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ONE GOAL OF TRANSFORMING THE IDEA OF A TREATY BETWEEN THE STATE OF GEORGIA AND THE ORTHODOX CHURCH OF GEORGIA INTO A "CONSTITUTIONAL AGREEMENT"

ABSTRACT

In 2001, a new legal institution that appeared in the legislation of Georgia - the "Constitutional Agreement of Georgia" received significant criticism both at the national level and from competent international institutions. One of the main targets of these critical evaluations was the "constitutional" status assigned to it. Within the framework of this article, the author offers his own observations about one goal of transforming the idea of an "treaty between the state of Georgia and the Orthodox Church of Georgia" into a "Constitutional Agreement".

The structure of the article is as follows. The first introductory chapter briefly describes the chronology of the transformation of the idea of an "treaty" into a "Constitutional Agreement" (1994-2001) and, by referring to various landmark legal acts (drafts) or documents, offers essential guidelines for the central discussion. The second chapter presents the formal arguments supporting the idea of assigning a "constitutional" status to the agreement between the state and the church and their critical analysis, which frees up the necessary space for the author's theory. In the third chapter, with appropriate sources, the central thesis of the present article is substantiated, according to which one of the goals (actual result) of granting the "constitutional" status to the agreement between the state and the church was to avoid the exclusive legislative power of the state for this legal act and the corresponding relationship. In the final part of the article, all presented facts and developed reasoning are systematically summarized.

It should be noted that the article was prepared within the framework of the current research, which aims to study the legal dimension of the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia. Sources found and processed at this stage of the said research were used directly for this article. Accordingly, the author assumes that it may not fully indicate all sources, including those documents that the author did not consider appropriate for the discussion developed here, and those that have not yet been searched and processed.

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Nevertheless, the author believes that the presented sources are essentially sufficient to support the issue raised within the scope of this article and its supporting arguments.

I. FOR AN INTRODUCTION - BASIC FACTS AND A BRIEF CHRONOLOGY

In order to determine the legal status of the Apostolic Autocephalous Orthodox Church of Georgia[1] and regulate its relationship with the state of Georgia, the idea of concluding an agreement between these two subjects appeared publicly for the first time in 1994. In the early 1990s, the frequent manifestation of religious extremism and intolerance in Georgia and, at the same time, the absence of appropriate legislation in the relevant field, prompted the Georgian authorities to adopt a special law on freedom of religion and religious associations.[2] Work on the draft law was started[3] in 1992, and two years later, in 1994, the Parliament of Georgia published the draft law of the Republic of Georgia "On Freedom of Belief and Religious Associations".[4] According to Article 6 of the draft law, the relationship between the state and the church was regulated by *a separate agreement.*[5]

It should be noted that the Parliament of the convocation of 1992-1995 did not discuss the mentioned draft law, and in 1996, the record about the agreement disappeared altogether from the new draft law "On Freedom of Conscience and Religious Organizations", already significantly modified by the Ministry of Justice of Georgia.[6] Later, in 1997, the Ministry of Justice made amendments to the specified draft law and in order to determine the legal status of the church, presented the initiative of a special law "On the Georgian Orthodox Church" (Article 8).[7]

Thus, in 1996, the idea of an agreement, which emerged in 1994 as part of the effort to develop national legislation on freedom of religion and religious associations in order to regulate the relations between the state and the church, was rejected in 1996, and

[1] In order to simplify the text, the term "Church" will be used everywhere, except for special citations or references, to denote the "Apostolic Autocephalous Orthodox Church of Georgia".

[2] The basis for this, in turn, was the Resolution N183 of the Council of Ministers of the Georgian SSR of April 12, 1990 "On Religious Affairs".

[3] Paata Zakareishvili, 'Why an agreement and not a law?' in Gia Nodia (ed), Church, State and Religious Minorities in Georgia: Are we threatened by religious fundamentalism (published by the Caucasus Institute for Peace, Democracy and Development (CIPDD) 2000) 16 (in Georgian).

[4] Draft Law of the Republic of Georgia "On Freedom of Belief and Religious Associations", Republic of Georgia (5 May 1994) 1-2.

[5] ibid, 1.

[6] Zakareishvili, supra note 3, 17.

[7] Letter from the Deputy Minister of Justice of Georgia to the Deputy Minister of State of Georgia, Annex: Draft Law of Georgia "On Freedom of Conscience and Religious Organizations", N01/52-3113, 17 November 1997.

in 1997, it was replaced by the initiative of a special law on the church. However, in the end, the Parliament of Georgia did not adopt either the general law on freedom of conscience and religious organizations, or the special law on the Georgian Orthodox Church.

In 1997, the idea of regulating the relationship between the state and the church on the basis of a bilateral treaty - this time *an agreement (concordium)* - appeared again in the Georgian legislation. In particular, the new law of Georgia "On Culture" determined the list of normative acts, which were necessary to be adopted in connection with this law, including *the agreement (concordium)* between the state and the church. It should be noted that the Law of Georgia "On Culture" still contains this norm.[8]

In 2000, the Ministry of Justice of Georgia directly indicated the corresponding norm of the Law of Georgia "On Culture" as the legal basis for the development of the draft "Agreement (concordium) between the State of Georgia and the Georgian Orthodox Apostolic Autocephalous Church".[9] We can consider as justified the point of view that the *agreement (concordium)* stipulated by the law of Georgia "On culture" is the current Constitutional Agreement (2002), the "constitutionality" of which was not provided by the law of 1997, nor by the draft agreement (concordium) prepared in 2000 based on it. It should be noted here that it is the 2000 draft of the agreement (concordium) and the remarks expressed around it that are, within the framework of this article, the main basis and source of our central reasoning, which we will refer to later.

As the next stage of development of the idea of regulating relations between the state and the church on the basis of a bilateral agreement, the period of working on the draft of the agreement can be distinguished. In particular, on January 9, 1998, the National Security Council of Georgia recommended the development of an appropriate document to the Ministry of Justice of Georgia in order to regulate the issues of church ownership.[10] In this case, resolution N183 of the Council of Ministers of Georgia dated April 12, 1990 was indicated as the basis of the bilateral agreement. According to the draft developed by the Ministry of Justice, - "Constitutional Treaty for Defining the Foundations of the Relationship Between the State of Georgia and the Georgian Orthodox Church"

[8] Article 40, Law of Georgia "On Culture" <https://www.matsne.gov.ge/ka/document/view/31402?publication=13> [last accessed on 15 October 2022].

[9] Letter of the Deputy Minister of State of Georgia to the Heads of Ministries and Departments of Georgia, Annex: Draft Agreement (Concordium) between the State of Georgia and the Orthodox Apostolic Autocephalous Church of Georgia and Annex: Explanatory note on the Draft Agreement (Concordium) between the State of Georgia and the Orthodox Apostolic Autocephalous Church of Georgia, N45/2, 14 March 2000.

[10] Letter of the Deputy Minister of Justice of Georgia to the National Security Council of Georgia, N02.11/91, 14 May 1998.

was elaborated.[11] Chronologically, this is the first time when the term *constitutional* appeared in the name of the treaty between the state and the church.[12]

It should be noted that the term constitutional, according to the presented draft, actually considered the corresponding hierarchical position of the agreement among the normative acts of Georgia. Article 34 of the draft gave it superior legal effect in relation to the Organic Law of Georgia, decree and subordinate normative acts.[13] It is worth to mention that the given draft did not consider the superior legal force of the Constitutional Treaty in relation to the international treaties and agreements of Georgia, as it is established by the Constitution of Georgia (Article 4) in the case of the current Constitutional Agreement.[14]

Accordingly, it can be said that the idea of giving a "constitutional" status to the treaty between the state and the church first appeared in 1998 but was soon rejected. In the process of working on the draft agreement in the Ministry of Justice of Georgia, its name was changed and it was first called "Concordat" (1999)[15], and later again – "Agreement (Concordium)"[16]. This process of searching for the nature, status and rank of the agreement continued for another year and officially ended on December 8, 2000, when the draft of the Georgian Constitutional Law "On Amendments and Additions to the Constitution of Georgia" was published for public consideration. According to the initiated changes, the Constitution of Georgia defined a completely new normative act for the legislation of Georgia – "Constitutional Agreement", the purpose of which was to regulate the relationship between these two parties at the constitutional level.[17]

The purpose of the sources cited here is to chronologically describe the process by which the idea of an "treaty" between the state and the church was transformed into a "Constitutional Agreement". In this way, we have made clear the two facts of the doctrine necessary for the central argument of the present article. Firstly, a bilateral treaty was conceived from the beginning as an act regulating the relationship between

[11] President/State Office of Georgia, Incoming Correspondence, "Constitutional Agreement to define the basis of relations between the state of Georgia and the Orthodox Church of Georgia", N86/4, 1 April 1998.
[12] On the agreement between the state and the church, about the term "constitutional", see Valery Loria and others, Human Rights and Religion (Tobalis Publishing House, 2006) 158-159 (in Georgian); see also: Dimitri Gegenava, Legal Models of Church-State Relations and the Constitutional Agreement of Georgia (publisher House David Batonishvili Institute of Law, Publishing House "World of Lawyers" 2018) 116-117 (in Georgian).
[13] President of Georgia/State Office, Incoming Correspondence, supra note 11.
[14] On the relationship between the Constitutional Agreement of Georgia and the international treaties and agreements of Georgia, see Konstantine Korkelia, Application of the European Convention on Human Rights in Georgia (Institute of State and Law of the Georgian Academy of Sciences 2004) 84-90 (in Georgian).
[15] Letter of the Minister of Justice of Georgia to the State Minister of Georgia, N08-22/69, 18 March 1999.
[16] Supra note 9.
[17] Republic of Georgia (8 December 2000) 3.

the state and the church and determining the legal status of the latter (the idea of a special law on the church existed only for a short time and parallel to the idea of the agreement, without principal dominance). Secondly, the legal status of the treaty (agreement, concordat, or concordium) was "constitutional" neither during the initial nor during the active discussions of the drafts (except for the weak and short episode of the "Constitutional Agreement"), it acquired a similar status only at the final stage of this process. Therefore, our goal is to answer the question - what essentially led to the granting of "constitutional" status to the treaty between the state and the church.

II. FORMAL ARGUMENTS FOR GRANTING "CONSTITUTIONAL" STATUS TO THE AGREEMENT BETWEEN THE STATE AND THE CHURCH

On March 30, 2001, during the consideration of the draft of the Georgian Constitutional Law "On Amendments and Additions to the Constitution of Georgia" in the Parliament of Georgia, the state justified the granting of "constitutional" status to the agreement between the state and the church on the following grounds:

„[...] why is this agreement called constitutional? It is called constitutional to the extent that the conclusion of this agreement and the circle of contracting parties is determined only by the Constitution, and only the Constitution determines, so to speak, the manner of its conclusion, as well as the circle of contracting parties, and, therefore, this institution of the constitutional agreement is used only in this case and not to regulate other, so to speak, similar relations. [...] As you know the most optimal form of defining the relationship between two independent parties is an agreement. [...] because in case of an agreement, the parties express their autonomous will and by mutual agreement determine the manner of solving these matters to be settled. Another advantage of this form is that the state will not be allowed to unilaterally change the legal status [...] of the church by adopting legislative acts unilaterally. [...] The more important the social relations that are regulated by the legal act are, all the more, it should be regulated by acts of higher and higher legal force and, at the same time, there is a protective mechanism here so that it does not become easy to make changes to the constitutional agreement."[18]

At the session of the Parliament of Georgia, the purpose of quoting this extensive excerpt from the Parliamentary Secretary of the President of Georgia, Prof. *Johnny Khetsuriani's* speech is to clearly present the state's official position and formal arguments in relation to the mentioned issue. It should be noted that Prof. *Khetsuriani*

[18] Stenographic record of the session of the Parliament of Georgia of March 30, 2001 (Central Historical Archive of Georgia, F. N1165, or 8) 5-7.

substantiated the above cited grounds of the "constitutionality" of the agreement between the state and the church in a number of author's works,[19] which gives us the right to discuss them not only as the political vision of the state announced by the Parliamentary Secretary of the President of Georgia, but also as, Prof. *Khetsuriani's* personal academic point of view.

To justify the "constitutionality" of the agreement between the state and the church, we will group the extensive argumentation offered by Prof. *Khetsuriani* to the Georgian Parliament and academic space into two parts. First, the arguments that support contractual rather than legislative regulation in order to regulate the relationship between the state and the church and to determine the legal status of the latter, and second, the arguments supporting the "constitutional" status of the agreement itself.

1. ADVANTAGE OF CONTRACTUAL SETTLEMENT

Arguments supporting the idea of the superiority of contractual regulation can be summarized as follows: the agreement is the most optimal legal mechanism for regulating the relationship between two independent parties, because it ensures each contracting party from the risk of unilaterally changing the conditions agreed by the other party. In a general sense, this means that once the agreement is concluded, neither the state nor the church will have any kind of legal instrument that would give one of them the ability to unilaterally change the agreed terms. However, in this particular case, essentially only the state had to refuse such a legal instrument, because the church did not have such a possibility anyway. This one-sided superiority of the church is directly pointed out by Prof. *Khetsuriani*: "The advantage of this form compared to the usual legislative regulation is that the state government is limited by the agreement and lacks the possibility to unilaterally change the legal status of the church with legislative innovations."[20] In addition to the fact that such an approach shows a preliminary negative attitude towards the legislative power democratically granted to the relevant state institution, it also leaves open the question why this legislative institution deserves distrust in determining the legal status of only one religious association, and not also in relation to all religions? We think this question is rhetorical enough to make it difficult to answer.

[19] Johnny Khetsuriani, State and Church (2001) 1 Individual and the Constitution 9-13 (in Georgian); Johnny Khetsuriani, 'Constitutional Foundations of the Georgian Church' (2002) 2 Individual and the Constitution 9-15 (in Georgian); Johnny Khetsuriani, 'Constitutional Agreement and Some Issues of the Legal Status of Religious Unions in Georgia' in Johnny Khetsuriani, Searches in Georgian Jurisprudence (Favorite Print Publishing House 2011) 48-90 (in Georgian); Johnny Khetsuriani, State and Church. Legal aspects of the relationship (Publishing House "Favorite Print" 2013) (in Georgian).

[20] Khetsuriani, supra note 19 (2013), 16.

On the other hand, the contractual settlement of a number of issues essentially deprives the Parliament of Georgia of the legislative power granted by the Constitution. For example, the state practically does not have the legal mechanism to unilaterally cancel the tax exemption provided by the constitutional agreement (Article 6) for the church. According to the Constitution of Georgia (Article 67), exemption from taxes is allowed only by law, which is the constitutional basis of the exclusive power of the state legislature in this area. However, the Parliament of Georgia lacks the ability to adopt such a law that contradicts the constitutional agreement of Georgia.[21] Accordingly, the legislator is obliged to always consider the tax exemption granted to the church by the constitutional agreement in the tax legislation of Georgia. In this way, the contractual regulation of the relationship between the state and the church in the form defined by the current Constitutional Agreement unjustifiably cut off the constitutional power of the state in two directions - first, the exclusive authority to set taxes and exempt from taxes, and second, the exclusive authority of law-making activity itself. This is an extremely important issue and we will return to it in more detail in the future, within the framework of an independent article.

In general, the contractual regulation of the relationship, insofar as it is based on the independence, free will and equality of the contracting parties, can indeed be considered a "better" democratic legal mechanism than the legislative regulation. However, the existing Constitutional Agreement makes it clear that when an agreement is granted constitutional status, it is not only freed from the obligation to comply with national legislation, but also threatens, if not directly contradicts, the constitutional norms and principles themselves. Therefore, from this point of view, the object of our criticism is not so much the idea of "contractual" regulation of the relationship between the state and the church, as its "constitutional" status, in essence, the combination of the two.

2. THE NEED TO ASSIGN "CONSTITUTIONAL" STATUS TO THE AGREEMENT

The need to assign a "constitutional" status to the agreement and the corresponding arguments, in fact, emerged only after a political agreement was reached between the state and the church to regulate the relationship at the level of the constitution. The general argument sounded like this: the importance of the relationship between the state and the church is so high that it can only be regulated by a legal act of the rank of the constitution. And, according to a more direct argument, the conclusion of the "constitutional agreement" between the state and the church was conditioned by the

[21] Article 7, Organic Law of Georgia "On Normative Acts" <https://matsne.gov.ge/ka/document/view/90052?publication=37> [last accessed on 15 October 2022].

fact that the subjects of this agreement, the possibility of its conclusion and the relevant procedures were determined by the constitution.[22]

First of all, it should be clearly noted that we do not completely reject the general argument about the interconnection between the importance of relationship and the rank of the legal act regulating it. Indeed, it is generally recognized that freedom of religion and belief, as a universal and fundamental human right, is the subject of constitutional provision. In turn, constitutional guarantees of this right always include its collective dimension. However, this usually implies general, universal and equal guarantees, which, by itself, cannot be equal to the obligation of constitutional provision of institutional guarantees of a particular religious association. Accordingly, the necessity of granting constitutional status to the legal act regulating the relationship between the state and the church does not directly follow from the fact that the constitution provides the most important value of freedom of religion and belief.[23]

Regarding the second – "direct" argument, first of all, it should be noted that when the idea of concluding a "constitutional agreement" between the state and the church was born, the possibility or procedures for concluding it were not determined by the Constitution of Georgia. These conditions appeared only as a result of the amendments to the Constitution of Georgia on March 30, 2001. It should be noted that Prof. *Khetsuriani* directly refers to them as not already existing, but as conditions to be created in the future, in his later works.[24] Accordingly, it is clear that the mandatory conditions for concluding a "constitutional" agreement with the Church were not established by the Constitution, as it was stated in the parliamentary report quoted above, but on the contrary, they were created only to strengthen the political agreement reached between the State and the Church.

It also should be noted that the constitutional guarantees[25] of the independence of the Church and the State and the freedom of belief and confession in that period already represented a solid basis for the relationship between the State and the Church and for providing the latter with a legal status that would be in full compliance with the universally recognized modern democratic standards.

[22] Comp. Sources between the 19th and the 20th notes.

[23] For criticism of the relationship of the Constitutional Agreement of Georgia with the Constitution of Georgia and its "constitutionality", see: Comments on the draft of the Constitutional Agreement between the State of Georgia and the Georgian Orthodox Church (by Mr. Antonis Manitakis, Commission Expert). VENICE COMMISSION. CDL (2001) 64. 28.06.2001; see also: Comments on the draft Constitutional Agreement between the State of Georgia and the Georgian Apostle Autocephalous Orthodox Church (by Mr. Hans-Heinrich VOGEL, Member, Sweden). VENICE COMMISSION. CDL (2001) 63. 28.06.2001.

[24] Comp. Khetsuriani, supra note 19 (2011) 58, (2013) 17.

[25] Articles 9 and 19, the edition of the Constitution of Georgia valid until 30 March 2001 <https://matsne.gov.ge/ka/document/view/30346?publication=5> [last accessed on 15 October 2022].

Considering the mentioned, together with others, this last formal argument also can be fairly considered not sufficiently convincing. Thus, the only legitimate goal underlying the “constitutionality” of the agreement between the State and the Church is the maximum avoidance of the influence of the constitutional power of the legislature on the legal status of the church.

III. THE “CONSTITUTIONAL” STATUS OF THE AGREEMENT AS A MECHANISM FOR AVOIDING THE LEGISLATIVE POWER OF THE STATE

In this chapter, on the example of the discussion of one of the drafts of the positive agreement between the state and the church in the state institutions of Georgia, we present the central thesis of the present article - by assigning a “constitutional” status to the agreement concluded between the state and the church, strong arguments emerge for evading the legislative power of the state for this legal act and for the relationship regulated by it.

On March 14, 2000, the draft “Agreement (concordium) between the State of Georgia and the Orthodox Apostolic Autocephalous Church of Georgia” (which consisted of 12 chapters and 50 articles) developed by the Ministry of Justice of Georgia was sent to the Ministries and State Departments of Georgia in order to present their opinions on it.[26] It should be noted that according to the “explanatory note” attached to the correspondence, the agreement was not assigned a “constitutional” status, which is clearly demonstrated by the reference to other legislative acts and by-laws, along with the Constitution of Georgia, as the basis of relations with the church. However, it was also mentioned that according to the legislation of Georgia, this type of normative act was not provided for, which, in case of approval of the draft, would lead to appropriate changes in the legislative acts of Georgia without direct reference to the Constitution of Georgia. In addition, the preamble of the “Concordium” draft provided for the compliance of the agreement with international agreements on human rights in the field of religion (conventions, pacts, agreements, etc.).

From the critical comments made in the return correspondence, we will focus only on those whose content indicates the contradiction of the agreement (the idea and specific norms) with the national legislation. In particular, the relevant notes sound like this:

Ministry of Foreign Affairs of Georgia – “Regarding the provision formulated in the explanatory note of the draft, as if the legal basis for the preparation of the draft of the presented agreement is the Law of June 12, 1997 “On Culture” (Article 40, paragraph 1, subparagraph “o”). It should be noted that this paragraph envisages the adoption of various normative acts in connection with the entry into force of the Law “On Culture”,

[26] Supra note 10.

among which the agreement (concordium) between the State of Georgia and the Georgian Orthodox Church is mentioned. This provision of the law essentially contradicts the special legislation of Georgia, in particular, the law of Georgia "On normative acts", in which an exhaustive list of normative acts is given, and when classifying normative acts, only international treaties and agreements are considered among other acts".[27]

The Ministry of Culture of Georgia – "In general, the draft should be processed in accordance with the Law of Georgia on "Protection of Cultural Heritage".[28]

The Ministry of Economy of Georgia - „[...] as for the extension of the rights of a legal entity under public law to the Patriarchate of Georgia, it is not fully justified (the status of the Patriarchate does not comply with Articles 2, 3, 4, 5 and other articles of the Law on Legal Entities under Public Law). [...] paragraph 3 of Article [11], according to which the ecclesiastical service of Georgian clergy is equated with public service, also does not comply with the Law of Georgia "On Public Service"."[29]

The Ministry of Finance of Georgia – "Article 37 should be removed from the draft.[30] Since in accordance with Article 4, Part 7 of the Tax Code of Georgia, it is prohibited to regulate issues related to taxation by non-tax legislation."[31]

The Ministry of Environment and Natural Resources Protection of Georgia – "In paragraph 2 of Article 26, we believe that the Patriarchate should neither give permission nor approve projects for the restoration of temples with cultural-historical value. Here we can talk only about the agreement [...]. [...] The option given in the draft directly contradicts the "Law on the Protection of Cultural Heritage" and the "Law on Culture"."[32]

The State Archival Department of Georgia - "Article 41 of the draft agreement (concordat) between the State of Georgia and the Georgian Orthodox Apostolic Autocephalous Church contradicts the current law "On the National Archives Fund" (02.05.95), according to Article 4 of which, "it is not allowed to alienate a document of the national archive fund of state property".[33]

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[27] Letter of the Deputy Minister of Foreign Affairs of Georgia to the Deputy Minister of State of Georgia, N3-17/256, 4 April 2000.

[28] Letter of the Minister of Culture of Georgia to the Deputy State Minister of Georgia, N01/887-19, 1 June 2000.

[29] Letter of the Deputy Minister of Economy of Georgia to the Deputy Minister of State of Georgia, N3/1-2/11, 30 March 2000.

[30] Article 37 of the agreement (concordium) draft: "The Patriarchate of Georgia (dioceses, churches, theological institutes included in it) and the enterprises created by it are exempted from property and land taxes."

[31] Letter from the Deputy Minister of Finance of Georgia to the Deputy State Minister of Georgia, N13-02/76/435, 12 April 2000.

[32] Letter of the Minister of Environment and Natural Resources Protection of Georgia to the Deputy State Minister of Georgia, N08-14/309, 11 April 2000.

[33] Letter of the Chairman of the State Archival Department of Georgia to the Deputy State Minister of Georgia, N01-11/42, 22 March 2000.

Even this small source clearly shows the legal reality that threw the authors of the idea of the agreement into a dilemma. In particular, they should either bring the developed draft - the form of the normative act and each of its norms into compliance with the current legislation of Georgia or overcome the influence of the latter on the former by some mechanism. It is clear that the first way would be the most difficult, long and largely fruitless, as evidenced by the long-term process of working on drafts of the constitutional agreement. And the second way, under the legislation in force before March 30, 2001, simply did not exist. It is against this reality and to change it that “a completely new institution of constitutional agreement in Georgian law” appears.

Thus, it is quite clear that the “constitutional” rank was not given to the agreement between the state and the church based on the importance of the relationship, as the formal arguments presented by the state claim, but for the maximum exemption from the constitutional legislative power of the legal act regulating the legal status of the church and its relationship with the state. For a full assessment of this fact, it should be noted that this decision, at the initial stage, was only a tactical mechanism for avoiding the legislative power of the state, however, in the form as it was formed under the conditions of the current constitutional agreement, it thoroughly coincided with the ideological aspiration of the church to establish and implement legal-political parallelism with the state and it became the most favorable constitutional model of its implementation. It should be noted that, in addition to the “constitutional” status of the agreement and the general experience of its twenty-year period of validity, this model is also directly indicated by the definition of the first article of the constitutional agreement, which recognizes the church as a historically formed public law subject - a full-fledged public law legal entity, which makes it, in fact, a constitutional institution equal to the state.

IV. CONCLUSION

The summary of the sources, arguments and counterarguments presented here, we think, clearly enough confirms the validity of the thesis we have formulated. Despite the fact that the “constitutional agreement” concluded between the state and the church of Georgia is unacceptable in many ways, this article only aims at criticizing its “constitutional” status. In particular, we tried, on the one hand, to invalidate the formal arguments that the state presented in support of this idea (the second chapter) and on the other hand, to substantiate the real reason we found at the basis of this idea (the third chapter). Considering all the above, we can, as a conclusion, single out two issues of fundamental importance:

Firstly, assigning this act a “constitutional” status does not actually derive from the nature of the relationship regulated by it, but rather it serves the tactical purpose of

overcoming principled legislative contradictions and inconsistencies in drafts of the agreement, as the remarks made on the above-mentioned "Concordium" draft make it clear. If it had a hierarchically lower status, its change would automatically become mandatory following the changes of hierarchically higher normative acts - in accordance with the general principle of ensuring compliance with legislation. The "constitutional" rank, on the contrary, obliges all national legislation subordinate to the constitution to comply with the Constitutional Agreement itself. Thus, the only way to unilaterally revise the existing Constitutional Agreement is to introduce changes in the Constitution that would result in a direct obligation to comply with the Constitutional Agreement. However, the nature and structure of the Constitution actually precludes this, as its text does not include such detailed norms as those contained in the Constitutional Agreement (for example, the issue of tax exemptions discussed above, etc.).

And secondly, despite the unambiguously pragmatic beginning, the Constitutional Agreement essentially reflects the ideological aspiration of the church to obtain equal constitutional legitimacy of the state - legal-political parallelism, and by guaranteeing maximum freedom from it, it is the most favorable model for the implementation of this idea. From this point of view, it is impossible not to agree with the formal argument that under the conditions of the constitutional agreement, the state is deprived of the opportunity to unilaterally change – "worsen" - the legal status of the Church through legislative mechanisms. However, in the background of twenty years of experience, this argument has actually become more justified from the opposite perspective. Indeed, in 2002, the church rightly used the unprecedented political consensus that existed in that period and entered into such a legal relationship with the state, which, despite a number of fundamental inconsistencies and contradictions, cannot be easily unilaterally changed today – "improved" by the state, despite its exclusive legislative power.