

Liberal Neutrality and the Challenges of Pluralist Liberalism in Georgia

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Peculiarities of Context-

Byzantine “symphonia” with strong Russian “Caesarist” flavor

Empire and the suppression of political nation in favor of cultural nation

Totalitarian experiment as the first experience of “modernization” right after the serfdom

Constitutional framework-

The “inventiveness” of constitutional agreement between the state and orthodox church. What does “recognition” really stand for?

Church’s social power and its political significance-

Diffusion of Church’s power through traditional family, kinship, clan, neighborhood and other informal social institutions;

Constitutional Court’s Approach to Neutrality –

Refusal to enforce religious morality through litigation and judicial enforcement- The ouster of the court jurisdiction over the content of the Public Broadcaster’s programs deemed constitutionally justified restriction of the plaintiff’s right to access to the courts- **The “Orthodox Parents’ Case” (2009)**

Conscientious Objection Case (2011) – Denial of conscientious objection to reservists is deemed a violation of absolutely protected core of “forum internum”.

State’s duty to accommodate freedom of belief vis a vis legitimate aims and constitutional duties of citizen;

Rejection of Parliament’s argument on the “impossibility of checking the sincerity of belief”. The court underlined that state’s power to check “sincerity of belief” would be close to state’s role of assessing the legitimacy of belief- the power categorically denied to the state under the constitution.

Church FOIA Case (2016)- Constitutional court ruled that Orthodox Church is exempt from freedom of information duties even when the FOI requests concern the spending of state funds. Constitutional court ruled that receipt of state funds does not make orthodox church a “public authority” and thus no freedom of information requirements apply to Church’s operations.

Neutrality as practiced by the Constitutional **court is not of a strict or militant type and does not preclude state benefits and other cooperative practices.**

The terms of cooperation and engagement **are unequal** and in **case of “nontraditional” denominations even nonexistent.**

Challenges-

Disproportional social power of other religions compared to orthodox church.

Pluralism in society is mostly that of different traditional non formal institutions and not religious organizations.

Major problem of building pluralist liberal account in Georgian constitutional system is captured in the following question- **do these social institutions value liberty and foster liberty?**

Do they have sufficient incentives to be liberty-friendly, especially those who have outsized social power?

Use and abuse of the question of the constitutional definition of traditional marriage –

The proposed referenda blocked by the President;

Reasons against referendum-

Used to mobilize the electorate responsive to Kremlin propaganda line on “traditional values risking the corruption from the West”;

Does not advance any rational purpose to strengthen or protect already constitutionally protected institution;

Aimed at suppressing marginal social groups/vulnerable minorities;