Paragraph 1 of the Constitution[90]. The Constitution ensures the principle of equality. It lists prohibited grounds for discrimination, including the ground of religion[91]. At the same time, as a gratitude for its special contribution in the history, Constitution although emphasized church-state separation, recognized 'the outstanding role' of the Orthodox Church (Article 9 of the constitution as of 20.04.2000).

As Constitutional Court of Georgia noted, mentioned provision "recognizes the independence of the Georgian Patriarchate from the state, thus strengthening the secularism and obligation of non-interference between the state and the Church. Consequently, the constitution aims at the functional separation of state organs from the activities of the religious establishment"[92].

In 2001, the ruling party in the Parliament of Georgia amended the Article 9 of the Constitution, so that to introduce what is to be called "Constitutional Agreement Between the State of Georgia and Georgian Apostolic Autocephalous Church" (Hereinafter the Concordat). Reason behind such privilege, as in Spain and Italy, was desperate attempt to maintain the political power.

The Concordat prescribed the numerous privileges for the Church (tax exemptions, exemption of the military service for clergyman, special legal status of the leader of the Orthodox Church etc.)

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[89] Jeremy T. Gunn & Dag Nygaard, "Georgian Constitutional Values versus Political and Financial Interests: The Constitutional Agreement's Departure from the Georgian Principle of Equality" The Oslo Coalition on Freedom of Religion or Belief, 2015, 17

[90] Article 19 as for the 13/10/2017, Article 16 as for the 23/03/2018

[91] Article 14 as for the 13/10/2017, Article 11 as for the 23/03/2018

[92] Judgement of the Constitutional Court of Georgia N1/1/618, II-10

In contrast to the respective Concordats concluded in Spain and in Italy, the one concluded in Georgia does not envisage reciprocal obligation of the Church towards the State or the society. The only party that carries obligations under the Concordat is the Georgian State.

No such agreement was ever adopted between the State and any other religion. In late 1990ies the attempt to conclude an international agreement with the Roman Catholic Church was dropped last minute because of the harsh opposition led by the Georgian Orthodox Church (Papal nuncio even payed visit to Georgia to sign the treaty)[93].

### 3.2.1 Legal Status of the Constitutional Agreement of 2002

Unlike Spain and Italy, where states designed multi-layered (multi-tier) cooperation system, legislative framework of Georgia basically creates the hierarchy in which only two tiers can be distinguished: First and only group that enjoys the cooperation in practice (the Orthodox Church) and every other remaining religious denomination.

As noted, the Church seeking financial and political benefits and taking advantage of weakened political spectrum, managed to obtain Constitutional Agreement with the list of rights and privileges, and none of its reciprocal obligations. According to the Article 4 paragraph 5 of the Constitution and Article 7 paragraph 3 "Law of Georgia on Normative Acts", the Status of that agreement in the hierarchy of norms is just below the Constitution, but above international agreements and treaties.

[93] Supra note 89, Jeremy T. Gunn & Dag Nygaard, 19

Venice Commission voiced its concerns before adoption of the agreement, as early as 2001. The commission emphasized the unclear legal nature of the agreement as "neither is it a constitutional law based solely on the pouvoir constituant of the Sovereign, i.e. the people of Georgia as stated in Article 5 of the Georgian Constitution, nor is it a concordate-style treaty between subjects of international law"[94]. The Commission strongly advised to abandon term 'constitutional' from the name of the agreement, as it raised numerous risks: "Orthodox Church due to the constitutional nature of the agreement acquires constitutional status, equivalent to the State with which it comes to an agreement"[95]. That the status of the Church came close to the constitutional status of government branches indeed had the potential to raise doubts and was clearly problematic in terms of the principle of a secular state, since the its underlying principle is precisely the separation of church and state. Commission recommended agreement to be signed by the competent minister within the government, rather the head of the State as agreement is not bilateral international treaty, rather it's part of the national law[96].

Indeed, legal status and arrangement of the agreement is one of its kind. No other State in the world has agreement of same status. "This is a "hybrid" text—inasmuch as it takes the form of an international treaty, it has priority in the event of any conflict with national legislation"[97]. It is highly unclear, how the conflicts between the agreement and international law will resolute.



[94] European Commission for Democracy Through Law (Venice Commission), "Comments on the Draft Constitutional Agreement Between the State of Georgia and the Apostle autocephalous Orthodox Church of Georgia." CDL (2001) 63, June 28, 2001. §1

[95] European Commission for Democracy Through Law (Venice Commission), "Comments on the Draft Constitutional Agreement Between the State of Georgia and the Apostle autocephalous Orthodox Church of Georgia." CDL (2001) 64, June 28, 2001. §A.1

[96] Ibid, §B

[97] Silvia Serrano, "The Georgian Church Embodiment of National Unity or Opposition Force?", *Russian Politics and Law* 52, no. 4 (2014), 79-80

Commission expressed its view about the Preamble too. It condemned the emphasize on Orthodox religion being historically state religion. Commission believed that such wording is against State-Church separation guaranteed by the Constitution, Moreover, in the future it could lead to legitimize privileges of Orthodox Church, privileges that other religious communities would be denied. Thus, Commission thought, that it would encourage the Orthodox Church to claim to be treated by the State as a "Church of the State"[98]. It was also indicated that Preamble asserting on dominance of majority being Orthodox, overstepped the cultural neutrality of the state and infringed the equal access for every other religion in the culture of Georgia[99]. Regrettably, these recommendations were overlooked.

### 3.2.2 Benefits of the Orthodox Church Envisaged Under the Agreement

Article 1 paragraph 3 of the agreement defines the legal status of the Orthodox Church to be Legal Entity under Public Law. It was only 9 years after that this possibility became option for other religious organizations too[100].

Article 1 paragraph 5 grants inviolability/immunity to the Head of the Orthodox Church- Patriarch. He is the only person that enjoys such privilege alongside the President of Georgia[101]. Moreover, while "the President is "immune" during his/her tenure only and, upon the conditions envisaged



[98] European Commission for Democracy Through Law (Venice Commission), "Comments on the Draft Constitutional Agreement Between the State of Georgia and the Apostle autocephalous Orthodox Church of Georgia." CDL (2001) 64, June 28, 2001. §B

[99] ibid

[100] Article 1509 Paragraph 1 of the Civil Code of Georgia

[101] Immunity of the President of Georgia is guaranteed by the Constitution of Georgia 1995, Article 51 Paragraph 3

in the Constitution […] the Patriarch benefits from immunity for an indefinite time […]"[102].No such advantage is available for Heads of any other religious organization.

Article 1 Paragraph 6 of the Concordat proposes that generally, major Orthodox holidays and Sundays are State holidays too. Labour Code of Georgia creates an alternative for an employee: s/he can opt out from state holidays and ask for other days off instead. Details should be defined in labour agreement[103]. It may seem that such normative regulation is beneficial and neutral towards believers. But, in practice it creates substantial difficulties, it burdens all believers, but the Orthodox. Besides technical inconveniences, people of belief have to disclose very personal information about their identity. As a result, it is likely the people of belief, will decide nit to use the opportunity.

By virtue of Article 3 of the agreement, the State granted legal recognition to Orthodox religious marriages[104]. Such recognition is not given to any other kind of religious marriage. Though, it must be noted, that this privilege was not reflected in the provisions of the Civil Code of Georgia, that regulates the notion of marriage[105].

The Concordat also recognizes mutual and equal acceptance of diplomas issued by educational institutions[106]. State also took responsibility to support functioning ecclesiastic educational



[102] Mariam Begadze, "Georgian Constitutional Agreement with the Georgian Orthodox Church: A Legal Analysis." *Occasional Papers on Religion in Eastern Europe* 37, no. 2 (2017): 20

[103] Organic Law on Labour Code of Georgia, Article 20 Paragraph 2

[104] Agreement, Article 3

[105] Article 1106 of the Civil Code of Georgia: "Marriage is a voluntary union of a woman and a man for the purpose of creating a family, which is registered with a territorial office of the Legal Entity under Public Law (LEPL) – Public Service Development Agency of the Ministry of Justice of Georgia ('a territorial office of the Agency')".

[106] Agreement, Article 5 Paragraph 2

institutions[107]. This guarantee was reflected in the Law of Georgia on Higher Education. Academic degree can only be awarded by a higher educational institution or an Orthodox theological higher education institution[108]. Moreover, the State must unconditionally recognize the education obtained on one of the Orthodox theological higher educational programs[109]. No other religious institution is entitled to the same authority.

Wording of the Law can be indicative too, while it lists the types, establishment and management procedures of the educational institutions, the only theological educational institution Law refers to, is Orthodox[110]. Additionally, Minister of Education and Science issued decree granting Orthodox theological higher educational institutions authority to enroll their male-students on criteria envisaged by them. No other theological, or secular institution enjoys the same authority. Whereas all the other accredited educational institutions enroll students based on Common National Entrance Exams consisting of three mandatory exams (Georgian Language and Literature, general skills and foreign language), Orthodox institutions can enroll students that took the exam and overcame minimal barrier in Georgian Language and Literature exam[111]. No other religious institution has such a beneficial exemption to enroll students on their own terms.

Article 6 Paragraph 5 of the Agreement grants Orthodox Church exemption from taxes and duties on producing, importing, distributing of all ecclesiastic goods; donations, lands and properties of non-economic activities. The Venice Commission in 2001 pointed out this privilege and noted,



[107] Agreement, Article 5 Paragraph 3

[108] Law of Georgia on Higher Education, Article 2 Paragraph F

[109] Law of Georgia on Higher Education, Article $47^5$ Paragraph 3

[110] Law of Georgia on Higher Education, Articles 9 and $31^1$

[111] Decree N92/N of 9 July 2013

that it was not foreseeable how far-reaching these exemptions would be. Opinion emphasizes that wording of the provision provides "a tax exemption of unusual and very substantial proportions"[112].

Later, Tax Code of Georgia certainly introduced exemptions for the for Patriarchate of Georgia (Patriarchate of Georgia can be basically everything that Patriarch orders it to be within Church divisions and entities). Once again, head of the Church is granted social benefits such as exemption from customs control[113]. No such benefit is available for Heads of other religious organizations to enjoy.

As for the most problematic part of the Concordat, the financial benefits, Patriarchate is free from payment of profit tax on profits that was gained by the "the sale of crosses, candles, icons, books and calendars used by the for religious purposes"[114]. Besides, supply by the Patriarchate of any liturgic item used for religious purposes are exempted from VAT without the right of deduction[115]. Tax Code also exempted services of construction, restoration and painting of churches under commission by the Patriarchate from the VAT without the right of deduction (the latter exception was abolished by the Constitutional Court of Georgia in 2018 - To be discussed below)[116].

Although, Tax Code does not prescribe different tax procedure for land taxes, and generally, no religion is listed to be exempted from it, by the virtue of the Agreement, that has hierarchically



[112] CDL (2001) 63, §1

[113] Tax Code of Georgia, Article 219 Paragraph 1

[114] Tax Code of Georgia, Article 99 Paragraph 1 Subparagraph D

[115] Tax Code of Georgia, Article 169 Paragraph 1 Subparagraph F

[116] Tax Code of Georgia, Article 168 Paragraph 2 Subparagraph B

higher legal force than the Code, Orthodox Church enjoys extra benefits without any additional legal arrangement.

According to Article 7 Paragraph 1of the Agreement, the State declares Orthodox Church as property owner of every Orthodox monastery, church (despite its status of activity), their remains and all the lands they are built on. By Article 11 Paragraph 1 of the Agreement, state also acknowledged "material and moral damage" of Church that was imposed in Soviet times and set responsibility upon itself to partially compensate material damage. The rational behind both of these provisions is the state's assumed responsibility to compensate for the damage both in terms of returning the lost real property and creating a mechanism for annual subsidies. Despite the state's generous recognition of this obligation towards the Orthodox Church, there has been no general legislation addressing this issue for religious minorities who had similarly suffered in times of Soviets.

It was only in 2014 when State acknowledged certain obligations of this kind towards four other religions. Government of Georgia issued the resolution[117] emphasizing that Georgia does not have any legal responsibility to compensate moral and material damages, but as the State dedicated to the rule of law, would compensate it anyways (to be more precise state highlighted its goodwill rather than responsibility). Compensation is symbolic and is paid from the State budget. However, this very limited and contract-based restitution scheme does not address the very problematic issue of returning places of worship that was confiscated by the Soviets. It is important to note, that some property previously owned by religious minorities was transferred to the Orthodox Church



[117] The Resolution N117 of 27 January 2014 „On Approval of the Procedure for Implementation of Certain Measures related to the Partial Compensation of Damages Inflicted during the Soviet Totalitarian Regime to the religious Organizations Present in Georgia"

during the Soviet period, therefore, the provision of the constitutional agreement that recognizes property rights of the Orthodox Church to anything that can be traced as Orthodox, made it possible for the Church claim property for instance over Catholic Church used by Orthodox parish after such transfers is now already their property.

While compensation granted by the decree is the only source of compensation given to Catholic and Armenian Apostolic Church, Muslim and Jewish communities, Orthodox Church is annually paid 25 million Georgian Laris (more than 8 million of EUROs) from the state budget. With this annual allotment the state subsidizes not only the educational institutions, orphanages, rehabilitation centers, but State subsidizes the TV Channel of Patriarchate of Orthodox Church. "In the 10 years following the Constitutional Agreement, the church has received at least GEL 200,000,000 (€ 80,000,000)"[118].

As for the additional privileges with regards to property, Law of Georgia on State Property lists types of legal and natural persons, that can become an acquirer of state property. The only religious organization that can acquire property, in case of direct sale by the Government, is the Orthodox Church[119]. The privatization of a state-owned agricultural land plot free of charge is only possible to homeless citizens from the occupied territories and the Orthodox Church[120]. Law also prescribed that Government of Georgia could transfer title of state property free of charge only to Orthodox Church (the latter exception was abolished by the Constitutional Court of Georgia in 2018 - To be



[118] Supra note 89, Gunn & Nygaard, 46

[119] Law of Georgia on State Property, Article 3 Paragraph 1

[120] Law of Georgia on State Property, Article 3 Paragraph 2

discussed below). Accordingly, no such beneficial arrangements are provided for any other religious organization.

Other than being the only organization receiving annual state funding without term of expiration and being compensated by the State for damages caused by the Bolsheviks, the Orthodox Church enjoys other practical benefits.

Local municipalities serve as a medium to indirect funding by transferring of "[…] real estate property to the Orthodox Church including hectares of farmland, plots for church buildings, forests, historical monuments, national parks, and protected areas […] municipalities […] assisted in financing various municipal events, restoration of churches and temples, and even the birthdays of bishops"[121].

It must be noted, that the text of the draft agreement envisaged that Patriarchate was to be provided with broadcasting time in the Georgian Public Broadcaster (state broadcasting company) and that the broadcasting company of the Patriarchate was provided with needed wave band for broadcasting. The Venice Commission clearly stressed its position, that if such guarantee stayed in the agreement, it was likely be a violation of the Convention in relation to individuals belonging to another religious communities, as only the Orthodox Church would have benefited from this opportunity. Luckily, this opinion was shared by the State. Nevertheless, the privilege translated in other form: State subsidizes Patriarchate TV Channel with 800,000 GEL (more than 250,000 EURO) annually. As TV broadcasting is a very powerful and effective platform to distribute values



[121] Tornike Metreveli, "An Undisclosed Story of Roses: Church, State, and Nation in Contemporary Georgia", *Nationalities Papers* 44, no. 5 (2016): 703

and faith, and as any other religion has equally valuable interest to share its teachings, this subsidy becomes very problematic in regard to the guarantee of State-Church separation.

## 3. 3 Judgements of the Constitutional Court

On July 3, 2018 Constitutional Court of Georgia issued, two unequivocally groundbreaking decisions. Number of religious organizations[122] disputed the provisions of the Tax Code, which stipulated that services of construction, restoration and painting of churches under commission by the Patriarchate are exempted from the payment of VAT without the right of deduction[123] (Claim N671). Provision of the Law of Georgia on State Property was also challenged, in particular, the article that prescribed that Government of Georgia could transfer title to state property free of charge only to the Orthodox Church[124] (Claim N811).

The Court noted that realization of the right to live in accordance of one's beliefs, is often related to the spaces created for special services, especially to religious buildings. "The Constitutional Court indicated that the main purpose of religious associations is to coordinate religious activities and create all necessary conditions for believers"[125]. It was emphasized that these purposes are equally important, for all religious organizations including the claimant organizations. All these

122 Constitutional Claim №671: "LEPL "Evangelical-Baptist Church of Georgia", NNLE "Word of Life Church of Georgia", LEPL "Church of Christ", LEPL "Pentecostal Church of Georgia", NNLE "Trans-Caucasus Union of the Seventh-Day Christian-Adventist Church", LEPL "Caucasus Apostolic Administration of Latin Rite Catholics", NNLE "Georgian Muslims Union" and LEPL "Holy Trinity Church". Constitutional Claim №811: "LEPL "Evangelical-Baptist Church of Georgia", LEPL "Evangelical Lutheran Church of Georgia", LEPL "The Highest Administration of all Muslims in Georgia", LEPL Redeemed Christian Church of God in Georgia" and LEPL "Pentecostal Church of Georgia".

123 Tax Code, Article 168 Paragraph 2 Subparagraph B

124 Law of Georgia on State Property, Article 63 Paragraph 1

125 Journal of Constitutional Law, Vol.2/2018. p. 111

organizations have an equal interest to be granted the right to get state property free of charge and create the necessary environment for their religious institutions and services in a similarly favorable way like the Orthodox Church[126].

In both decisions, the Court emphasized that granting "the outstanding role" in the history within the Constitution does not grant Orthodox faith predominance over other religions. Court stressed that considering constitutional provision (that introduces constitutional agreement and highlights church's special role) as the source of entitlement of any kind of privilege would deteriorate guarantee of equality[127].

The recognition of the outstanding role of the Orthodox Church is associated with its historical contribution in past and it cannot be assessed to serve privileged legal position for the Orthodox religion in present times. Historical contribution cannot be considered as the source of the privilege of legitimacy. Granting certain rights to the Church does not imply the right to interfere with other religious organizations[128].

At the same time, Court did not exclude the possibility that some differentiations can be legitimate, when "assistance" by the state will objectively and rationally relate to the role of the Church and



[126] Journal of Constitutional Law, Vol.2/2018. p. 112 „The Court emphasized that the contested regulation is directed not specifically to the VAT exemption of services related to the monuments of cultural heritage, but to the VAT exemption of services under commission by the Patriarchate of Georgia. Consequently, services connected with not only to the monuments of cultural heritage, but also other churches and cathedrals without such status may fall within the regulation of the disputed provision. At the same time such kind of services under commission by the other religious organizations (except the Patriarchate of Georgia) are not exempted from VAT. Based on the above mentioned arguments the Court concluded that there is no logical link between the legitimate aim of protecting cultural heritage and differentiated treatment established by the disputed norm and that achieving of this legitimate aim is possible without the differentiated treatment between comparable persons in this case".

[127] Judgement of Constitutional Court of Georgia, N1/2/671, II-32.

[128] Judgement of Constitutional Court of Georgia, N1/1/811, II-23.

history[129]. The court indicated that in both cases, privileged position of the Patriarchate did not have solid, rational and inevitable correlation with the outstanding role of the Orthodox Church in the history. Parliament could not convince the Court that privileges granted by the challenged provision was not the purpose in and of itself, rather than a historical consequence. Consequently, the Court found these provisions to be incompatible with the requirements of equal treatment, guarantee enshrined by the Constitution as "State treated favorably only the Orthodox Church and failed to treat religious organizations neutrally"[130].

In the reality, in which the Parliament seems reluctant or politically weak to uphold equal rights of religious organizations, it seems the Constitutional Court will be the only avenue to correct at least some constitution al defects.

## 3.4 Religious Minorities and Lack of Cooperation With Regards to Places of Worship

While the Orthodox Church accumulates more and more real estate, religious minorities still fight for their basic needs as other religious communities very often do not have spaces for worshiping. "Permits to build non-Georgian Orthodox places of worship are often either not issued or arbitrarily cancelled by local councils"[131]. For instance, in the city of Batumi, where roughly 25% of the population is Muslim, "as many as 1,000 people have to pray outside the mosque during

[129] Supra note 127, II-34

[130] Ibid, II-35.

[131] Mariam Gavtadze and Eka Chitanava, "Georgia: State Obstructs Building New Non-Georgian Orthodox Places of Worship", Forum 18 News Service, November 5, 2015. < http://www.forum18.org/archive.php?article_id=2118.> (accessed March 29, 2019).

ordinary prayer days, with twice as many during Islamic festivals"[132]. The government constantly promises to solve the problem, but these promises are never executed. Permit for building a new place of worship for Jehovah's Witnesses (in town of Terjola) was suspended by the local authority asserting that construction will damage the neighboring house. The claim was invalidated by the National Forensic Bureau. Despite the Court's decision, permit was not given.

State officials initiated the meeting to discuss the case. Jehovah's Witnesses boycotted the meeting as the Orthodox clergy was invited to discuss the issue (the same Clergy, that demonstrated against the construction). Similar intimidation techniques were used against Catholics who wanted to acquire construction permit in Rustavi city. The case ended up in the Court that ruled in favor of Catholics. Once again, local officials initiated the meeting but when the representatives of the Catholic denomination arrived, they "[…] found about 10 Georgian Orthodox clergy and parishioners, and city councilors […]"[133]. All these denominations still have difficulty to build places of worship. The State prefers not to engage in conflict with the Orthodox Church and ignores the pleas for ages.

## 3.5 Conclusion

Rational behind the cooperative secularism in Spain and Italy has been the mutual benefits accumulated by such an arrangement, namely, the fact that the religious organizations can play beneficial role for the public goods of the society. In contrast, these elements of cooperation are

[132] Ibid.

[133] Ibid.

absent in the Georgian context. It is illustrated among others by the fact that there are no obligations foreseen on the part of the orthodox Church in the constitutional agreement. Neither does the spheres financed by the annual subsidies reflect any important social cause. As noted, the major parts of the finances are used exclusively for Orthodox educational institutions and the broadcasting company of the Patriarchate. Obviously, social cause as understood under cooperative models do not restrict this purpose to pursuance of one denomination's goals and its beneficiaries should not be determined by their religious belonging.

It seems that cooperative model has been abused in the Georgian model of state-religion relationship and became detached from interests for which the model was originally designed for.

# 4. Conclusion

Obviously, the way state arranges its relations with religion will have an influence on religious minorities and general state of religious freedom. As a rule, state-religion relationships are regulated at the constitutional level. However, the seemingly neutral model established in the basic laws do not necessarily reflect the application of the model.

Although, all three case-studies represent the model of cooperative secularism, the comparative analysis indicated that there are differences. For instance, while in Spain the conclusion of agreements is not constitutionally required, in Italy the state is more interested in ensuring that relationships are regulated with agreements, more specifically it is required through articles 7 and 8 of the Constitution. Further, in Spain there is less discrepancy in privileges of different denomination in respect to their place in the tiered system, than in Italy. However, unlike these minor differences, there are major gap between the arrangements in Spain and Italy and on the other hand and in Georgia, on the other. One of this difference concerns the most visible characteristic of the cooperation model itself, namely, the special agreements: existence of reciprocal obligations. Georgian constitutional agreement, which envisages widest range of benefits conceivable, as an exceptional example does not even impose single obligations upon the Church. Neither are there any common public goals that this Agreement facilitates to achieve.

This characteristic was not overlooked by the European Court in the case of *Ortega Moratilla v. Spain*. The Court held that the fact that agreement between the state and the religious organization exist and grant benefits does not constitute violation of the equal treatment. However, the Court stressed that the agreement had established mutual rights and obligations that was considered a reasonable justification, namely, the Court noted that the applicant (the Evangelical Church) had

no similar obligations to those of the Catholic Church before the State of Spain. It seems that it is important for the Court whether an agreement apart from providing for benefits, also imposes certain obligations to the relevant Church.

As argued, practice and sub constitutional arraignments do matter and the extent of inequality between relations of the Orthodox Church and other denominations with the state provides a valid basis for arguing that arrangements like the one in Georgia is not a cooperation model any more. However, it is also true that judging from the progressive statements of the Constitutional Court in recent decisions, it will be difficult to characterize Georgia as a state-religion model either.

Not only is Georgia in between different models when looking at it from the outside, but the distinct classifications of the model by executive policy and Constitutional Court practice, raise further difficulties in placing the arrangement under any certain model. We can say that the cooperation model is abused in Georgia, as the characteristic of cooperation is applied only in relation to legitimizing exclusive preferential treatment of the institutionally influential Church.

Although international law tends to view state-church arrangements similar to cooperation model permissible, so long as religious freedom is not infringed and equality protected[134], more secular, neutral, dialogue-based state-religion relations have to be preferred in the Georgian context. While cooperation models may still survive in a more robust democratic states, the platform for special agreements with religions, is a dangerous one for state of dominant religious models, like Georgia.



[134] Norman Doe, "The Scope, Sources, and Systems of Religion Law", In *Law and Religion in Europe: A Comparative Introduction* (Oxford: Oxford University Press, 2011), 29.

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