

## Registration of Religious Organisations

The Parliament of Georgia on this 6 April adopted a Law on Amendments and Addenda to the Civil Code of Georgia and to the Code of Administrative Offences of Georgia. These changes have put an end to the absurd situation where other religious associations, apart from the Georgian Orthodox Autocephalous Church, were devoid of the right to undergo registration, and represented factually unregistered unions.

### 1. PREVIOUS SITUATION

In accordance with Article 1509 of the Civil Code of Georgia, religious associations represented legal entities of public law.

#### **Article 1509, Legal Entities of Private and Public Law <sup>1</sup>**

##### **1. Legal entities of public law envisaged by the Civil Code are:**

- a) **The State;**
- b) **Self-government agencies;**
- c) **Legal entities created by the State on the basis of legislation or administrative deed which are not established in the organizational and legal form envisaged by the Civil Code of the Law “On Entrepreneurs”;**
- d) **State agencies and state funds that are not established under the Civil Code or the Law “On Entrepreneurs”;**
- e) **Non-state organizations (political parties, religious associations, etc.) established under legislation to accomplish public goals;**

##### **2. Legal entities of private law are:**

- a) **A union;**
- b) **A foundation;**
- c) **A partnership;**
- d) **A limited partnership;**
- e) **A limited liability company;**
- f) **A joint-stock company;**
- g) **A cooperative;**
- h) **A treasury enterprise.**

Subparagraph e) of this Article rendered impossible registration of religious associations as legal entities of private law. Whereas registration as legal entities of public law was impossible because of full non-compliance of the norms of the Law “On a Legal Entity of Public Law” with the nature and the activity procedure of religious associations (see Section 3 for details), also because of vagueness in connection with procedural matters.

<sup>1</sup> The version before the amendments dated on 6 April, 2005

For instance, a letter received by our organization from the Registration, Licensing and Public Register Maintenance Department of the Ministry of Justice dated 27.07.2004 indicated that “religious organizations represent legal entities of public law, and a special legal act determining their registration procedure and conditions has not been adopted”.

At the same time, in accordance with Article 199 of the Code of Administrative Offences of Georgia, registration avoidance by religious association and some other actions are regarded as administrative offences punishable under law.

### **Article 199. Violation of legislation concerning religious associations**

#### **Violation of legislation on religious associations:**

- 1) **Avoidance by religious association leaders of registration of these associations with state administration agencies;**
- 2) **Violation of the statute-established procedures for arranging and holding religious meetings, processions, and other religious ceremonials;**
- 3) **Arrangement and holding by ministers of religion and other members of religious associations of a special gathering of children and youth, as well as the arrangement and holding of labor, literature, and other sections and groups that are not associated with religious service, -Invokes penalizing at the rate of two minimum amounts of labor remuneration.**

That is, here we deal with an absurd and discriminatory situation – religious associations were devoid of the opportunity to be registered under the legislation in force, and were, concurrently, punishable for a failure to get registered.

## **2. SITUATION AFTER LEGISLATION AMENDMENTS**

As indicated above, the Parliament of Georgia on this 6 April adopted a Law on Amendments and Addenda to the Civil Code of Georgia and to the Code of Administrative Offences of Georgia. In particular, the new wording of Article 1509 of the Civil Code is now as follows:

### **Article 1509. Legal Entities of Private and Public Law (06.04.2005, #1233)**

1. **Legal entities of public law envisaged by the Civil Code are:**
  - a) **The State;**
  - b) **Self-government agencies;**
  - c) **Legal entities created by the State on the basis of legislation or administrative deed which are not established in the organizational and legal form envisaged by the Civil Code of the Law “On Entrepreneurs”;**
  - d) **State agencies and state funds that are not established under the Civil Code or the Law “On Entrepreneurs”;**
  - e) **Non-state organizations (political parties, etc.) established under legislation to accomplish public goals;**
  - f) **A legal person of public law recognized as such under a constitutional agreement.**

**2. Legal entities of private law are:**

- a) A union;
- b) A foundation;
- c) A partnership;
- d) A limited partnership;
- e) A limited liability company;
- f) A joint-stock company;
- g) A cooperative;

That is, the words “religious associations” were withdrawn from paragraph e) and paragraph f) was added. At the same time, Article 199 of the Code of Administrative Offences was repealed.

Of course, all the previously mentioned are a step forward in the real establishment of the freedom of religion and faith in the country. Religious associations have been given thus an opportunity to get a legal status of the base level. Notwithstanding this, a whole number of discrepancies and contradictions, including legislative ones, remain.

Georgian legislation, particularly the Civil Code proper, recognizes two types of a non-entrepreneurial legal person. These are the fund and the union. Because of the adopted amendments, religious associations are entitled to get registered in any of these two legal and organizational forms. Let us consider the registration process of the fund and the union.

In accordance with Article 31 (3) of the Civil Code:

**Article 31. Registration of union and fund**

- 3. An application and charter signed by all founders and members of the board of management to be submitted to a territorial agency in charge of the Public Register of the Ministry of Justice at the location of the union or the fund are necessary for registration.**

Certainly a question arises, who shall represent founders of the Catholic, Muslim or Armenian Gregorian Church with centuries-old traditions in Georgia, and who shall submit the notarized signatures?

The general meeting is the highest management body of a union that is to be called once a year at least. In a period between the meetings, the board shall manage the union. This, however, runs counter to the management procedure and management bodies traditionally established in various religious associations.

**Article 41. General meeting of members of a union (Civil Code)**

- 1. The board convenes the general meeting of a union once a year at least, or when the interests of the union so require. The general meeting may be convened by a request in writing of one-tenth of the members, with the indication of the meeting’s agenda.**

2. All members shall be notified in writing of the convocation of the meeting or through publication of information in an official publication body of the union in advance of two weeks at least before the meeting.
3. The meeting of the members decides on all the matters of the union being outside the board’s competence. A decision is valid only if it has been included in the meeting’s agenda.
4. Decisions at the meeting are made by a majority vote of the members attending. A decision on the alteration of the agenda is taken by a two-thirds majority vote. A decision concerning alteration of the union’s aim shall require four-fifths of the votes of all the members. The members who cannot attend the meeting may vote in writing. They have equal rights with the members present and voting.

How will the board be elected, for which purpose the general meeting of members is to be called? How will dozens of thousands of members of different religious associations be assembled in a meeting even if once a year, at which amendments to the charter, for example, shall be made by a two-thirds majority vote? As for the fund, it generally has no members.

### **Article 30. Non-entrepreneurial/non-commercial legal persons (Civil Code)**

3. A fund is a legal person without membership founded by several persons on the basis of transfer of special property to the possession by an independent subject pursuing a socially-useful aim.

This and a number of other problems are the reason that the Catholic, Muslim and Gregorian associations have actually waived such form of registration.

## **3. CONCERNING LEGAL PERSONS OF PUBLIC LAW**

The Georgian legislation recognizes also a legal person of public law. The Georgian Orthodox Autocephalous Church represents such a person. As is known, its relationships with the State are governed by a Constitutional Agreement of 14 October 2002, wherein it is mentioned as a “historically established subject of public law”.

The procedure for setting up and activities of a legal person of public law is defined under the Law of Georgia on a Legal Person of Public Law. Pursuant to Article 2 of this Law:

### **Article 2. Concept of a legal person of public law**

A legal person of public law is the organization separated from the organs of state administration, set up under a respective, law, edict of the President of Georgia or a law-based administrative instrument of a state administration agency which, independently of the state control, engages in the political, state, social, educational, cultural, and other public activities; also the organization separated from the organs of state administration, set up under a normative act of the supreme executive body of an autonomous republic

which, independently of the state control, engages in the political, state, social, educational, cultural, and other public activities.

At the same time, a legal person of public law has restricted legal capacity in its activity, that is it cannot engage like a legal person of private law in any other activity that is not prohibited under law, and hence we have the state control over such activity and its management. In particular:

#### **Article 10. Management and representation**

1. The procedure for management of a legal person of public law shall be determined by a respective law or edict of the President of Georgia and under the person's charter/regulations.
2. Its director independently acting within the scope of a respective law, presidential edict, charter/regulations, and decisions of the members (where the legal person of public law is member-founded) shall manage a legal person of public law.
4. The director of legal person of public law shall individually run the business. The director shall be in charge of representation of the legal person of public law and shall be personally responsible for the proper running of its activities.
5. The director of legal person of public law founded on the basis of the state-owned property shall be appointed to and removed from office by the President of Georgia or an agency of state administration as stipulated by this Law/presidential edict. The director of a members-founded legal person of public law shall be appointed to and removed from office by the general meeting of members.
6. The director shall be personally responsible for the property owned by the legal person of public law and the proper spending of its funds.
7. In the cases and the procedure stipulated by law, administrative instrument or charter/regulations, a supervisory body may be set up for the purpose of management of a legal person of public law. Officials of a respective agency of state administration, also the members designated by the meeting of members, (where the legal person of public law is member-founded), and the representatives of the working collective may be included in its membership.

#### **Article 11. State control**

1. A legal person of public law shall be subject to the state control implying the oversight of the purposefulness and effectiveness of the activities performed thereby and the supervision of its financial and economic activity.
2. The state control over a legal person of public law shall be exercised by an agency of state administration stipulated by law and/or edict of the President of Georgia being authorized to request the production of necessary materials and information for exercising the control.
3. A state control-exercising agency shall be authorized to suspend or revoke any illegal decision of the legal person of public law.

#### **Article 12. Activity subject to Authorization**

1. A legal person of public law founded on the basis of the state-owned property may, subject to a consent of the state control-exercising agency, engage in the following activity: Purchase, alienation and encumbrance;
  - a) Taking a loan;

- b) **Acting as a surety;**
  - c) **Determining the manning table and payroll fund;**
  - d) **Other decisions concerning the property of the legal person of public law if they exceed the scope of ordinary activities.**
2. **The performance of the activities stipulated by paragraphs b) and c) of paragraph one of this article shall be subject to a consent of the Ministry of Finance of Georgia.**
  3. **The state control-exercising agency's refusal to perform the actions stipulated by paragraph one of this article shall be substantiated. The refusal may be appealed with a superior state authority and/or in court.**

Thus, the recognition of a religious organization as a legal person of public law under the effective legislation contradicts both the nature of a religious association and the traditional activity procedure as well as the principle of interrelationship of the State and the Church, as universally established by the Constitution and international law.

In the case of the Georgian Orthodox Autocephalous Church, the above law norms are not effective, for the Constitutional Concordance is of higher a hierarchy than the law.

The Law of Georgia on Normative Acts

#### **Article 19**

1. **The normative acts operating in Georgia shall have the following hierarchy, according to their ranking by legal force:**
  - a) **The Constitution of Georgia, a constitutional law of Georgia;**
  - a<sup>1</sup>) **The Constitutional Concord of Georgia;**
  - b) **An international agreement or a treaty of Georgia;**
  - c) **Organic law of Georgia;**
  - d) **Law of Georgia; Regulations of the Parliament of Georgia; edict of the President of Georgia;**

Although, a possibility that any other association would achieve a constitutional concord with the State and enjoy the new wording of Article 1509 (1), f) of the Civil Code of Georgia is rather unlikely.

Of course, the registration issue is only a small problem in the process of securing the religious freedom. Many other more or less acute problems also exist. For instance, the issue of divine service of the convicts of a penitentiary institution, where ministers of other religion association can enter for services only subject to an agreement with the Georgian Orthodox Autocephalous Church; existence of the still unsettled disputes regarding various real estate; the non-settlement by religious associations as a whole (other than the Georgian Orthodox Autocephalous Church) of their relations with the state structures, etc. Therefore, as mentioned above, there is still much to be done in this direction.