

The 2003 draft Agreement between the Holy See and Georgia and future prospects for cooperation

Projekt umowy pomiędzy Stolicą Apostolską i Gruzją z 2003 roku
i perspektywy ich przyszłej współpracy

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Abstract: In 2002, Georgia and the Georgian Apostolic Autocephalic Orthodox Church signed the Constitutional Agreement, which established a new legal model of the state–church relationship. After this event, Georgia and the Holy See drafted a special agreement that was supposed to be signed in September 2003. It was intended to give legal guarantees to the Catholic Church and Catholic believers. Vatican Secretary for Relations with States Jean-Louis Pierre Tauran arrived in Georgia on 18 September to sign the agreement, but at the last minute, the president of Georgia decided not to finalise the process. This draft was not known to society, and even researchers did not have access to the text. This article overviews that document and tries to analyse the perspectives of a future agreement between Georgia and the Holy See.

Key words: Holy See; Georgia; Georgian Orthodox Church; constitutional agreement; concordat; draft agreement

Streszczenie: W 2002 r. Gruzja zawarła umowę konstytucyjną z Gruzińskim Apostolskim Autokefalicznym Kościołem Prawosławnym, ustanawiając tym samym nowy model prawnych relacji państwo–Kościół. Po tym wydarzeniu Gruzja i Stolica Apostolska przygotowały projekt umowy, która miała zostać przez nie podpisana we wrześniu 2003 r. Jej celem było ustanowienie prawnych gwarancji, które miały przysługiwać Kościołowi Katolickiemu i katolikom. W dniu 18 września do Gruzji przybył Jean-Louis Pierre Tauran, watykański Sekretarz do spraw Relacji z Państwami, aby podpisać umowę. Jednak w ostatniej chwili prezydent Gruzji podjął decyzję o odstąpieniu od sfinalizowania tej procedury. Omawiany projekt nie jest znany opinii publicznej. Nawet badacze nie mieli dostępu do tego tekstu. Jego omówienie stanowi podstawowy cel niniejszego artykułu, w którym podejmuje się ponadto kwestię perspektyw przyszłej umowy pomiędzy Gruzją i Stolicą Apostolską.

Słowa kluczowe: Stolica Apostolska; Gruzja; Gruziński Kościół Prawosławny; konkordat; umowa konstytucyjna; projekt umowy

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Introduction

Relations between the Holy See and Georgia are very old; they start almost from the beginning of Christianity.¹ In the early ages, when the political geography of the Christian Church was quite simple and Christianity was not the main religion of Europe, Rome and Mtskheta had direct and very close relations with each other.² Over centuries, these relations changed and were reestablished in a more complex form, partly because of the alienation of the Eastern and Western churches and partly because of geopolitical factors.

Modern politics and the legal relations of the Holy See with states differ from past experiences. The Catholic Church began signing concordats with so-called “friendly” or historically Catholic states, but in the late twentieth century, the Church changed the practice and enlarged list of states for agreements,³ and logically, objectives and terms of the concordats also were changed. Despite these changes, the basic intent still remains: protection of Catholic believers’ rights and freedoms, legal status of the Church and clergy and cultural, social and economic cooperation.⁴ Other objectives can also be involved in the agreements; it depends on the counter-state and the intention of the cooperation.

Official diplomatic relations between the Holy See and Georgia were established in 1992, after the restoration of Georgia’s independence, and developed dynamically.⁵ While in international politics cooperation has always been progressive, there were significant problems regarding the legal status and historical property of the Catholic Church in Georgia, especially considering that the majority of Georgians are Orthodox and the Georgian Orthodox Church had a dominant social and political role in the 1990’s (to some extent, it remains so until now).⁶ The Holy See tried to secure and obtain legal mechanisms of protection for the organisational status and rights of believers and Catholic clergy.⁷ In 2002, the Constitution Agreement

¹ Bettencourt 2022, iv–v.

² See: Ghaghanidze 2021, 79–83.

³ Petkoff 2007, 39.

⁴ See: Gegenava 2018, 67–70.

⁵ Bardavelidze 2022, 16.

⁶ See: Gegenava 2020, 169–174.

⁷ See: Sepashvili 2003; Surguladze et al. 2022, 387–388.

between the Georgian Orthodox Church and Georgian state was signed,⁸ after the constitutional amendments of 2001.⁹ All these processes inspired the Catholic Church and Georgian government to draft an agreement, but it was not signed.¹⁰ The draft was not known to society or even scholars. This article reviews some issues concerning the draft agreement, its content and the basic directions of the document. This paper aims to underline the perspective of future possibilities of the agreement between the Holy See and Georgia, as well as to determine prospective fields of cooperation.

1. Attempt to Sign the Agreement

The Holy See tried to sign a special agreement with Georgia in 2003.¹¹ President Shevardnadze admitted that the parties began drafting the document pertaining to the mutual cooperation almost immediately after the apostolic visit of Pope John Paul II in Georgia in 1999.¹² However, the hierarchs of the Georgian Orthodox Church were not happy with the perspective of such a legal connection and openly opposed it.¹³ The Georgian Orthodox Church was afraid that this agreement would be dangerous for the “special status”¹⁴ of the Church and its “exclusive rights.”¹⁵ Bishop Zenon (Iarajuli) announced that the draft agreement was “absolutely identical to the Constitutional Agreement”¹⁶ (signed by the Georgian Orthodox Church and Georgian State one year prior). Deputy Minister of Foreign Affairs of Georgia Mr. Surguladze denied this statement and clarified that the draft agreement between the Holy See and Georgia was not a concordat and could not be

⁸ Gegenava 2016, 158.

⁹ Constitutional Law of Georgia No. 826 of 30 March 2001, Georgian Legislative Herald, N9, 10 April 2001.

¹⁰ Surguladze et al. 2022, 387–388.

¹¹ Ibidem.

¹² Sepashvili 2003.

¹³ Surguladze et al. 2022, 388.

¹⁴ See: Gegenava 2020, 169–174; Górecki 2020, 1.

¹⁵ Protest against Georgia–Vatican Agreement, 19 September 2003 [საპროტესტო აქცია საქართველო-ვატიკანის ხელშეკრულების წინააღმდეგ]. <https://old.civil.ge/geo/article.php?id=4817> [accessed: 6 July 2023].

¹⁶ See: Paichadze 2003.

because a concordat was a different document, with quite different content, legal status, and importance.¹⁷

The Georgian Patriarchate linked the agreement to religious purposes of the Holy See: “The state must not adopt; it must not sign this agreement. I think the result will not be good [...]. Vatican, when it signs an agreement, firstly, has religious purposes. Here might be the same.”¹⁸ One day before the official ceremony of signing the document, Catholicos Patriarch Ilia II gave a press conference and declared that the Patriarchate had no information on the details of the agreement¹⁹ and that the “international treaty between Georgia and Vatican cannot be advisable.”²⁰ According to the Ministry of Foreign Affairs of Georgia, the agreement was in full compliance with Georgian legislation; it was not classified and did not intend to solve the “issues concerning the former property of the Catholic Church on the territory of Georgia.”²¹

Secretary for Relations with States of the Holy See Jean-Louis Pierre Tauran, who arrived in Tbilisi to sign the agreement, was met with protests at the airport.²² There were a few other protests in several places in the capital of Georgia.²³ The Orthodox Church used its political power to interrupt the signing of the document.²⁴ As a consequence, the Georgian state avoided a clash with the church and refused to sign an agreement with the Holy See.²⁵ President Shevardnadze reconsidered at the last minute, on 19th of September, before signing the document, but he also admitted that the government would go on working on the project (including a bill on religion).²⁶ Archbishop Tauran expressed sorrow and disappointment for the failed agreement and the position of the Georgian Orthodox Church, which had probably misunderstood the content and idea of the document.²⁷

¹⁷ Ibidem.

¹⁸ Ibidem.

¹⁹ Protest against Georgia–Vatican Agreement 2003.

²⁰ Ibidem.

²¹ See: Paichadze 2003.

²² Protest against Georgia–Vatican Agreement 2003.

²³ Ibidem.

²⁴ Sepashvili 2003.

²⁵ Surguladze et al. 2022, 388.

²⁶ Sepashvili 2003.

²⁷ Ibidem.

He also admitted that these processes affected Georgian Catholics, who were in the most difficult situation without “any kind of legal guarantee.”²⁸

2. Content of the draft agreement

The draft agreement between Georgia and the Holy See consisted of a preamble and 15 articles. The preamble underlines the basic directions and goals that the agreement is supposed to achieve. Both parties stated their respect for each other and the special role of the Georgian Orthodox Apostolic Autocephalic Church in the history of Georgia and Christianity.²⁹ One of the main goals of the document (alongside the development of the existing partnership and cooperation) was to determine the legal status of the Catholic Church in Georgia.³⁰ This was expressed not only in the preamble but also in the basic text (Art. 1 para. 2).

Several articles of the agreement refer to the guarantee of freedom of belief and conscience on both organisational (Art. 1 para. 1, Art. 4) and individual levels, including the right of Catholic students to study their religion (Art. 8), the right to express religion and take part in the holy liturgies and connect with the clergymen for the Catholic servants of the armed forces and police (Art. 11). The document guaranteed the freedom of the Catholic Church to organise itself and carry out its mission (Art. 1 para. 3) and to create structures and erect and modify ecclesiastical legal entities in accordance with the legislation of Georgia and the Holy See (Art. 1 para. 4). It provided freedom of selection and appointment of the clergy by the appropriate bodies of the Catholic Church (Art. 2 para. 2), appointment of the Apostolic Administrator (Art. 2 para. 1) and the inviolability of communication of the Apostolic Administration and clergy to the Holy See (Art. 3). The draft considered the privacy of confession, and the seal of confession and its absolute character, as inviolable freedom of men and the Church, in

²⁸ Ibidem.

²⁹ The Constitution of Georgia and Constitutional Agreement use almost the same wording. See: Art. 8 of the Constitution of Georgia, 24 August 1995, Newsletter of the Parliament of Georgia, N31–33, 24 August 1995; Preamble of the Constitutional Agreement between Georgian State and Georgian Apostolic Autocephalous Orthodox Church, 14 October 2002, Georgian Legislative Herald, N116, 27 November 2002.

³⁰ See: Preamble of draft Agreement between the Holy See and Georgia of 19 September 2003.

consequence of which civil authorities would not have the right to obtain information from the ecclesiastics concerning “persons or other matters they have acquired in the course of their ministry” (Art. 7). Georgia would have to support priests, members of religious congregations and laypersons, non-citizens invited to Georgia by the bishop, apostolic administrator, ordinary or their equivalents (Art. 5).

Some provisions of the agreement were about financial, economic and property issues. The Catholic Church was able to build temples and other cultic buildings according to the rules and standards established by Georgian legislation (Art. 6 para. 1). Property of the Church was secured and protected, holy places and spaces for religious rituals were inviolable and public authorities would be allowed to limit this right only in cases provided for by law (Art. 6 paras. 2–3).

According to the draft, issues concerning disputed property, as well as other financial and fiscal questions, would have to be solved by an *ad hoc* joint commission “with the task of finding solutions acceptable to both parties” (Art. 12). This part of the document was perceived by the Georgian Orthodox Church to be the most dangerous to its interests, as there were critical issues concerning several temples. Catholics were always a minority in Georgia, but played a vital role in the cultural and social development of the country. They had churches in the Tbilisi, Batumi, Gori, Kutaisi and Samtskhe-Javakheti regions.³¹ Some of these churches were expropriated by the Soviet Union and, at the end of the Soviet era, were given to the Orthodox Church.³² These churches are still disputed, and the Catholic Church has a principal position in them.³³ Secretary of States of the Holy See Cardinal Parolin appealed to the Georgian government to demonstrate its goodwill and return to the Catholic Church at least one temple.³⁴

The document was supposed to remain in force until one of the parties notified another party about its intention to terminate the agreement (Art. 14). For changes and additions to the agreement, both parties’ consent was mandatory (Art. 13 para. 1). Termination would become effective six

³¹ Natsvlishvili 2015, 22–24.

³² Chitanava, Chabukiani 2014, 27; Gegenava 2018, 175; Lomtadidze, Tsiklauri 2014, 175.

³³ See: Sutidze 2017.

³⁴ *Vatican calls on Georgian government to return Catholic Church property in Georgia*, 6 July 2023. <https://civil.ge/archives/551004> [accessed: 7 July 2023].

months after the receipt of the notification about termination by either party (Art. 14). The draft was created with two original copies – English and Georgian – and both texts were equally authentic; English text would prevail only in the case of divergence (Art. 15). All difficulties concerning the interpretation or implementation of provisions were supposed to proceed by “common accord to an amicable solution” (Art. 13 para. 2).

The draft agreement dealt with many important issues for 2003, but despite this fact, comparing it to the Constitutional Agreement of 2002 or other “traditional” concordats is not valid and realistic. Issues incorporated by the Constitutional Agreement between the Georgian Orthodox Church and Georgian state are broader and more diverse; responsibilities and duties taken by the state in favour of the Orthodox Church are so huge and impressive that they cover many constitutional directions (legal status, tax exemption and compensation).³⁵ Any remarks or association on similarities or identities between the Constitutional Agreement and the draft agreement were false; the position of the Georgian Orthodox Church aimed to create a tense situation, manipulate the government and interrupt signing the document. Unfortunately, this goal was achieved.

3. Cooperation between the Holy See and Georgia: Reality and perspective

Agreement between the Holy See and Georgia, if signed, will have the status of an international treaty and because of this, it will take place after the Constitutional Agreement. This was secured by the Constitutional Amendment of 2001 and incorporated into ordinary legislation.³⁶ The Georgian Orthodox Church wanted some legal guarantees for the Constitutional Agreement, and the Georgian government found such a solution: the Constitutional Agreement prior to the international treaties and directly after the Constitution of Georgia and constitutional laws.

³⁵ See: Constitutional Agreement between Georgian State and Georgian Apostolic Autocephalous Orthodox Church, 14 October 2002.

³⁶ See: Constitutional Law of Georgia No. 826 of 30 March 2001; Art. 7 para. 3 of Organic Law of Georgia No. 1876 on Normative Acts, Georgian Legislative Herald, N33, 9 November 2009.

Cooperation between the Catholic Church and Georgia can be developed in many directions, keeping the *status quo* on one hand and not being discriminative towards other religious organisations on the other. The agreement will be productive for both parties: the Church will receive more legal guarantees, but for the state, it can be useful on national and international levels, especially in international relations and politics.

According to worldwide practice and current Georgian reality, collaboration can be established in several directions. The first is the legal status of the Catholic Church in Georgia and its clergymen and religious education. These issues were also considered in the 2003 draft. Existing questions were partly solved in 2011, when so-called “traditional religions” gained status as a legal person of public law (LEPL).³⁷ The Catholic Church (represented as the Apostolic Administration of Latin Caucasus) gained this status, too. However, for more stability and guarantee, it is possible to ensure this on an international level by the legally binding agreement. The legal status of clergymen is one of the most important points of negotiation. Current priests, deacons, bishops and future clergymen need real mechanisms for protection, especially in light of the right to conscientious objection. The Parliament of Georgia heard a bill – the Defence Code³⁸ – that does not include exemption from military service for the clergy, so they will have to serve mandatory military service or its alternative.³⁹ Clergy of the Georgian Orthodox Church is exempted from this obligation according to the Constitutional Agreement, which has higher normative authority than ordinary law, so the new Defence Code will not cover orthodox priests.

Issues concerning teaching and studying religion in schools are regulated by the special legislation in Georgia, but this is too abstract, just declaring religious freedom in education and right to study elective course about religion, it does not address special questions on teaching religion or religious education. All people have the right to study their religion and receive special religious education. These topics can be involved in the agreement, which can establish more guarantees for believers and the Catholic Church.

³⁷ Meladze, Noniashvili 2016, 74–76.

³⁸ Georgian Law No. 3500-XIIIობ-Xო3 of 21 September 2023, Georgian Legislative Herald, 12 October 2023.

³⁹ See: *Clergy to be required to undergo compulsory military service in closure of loophole*, 12 January 2023. <https://agenda.ge/en/news/2023/102> [accessed: 6 July 2023].

Basics of freedom of religion are in the Constitution of Georgia and in the case law of the Constitutional Court of Georgia, so it is not necessary to put it in the document (as it used to be in the draft of 2003; since that Constitutional Court developed a much higher standard).

Mutual cooperation can also pertain to financial–economic, tax, property issues and compensation. Tax exemptions are the sphere in which cooperation can be successful. This question was discussed at the Constitutional Court of Georgia and the court used its discretion to interpret exclusive tax exemptions for the Georgian Orthodox Church to be effective for the Catholic Church and other religious organisations too.⁴⁰ Despite this decision, there are several other possibilities in the tax law field for ensuring legal equality for all religious organisations.

The Georgian government gave the Apostolic Administration of Latin Caucasus (with several other religious entities) compensation for the damages during the Soviet occupation.⁴¹ The amount of this compensation is not high and carries a more symbolic character, but it is still a fact. The question of compensation is very problematic. The Joint Commission must account for the full amount of damage and the period for which compensation will be given to the Church. It is a principal question because the Georgian government did not establish this when the Constitutional Agreement was signed and it took responsibility for the compensation to the Georgian Orthodox Church for the last two centuries,⁴² the period of annexation and occupation of the country.

The most problematic and actual questions are property issues.⁴³ There is no consensus about the disputed temples given to the Georgian Orthodox Church. Moreover, this is still an object of serious conflict.⁴⁴ Solving this problem using international instruments and signing the international agreement without involving the current owner will be a direct source of conflict and confrontation. Thus, parties need more than just political will. Unfortunately, historical justice often belongs more to history than to justice

⁴⁰ Decision of the Constitutional Court of Georgia of 3 July 2018, No. 1/2/671, Georgian Legislative Herald, 11 July 2018.

⁴¹ See: *Gegenava* 2019, 125–126.

⁴² See: Art. 11 para. 1 of the Constitutional Agreement between Georgian State and Georgian Apostolic Autocephalous Orthodox Church, 14 October 2002.

⁴³ *Gegenava* 2018, 175–176.

⁴⁴ *Chitanava, Chabukiani* 2014, 19.

in general. Formulation of the draft of 2003 about *ad hoc* joint commissions is still the best temporary solution. It can be more detailed, however, with more concrete goals (for example, terms and conditions of dispute resolution, forms of compensation, etc.).

Collaboration in the fields of social programmes, culture and the protection of cultural heritage is also desirable and useful for both parties. Social programmes and projects, organised by the government and supported by the Holy See and represented by different organisations and entities, are extraordinary and in some way irreplaceable.⁴⁵ Cultural cooperation is available in many different forms, including sharing experiences and elaborating on new programmes. Special institutions of the Holy See have amazing experience in cultural heritage protection, which can also be used in Georgian reality, not only for the Catholic Church. Access to the Vatican Archive and research about Georgian history will also have invaluable importance for the country.

Cooperation between the Holy See and Georgia can also have a positive effect on supporting Georgia's territorial integrity and sovereignty. The Holy See always supported Georgian territorial integrity using diplomatic resources, official statements and even soft power. Pope Benedict XVI's statements and declarations during the Russian–Georgian war in 2008 are remarkable.⁴⁶ According to his international politics, Latin American states supported the nonrecognising policy of occupied Georgian territories.⁴⁷ This was one of the main reasons why Russian propaganda failed in that region. Considering the international authority and diplomatic relations of the Holy See, the position of the Catholic Church and support in the nonrecognising campaign are vital and may be crucial for the statehood of Georgia.

There are many spheres and forms of possible cooperation, but the most important for all of them are political will and readiness. With high probability, Georgia will not begin negotiations on signing an agreement with the Holy See in the next few years. This is not so much because of the absence of political will as it is because of the existence of the potential risks and

⁴⁵ See: Bardavelidze 2022, 19.

⁴⁶ Stephen Brown. 2008. *Pope calls for halt to fighting over South Ossetia*, 10 August 2008. <https://www.reuters.com/article/idUSLA481467> [accessed: 7 July 2023].

⁴⁷ Bardavelidze 2019, 210.

dangers that have been present since 2003. The Georgian Orthodox Church has an incredible influence on these processes, mostly because it determines the direction and reaction of society's majority to concrete questions. Fear of losing its "exclusivity" is too much risk for it and signing international agreement with the Holy See without special negotiation and unofficial consent by the Georgian Patriarchate is hardly to imagine.

Conclusion

Signing an international agreement between the Holy See and Georgia would have been vital and useful for both parties, especially in 2003, when there were many challenges for the Catholic Church in Georgia and for the state, too. The main motivation for the draft agreement was to create a framework and legal mechanisms for protecting Catholic believers and the Church (its organisational and legal side). Many of the questions at that time were solved after the Rose Revolution (two months after the failed signing in November 2003), but some of them remain.

The international agreement in question is not only in the Church's interests, but also has importance for Georgia. This document can be an effective instrument in international relations, in its legal, social, cultural and economic dimensions. However, signing the agreement is not only up to the parties, but it can also face the same problems as 20 years ago. While the Georgian Orthodox Church has so strict a position and fears of losing its "exclusivity" and the disputed temples, it will do everything against this. Negotiation with the Georgian Patriarchate will not be easy, but it is possible. Starting the process is strongly recommended. The initiator should be the Holy See. It should use all the resources for successful results with Patriarchate and, parallelly, speak to the Georgian government. These processes should be transparent and ensure that all parties have the purest intentions. This is a long process between two signing parties, especially when there is implicitly a third party.

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