

# FREEDOM OF RELIGION OR BELIEF IN GEORGIA



**Report**  
2010-2019



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2010-2019**

Tolerance and Diversity Institute (TDI)

2020



TOLERANCE & DIVERSITY INSTITUTE

The report is prepared by Tolerance and Diversity Institute (TDI) within the framework of East-West Management Institute's (EWMI) "Promoting Rule of Law in Georgia" (PROLoG) project, funded by the United States Agency for International Development (USAID). The report is published with the support from the Open Society Georgia Foundation (OSGF).

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**Authors:** Mariam Gvartadze, Eka Chitanava, Anzor Khatiashvili, Mariam Jikia, Shota Tutberidze, Gvantsa Lomaia

**Project director:** Mariam Gvartadze

**Translators:** Natia Nadiradze, Tamar Kvaratskhelia

**Design:** Tornike Lortkipanidze

**Cover:** shutterstock

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Tolerance and Diversity Institute (TDI), 2020

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## INTRODUCTION

The present report prepared by Tolerance and Diversity Institute (TDI) provides an assessment of the situation of the freedom of religion or belief in Georgia and the respective state policy for the period from 2010 to 2019. The report also includes recommendations for key stakeholders.

The report discusses the problem of separation of state and religion, crimes motivated by religious intolerance and their investigation, including the State's response to cases of violation of the rights of Muslims and Jehovah's Witnesses and legislative initiatives restricting freedom of religion or belief. The report also examines the national legal framework in respect of freedom of religion or belief, referencing important judgments of the Constitutional Court in relation to the Tax Code and Law on State Property, which has created unequal conditions for religious organizations; state funding for religious organizations and privileges granted to the Orthodox Church; the issue of religious bias and discrimination in public schools; issues relating to the property of religious communities including the restitution of property confiscated by Soviet authorities and obstacles faced by religious organizations in their attempts to obtain construction permits for new houses of worship; problems related to the mandate of the State Agency for Religious Issues and the State's interference into the autonomy of religious minority organizations.

The majority of problems relating to the freedom of religion or belief in Georgia are structural. Analyzing state policy suggests the principle of the separation of state and religion as enshrined in the Georgian Constitution is often breached with financial, legal and social privileges being granted to the Patriarchate of Georgian Orthodox Church (hereafter, referred to as Orthodox Church and Patriarchate) and discriminatory treatment towards other religious communities. Furthermore, the State tends to interfere with the autonomy of religious organizations. In 2017, state authorities attempted to curb the freedom of religion within the framework of constitutional reform by introducing vague and unforeseeable criteria such as "national security". In addition to being unclear, these criteria fail to meet international standards. The policy and practice pursued by the State Agency for Religious Issues seek to differentiate religious organizations and reinforce the State's control over the latter rather than ensuring the protection of freedom of religion and equal rights to all religious communities.



In 2019, discussions on drafting a new law on religion and religious organizations made headlines with the Human Rights and Civic Integration Parliamentary Committee, the State Agency for Religious Issues and some religious organizations invoking special “regulations” while in fact, there was no need to impose additional regulations to protect freedom of religion and belief nor should the State define such concepts as “religion” and “religious organizations”. Taking into consideration the Georgian context as well as the history of the relationship between the State and religious organizations, there is a high risk that the introduction of such legislation would likely cause a hierarchy of religions with their differentiation based on various criteria.

TDI, with the present report, aims to paint a full picture of the systemic problems affecting the freedom of religion or belief in Georgia. An analysis of state policies and practice, the legal framework and cases may help religious organizations to fully enjoy their rights. Finally, the report together with the recommendations enclosed herein, will help the state authorities to objectively assess the situation in the field of freedom of religion or belief and tailor their policies to protect fundamental human rights.

## **METHODOLOGY**

The aim of the presented report is to give an overview and analyze the legal and political facets of freedom of religion or belief in Georgia.

The report covers the period of 2010-2019 and focuses on specific events when religious organizations faced acute problems. This approach allows for the assessment of both qualitative and quantitative indicators pertaining to cases of human rights violation vis-à-vis certain political processes and changes within the State's religious policy. For instance, in order to showcase the systemic violation of Muslims' rights, the report depicts particular cases of human rights violations and discrimination against Muslim citizens between 2012 and 2016, and documents the State's response to the alleged crimes. To analyze the State-Religion separation challenges, TDI scrutinized the state policy and practice of funding religious organizations by processing data derived from public information requested both from central and local authorities. One of the indicators assessing the State's policy regarding freedom of religion or belief is the work carried out by the State Agency for Religions Issues, a government entity, set up in 2014. The report also incorporates all important legislative and political initiatives, tendencies and court decisions with respect to the freedom of religion or belief in the reporting period.

Some of the issues discussed in the report relate to the challenges which religious organizations face due to the discriminatory legal framework in place, implementation of the law, artificial barriers created by the State and the privileges granted to the dominant religious group.

While collecting and processing empirical materials for the report, TDI applied a combination of various research instruments including desk research and analysis of Georgian legislation, state documents, reports produced by international and local organizations as well as the Public Defender of Georgia; public information retrieved from local and central authorities; outcomes of TDI's strategic litigation and advocacy, as well as court decisions and recorded interviews with representatives from religious organizations.

The state policy and practice in relation to the freedom of religion or belief are assessed vis-à-vis constitutional and international standards for human rights protection.

# SUMMARY AND KEY FINDINGS

## STATE AND RELIGION

- ▶ The analysis of the State's policy suggests that the principle of separation of Church and State is often breached by granting financial, legal and social privileges to the Georgian Patriarchate and reinforcing differential treatment towards other religious organizations.
- ▶ The influence of the dominant religious group over the legislative process in the country became prominent in December 2013 while working on the self-government code; in 2014, during discussions around the passage of the Law on the Elimination of All Forms of Discrimination by the Parliament; in 2018, when the Government of Georgia submitted a bill on the production and cultivation of medical marijuana. Finally, in response to the Patriarchate's proposal, the Parliament, through expedited proceedings, announced 12 May as the Day of Georgia's Allotment to Virgin Mary.
- ▶ The privileges granted to the Patriarchate are revealed in the policy and practice of State funding. At the same time, the State has repeatedly been intruding into the autonomy of other religious organizations.
- ▶ In 2014, the Government created the State Agency for Religious Issues. Human rights and minority religious organizations were not afforded the opportunity to consult in the process of establishing the mandate and the statute of the Agency. The policy and the views of the Agency on freedom of religion or belief was revealed in the Strategy of the Development of Georgia's Religious Policy, the document was published in 2015. The content and objectives of the strategy suggest that the State's priority is not the protection of freedom of religion or belief and the rights of religious communities, but to reinforce its control over them. The Agency, instead of "human rights", emphasizes the need to ensure "security".
- ▶ The 2016-2017 Human Rights Action Plan of the Government identified the State Agency for Religious Issues as a responsible body for implementing a wide range of important measures. However, the Agency failed to deliver on its commitments. The State Agency for Religious Issues remained silent and never positioned itself vis-à-vis ongoing debates regarding the constitutional amendments in 2017, which created a high risk to unjustifiably interfere with the freedom of religion or belief in the country.

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- ▶ The interaction of the Agency with religious organizations is an important issue; the third monitoring report (2019) of the implementation of the Framework Convention for the Protection of National Minorities (FCNM) stresses that religious minorities express a low level of trust towards the State Agency for Religious Issues. Instead they express stronger confidence in the work of the Council of Religions under Public Defender of Georgia.
- ▶ One of the problems faced by religious minority communities is the monopolization of public space by dominant religious organization. An analysis of the respective practice suggests that religious minorities have the right to exist but only with limited visibility in public space.
- ▶ In recent years, various aggressive and violent groups have gained considerable visibility in public space by attacking individuals of different national backgrounds or identities. Members of such groups often include representatives of the Georgian Orthodox Church clergy or other organizations with ties to the Georgian Patriarchate. The State does not have an adequate response to such incidents.
- ▶ Representatives of minority religious communities, especially Muslims, often face various problems while crossing the State border including those related to the transfer of religious literature. In addition, the inspection of their travel documents takes unreasonably long. Further, belongings and luggage carried by Muslim citizens are often searched without reasonable doubt. In 2017, the Public Defender of Georgia established the fact of discrimination against Muslim community members crossing the State border.
- ▶ The existing system of financing religious organizations of Georgia can be qualified as a violation of the constitutional principle of separation between State and Church. From 2002 through 2019, the Georgian Orthodox Church received a total of 276.5 million GEL from the central budget. Self-governing communities and cities also pursue the practice of donating property to the Georgian Patriarchate (Annually, approximately 4-5 million GEL).
- ▶ The Georgian Patriarchate is the largest recipient of State funding granted to religious organizations. Based on TDI's and other organizations' data, it is estimated that real estate that the State donated to the Georgian Orthodox Church covers 64 km<sup>2</sup>.

- ▶ State policy is discriminatory when it comes to State funding of other religious organizations. Based on the resolution of the Government of Georgia, since 2014, four religious communities (Muslim, Jewish, Roman-Catholic and Armenian Apostolic) receive annual funding as a symbolic compensation for the damages inflicted during Soviet times. The criteria are based on three characteristics: the size of a particular religious community, number of clergy and number of houses of worship. Other religious communities who also experienced repressions, were omitted from this list.

### **LEGISLATIVE INITIATIVES LIMITING FREEDOM OF RELIGION OR BELIEF**

- ▶ In the framework of the constitutional reform of 2017, the Parliament of Georgia proposed amendments to the Constitution which would restrict the freedom of religion or belief on ambiguous grounds such as “national security”, “prevention of crime” and “administration of justice”. The Council of Europe’s Venice Commission highlighted that the newly added grounds are not legitimate aims according to Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.
- ▶ After succumbing to continuous pressure from religious associations, non-governmental organizations, lawyers and international organizations, in 2017 the Government initiated a new amendment to the Constitution resulting in the removal of the ambiguous criteria legitimizing interference with freedom of religion or belief.
- ▶ Issues around the proposed adoption of a special law on religion and religious organizations was a consistent topic on the public discourse agenda in 2019. The Council of Religions at the Public Defender’s Office disagreed with the idea to adopt such legislation arguing that it would curb religious freedom and undermine equality among religious associations.
- ▶ In 2019, the issue of abolishing the right of military service postponement for religious minority clergy was also raised on the political agenda. The initiative of the Defense and Security Committee of the Parliament stirred discontent among the majority of religious and non-governmental organizations.

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- ▶ There have been several attempts to restrict the freedom of expression over the past few years in Georgia, including numerous initiatives of reckless and ambiguous legal norms to make “blasphemy” and “insulting religious feelings” punishable. These initiatives were put forward by the Government of Georgia and Parliament members. The Patriarchate of the Georgian Orthodox Church has been actively campaigning for the criminalization of “insulting religious feelings”.

## INEQUALITY IN THE GEOGIAN LEGISLATION AND JUDGEMENTS OF THE CONSTITUTIONAL COURT

- ▶ On 3 July 2018, the Constitutional Court of Georgia set a precedent by delivering two judgments upholding claims by religious organizations. The claimants argued that norms set forth in the Tax Code and the Law on State Property violated Article 14 of the Constitution (right to equality) and contributed to an environment conducive to discrimination against religious organizations.
- ▶ In its judgment, the Constitutional Court stressed that “the recognition of the special role of the Church echoes its historical contribution and does not serve to create a preferential legal condition in favor of the Christian Orthodox religion. Nor should the historical contribution be perceived as a source of legitimacy for granting privileges. Differential treatment and affording legal preferences to the Church is not and shall not be the goal of the Constitution”.
- ▶ The Law of Georgia on State Property allows for differential treatment of religious organizations other than the Georgian Orthodox Church. More specifically, religious organizations, except for the Georgian Orthodox Church, are unable to purchase State-owned property through a direct sale or receive such property free of charge.
- ▶ One of the most striking examples of the discriminatory treatment experienced by religious organizations is present in certain provisions of tax legislation. The Tax Code of Georgia allows exemption in certain instances, only for the Patriarchate of the Georgian Orthodox Church granting the latter privileges which are not accorded to other religious organizations.

- ▶ The Georgian Orthodox Church enjoys a series of privileges in the field of higher education. However, no such privileges are accorded to any other religious organization.
- ▶ The Georgian law regulating labour relations defines secular and religious holidays. Religious holidays are celebrated only by the Orthodox religious community. The representatives of religious minority communities whether they work in public or private institutions, also students of general and higher education establishments, have difficulties in celebrating their religious holidays.

### **CRIMES MOTIVATED BY RELIGIOUS INTOLERANCE AND STATE POLICY**

- ▶ Religious persecution, physical and verbal assault, illegal interference with religious rituals of representatives of religious minorities, are among the most pressing and systemic problems in Georgia. While over the course of many years Jehovah's Witnesses have been the primary targets of such persecution and discrimination, the past few years have seen Muslim communities also facing this problem.
- ▶ Even though in 2012 a new article was added to the Criminal Code of Georgia to qualify the motive of intolerance as aggravating circumstances to a crime, there is little evidence to show that courts apply this article. The sense of the lack of protection of minorities is also fostered by impunity of perpetrators, inadequate qualification of alleged crimes and protracted investigations causing mistrust towards law enforcement agencies.
- ▶ From 2012 to 2016, eight large-scale violations of Muslims' rights living in different geographic areas of Georgia were identified. In seven cases, no charges were filed, while investigation of some of the cases are still ongoing. The main reason for confrontation from the side of Orthodox Christians and/or governments is directed mostly at holding religious rituals, keeping houses of worship, religious schools or other public expressions of religious faith.
- ▶ The forced resignation of Vagif Akperov, the former Sheikh of Administration of All Muslims of Georgia is a clear case of the State's intrusion into the activities of religious organi-

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zations. In 2013, he was summoned to one of the buildings of the Ministry of Internal Affairs where, according to him, he was threatened and it was hinted that his family would experience certain problems if he refused to resign. As of January 2020, Vagif Akperov has not been recognized as a victim, no one has been charged and the case remains open.

- ▶ The violation of rights of Jehovah's Witnesses is a long sustained issue in Georgia, the number of violent occurrences targeting them and the State's response indicates the poor situation pertaining to securing the freedom of religion or belief in Georgia. Among other reasons, due to the ineffective policy of the State, deeply rooted stereotypes and an active representation of Jehovah's Witnesses, they are frequently victims of violations on the grounds of religious intolerance.
- ▶ Crimes against Jehovah's Witnesses often include physical violence, interference with religious rituals, damaging houses of worship, assets and religious literature. In many cases, investigations are never launched, or are prolonged for unreasonable time, crimes are often qualified inadequately, and charges are rarely made.
- ▶ The European Court of Human Rights (ECtHR) handed down important judgments concerning cases against Georgia with respect to the freedom of religion or belief. At present, all judgments concern the rights of Jehovah's Witnesses. In three of the cases, the ECtHR found a violation of the rights of claimants, while another case ended in settlement as the Georgian state recognized the violation of rights.
- ▶ It is a positive step that in 2018, the Ministry of Internal Affairs (MIA) created a human rights protection and investigation quality monitoring department. One of its objectives is to ensure timely response and efficient investigation of hate crimes. However the mandate of the department is limited only to monitoring investigations and providing recommendations and it has no investigative function itself. The European Commission against Racism and Intolerance (ECRI) in its 2016 report on Georgia urged the State to create a special unit to investigate crimes committed on racist, homophobic and transphobic grounds. Since the newly created department has no such mandate, ECRI considers its recommendation to be partially implemented.



## PROBLEMS RELATED TO PROPERTY OF RELIGIOUS ORGANIZATIONS

- ▶ Among the major problems faced by religious minorities is the issue related to ownership of property, including houses of worship. They face barriers in attempting to regain property confiscated by Soviet authorities or obtain permits for the construction of new houses of worship. This problem is coupled with discrimination found in Georgian legislation which imposes restrictions on religious organizations, except for the Patriarchate of the Georgian Orthodox Church, to claim back or purchase property.
- ▶ In the 20<sup>th</sup> century, Soviet authorities confiscated all types of property including houses of worship owned by religious communities. After the collapse of the Soviet Union in 1991 and Georgia's independence, only the Georgian Orthodox Church was able to restore their ownership over confiscated property while other religious groups were not given such a possibility. Further, the Church was endowed with the property of other religious organizations as well. The Patriarchate refuses to return this property to their historical owners. Problems in relation to confiscated property affect the Armenian Apostolic, Catholic, Evangelical-Lutheran, Muslim and Jewish religious communities the most.
- ▶ The majority of religious buildings are monuments of cultural heritage. While the problem of historical and confessional ownership remains in limbo, the property is under a looming risk of being destroyed despite the State being officially responsible for its maintenance. Meanwhile, the historical buildings transferred to the Georgian Patriarchate have lost their authenticity with the original characteristics of the buildings erased to remove evidence of their historical and confessional origin.
- ▶ Religious communities often face discrimination while building houses of worship. Issuing construction permits falls within the competence of local authorities. The role of the State Agency for Religious Issues in relation to obtaining construction permits by minority religious communities also raises concerns as the Agency tends to encroach on the powers of local authorities without any legitimate purpose and legal basis.
- ▶ In 2016, Tbilisi City Hall rejected the application of a religious organization to issue a building permit. The Architecture Service of the City Hall requested from the religious

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organization a recommendation issued by the State Agency for Religious Issues. The religious organization applied with a lawsuit to Tbilisi City Court and later, the Tbilisi Court of Appeals. Both claims were satisfied. In 2017, The Tbilisi City Court ruled that, according to Georgian legislation, an administrative body was not authorized to demand any additional document or information (including a recommendation of the LEPL State Agency for Religious Issues) not designated by law.

- ▶ The need for a new mosque has been voiced by the Muslim community in Batumi over the course of many years. The only mosque in the city cannot accommodate believers who are forced to perform their religious rite outdoors. The Foundation for the Construction of a New Mosque in Batumi purchased a plot of land and filed a request to obtain a construction permit to Batumi City Hall. On 5 May 2017, the local authorities rejected the request. On 30 September 2019, Batumi City Court announced the decision in relation to the Batumi mosque case. The Court upheld part of the claim of the Foundation for the Construction of a New Mosque in Batumi and established the fact of discrimination. The judge stressed that Batumi City Hall had demonstrated unequal treatment towards two different religious groups citing the fact that there had been seven Orthodox churches built in the same residential zone including those constructed on municipality-owned plots of land. The Court revoked the decision made by Batumi City Hall denying the application for construction at the first stage and returned the case to Batumi City Hall for reconsideration. The Court ruled against the part of the claim which demanded that the Court task Batumi City Hall to issue an act approving the application for construction permit for the first stage.

## RELIGION IN PUBLIC SCHOOLS

- ▶ The Law of Georgia on General Education, adopted in 2005, recognizes religious neutrality and non-discrimination as one of the core principles of public schools. The law aims to create a learning environment based on the principles of secularity and equality for all students. However, indoctrination and proselytism in public schools remain a problem.
- ▶ Taking national exams and attending various competitions held on Saturdays create problems for students from certain religious minority groups. For instance, members

of the Seventh-Day Adventist Church report that students from this congregation have problems attending events, school tournaments and final exams held on Saturdays. The same problem is shared by members of Jewish community.

- ▶ The Ministry of Education and Science failed to adequately respond to an alleged case of discrimination and violations of the rights of a Muslim student in Mokhe village during 2016-2017. In a report prepared on the case, the Internal Audit Report justified an attempt by the school administration banning the Muslim student from wearing a hijab at school.
- ▶ On 8 June 2019, news about dozens of public school teachers from various regions attending theological lectures dedicated to the “Day of Georgia’s Allotment to Virgin Mary” was spread in the media and on social networks. Teachers were reported to have been instructed to attend lectures without providing any information as to what the subject of the lectures would be. The practice of involving teachers in the celebrations dedicated to the Day of Georgia’s Allotment to Virgin Mary contradicts the principle of the separation of the State and church enshrined in the Constitution and violates the Law on General Education.
- ▶ The poor qualification of school teachers and administrative staff, together with the ineffective policies of the Ministry of Education tasked with ensuring religious neutrality, as well as the content of textbooks contribute to creating an environment that is conducive to intolerance in public schools. An analysis of the content of the textbook reveals that they are mostly written from the perspective of the ethnic and religious majority when addressing Georgian history in the mono-religious and ethnocentric context which is particularly striking.
- ▶ In 2019, stakeholders welcomed the decision of the Ministry of Education and Science to invite human rights experts to work together with specialists in the field and under the coordination of Public Defender to evaluate all textbooks for the 7<sup>th</sup> grade submitted for review. Submitted textbooks were assessed to ascertain to what extent they reflected on tolerance and diversity culture and met the human rights and non-discrimination criterion.

## CHAPTER I. THE STATE AND RELIGION

### 1.1. THE PROBLEM OF SEPARATION OF STATE AND CHURCH IN GEORGIA

Secularism is the principle of institutional separation of religion from the State which ensures the State's impartiality with respect to religious groups. Constitutional secularism allows religious associations, like other public or interest groups, to participate in policy dialogue and public debates provided that the arguments that they promote do not have substantial influence over legal and political decision-making. In turn, the State must refrain from interfering with the autonomy enjoyed by religious associations.

#### **The principle of separation of State and Religion in a legal framework**

Secularity principle is enshrined in the Constitution of Georgia which defines the level of interaction between the State and the Church. In addition, the Constitution establishes a set of guarantees for the freedom of religion or belief.

Article 11 of the Constitution recognizes the right to equality before the law regardless of religion or belief while Article 16 ensures the protection of freedom of belief, religion, and conscience.

The freedom of belief and religion is also enshrined in Article 8 of the Constitution. However, the same article also references the relationship between the State and the Georgian Orthodox Church by stating that the State "recognizes the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the State".

The above mentioned norm is not designed to provide privilege to any religious group, it is limited only to recognizing the outstanding historical role of the Georgian Orthodox Church. In addition, it serves to delimitate the State from the Church and establishes guarantees distinguishing the two institutions as independent from each other.

The principle of separation of State and Church was enshrined in the first Constitution of Georgia of 21 February 1921. The 1921 Constitution safeguarded the freedom of belief and religion and provided guarantees for the full protection of religious associations from State interference. The Constitution also banned the allocation of resources from the State or local budget intended for religious purposes. The Constitution recognized all religious associations as having equal rights and legal status.<sup>1</sup>

The first Georgian Constitution was short-lived and fell victim to Soviet Occupation which befell the country just a few days after the document's enactment. Together with the Occupation, the ideals enshrined in the country's supreme law had also perished. In later years, the principles of secularism and religious neutrality were passed on to the current Constitution adopted by the Parliament of Georgia on 24 August 1995.

In 2001, an additional paragraph was added to Article 9 of the Georgian Constitution (Article 8 in the current version)<sup>2</sup> introducing a norm regulating the relationship between the Georgian State and the Georgian Orthodox Church through a constitutional agreement. On 22 October 2002, the Parliament of Georgia agreed a constitutional agreement between the Georgian State and the Georgian Apostolic Autocephalous Orthodox Church.<sup>3</sup>

Even though the Georgian Orthodox Church is not a subject of international law and has no international legal personality, the constitutional agreement follows the rules of an international covenant and therefore, is supreme to domestic legislation. The Agreement was signed by the President of Georgia on behalf of the State while the Parliament passed a respective resolution after the enactment of the Agreement.<sup>4</sup>

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1 Constitution of Georgia of 21<sup>st</sup> February 1921, Articles 31, 142, 143, 144. Available at: <https://matiane.wordpress.com/2012/09/04/constitution-of-georgia-1921/>.

2 Constitutional Law of Georgia of 30 March 2001 (№826-სსმI, №9, 10.04.2001), Article 33.

3 Resolution 1697-16 of the Parliament of Georgia of 22 October 2002 on *approving the Constitutional Agreement between the State of Georgia and Georgian Apostolic Autocephalous Orthodox Church*. Available in Georgian at: <https://matsne.gov.ge/ka/document/view/41626?publication=0>.

4 It is worth noting that because of the international legal incapacity of the Georgian Orthodox Church all tenets that regards the constitutional agreement between the State of Georgia and the Orthodox Church similar to that between Italy and Holy See are deemed invalid since Vatican, unlike Georgian Orthodox Church is the subject to international law.

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The Constitutional Agreement recognizes the Georgian Orthodox Church as a “historically originated legal entity of the public law”.<sup>5</sup> By the time the Agreement was signed, no other religious associations had legal status up until 2005, they had not been allowed to be registered as legal entities in any form.<sup>6</sup>

By signing the Constitutional Agreement, the State undertook a number of responsibilities before the Orthodox Church and granted a wide range of privileges to the dominant religious group including the recognition of the wedding ceremony held by the Church, exemption of the clergy from conscription, introduction of chaplaincy in the army, jails and other places of detention, support to the functioning of the Church-run education institutions. In addition, the Catholicos-Patriarch of the Georgian Church was declared as “invulnerable”.

Privileges enshrined in the Constitutional Agreement which favor only one religious group creates an environment conducive to discrimination. For instance, pursuant to Article 6(5), products and items produced, made, imported, supplied by and donated to the Patriarchate of Georgia, as well as non-economic property and land are exempt from tax while Article 7(1) recognizes all functional and non-functional Orthodox churches, cathedrals, monasteries or ruins of such, including land, as property of the Georgian Orthodox Church.

Aside from the constitutional privileges, the Patriarchate of the Georgian Orthodox Church enjoys other benefits: pursuant to a resolution of the Government of Georgia of 20 April 2015,<sup>7</sup> high-ranking clergy of the Church and administrative staff of the Patriarchate are eligible for diplomatic passports.<sup>8</sup>

In the second report on Georgia, the European Commission against Racism and Intolerance (ECRI) highlighted the fact that no such agreement had been concluded with other religious associations and recommended that the Georgian authorities “take stock of legislation and practice in religious matters including the Constitutional Agreement to ensure

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<sup>5</sup> Article 1, Para 3 of the Constitutional Agreement.

<sup>6</sup> For more information on this matter, see *Chapter 1: The State and Religion: registration of religious organisations*.

<sup>7</sup> Resolution 176 of the Government of Georgia of 20 April 2015 on approving the rule for the issuance of work passport

<sup>8</sup> Giorgi Meladze, Giorgi Mumladze. “Constitutional Agreement: History, public discussions and impact on the protection of the rights of minorities in Georgia”, “Review of Constitutional Law”, N10, September 2016  
Available at: <https://iliauni.edu.ge/uploads/other/43/43938.pdf>.

that the current situation does not cause any direct or indirect discrimination against any religious minority”.<sup>9</sup>

A report developed by the Oslo Coalition at the Norwegian Centre for Human Rights reviewing the Georgian Constitutional Agreement pointed out that unlike the constitutions of 1921 and 1995, the Constitutional Agreement of 2002 does not contain a reference to the terms “equality”, “universally recognised rights” or “human rights” – rather, it resorts to the language such as “common interests” of the State and the Church, and the “State support” of the Orthodox Church”.<sup>10</sup>

A decision of the Constitutional Court of Georgia handed down in 2018 bears particular importance with respect to equal rights for religious organizations. The Court ruled that the recognition of the outstanding role of the Orthodox Church of Georgia echoes the historic significance and does not serve to establish preferential legal treatment at present nor is the establishment of legal privileges the ultimate purpose of the respective constitutional norm.<sup>11</sup>

## **The influence of the Patriarchate of Georgia over political decisions and legislative initiatives**

An analysis of the State’s policies suggests that the principle of separation of Church and State is often compromised by granting financial, legal and social privileges to the Georgian Patriarchate, reinforcing differential treatment towards other religious associations. On one hand, the State often uses the Orthodox Church for political legitimacy while the Patriarchate often interferes with political and legal matters – with the ultimate purpose of influencing decision-making.

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9 Second report on Georgia (adopted on 30 June 2006), European Commission against Racism and Intolerance (ECRI), para 55.

10 T. Jeremy Gunn in cooperation with Dag Nygaard, “Georgian Constitutional Values versus Political and Financial Interests, The Constitutional Agreement’s Departure from the Georgian Principle of Equality”, Norwegian Centre for Human Rights, the Oslo Coalition on Freedom of Religion or Belief.,2015. Available at: [https://www.jus.uio.no/smr/english/about/programmes/oslocoalition/news/report\\_georgia\\_til\\_net.pdf](https://www.jus.uio.no/smr/english/about/programmes/oslocoalition/news/report_georgia_til_net.pdf).

11 Judgements of the Constitutional Court of Georgia of 3 July 2018, Constitutional complaints N671 and 811.

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In 2011, the Patriarchate shot down amendments to the country's Civic Code proposed by a majority in Parliament allowing other religious associations to register as legal entities under public law. As a response to the proposition, thousands of the clergy and their parishioners took to the streets in a mass protest using language saturated with hate speech targeting minorities. However, the Parliament, nevertheless, passed the law through a fast-tracked procedure.

The influence of the dominant religious group over the legislative process in the country became ever so prominent in December 2013 when the Patriarch Ilia II weighed in on the debate around the local self-government code declaring that the draft law posed a "threat" because it would lead to Georgia's disintegration and vowed that the Georgian Church would prevent the passage of the bill. After this announcement, Government representatives visited the Georgian Patriarchate to hold consultations on the draft law. After the consultations they told the public that "some of the norms have been improved".<sup>12</sup> In the end, the draft law was finalized in a manner which appeased the Patriarchate and stated that regional unions of municipalities, established by the Code, would be transformed into a regional consultation board.

In 2014, the Georgian Patriarchate weighed in on the discussions around the passage of the Law on the Elimination of All Forms of Discrimination by the Parliament. Ultimately, the church managed to contribute to the final version of the law.<sup>13</sup> During the hearing of the bill at the Parliamentary Committee of Human Rights and Civic Integration, Orthodox priest, Davit Isakadze threatened to anathemize those members of the Parliament who supported the passage of the bill. Patriarch Ilia II also called for the postponement of the discussions around the bill; He said the Georgian legislation protects the rights of every person whilst the adoption of the bill would trigger controversies and cause frenzy amongst the public.<sup>14</sup>

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12 Georgian patriarch against local government reform, DFWatch, 6 December 2013 <https://dfwatch.net/georgian-patriarch-against-local-government-reform-59901-24666>.

13 The Patriarchate had been particularly vocal against including sexual orientation and gender identity in the list of potential prohibited grounds of discrimination. While the Parliament chose not to uphold this concern, they nevertheless added "protection of public order and ethics" as legitimate aim when the discrimination can be justified.

14 Georgia's Orthodox Church Opposes Antidiscrimination Bill, Radio FreeEurope/RadioLiberty, 29 April 2014 <https://www.rferl.org/a/georgias-orthodox-church-opposes-antidiscrimination-bill/25366250.html>.



The stance of the Government representatives with respect to the bill stands out as important against this backdrop. Gedevan Popkhadze, the then-deputy chair of the Human rights and Civic Integration Committee said he was not going to support the bill if the Synod of the Georgian Orthodox Church turned their back on the draft law.<sup>15</sup>

In the end, the State decided to soften the bill following a series of consultations with the representatives of the country's dominant religious community.<sup>16</sup>

On 18 May 2016, the Georgian Ministry of Education, Science, Culture and Sports approved the syllabus for the subject entitled "Society and I" for general education curricula thus, ending a series of deliberations and discussions lasting for almost a year. The original version of the document included a chapter entitled "What I believe and have faith in" along with discussion topics such as "why we should not commit violence in the name of religion, why to respect a person with a different religion" etc. This version also invoked such terms as "tolerance", "minority", "gender". However, the Ministry decided to remove some of the topics and terms following a consultation with the Georgian Patriarchate. In December 2017, the Patriarch Ilia II declared that Georgian public schools must teach the history of religion and that the Government should ensure the subject is introduced in schools. In January 2018, the Minister, Chkhenkeli, responded to the Patriarch's statement: "I think that the history of religions as an optional subject must be available in every school. That is the target we aim for".<sup>17</sup> This proposition sparked a series of debates and discussions. However, by January 2020 there was no decision made regarding the introduction of religion as a subject in public schools.

On 18 September 2018, in the run-up to the presidential elections, candidate Salome Zurbishvili slammed the Georgian Orthodox Church for breaching the Constitutional Agreement between the Church and the State.<sup>18</sup> Zurbishvili responded to comments made by

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15 Gedevan Popkhadze: I prefer to be Orthodox than the MP, Netgazeti.ge, 16 April 2014, available in Georgian: <http://netgazeti.ge/news/31018/>.

16 Anti-Discrimination Bill Adopted, Civil Georgia, 2 May 2014 <https://civil.ge/archives/123677>.

17 A discussion around religion and public school organized by TDI on 6 February 2018. <http://tdi.ge/en/news/522-discussion-public-school-and-religion>.

18 Salome Zurbishvili's statement of 19 September 2018 [http://www.messenger.com.ge/issues/4232\\_september\\_20\\_2018/4232\\_edit.html](http://www.messenger.com.ge/issues/4232_september_20_2018/4232_edit.html).

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some members of the clergy<sup>19</sup> and denounced the Church's active involvement in the run-up to the election. In spite of the tension, Zurabishvili met the Patriarch a day before the elections after the announcement of the runoff.<sup>20</sup>

In 2018, the Government of Georgia submitted a bill of law to Parliament on the production and cultivation of medical marijuana. The draft initiated harsh criticism from the Georgian Patriarchate. After a meeting was held with the Patriarch and following the vitriol, the Government decided to backtrack on the draft law.<sup>21</sup>

In response to the Patriarchate's proposal, the Parliament announced 12 May as the "Day of Georgia's Allotted to Virgin Mary". The decision was taken at an extraordinary session of Parliament held on 8 May 2019 through expedited proceedings.<sup>22</sup> Proposed amendments to the Labour Code were passed with 96 to 0 vote. Up to 900,000 GEL<sup>23</sup> was allocated from the Government's reserve fund for various events dedicated to the Allotment Day.<sup>24</sup> In addition, by issuing yet another resolution the Government approved an action plan of events dedicated to the Allotment Day including lectures, literary events, conferences, movie screenings, performances, folk bands tours in Tbilisi and in the country's regions.

## The State's response to violence committed by the Georgian Orthodox clergy in the name of religion

Due to the State's loyalty to the Orthodox Church, purported crimes committed by the Orthodox clergy often slip through the cracks without an adequate State response.

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19 Orthodox Patriarch weighs in on Zurabishvili Controversy, Calls for Political Neutrality, Civil Georgia, 20 September 2019 <https://civil.ge/archives/254761>.

20 "The Patriarch met with Zurabishvili on the day prior to the elections", 27 November 2018. Available in Georgian at: <https://bit.ly/2R9RZXY>.

21 Georgian officials to withdraw cannabis export bill after meeting Patriarch, OC Media, 2 November 2018, <https://oc-media.org/georgian-officials-to-withdraw-cannabis-export-bill-after-meeting-patriarch/>.

22 Parliament approves May 12 as Day of Georgia's Allotted to Virgin Mary 8 May 2019. <https://1tv.ge/en/news/parliament-approves-may-12-as-day-of-georgias-allotted-to-virgin-mary/>.

23 900,000 Georgian Lari is about 315,000 USD, 288,000 Euros.

24 "Georgian government allocates \$320,000 for new religious holiday, OC Media, 10 May 2019 <https://oc-media.org/georgian-government-allocates-320-000-for-new-religious-holiday/>.

On 17 May 2013, a Church-led violent mob counter-protested a peaceful rally against homophobia and transphobia. While physical and verbal assaults by the clergy had been evidenced and supported with testimony from witnesses, no criminal charges were brought and the Court ruled that there was not sufficient evidence to file charges.

The reluctance of the State to effectively investigate violent crimes against religious minorities committed by Orthodox clergy and numerous attempts to elude responsibility to bring the perpetrators to court<sup>25</sup> has been founded in judgments of the European Court of Human Rights.<sup>26</sup>

### Financial and property privileges of the Georgian Patriarchate

The privileges granted to the Patriarchate are discernible in funding policy and practices which the State pursues with the Church. Since 2002, the State has been allocating a considerable amount of financial resources to the Patriarchate from the budget. In addition, the Church has been a recipient of generous donations in the form of real estates and movable assets. While such form of state funding is partial compensation for damage and loss incurred during the Soviet regime, in fact, the financial support to the Patriarchate is rendered in the form of direct funding. Material and financial assets allocated to the Church are mostly used for religious works and for purposes which constitutes a violation of the constitutional principle of separation of State and Church. Since 2014, the State has been funding an additional four religious organizations with the purpose of compensating for the damage. However, like in the case of the Patriarchate, the State has not provided any legal criteria for the compensation.<sup>27</sup>

The State's bias is obvious when it comes to restitution of property seized from religious associations by the Soviet authorities. So far, the State has only returned property to the dominant religious group, the returned property includes assets which were historically

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25 T. Jeremy Gunn in cooperation with Dag Nygaard, "Georgian Constitutional Values versus Political and Financial Interests, The Constitutional Agreement's Departure from the Georgian Principle of Equality", 2015, The Oslo Coalition on Freedom of Religion or Belief. Available at: [https://www.jus.uio.no/smr/english/about/programmes/oslocoalition/news/report\\_georgia\\_til\\_nett.pdf](https://www.jus.uio.no/smr/english/about/programmes/oslocoalition/news/report_georgia_til_nett.pdf),

26 Judgement of the European Court of Human Rights on *Begheluri and others v. Georgia* of 3 May 2007 (N71156/01).

27 See Chapter 1, The State and Religion, a subchapter Policy and Practice of Funding of religious organisations.

owned by other religious associations and that the State handed to the dominant religious organization without any preconditions or prior deliberations.

### **The State's attempt to intervene in the autonomy of minority religious organizations**

Along with granting privileges to the dominant religious group, the State has repeatedly been meddling with and exerting control over minority religious organizations.

For instance, in 2013 the State, through means of law enforcement agencies, forced a Muslim religious leader to resign from office.<sup>28</sup> In 2011, State efforts led to the creation of a religious organization known as the Administration of All Muslims of Georgia. Georgia's Muslim community has long been complaining for the reorganization of the Administration and amend the rule for electing spiritual leaders and officials within the Administration. In December 2019, the Administration held the elections for the new Mufti (Sunni Muslim leader of the organization). Representatives of the Muslim community complained that the State intervened with the autonomy of the religious organization as the elections were held with the active involvement of the state security services<sup>29</sup>.

As of today, the State works closely with the Administration who also receives estate and financial assets from the former. Importantly, a State-brokered agreement signed by the State Agency for Religious Issues and the Administration of All Muslims of Georgia in 2014 sets forth conditions and aims to use money, paid by the State, as compensation against the damage incurred under the Soviet regime. Pursuant to this agreement, more than half of the money paid by the State could be spent on salaries for the clergy at the Administration.

Members of the Muslim community believe that the Administration of All Muslims of Georgia, succumbing to the State's pressure, gave up on an opportunity to build a new mosque in Batumi – a long-standing quest of the country's Muslim community. Instead, the Administration pledged to enlarge the existing mosque and lodged a request to the Government

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<sup>28</sup> See Chapter 4. Crimes committed on ground of religious intolerance and the State's policy.

<sup>29</sup> Four employees of Administration of Muslims quit posts in protest, 25.12.2019 <https://1tv.ge/en/news/four-employees-of-administration-of-muslims-quit-posts-in-protest>.

for additional space for the organization's residential building and the construction of a Madrasa. The Government decided to uphold these requests.<sup>30</sup>

The cases above suggest that despite the binding constitutional principle of separation of Church and State, the government does not shy away from granting apparent privileges to the Church allowing it latter to interfere with and influence legislative and political processes. Furthermore, there are signs of state interference with the autonomy of minority religious organizations.

### **1.2. ASSESSING THE MANDATE AND WORK OF THE STATE AGENCY FOR RELIGIOUS ISSUES**

An interagency commission tasked with examining specific issues related to religious associations was set up on 29 November 2013 based on a resolution of the Government of Georgia.<sup>31</sup> The Commission, comprising of first deputy ministers and chaired by the State Minister for Reconciliation and Civic Equality, was tasked, inter alia, to analyze legal acts affecting religious associations, develop a legal framework to regulate the construction of religious buildings, investigate issues related to the funding of religious associations, ownership of property, public worship, and educational activities carried out by religious associations. The Commission had an advisory mandate with a goal to draft legal amendments in compliance with its core objectives. The statute of the Commission allowed non-governmental and international organizations, as well as recognized experts in the field to attend sessions, without the right to vote.

TDI has been vocal in criticising the mandate and warding of the main objectives of the Commission at its very inception.<sup>32</sup> TDI feared that ambivalent and unclear objectives of the Commission allowed ambiguous interpretations and triggered risks for greater legal preference in favor of the dominant religious group. Therefore, it was not entirely clear whether

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30 See Chapter 5: Property related problems of religious organisations, subchapter: obstacles to constructing new places of worship.

31 Resolution of the Government N305 establishing an interagency commission to examine specific issues related to religious associations, 29.11.2013.

32 A statement of Tolerance and Diversity Institute (TDI), 9 December 2013. Available in Georgian at: <http://www.tdi.ge/ge/statement/tdi-religiuri-sakitxebis-shemscavleli-komisiis-shesaxeб>.

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or not the Commission would be successful in its attempt to ensure an equal environment for religious minorities.

Between 29 November 2013 and 10 February 2014, the Commission convened five sessions and developed two normative acts: a draft resolution of the Government of Georgia “on approving the rule for implementing some measures for the partial compensation of damage incurred by the Soviet totalitarian regime to Georgia’s religious associations (on 27 January 2014) and a draft resolution of the Government of Georgia “on setting up and approving the statute of a legal entity under public law *State Agency for Religious Issues* (on 19 February 2014).

The Interagency Commission ceased its work in February 2014 and was abolished on 30 June 2014.<sup>33</sup>

On 19 February 2014, the Government issued resolution #177 to set up a legal entity under public law, the State Agency for Religious Issues (hereinafter referred to as the Agency) and approve its statute.<sup>34</sup> According to the statute, the Agency is tasked to develop recommendations in the field of religion for the Georgian Government and it is the Prime Minister who is mandated to appoint and dismiss the chair of the Agency. It is apparent that the country’s religious policies are in the hands of not a representative body, but in those of the agency overseen by the Prime Minister. Rather than ensuring the establishment of an equal environment and the protection of the freedom of religion, this institutional arrangement has created an additional series of risks exerting control over religious associations.

The Agency, as set forth in its statute, is tasked to implement research, scientific and educational work, as well as make recommendations related to religious issues. In addition, its mandate also covers developing recommendations on issues of concern for religious associations, on the implementation of goals and objectives in line with the Constitution Agreement, on identification of locations for and construction of religious buildings, support of tolerance among civil society, in particular, among youth.

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<sup>33</sup> Normative act available in Georgian at: <https://matsne.gov.ge/ka/document/view/2384242>.

<sup>34</sup> Resolution of the Government of Georgia 177. Available in Georgian at: <https://matsne.gov.ge/ka/document/view/4021166?publication=0>.

Human rights organizations and minority religious associations were not afforded the opportunity to consult in the process of establishing the mandate and the statute of the Agency. Therefore, the State failed to reflect on actual needs, interests and on the views of religious minorities both in policy and practice. Echoing this failure, the European Commission against Racism and Intolerance (ECRI) noted that the mandate of the agency is not yet entirely clear and neither is its procedure for developing recommendations<sup>35</sup>.

The establishment of a Government agency exclusively mandated to work on religious issues caused discontent among the majority of religious associations and human rights organizations arguing that is reminiscent of the Soviet Council for Religious Affairs.<sup>36</sup>

In 2015, the strategy of the development of Georgia's religious policy was published on the official website of the State Agency for Religious Issues.<sup>37</sup> The legal nature of the document and the question of who is responsible for its approval remains unclear. According to the representatives of the Agency, the published document is just a draft version of the strategy and it was only published to involve stakeholders in its finalization.

The document was developed without any input from representatives of religious minorities or NGOs working in the field of freedom of religion meaning the process of elaboration was not transparent. The content of the strategy and objectives outlined suggest that the State's true intention is to reinforce its control over religious organizations rather than ensuring freedom of religion or belief and protecting the rights of religious organizations. The Agency, instead of "human rights", emphasizes the need to ensure "security".

The Agency refers to religious groups residing in the country's border regions as a potential threat to Georgia's domestic and foreign security: *"This situation shapes specific geopolitical objectives for the Georgian state. More specifically, these objectives include the prevention of threats that may arise by regional neighbors pursuing their interest in Georgia's domestic politics by exploiting the country's ethnic and religious diversity."* This extract is taken from the

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35 Report on Georgia (fifth monitoring cycle), European Commission against Racism and Intolerance (ECRI), Para 97.

36 The council was established in 1965 in order to bring together the council for Russian Orthodox Church and the council for religious cults. The establishment of this structure had been viewed as a shift of the state policy to the oversight of religious organisations.

37 The document is available in Georgian at: <http://religion.geo.gov.ge/geo/document/saqartvelos-saxelmtsifos-religiuri-politikis>.

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State's declared religious policy which aims to reinforce control over religious minorities rather than taking measures to eliminate problems that these communities face. This approach has manifested in the treatment of Georgia's Muslim community members when they try to cross the state border. In recent years, Muslims have routinely been subjected to unjustified detentions and search procedures at the border. Carrying religious books from other countries to Georgia has also been problematic.<sup>38</sup>

In its monitoring report, the European Commission against Racism and Intolerance notes that viewing religious freedom and the rights of religious minorities through a security perspective is detrimental to the protection of rights and the prevention of discrimination and intolerance.<sup>39</sup> ECRI recommends that the Agency amend the strategy for the development of a religious policy to focus on the rights of religious minorities, the principle of non-discrimination and the promotion of religious tolerance from a perspective of inclusion and integration.

The draft state strategy also implies differentiation of religions into mainstream and non-mainstream, traditional and non-traditional groups and triggers a threat of further classification. Such an approach contributes to more stigmatization and marginalization of certain religious groups and increases intolerance towards them.

The strategy makes it clear that the State intends to enact a law on religion since "existing norms are either of private nature and hence fail to cover the whole range of rights and relationships, or are scattered without much structure and cannot construct the holistic legal framework". It is feared that if passed, the law on religion will create a special legal framework to define the notion of "religious organization" to oversee and regulate such organizations, and will set up procedure and rules for registering religious associations, define their legal status, property ownership and financial matters, as well as matters of education etc. In fact, the analysis of the legal framework and the State's practice with respect to the protection of freedom of religion reveals that most pressing problems faced by religious minorities are mostly caused, not by lack of systematization of normative acts, but through discriminatory administration of respective normative acts. Therefore, the adoption of the

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<sup>38</sup> See Chapter 1: State and Religion, and subchapter: Problems related to border-crossing and carrying religious literature across the state border.

<sup>39</sup> Report on Georgia (fifth monitoring cycle), European Commission against Racism and Intolerance (ECRI), Para 99.



law on religion is likely to enhance risks compromising their autonomy by the state rather than contributing to creating an equal environment for religious minorities.

The initiative of the law on religion reappeared in the focus of wider debates in 2018-2019 when a working group set up at the Parliament of Georgia repeatedly raised the need to adopt necessary regulations in the area of freedom of religion.<sup>40</sup>

The Strategy also concerns issues related to rules for construction and ownership of religious buildings and places of worship. An analysis of existing practice suggests that before issuing a permit for the construction of the place of worship of religious minorities, administrative bodies require a recommendation to be issued by the State Agency for Religious Issues on the expediency of the construction in question. This practice contradicts legislation regulating construction and creates additional bureaucratic barriers for the applicant.<sup>41</sup>

The negative role played by the State Agency for Religious Issues came to the fore with respect to other property issues faced by religious associations. The long-standing demand of Batumi's Muslim community for the State allocate land and grant permission for the construction of a new mosque, ended with an agreement which was frowned upon by the majority of the local Muslim community. The State donated residential and educational property to the Administration of All Muslims of Georgia and offered the Muslim community to enlarge the existing mosque. By making the offer, the State, in fact, rejected the request of the Muslim community to construct a new mosque.<sup>42</sup> In 2014, the Agency set up a special commission to look into the Muslim community's request that the State stop dismantling the old mosque and transfer the building over to the community of the village Mokhe, Adigeni municipality. Two years after the establishment of the commission, it became clear that the Agency was not interested in settling the dispute with the Muslim community, tracing the origin of the building or advocating for the return of the building to its historical owners.<sup>43</sup>

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40 See Chapter 2: Legislative initiatives to limit freedom of religion, and subchapter: attempts to adopt the law on religion.

41 See Chapter 5: Issues related to property owned by religious organisations, and subchapter: obstacles to constructing new religious buildings.

42 See Chapter 5: Issues related to property owned by religious organisations, and subchapter: Construction of a mosque in Batumi.

43 See Chapter 5: Issues related to property owned by religious organisations, and subchapter: The problem of a disputed building in village Mokhe.

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The Agency has pursued a discriminatory policy with respect to allocation of state funding granted to religious minorities. By adopting resolution #117 of 27 January 2014 the Government of Georgia approved the rule for undertaking some measures for partial compensation of the damage incurred by religious associations under the Soviet totalitarian regime. Based on this resolution, the Government finances four religious associations (Roman Catholic Church, Armenian Apostolic Church, Muslim and Jewish religious communities) to compensate the damage. However, the manner in which the State defined the criteria for selection and the financial amount contradicts legal principles.

The findings of the research undertaken by the Oslo Coalition on Freedom of Religion or Belief raise concerns over the work of the Agency. The report highlights three main issues of concern: the *Agency's mandate and authority*, *the standard of equality versus hierarchy and favouritism* and *the lack of procedures for allocating funds and property*.<sup>44</sup>

In 2018, the Agency published its annual report for 2016-2017.<sup>45</sup> The work that the Agency carried out and its stance with respect to returning property to religious associations, violence based on religious intolerance, revising the legal framework and compensating for the damage sustained under the Soviet Occupation, deserve close attention.

The Agency repeatedly mentions that it routinely helps various religious organizations receive buildings of worship. These issues are assigned to the Agency's recommendatory commission for the study of property and financial matters pertaining to religious communities. However, since its establishment, the Agency constantly tries to evade responsibility for researching and resolving issues related to the return of religious buildings appropriated by the Soviet authorities from religious minorities to their historical owners. Not one building of worship which the Agency returned to religious minority organizations, belonged to a category of buildings seized by Soviet authorities, buildings left without function and/or so called disputed buildings which Armenian Apostolic, Roman Catholic, Evangelical-Lutheran, Muslim and Jewish religious groups have advocated for since Georgia's independence of the 1990s.

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44 T. Jeremy Gunn in cooperation with Dag Nygaard, "Georgian Constitutional Values versus Political and Financial Interests, The Constitutional Agreement's Departure from the Georgian Principle of Equality", Norwegian Centre for Human Rights, the Oslo Coalition on Freedom of Religion or Belief, 2015. Available at: [https://www.jus.uio.no/smr/english/about/programmes/oslocoalition/news/report\\_georgia\\_til\\_net.pdf](https://www.jus.uio.no/smr/english/about/programmes/oslocoalition/news/report_georgia_til_net.pdf).

45 Annual report for 2016-2017 of the State Agency for Religious Issues. Available in Georgian at: <http://religion.geo.gov.ge/geo/document/reports/religiis-sakitxta-saxelmtsifo-saagentos-tsiuri2>.

In addition, the report also provides a list of religious organizations and number of buildings which were transferred to religious groups based on the recommendation issued by the commission. It should be noted that when it comes to returning property to minority religious groups, the Agency fails to specify that these buildings are handed over on a temporary basis without entitlement to ownership unlike the Georgian Patriarchate who happens to have existing, as well as newly granted property with the right of ownership. Therefore, the buildings that were “returned” to religious minority groups are those factually possessed by religious minorities and used for worship. Importantly, these buildings remain under the State’s ownership.

By transferring religious buildings for a limited period of time rather than under full legal ownership, religious organizations are not able to fully dispose of property. What is most important is that by spearheading such an arrangement, the State retains the leverage of control over religious organizations who will have to yield properties back to the State if the latter requires them to do so.

Importantly, with respect to Muslim religious buildings, they have been transferred exclusively to the Administration of All Muslims of Georgia, the organization believed to be mistrusted by a considerable part of the local Muslim community and may not be pursuing their best interests. Therefore, there is the question as to what criteria the State uses when transferring religious buildings to the organization while the Muslim community is represented by numerous organizations in Georgia.

The Agency tends to turn a blind eye to problems related to crimes committed on the grounds of religious intolerance. This attitude is evident at a policy level as well as in public statements made by the Agency. While representatives of minority religious organizations often fall victim to intolerance, the State’s response to cases involving violence against the former remains inadequate. Investigation bodies often fail to give crimes adequate qualification and investigations are often prolonged in time resulting in law enforcement agencies’ evading their responsibilities. None of the cases from the period of 2012-2016 involving violence, intimidation and threats, interfering with religious rites and persecution against the Muslim community have been investigated and none of the applicants has been given victim status or charged with any of these crimes.<sup>46</sup>

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<sup>46</sup> See Chapter 4: Crimes motivated by religious intolerance and state policy.

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The 2016-2017 Human Rights Action Plan of the Government (chapter on freedom of religion) identified the State Agency for Religious Issues as the responsible body for implementing a wide range of important measures<sup>47</sup>. A list of competences assigned to the Agency include: prevention of crimes motivated by religious intolerance and monitoring of responses to such crimes, revision and improvement of a relevant legislative framework, revision of the legal framework and preparing recommendations, where necessary, to ensure the full enjoyment of individual rights safeguarded by freedom of religion or belief, revision of the legal framework and preparing recommendations, to ensure that religious associations implement their work without impediment, elimination of discriminatory tax regime with preferential treatment of the Georgian Orthodox Church, determination of historical (confessional) owner of religious buildings and transfer of these buildings to the identified owners, resolution of disputes related to ownership of religious buildings in a timely, transparent and fair manner. However, the Agency failed to deliver on its commitments. The fact that it has never attempted to address discriminatory and questionable norms of the legislation suggests that the Agency is not committed to ensure the freedom of religion and equality.

According to the 2018-2020 Action Plan of the Government of Georgia,<sup>48</sup> the Agency (together with other institutions) play a leading role for: raising awareness among media on issues related to freedom of religion, tolerance, equality and religious neutrality, conducting research into root causes of problems identified in reports to ensure evidence-based policy making, raising awareness among representatives of religious associations (the clergy) of aspects of freedom of religion and fundamental human rights and freedoms, taking measures to foster a culture of religious tolerance, re-training staff of the Ministry of Internal Affairs and Prosecutor's Office in determining crimes committed on the grounds of religion or belief, reviewing school textbooks and upgrading standards of licensing, including principles of religious neutrality in training/retraining programs for school teachers and directors, developing a concept and an action plan for determining the origin and resolution of disputes with respect to the return of disputed historical religious buildings seized by the Soviet regime.

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47 Human Rights Action Plan 2016-2017 of the Government of Georgia. Available at: <http://myrights.gov.ge/en/plan/Human%20Rights%20Action%20Plan%20for%202016-2017>.

48 Human Rights Action Plan 2018-2020 of the Government of Georgia. Available at: <http://myrights.gov.ge/en/plan/Human%20Rights%20Action%20Plan%20for%202018-2020>.

The pattern of cooperation between the Agency and religious groups also requires attention. In the report issued under the fifth monitoring cycle the European Commission against Racism and Intolerance (ECRI), recommended the Government of Georgia to strengthen their support to and cooperation with the Council of Religions in the Public Defender's Office, also to task the State Agency for Religious Issues in the Prime Minister's Office to partner with the Council of Religions, share the latter's experience and consider lessons learnt as well as recommendations to successfully tackle problems related to religious intolerance. On 5 March 2019, ECRI published a document providing conclusions<sup>49</sup> on the implementation of the recommendations issued by ECRI in 2016. The document states that the Government of Georgia did not implement the recommendations.

The Committee of Ministers of the Council of Europe also called on the Government to cooperate with the Council of Religions. In its decision on the execution of judgments of the European Court of Human Rights concerning the government of Georgia, the Committee encouraged the authorities to enhance cooperation between the State Agency for Religious Issues and the Council of Religions in order to tackle religious intolerance, taking into account also the recommendations made by the European Commission against Racism and Intolerance.<sup>50</sup>

A third monitoring report (2019) of the implementation of the Framework Convention for the Protection of National Minorities (FCNM) stresses that<sup>51</sup> religious minorities express a low level of trust towards the State Agency for Religious Issues. Instead they express stronger confidence in the work of the Council of Religions at the Public Defender's Office of Georgia. The possibility provided by the Council of Religions to engage horizontally with 33 religious organizations in an independent platform should be valued accordingly.

It is important to note that 2017 was marked by controversies caused by an amendment to the Constitution of Georgia. More specifically, the amendment created a high risk to un-

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49 Conclusions on the implementation of the recommendations in respect of Georgia, European Commission against Racism and Intolerance (ECRI), 5 March 2019. Available at: <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680934a7e>.

50 Committee of Ministers, decision CM/Del/Dec(2019)1355/H46-8, 25 September 2019 [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1355/H46-8E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1355/H46-8E).

51 Advisory Committee on the Framework Convention for the Protection of National Minorities. Third Opinion on Georgia. Available at: <https://rm.coe.int/3rd-op-georgia-en/1680969b56?fbclid=IwAR0Hzmw9vtSyyIlg-54T9muRaAnA4xybJFh1fTVKrQvROxqS7IGX3a0dybqA>.

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justifiably interfere with the freedom of religion or belief and to undermine human rights protection standards. The amendment caused great discontent among most religious and non-governmental organizations, lawyers and experts, leading the Venice Commission to issue critical assessments.<sup>52</sup> Against the backdrop of these developments, the State Agency for Religious Issues, an institution mandated to provide counsel to the authorities on religious issues, had remained silent and never positioned itself vis-à-vis ongoing debates regarding the amendment. ECRI highlighted that such an attitude of the Agency had further reinforced the perception of the Agency among human rights groups and religious organizations as a mechanism to control minority religious organizations, rather than an impartial institution.<sup>53</sup>

In conclusion, there is a strong indication that the declared policy as well as practice of the State Agency for Religious Issues have served to differentiate between religious organizations, compromise the latter's autonomy and strengthen the State's influence over them rather than ensuring freedom of religion or belief and striving for equality for all religious organizations.

### 1.3. REGISTRATION OF RELIGIOUS ORGANIZATIONS

Up until 2005, religious organizations were not allowed to register due to gaps in the existing legislation and the State's flawed practices. Pursuant to amendments to the Civil Code of Georgia of April 2005, minority religious groups were given the right to register as non profit (non-commercial) legal entities (also, in the form of a union or a foundation). However, a year later in 2006 both forms of registration, *union and foundation* were abolished and religious associations could register as non-profit (non-commercial) entities.

Even in light of these arrangements, some religious associations found it unacceptable to carry out their work as a non-profit (non-commercial) legal body and demanded to be able to register as a legal entity under public law (LEPL), a status granted only to Georgian Or-

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52 Statement on limitation of freedom of religion in the Constitution. Available at: <http://www.tdi.ge/en/news/466-statement-limitation-freedom-religion-constitution>.

53 Conclusions on the implementation of the recommendations in respect of Georgia, European Commission against Racism and Intolerance (ECRI), 5 March 2019. Available at: <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680934a7e>.

thodox Church as early as in 2002 when the State recognized the latter as a historical legal entity under public law based on the constitutional agreement between the State and the Church.

Finally, on 5 July 2011, the Parliament of Georgia succumbing to a long standing demand from the religious organizations, approved an amendment to the Civil Code,<sup>54</sup> enabling them to register as legal entities under public law. However, the legal amendment does not prevent religious groups wishing to register as legal entities under private law or continue their work without a particular form of registration.

For an association to be able to register as a legal entity under public law, it has to meet either of the following criteria: 1. Have a historical tie to Georgia 2. Be recognized as a religion in member states of the Council of Europe.

It is important to note that pursuant to the amendments to the Civil Code, religious organizations have remained in the legal sphere regulated by private law and the Law of Georgia on Legal Entities of Public Law is not applicable to religious organizations registered as legal entities of public law.<sup>55</sup> Instead, they are subject to the rule for registration for non-profit (non-commercial) legal entities and their rights and responsibilities are regulated by those norms of the Civil Code<sup>56</sup> which apply to the rights and responsibilities of non-profit legal entities.<sup>57</sup>

The aim of such an arrangement was to allow religious organizations to register as a legal entity of public law, an intent which is effectively just a declaration and a measure for ensuring more or less equal treatment of religious organizations rather than imposing on them public-law entity liabilities. Conversely, in 2014, the State introduced a practice of extending norms provided by various normative acts concerning legal entities of public law to religious organizations.

In 2014, the LEPL National Agency of State Property at the Ministry of Economy and Sustainable Development rejected the request of the Evangelical-Protestant Church request-

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54 Article 1509<sup>1</sup> was added to the Civil Code of Georgia.

55 Civil Code of Georgia, Article 1509(1), Part 5.

56 *ibid*, Section I, Chapter 2.

57 *ibid*, Article 1509<sup>1</sup>, Part 5.

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ing property factually owned by the Church to be registered as its property. The Agency explained that pursuant to Article 3(1) of the Law of Georgia on the State Property, a legal entity under public law cannot acquire state property through a direct sale.<sup>58</sup> In this case, the State, for the purpose of the Law of Georgia on State Property viewed the religious organization as a legal entity under public law in its conventional sense and subjected the latter to public-law restrictions thus, violating the rights of the religious organizations.

The way the National Agency of Public Registry interprets the law is inconsistent and unforeseeable. Little is known as to which criteria are used to establish a historical link of a religious association with Georgia, or whether or not a particular confession or denomination is recognized as a religion in Council of Europe member states. The problematic nature of this procedure and issues related to the State's policy became evident in 2016 when a group of individuals lodged a request to the National Agency of Public Registry to register the Autocephalous Church of the Flying Spaghetti Monster<sup>59</sup> as a legal entity under public law. The Agency turned down the request arguing that the applicant did not present proof of presence of this particular religion in Council of Europe member states.

In addition, the term "autocephalous", used in documents submitted to the Registry, was an official term to be used in reference to the Georgian Orthodox Church based on Article 6(6) of the Constitutional Agreement between the Georgian state and the Church, and paragraph 24 of the Definition of Terms enclosed in the Constitutional Agreement. Therefore, the use of the term required the State's consent to be obtained based on a prior permission from the Church.<sup>60</sup>

It should be noted that in its judgement on the case of Zurab Aroshvili vs. Parliament of Georgia, the Constitutional Court of Georgia ruled that Article 6(6) of the Constitutional Agreement "concerns the use of official terminology and symbols of only the Georgian Ap-

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58 See Chapter 3: inequality in the Georgian legislation, and subchapter: *legal barriers to purchasing state property by religious organizations*.

59 Pastafarianism (the Church of the Flying Spaghetti Monster) was founded in 2005 by Bobby Henderson who opposed teaching Creationism instead of Evolution in public schools in the U.S. In 2005 Henderson sent a satirical open letter to the Kansas State Board of Education mocking scientific foundations of Creationism.

60 According to paragraph 24 of the Definition of Terms Used in the Constitutional Agreement, "the following is the official terminology of the Church: "Georgian apostolic", "autocephalous", "Orthodox", "Catholicos-Patriarch", "Holy Synod", while pursuant to Article 6, Para 6 permission to use official Church terminology is to be issued by the State upon prior consent from the Church.



ostolic Autocephalous Church and not other confessions or denominations...". According to the judgment, Article 6(6) of the Constitutional Agreement does not require other religious organizations to have permission to use their terminology or symbols. "Any religious organization has the same right as the Georgian Church to use its own symbols, terminology or worship items without any permission or a licence".<sup>61</sup>

Even in the presence of the explanation provided above, the case in question has revealed the policy pursued by the Public Registry creates problems since it extends terms of the Constitutional Agreement between the State of Georgia and the Georgian Orthodox Church to other organizations which, in turn may entail the violation of constitutional principles of freedom of religion, equality and freedom of association.

OSCE/ODIHR guidelines on legal personality of religious organizations highlight risks which may arise by the State's imposing restrictions over registration of religious or belief communities and call on states to protect the freedom of religion or belief and internationally recognized rights.<sup>62</sup> According to the European Court of Human Rights, refusing the registration of an association amounts to a restriction of the freedom of religion or belief as well as that of assembly and association.<sup>63</sup>

## 1.4. RESTRICTING PUBLIC SPACE TO MINORITY RELIGIOUS COMMUNITIES

One of the problems faced by minority religious communities is the monopolization of public space by the dominant religious organization. An analysis of the respective practice suggests that religious minorities have the right to exist but only with limited visibility in public space.

Religious organizations face artificial barriers created by the State, the Orthodox clergy and their parishioners when it comes to obtaining permission for the construction of religious

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61 Case of Zurab Aroshvili v. Parliament of Georgia, Judgement 2/18/206 of the Constitutional Court of Georgia of 22 November 2002.

62 Guidelines on the Legal Personality of Religious or Belief Communities, OSCE/ODIHR, 2014. Available at: <https://www.osce.org/odihr/139046?download=true>.

63 ECtHR 1 October 2009, Kimlya and others v. Russia, Application nos. 76836/01 and 32782/03, para. 84.

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buildings, organizing celebrations or festivals in public space, or conducting any activity which makes the community visible in public space.

In recent years, various aggressive and violent groups have gained considerable visibility in the public space by attacking individuals with different national backgrounds or identities. Members of such groups often include representatives of the Georgian Orthodox Church clergy or other organizations with ties to the Georgian Patriarchate. These groups have grown considerably since 2017. For instance, the Day of Family Sanctity introduced by the Georgian Patriarchate in 2018 was marked by a public march accompanied by Fascist symbols. These groups reject the principles of equality and secular state, restrict others' freedom of expression and assembly, attack their fellow citizens and commit violence in the name of religion. On the other hand, the State's conformism and ineffective policies also contribute to the rising intolerance and violence.

The previous years saw an abundance of examples supporting the existence of these problems and developments around the **Imedi International Festival (Festival of Hope)** of July 2014, is among these examples. A festival due to have been hosted in the Sports Palace from 6 to 8 June with a wide range of participants including international Christian-Evangelical organizations and other guests had been in the making for a year. The group of organizers had signed an agreement with the administration of the Sports Palace well in advance and paid the required fee. The news of the festival stirred protest among various public groups and the Orthodox clergy.<sup>64</sup> The organizers of the festival faced difficulties as they were placing advertisement banners and flags in the city. For instance, a few days prior to the start of the festival, the advertising company *Outdoor.Ge* removed most of outdoor advertisements thus, breaching the prior agreement.

A week before the event, the Georgian Patriarchate issued a statement declaring that they "had nothing to do with the event organized by a Pentecostal religious denomination".<sup>65</sup>

On 3 June 2014, three days before the opening of the festival, a suspicious fire started on the roof of one of wings of the Sports Palace. The fire was put out almost immediately. How-

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64 Orthodox activists protest evangelical event in Tbilisi, DFWatch, 7 June 2014, <https://dfwatch.net/orthodox-activists-protest-evangelical-event-in-tbilisi-85449-29295>.

65 Patriarchate: we have nothing to do with the "Festival of Hope", available in Georgian at: <http://www.tabula.ge/ge/story/83833-sapatriarqo-tbilisshi-dagegmil-imedis-festivaltan-kavshiri-ar-gvaqvs>.

ever, the director of the Sports Palace told the organizers they could not host the event due to safety risks. The administration turned down the request of the organizers to have independent experts assess the outcomes of the fire and security conditions. The small scale fire as well as unhindered access to the building for the organizers as well as representatives of NGOs and the Public Defender's Office reinforced suspicions that artificial barriers had been used to prevent the event from taking place.

Later in the year, the Sports Palace Ltd commissioned an assessment by the LEPL Levan Samkharauli National Forensics Bureau. In the report dated 30 June 2014, the Bureau stated that the fire had no effect on the "resilience and sustainability of Ferro-cement construction" confirming that holding the event in the Sports Palace would not entail any security risks.

The organizers tried to identify an alternative space for the event and while doing so, appealed to large companies in Tbilisi. However, all of them chose to refuse. Finally, the organizers had no other choice but to hold the event, attended by representatives from 150 Christian confessions and great many guests, in a small space of the yard of the Pentecostal Church in Tbilisi.

An incident which took place on 4 December 2013 during **Hanukkah celebrations** is yet another example of restricting public space to religious minorities. At the gathering attended by the president of Georgia, Israeli ambassador and a Rabbi, two individuals tore down a poster with the text "Jewish Community wishes you a Happy Hanukkah" and broke speaking lecterns.

Later on the same day, a group of the Georgian Orthodox Church clergy and parishioners organized a protest rally at the Israeli embassy during which priest Davit Isakadze made defamatory statements towards the Jewish community, religion and reiterated that he, as a person of Christian Orthodox faith, condemned the celebration of Hanukkah.<sup>66</sup>

In addition to meddling with religious holidays celebrated by religious minority communities, the **incidents of Nigvziani, Tsintskaro and Samtatskaro** also inferred a restriction of public space to Georgian Muslims. The Orthodox Christian communities involved in the

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<sup>66</sup> Radio Liberty, 5 December 2013, available in Georgian at: <http://www.radiotavisupleba.ge/a/antisemitizmi/25190584.html>.

incidents in all three locations argued that Muslims were allowed to pray privately in their homes but would not be allowed to do so in the public sphere.<sup>67</sup> A complete monopolization of the public space by the Georgian Orthodox Church leaves other religious organizations without any access to this space.

### **1.5. PROBLEMS RELATED TO BORDER-CROSSING AND CARRYING RELIGIOUS LITERATURE ACROSS THE STATE BORDER**

Representatives of minority religious communities, especially Muslims, often face various problems while crossing the state border including those related to the transfer of religious literature across the border. In addition, the inspection of their travel documents takes unreasonably long. Further, belongings and luggage carried by Muslim citizens are often searched without reasonable doubt.

In some cases, minority religious organizations are required to present permission issued by either the Georgian Patriarchate or, for Muslims, that of the Administration of All Muslims of Georgia. It should be noted that the involvement of the Administration of All Muslims of Georgia in customs procedures concerning Muslim religious literature has no legal ground (and it cannot have such). Georgian legislation does not stipulate any kind of permission, license nor requires a certificate to be presented at the border while carrying printed materials. Therefore, the practice observed at border checkpoints is illegal and without any ground while requesting a written permit from the Administration of All Muslims of Georgia (or from any other religious organization) by customs officials is illegitimate.

In some instances, Revenue Service staff argue that they have to check the content of religious literature as minority religious organizations are perceived as a threat. However, Revenue Service staff have neither authority nor expertise to do so. The goal of such illegitimate requests is allegedly to create more artificial barriers for religious minority communities.

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<sup>67</sup> See Chapter 2: Crimes motivated by religious intolerance and state policy, and subchapter: Investigation of violation of rights of Muslims during 2012-2016.

There are cases when representatives of minority religious organizations are required to pay an import fee even though the Tax Code of Georgia does not stipulate the payment of a customs fee for the importation of books.

In addition, the study conducted by Tolerance and Diversity Institute at the Sarpi checkpoint of the Georgian-Turkish section of the state border from February 2016 to February 2017 revealed a series of violations.

Muslim citizens interviewed by TDI stated that they had been held for unreasonable period of time ranging from 30 minutes to five hours before crossing to Turkey – for allegedly checking their travel documents. At times, customs officers told them they had “sent the documents to Tbilisi” and could not let them cross until they received a response. Another problem identified through the course of the interviews was the practice of searching luggage without reasonable suspicion.

Interviewed Muslim citizens reported that books written in either Turkish or Arabic languages are perceived as a particular threat at the checkpoint.<sup>68</sup> If such books are found, customs officers re-examine personal belongings/luggage and take photos of the books. Border police officers argue that these photos must be sent to a “respective” agency without clarifying which agency they have in mind.

Pursuant to an order issued by the head of the Revenue Service,<sup>69</sup> while exercising customs control, a customs specialist shall make a decision to search the traveller and his/her belonging/luggage if there is a reasonable suspicion that a person (a traveller) crossing the border <sup>70</sup> may be hiding forbidden or undeclared goods and items in luggage, on the body or in the body.<sup>71</sup>

However, as Muslim citizens reported, public servants often carry out personal searches and examine personal belongings and luggage following verbal orders from a rep-

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68 In 2017 in their written statement for TDI A.O. and I.G. indicated that if they had not handed in books at the border they would have ended up on a “black List”.

69 Legal ground for customs clearance of natural persons was Article 214(2), Para A of the Georgian Tax Code (currently Article 27 of the Customs Code), and Article 16(2), Para E of the Law of Georgia on Police.

70 A traveller – A natural person who legally crosses the state customs border.

71 Order 12858 of the Head of the Revenue Service on the implementation of procedures related to declaring and transferring goods in and out of the Georgian customs territory, Article 24.

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representative of an unidentified agency/public official present on the spot without any reasonable suspicion and by doing so, violate the Law of Georgia on Police as well as Order 377 of the Minister of Internal Affairs of Georgia on Code of Ethics and Conduct of the Police.

On 25 April 2017, following the appeals of Tolerance and Diversity Institute (TDI) and Human Rights Education and Monitoring Center (EMC), the Public Defender of Georgia established the fact of discrimination by the Ministry of Internal Affairs of Georgia and LEPL Revenue Service under the Ministry of Finance against Muslim community members' crossing of the border.

The Public Defender issued a recommendation to both agencies to ensure impartiality at checkpoints and retrain those staff who are directly involved in exercising passport control and respective customs procedures.<sup>72</sup>

The Public Defender assessed the artificial barriers posed to Muslims while crossing the border as interference with freedom of religion, movement and violation of property rights. The Public Defender said that "Detention of the applicants and other individuals as they tried to cross the border, and obstacles affecting their ability to import religious items serve to suppress religious activism which may lead to a freezing effect on aspirations to improve the protection of rights of the Muslim communities residing in the country". The Public Defender also stressed that the ban on the importation of religious literature imposed by the State "encourages the implementation of ambiguous and discriminatory practices."<sup>73</sup>

Despite the fact that the Public Defender established the fact of discrimination and gave respective recommendations to the state agencies, the discriminatory practice of creating obstacles for the religious minorities importing religious books remains.

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72 Available in Georgian at: <http://www.ombudsman.ge/geo/191127024139religia/saqartvelos-saxalxo-damcvelma-muslimebis-mier-saqartvelos-sazgvr-is-kvetisas-religiis-nishnit-pirdapiri-diskriminacia-daadgina>.

73 Available in Georgian at: <http://www.ombudsman.ge/res/docs/2019040913483376773.pdf>.

## 1.6. THE POLICY AND PRACTICE OF FINANCING RELIGIOUS ORGANIZATIONS BY THE STATE

The existing system of financing religious organizations of Georgia can be qualified as a violation of the constitutional principle of separation between State and Church. The Georgian Apostolic Autocephalous Church and its legal entities are the largest recipients of state funding. Even though financial and material resources handed over to the Orthodox Church by the Georgian state since 2002 are classified as compensation against the loss incurred during the Soviet regime, the existing practice constitutes a state subsidy rather than compensation against the damage caused by Soviet authorities. It should be noted that the State does not evaluate the price of real estate and therefore, it is impossible to ascertain its share and value vis-à-vis the compensation of damages inflicted during the Soviet period.

On the one hand, the policy and practice of state funding of religious organizations uncover loyalty and bias of the State towards the dominant religious organization, on the other hand, they also demonstrate interference into the autonomy of religious minorities.

### Material goods transferred to the Georgian Apostolic Autocephalous Orthodox Church and its purpose

The Georgian Patriarchate is the largest recipient of state funding granted to religious organizations. The allocation includes financial resources provided from the central and local budget. The amount of funding has been increasing year to year. More specifically, in 2013 the funding totalled 29,220,350 GEL<sup>74</sup>, in 2014 – 32,019,399 GEL<sup>75</sup>, 2015 – 31,153,900 GEL<sup>76</sup>, in 2016 the Patriarchate received 30,201,015<sup>77</sup> based on information available to TDI.<sup>78</sup> According to the State budget in 2017, 2018 and 2019, the funding was estimated at 28 million GEL<sup>79</sup>.

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74 29,220,350 Georgian Lari is about 10,234,798 USD and 9,350,007 Euros.

75 32,019,399 Georgian Lari is about 11,215,200 USD and 10,245,654 Euros.

76 31,153,900 Georgian Lari is about 10,912,049 USD and 9,968,710 Euros.

77 30,201,015 Georgian Lari is about 10,578,289 USD and 9,663,803 Euros.

78 The above data do not include funding allocated by Bolnisi municipality, Property Management Agency at Tbilisi municipality, and funding provided by Tbilisi City Hall since relevant information was not provided to TDI. In the case of Khoni municipality, funding comprises sums indicated in respective ordinance on the approval of the municipal budget.

79 Approx. 9,807,355 USD and 8,959,516 Euros.

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In addition to financial allocations, the Patriarchate also receives real estate including land and real estate. By 2017, the Georgian Orthodox Church owned land with a total space of more than 62.7 km<sup>2</sup> which almost equates to the size of Batumi city. 96% of the land was transferred by the State and private persons for free to the Patriarchate's ownership or for temporary disposal. Based on information available to TDI, between 2016 and 2018 the total space of real estate transferred to the Patriarchate by the State totalled 801,308 m<sup>2</sup>. Based on TDI's and other organizations' data, it is estimated that real estate that the State donated to the Georgian Orthodox Church covers 64 km<sup>2</sup>.<sup>80</sup>

While researching the purpose of the real estate transactions, TDI relied on available public information. The analysis revealed that in many instances that the intention of such transactions are far too vague and general, such as "support", "improvement of infrastructure" etc. Therefore, it is impossible to ascertain for what purposes the Patriarchate requests funding.

The financial resources allocated to the Georgian Orthodox Church from the central budget are mostly spent on non-secular purposes.<sup>81</sup>

The analysis of the funding policy suggests that the increase in the amount of financial resources and size of the real estate transferred by the State to the Patriarchate can be linked to elections and political developments in the country.

### Funding from the central budget

The annual transfers from the central budget account for the biggest share of the funding of the Georgian Patriarchate. From 2002 through 2019, the Georgian Orthodox Church received a total of 276.5 million GEL from the central budget, while from 2009 to 2013,

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80 The assets of the Patriarchate, a multimedia project of Indigo Magazine. Available in Georgian at: <http://sapatriarqoskapitali.documenti.ge/>; The policy of state funding for religious organisations (2014-2015 review), Tolerance and Diversity Institute (TDI) and Human Rights Education and Monitoring Center (EMC). Available in Georgian at: <http://tdi.ge/sites/default/files/religiuri-organizaciebis-saxelmcpo-dapinansebis-politika-2014-2015.pdf>.

81 Ibid.



the amount of funding from the same source ranged from 22<sup>82</sup> to 27 million GEL<sup>83</sup>. Since 2013, the budget line designated for the Georgian Patriarchy totals 25 million GEL.<sup>84</sup> In 2018, the country's dominant religious organization received 25,535.400 GEL<sup>85</sup> from the central budget. However, for 2019 and 2020 the amount of funding dropped back to 25 million GEL.

### **Financial resources, movable property and real estate transferred by the Government**

Further to a proposal made by the Georgian Patriarchate, the Parliament declared the 12 May as the Day of Allotment to Mother Mary and allocated an estimated 900.000 GEL<sup>86</sup> from the government's Reserve Fund for the celebration.<sup>87</sup>

In 2016-2018 the Government allocated 1,379,700 GEL<sup>88</sup> from the Reserve Fund to the Patriarchate for restoring infrastructure damaged by a fire in Trinity Cathedral, Tbilisi, and other related costs. As for data for 2019, the Chancellery of the Government of Georgia has not yet provided the requested information to TDI.

In 2015, the legal entities founded by the Georgian Patriarchate received a total of 1,590,000 GEL<sup>89</sup> from the Reserve Fund of the Government of Georgia. In 2014, the Patriarchate received 1,542,000 GEL<sup>90</sup> for religious educational activities conducted at educational institutions and educational centers while 270,000 GEL<sup>91</sup> was allocated from the Reserve Fund for an enthronement anniversary of Patriarch Ilia II.

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82 Approx. 7,705,779 USD and 7,039,620 Euros.

83 Approx. 9,457,092 USD and 8,639,534 Euros.

84 Approx. 8,756,567 USD and 7,999,568 Euros.

85 Approx. 8,944,097 USD and 8,170,887 Euros.

86 Approx. 315,236 USD and 287,984 Euros. OC Media. Georgian Government allocates \$320,000 for new religious holiday, 10 May, 2019

87 OC Media. Georgian Government allocates \$320,000 for new religious holiday, 10 May, 2019 <https://bit.ly/2SoN4pU>.

88 Approx. 483,257 USD and 441,480 Euros.

89 Approx. 556,917 USD and 508,772 Euros.

90 Approx. 540,105 USD and 493,413 Euros.

91 Approx. 94,570 USD and 86,395 Euros.

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In addition to monetary assistance, the Georgian Orthodox Church also receives various donations in-kind including cars, buses and other items. In most cases, there is no estimate as to the value of these items.<sup>92</sup>

The Georgian Orthodox Church receives a considerable amount of real estate transferred by the State either under ownership or at disposal on an annual basis. Plots of lands are donated to the Orthodox Church either at the expense of a symbolic 1 GEL or transferred for their disposal. Donated land includes not only those plots were originally owned by the Church but also state-owned land and property historically belonging to other religious organizations.<sup>93</sup>

In 2018, the Patriarchate received 22 plots of land with total space of 420km<sup>2</sup> including 300,245 m<sup>2</sup> agricultural and 119,857 m<sup>2</sup> non-agricultural land with buildings of 2,750.35 m<sup>2</sup> space.

In 2017, the Orthodox Church received 21 plots of land with a total space of 87,984 m<sup>2</sup> with buildings and construction (3,031.8 m<sup>2</sup> in total).

The number of plots of land transferred to Church ownership in 2016 totalled 20 plots with a total space of 287,222 m<sup>2</sup> including 282,550m<sup>2</sup> for free, transferred to the ownership and 4,672m<sup>2</sup> under usufruct agreement. In addition, the Church also received agricultural machinery (tractors) and 10,000 calc-tufa stones.

In 2015, the Orthodox Church became the owner of 21 plots of land with a total space of 568,060m<sup>2</sup>. The previous year the Georgian Patriarchate paid the symbolic price of 1 GEL for 27 plots of land with a total space of 345,454.83m<sup>2</sup>. As for property transferred under an usufruct agreement, in 2015, the Patriarchate received one item of real estate with the total space of 2,207 m<sup>2</sup>.

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92 For additional information see *The policy of state funding for religious organisations (2015-2016 review)*. Joint research commissioned by Tolerance and Diversity Institute (TDI) and Human Rights Education and Monitoring Center (EMC). Available in Georgian at: [shorturl.at/aJLQ6](http://shorturl.at/aJLQ6) P.25.

93 For more information about the property transfer of other religious organizations to the Church, see chapter 5 of the report.

## Funding allocated from the Presidential Reserve Fund

In 2017, 2018 and 2019 there were no allocations made from the Presidential Reserve Fund to the Orthodox Church, Spiritual Academy or other religious organizations.<sup>94</sup>

In 2016, the Orthodox Church received 40,000 GEL<sup>95</sup>, out of which 35,000 GEL<sup>96</sup> was used to fund the project Women in the History of Christian Georgia implemented jointly by the Spiritual Academy and Seminary, while 5,000 GEL<sup>97</sup> was spent for the promotion of a documentary dedicated to the enthronement anniversary of Patriarch Ilia II aimed at Georgian diaspora, and covering the related expenses.

In 2015, no financial allocations were granted from the Presidential Reserve Fund to either the Orthodox Church or any other religious organization. In 2014, a total of 108,000 GEL<sup>98</sup> was distributed among the legal entities set up at the Patriarchate mostly for the implementation of social projects.

In 2013, the Presidential Reserve Fund donated 339,000 GEL<sup>99</sup> to Poti cathedral to cover the construction costs as well as those related to a solemn blessing of the cathedral, promotion, recording TV advertisements and transportation costs for people attending the blessing ceremony.

An analysis of the allocations from the Presidential Reserve Fund demonstrates that afterwards the presidency, as an institute, lost most of its power; the allocations from the Presidential Fund also dwindled. For instance, during the period 2007-2013, the Georgian Orthodox Church received 10,806,207 GEL<sup>100</sup> from the Fund, the largest amount of which – 5,484,800 GEL<sup>101</sup> was allocated in 2008.

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94 Letter N9328 from the Administration of President of Georgia, 3 December 2019.

95 Approx. 14,010 USD and 12,799 Euros.

96 Approx. 12,259 USD and 11,199 Euros.

97 Approx. 1,754 USD and 1605 Euros.

98 Approx. 37,828 USD and 34,558 Euros.

99 Approx. 118,739 USD and 108,474 Euros.

100 Approx. 3,785,011 USD and 3,457,799 Euros.

101 Approx. 1,921,120 USD and 1,755,041 Euros.

## **Donation in-kind by the authorities of Achara Autonomous Republic**

Similar to the central Georgian Government, the Acharaian authorities also allocate various types of resources to the Georgian Patriarchate.

According to the information provided by the Government of the Autonomous Republic of Achara<sup>102</sup>, no funding was allocated to the Georgian Orthodox Church in 2016, 2017 or 2018, while in 2019, 157,000 GEL<sup>103</sup> was transferred to the Tbel Abuseridze Teaching University under the Patriarchate, with the purpose of supporting higher education.

In 2015, based on the request of Eparch Dimitri of Batumi and Lazeti, Acharian authorities transferred a regional government-owned plot of agricultural land, 249,909 m<sup>2</sup> total space, located in Kobuleti town to Khar-Puri LTD founded by the Georgian Patriarchate for free for the period of 49 years. In 2014, the Patriarchate received no donation in-kind from the Achara Government. In 2013 the regional authorities donated second-hand office equipment to the Georgian Patriarchate with an estimated cost of 15,978 GEL<sup>104</sup>.

## **Municipal funding and transfer of property**

Self-governing communities and cities also pursue the practice of donating property to the Georgian Patriarchate. Based on data from 2013-2019 the Georgian Orthodox Church received most of the transactions while other religious organizations received just an insignificant amount of allocations.<sup>105</sup>

According to the 2019 budgets, 40 local municipality councils transferred a total of 3,269,400 GEL<sup>106</sup> to churches, clergy, archdioceses and legal entities under the Patriarchate. In addi-

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102 Letter N 01–01/637, 12/02/2020.

103 Approx. 54,100 USD and 47,300 Euros

104 Approx. 5,596 USD and 5,112 Euros.

105 TDI requested public information from 72 municipalities and 10 district administrations of Tbilisi.

106 Approx. 1,145,148 USD and 1,045,852 Euros.

tion, 10 municipality councils of Tbilisi allocated the overall sum of 1,561,158 GEL<sup>107</sup> to the Orthodox Church<sup>108</sup>.

In 2018, churches, clergy, archdioceses and legal entities under the Patriarchate received a total of 2,753,600 GEL<sup>109</sup> from 40 local municipalities. Tbilisi municipality councils allocated 1,291,084 GEL.<sup>110</sup>

In 2017, 2,145,350 GEL<sup>111</sup> was allocated from local budgets, while 1,240,885 GEL<sup>112</sup> was allocated from the Tbilisi municipality councils.

In 2016, 51 municipality councils and 10 district administrations of Tbilisi transferred 4,423,615 GEL<sup>113</sup> to churches, members of the clergy, archdioceses and legal entities founded by the Georgian Patriarchate (3,105,007 GEL<sup>114</sup> accounts for the contribution made by regional municipalities while Tbilisi based administrations transferred 1,318,615 GEL<sup>115</sup>).

In 2015, 48 municipalities and 10 district administrations of Tbilisi transferred 3,966,590 GEL<sup>116</sup> to churches, members of the clergy, archdioceses and legal entities founded by the Georgian Patriarchate (2,364,829<sup>117</sup> GEL accounts for the contribution made by regional municipalities while Tbilisi based administrations transferred 1,601,761 GEL<sup>118</sup>).

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107 Approx. 546,815 USD and 499,401 Euros.

108 Official Letters of Tbilisi City Hall upon requested public information, 30-0120006444, 06/01/2020; 37-01193651179, 31/12/2019.

109 Approx. 964,483 USD and 881,016 Euros.

110 Approx. 452,218 USD and 413,065 Euros.

111 Approx. 751,436 USD and 686,376 Euros.

112 Approx. 434,635 USD and 397,067 Euros.

113 Approx. 1,549,427 USD and 1,415,425 Euros.

114 Approx. 1,087,568 USD and 993,428 Euros.

115 Approx. 461,861 USD and 421,882 Euros.

116 Approx. 1,389,348 USD and 1,269,086 Euros.

117 Approx. 828,311 USD and 756,558 Euros.

118 Approx. 561,037 USD and 512,437 Euros.

## Freedom of Religion or Belief in Georgia

In 2014, 40 municipalities and 10 district administrations of Tbilisi, allocated a total of 4,738,539 GEL<sup>119</sup> to the Orthodox Church (2,967,578 GEL<sup>120</sup> from regional municipal budgets and 1,770,961 GEL<sup>121</sup> from the budgets of Tbilisi based district administrations).

In 2013, the total amount transferred from local budgets to the Orthodox Church and its dioceses was estimated at 3,864,871 GEL<sup>122</sup> including 2,198,336 GEL<sup>123</sup> from Tbilisi district administrations and the remaining 1,666,534 GEL<sup>124</sup> from regional municipalities.

In addition to financial resources, the Orthodox Church also received real estate from local self-government bodies in various regions of Georgia.<sup>125</sup>

## Legal assessment of the State funding for the Georgian Patriarchate

The Orthodox Church and the State justify the practice of direct state funding based on the Constitutional Agreement signed in 2002. According to Article 11 of the Agreement, the State acknowledges the moral and material damages inflicted on the Church in the 19<sup>th</sup> and 20<sup>th</sup> centuries (especially in 1921-1990) during Soviet Occupation and as the factual owner of part of the seized property, commits to partially compensating against the material loss experienced.

However, justifying the existing funding based on the Constitutional Agreement is inappropriate. More specifically, Article 11(2) of the Agreement points out that the study of issues related to compensation as well as its forms, amounts, terms and timeframe, transfer of property and land shall fall under the competences of a special commission which shall also draft the respective normative acts. The commissions, set up specifically for these purposes, have never exercised functions.

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119 Approx. 1,659,733 USD and 1,515,959 Euros.

120 Approx. 1,039,431 USD and 949,391 Euros.

121 Approx. 620,301 USD and 566,503 Euros.

122 Approx. 1,353,720 USD and 1,236,332 Euros.

123 Approx. 769,995 USD and 703,224 Euros.

124 Approx. 583,724 USD and 533,057 Euros.

125 The policy of state funding for religious organisations (2014-2015 review), Tolerance and Diversity Institute (TDI) and Human Rights Education and Monitoring Center (EMC). Available in Georgian at: <http://tdi.ge/sites/default/files/religiuri-organizaciebis-saxelmcipo-dapinansebis-politika-2014-2015.pdf>.

For instance, according to the edict 1 of the President of Georgia dated 7 January 2003, special commissions were created to develop measures stipulated by the Constitutional Agreement. Among the five commissions set up for this purpose, one was for the study of issues related to compensating for material damages inflicted on the Church. However, there are no session protocols or information archived by the President's Administration.<sup>126</sup>

The Presidential edict was abolished on 21 February 2012. Instead, another commission related to the review of the Constitutional Agreement was set up based on resolution 63 of the Government of Georgia, dated 21 February 2012.<sup>127</sup> One out of eight working groups was assigned to work on the issue of damages and compensating the Church for the 19<sup>th</sup> and 20<sup>th</sup> centuries. However, the group never functioned and therefore, no decision was made to serve as a legal ground for funding the Orthodox Church.

Therefore, the direct funding of the Orthodox Church from the state budget cannot be qualified as a form of compensation against sustained damages. The State started and has continued direct funding under the pretext of compensation without establishing any normative acts to define a clear time-frame, the scale nor the procedures regulating the "compensation".

### **Transferring material goods to other religious organizations**

State policy is discriminatory when it comes to State funding of other religious organizations. Based on the resolution 117 of the Government of Georgia of 27 January 2014, four religious communities (Muslim, Jewish, Roman-Catholic and Armenian Apostolic) receive annual funding as a symbolic compensation for the damages inflicted during Soviet times.<sup>128</sup> In total, all four religious communities have received the following funding:

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126 Study of Religious Discrimination and Constitutional Secularism in Georgia, Tolerance and Diversity Institute, 2013, P 18. Available at: [https://tdi.ge/sites/default/files/study\\_of\\_religious\\_discrimination\\_and\\_constitutional\\_secularism\\_tdi.pdf](https://tdi.ge/sites/default/files/study_of_religious_discrimination_and_constitutional_secularism_tdi.pdf).

127 Resolution 63 of the Government of Georgia of 21 February 2012. Available in Georgian at: <https://matsne.gov.ge/ka/document/view/1593397>.

128 For more information on this matter see Chapter I. The State and religion. Subchapter: Policy and practice of state funding for religious organisations.

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2014 – 1,750,000 GEL<sup>129</sup>

2015 – 4,200,000 GEL<sup>130</sup>

2016 – 4,500,000 GEL<sup>131</sup>

2017 – 4,500,000 GEL

2018 – 4,500,000 GEL

2019 – 4,500,000 GEL<sup>132</sup>

Article 2(1) of resolution 117 of the Government of Georgia states that the government “is committed” to partially compensate religious organizations against the loss sustained during the Soviet regime. Pursuant to paragraph B of the same article, due to inability to assess the amount of such loss, the compensation shall have a “symbolic” value. The same rationale is embedded in the agreements concluded between the State Agency and religious organizations whereby partial and symbolic compensation serve as the purpose of the allocation of financial resources to signatory religious groups.

Similar to the case of the Georgian Orthodox Church, the practice of financing the four religious organizations falls under the category of direct funding. A necessary prerequisite for compensating the damages is the presence and estimated amount of such loss. Having established the presence and characteristics of the damages, it is then possible to determine the timeframe and rules for allocating compensation.

At the first session of the State Agency held in March 2015, the Head of the Agency proposed criteria to divide existing resources among religious organizations. The criteria are based on three characteristics: the **size of a particular religious community, number of clergy and number of houses of worship**. However, it is impossible to correlate these characteristics with the wrongs inflicted under the Soviet regime as none of them indicates either the amount of the loss/damage and/or a mechanism for establishing such loss. For instance, the most affected religious community may own the least houses of worship at present. The same refers to the number of clergy and the size of the community. Therefore, the selection criteria are irrelevant vis-à-vis the allocation of financial resources and determine the rules

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129 Approx. 612,959 USD and 559,754 Euros.

130 Approx. 1,471,103 USD and 1,343,485 Euros.

131 Approx. 1,576,182 USD and 1,439,464 Euros.

132 State Agency for Religious Issues, 2016-2017 report. Tbilisi, 2018.



for subsidising religious organizations rather than compensating for their loss. To be noted, the State transfers public goods to the Orthodox Church without setting any criteria.

The recognition of only four religious organizations as victims of the Soviet repressions is illustrative of the State's discriminatory approaches since there are far more religious communities who experienced repressions during the Soviet times.

The State Agency for Religious Issues signs agreements with religious organizations on an annual basis. Signatory organizations must submit an outline of spending per stated goals within a month of signing the agreement. However, the same requirement does not apply to the Patriarchate. The Agency is also authorized to carry out an audit of submitted reports. This practice suggests that the State provides direct funding for selected religious organizations. This policy, similar to one subsidizing the Georgian Orthodox Church from the state budget, constitutes a violation of the constitutional principle of separation between the State and Church as well as interference with the autonomy of religious minority communities.

Religious organizations selected as recipients of funding must meet certain preconditions in order to receive the financial resources from the budget. The resolution applies only to those religious organizations which have been registered as legal entities under public law prior to the adoption of this regulation. It is unclear why privileges are given to religious groups registered as legal entities under public law whereas non-profit (non-commercial) legal entities have the same rights and liabilities under the Civil Code of Georgia.

According to the resolution of the Government, religious organizations were expected to reorganize into a single legal entity of public law or set up a representative board no later than 5 November 2014 in order to be eligible for funding. This precondition created problems for the Muslim minority community. For instance, Sunni and Shia communities became forced to unite under one legal entity, whereas other religious organizations (Jewish, Catholic and Armenian Apostolic) were funded individually.

Despite this fact, on 4 November 2014, a Shia religious community *Supreme Spiritual Administration of All Muslims of Georgia* informed the Agency that they were ready to become a member of the representative board. However, the funding was allocated to the representative board without the Administration's participation.

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The Supreme Spiritual Administration of All Muslims of Georgia applied to the common court. The Supreme Court of Georgia partially upheld the claim. The Court ruled that the claimant had met the eligibility criteria set forth in the Government resolution<sup>133</sup>. The organization had the right to be a beneficiary receiving compensation and this eligibility criteria should not have been the basis for creating the board of representatives or registering as one legal entity (LEPL).

In 2016, the Supreme Spiritual Administration of All Muslims of Georgia submitted the claim to the Constitutional Court of Georgia against the norms of the resolution which establish the rules for allocating funding.<sup>134</sup> The claimant argued that in forcing Shia and Sunni Muslims to unite under one legal entity or representative board, as well as imposing this requirement only on religious organizations registered as legal entities of public law prior to the adoption of the resolution was against the freedom of religion or belief, freedom of assembly and equality enshrined in the Constitution of Georgia.

On 15 March 2017,<sup>135</sup> the Constitutional Court partially admitted the claim for consideration on merits concerning the requirement of religious organizations to be registered as legal entities of public law in order to receive state funding prior to the adoption of the government resolution<sup>136</sup>.

Even though the Court considered the case on merits, as of January 2020, the judgment has not yet been published.<sup>137</sup>

## Tbilisi Municipal Funding

Some religious minority organizations also receive municipal funding. According to Tbilisi City Hall, in 2019, the Armenian Apostolic Church received 9,999 GEL<sup>138</sup> to cover repair

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133 Complaint №6-597-556-2017, 3 November 2017.

134 Constitutional Court of Georgia, case of LEPL Administration of All Muslims of Georgia v. Government of Georgia. Constitutional claim 750.

135 Recording notice of the Constitutional Court of Georgia of 15 March 2017.

136 Constitutional Court will consider the constitutionality of the Article 1(3) of the resolution in relation to the Article 14 of the Constitution (equality).

137 Constitutional Court of Georgia, N750. LEPL Supreme Spiritual Administration of All Muslims of Georgia v. Government of Georgia.

138 Approx. 3,502 USD and 3,198 Euros.

costs of a church, and 9,993 GEL<sup>139</sup> was transferred additionally to Surb Gevorg (St. George's) Church.

In total in 2019, religious organizations, other than the Orthodox Church, received 19,992 GEL<sup>140</sup> from the Tbilisi City Hall.

In 2018, the Tbilisi City Hall transferred 7,000 GEL<sup>141</sup> to the Evangelical-Lutheran Church of Georgia. In 2017, Armenian Apostolic Church received 9,999 GEL<sup>142</sup> from Tbilisi City Hall to cover repair costs for a church; One of the worship houses in Zemo Vedzisi settlement in Tbilisi received 9,915 GEL<sup>143</sup>, and 4,992 GEL<sup>144</sup> was transferred to a cultural and educational centre under the administration of the Armenian Apostolic Surb Gevorg church. In total, religious minority organizations received 24,905 GEL.<sup>145</sup> In 2016, Tbilisi municipal councils allocated 28,859 GEL<sup>146</sup> to religious minority organizations, in 2015 this sum comprised 18,000 GEL<sup>147</sup> and in 2014\_34,000 GEL<sup>148</sup>.

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139 Approx. 3,500 USD and 3,196 Euros.

140 Approx. 7,002 USD and 6,394 Euros.

141 Approx. 2,451 USD and 2,239 Euros.

142 Approx. 3,502 USD and 3,198 Euros.

143 Approx. 3,472 USD and 3,171 Euros.

144 Approx. 1,748 USD and 1,596 Euros.

145 Approx. 8,723 USD and 7,965 Euros.

146 Approx. 10,108 USD and 9,230 Euros.

147 Approx. 6,315 USD and 5,777 Euros.

148 Approx. 11,908 USD and 10,874 Euros.

## CHAPTER II: LEGISLATIVE INITIATIVES LIMITING FREEDOM OF RELIGION OR BELIEF

### 2.1. AMENDMENTS TO THE CONSTITUTION OF GEORGIA AND POTENTIAL THREATS TO FREEDOM OF RELIGION

In the frame of the constitutional reform of 2017, the Parliament of Georgia proposed amendments to the Constitution which would restrict the freedom of religion on ambiguous grounds such as “national security”, “prevention of crime” and “administration of justice”.<sup>149</sup>

Up until the presidential elections of 2018, violating the rights of others was the only legitimate aim stipulated by the Constitution for restricting the freedom of belief, conscience and religion. However, as a result of constitutional amendments initiated in 2017 the list of legitimate aims soared to include five other grounds. Importantly, three of the newly added aims, more specifically, “national security”, “prevention of crime” and “administration of justice” fail to meet international human rights standards since they are not deemed as valid grounds for restricting the freedom of religion or belief by either the European Convention on Human Rights, the International Covenant on Civic and Political Rights or the great majority of constitutions of European states.

The State-initiated amendments to the Constitution triggered a looming risk of disproportionate interference with the freedom of religion or belief. The risk was further reinforced by State policy as illegitimate restrictions on the freedom of religion and poor responses from the State on violations of this right are a frequent occurrence.

In the second opinion of 22 September 2017 on the draft revised Constitution submitted to the Government of Georgia, the Council of Europe’s Venice Commission highlighted that the newly added grounds are not legitimate aims according to Article 9 of the European Convention on Human Rights. The Commission also stressed that legiti-

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<sup>149</sup> Article 19 of the Constitution of Georgia (Article 16 in the current version).

mate aims must be strictly interpreted and should not be extended by way of interpretation to other notions. The report also brings in the case-law of the European Court of Human Rights<sup>150</sup> which has ruled that a State cannot use the need to protect national security as the basis for restricting the exercise of the right of a person or a group of persons to manifest their religion.<sup>151</sup>

Despite a series of harsh criticism<sup>152</sup>, the Parliament passed the proposed amendments on 26 September 2017. However, after succumbing to continuous pressure from religious associations, non-governmental organizations, lawyers and international organizations, in 2017 the Government initiated a new amendment to the Constitution resulting in the removal of the ambiguous criteria legitimizing interference in freedom of religion or belief. The finalized amendments were passed by Parliament on the third reading on 23 March 2018.<sup>153</sup> Pursuant to Article 16 of the current version of the Constitution, freedom of belief, religion and conscience may be restricted only in accordance with the law and with the purpose of ensuring public safety, or for protecting health, or the rights of others, insofar as it is necessary in a democratic society.<sup>154</sup>

In 2019, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) published policy guidance for freedom of religion or belief and security.<sup>155</sup> OSCE/ODIHR stresses that in some OSCE participating states *“certain laws, security policies and practices*

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150 Nolan and K. v. Russia, application no. 2512/04, 12 February 2009.

151 European Commission for Democracy Through Law (Venice Commission), Draft opinion on the draft revised constitution as adopted by the Parliament of Georgia at the second reading, 22 September 2017. Available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2017\)006-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2017)006-e).

152 Assessments, statements and addresses of non-governmental organizations: TDI's assessment on restriction of freedom of religion in the Constitution of Georgia, 10 July 2017 <http://tdi.ge/en/statement/tdis-assessment-restriction-freedom-religion-constitution-georgia>  
Address of civil society organizations and lawyers on limitation of freedom of religion in draft amendments to the Constitution of Georgia, 2 August 2017. Available at: <http://tdi.ge/en/statement/address-civil-society-organizations-and-lawyers-limitation-freedom-religion-draft>  
Statement on limitation of freedom of religion in the constitution, 26 September 2017. <http://tdi.ge/en/statement/statement-limitation-freedom-religion-constitution>  
Address to the President of Georgia on limitations of freedom of religion in the Constitution, 28 September 2017. Available in Georgian at: <http://tdi.ge/ge/news/470-mimartva-sakartvelos-prezidents-konstituciashi-religiis-tavisuplebis-shezdvastan>.

153 Constitutional law of Georgia of 23 March 2018 (N2071). Date of publication: 02.04.2018.

154 See also: *Georgia: Constitutional Changes to impose impermissible freedom restrictions?*, by Mariam Gvartadze, Forum 18, 21 September 2017 [www.forum18.org/archive.php?article\\_id=2316](http://www.forum18.org/archive.php?article_id=2316).

155 Freedom of Religion or Belief and Security: Policy Guidance, OSCE/ODIHR, 2019. Available at: <https://www.osce.org/odihr/429389>.

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*have placed freedom of religion or belief and other universal human rights under significant pressure. Such measures, especially those that are very broad or applied arbitrarily, are often enacted in the name of “national”, “state” or “public” security, or in the interests of preserving or maintaining “peaceful coexistence”, “social stability” or “social harmony”. Experience shows that such limitations can worsen rather than improve security”. The policy guidance also underlines that concerns about “extremism” are often cited by states to justify the need for strict control over the activities of individuals and religious or belief communities in the interest of security.*

The document emphasizes that sustainable security is not possible without the full respect for human rights. Freedom of religion or belief and security are not competing rights. They are complementary, interdependent and mutually reinforcing objectives that can and must be advanced together.

## 2.2. INITIATIVES TO ADOPT THE LAW ON RELIGION

Issues around the proposed adoption of a special law on religion and religious organizations was a consistent topic on the public discourse agenda in 2019. An idea to regulate the field of religion by adding clauses to existing laws was also voiced amidst ongoing discussions.

It should be noted that Georgia has a fairly elaborate legal framework for religion and there is no need to introduce additional mechanisms for the regulation of the work of religious organizations. In addition, definition of such notions as “religion” and “religious organization” should fall outside of the State’s competences. Otherwise, there is a high risk that once the State comes up with such definitions, it will attempt to establish a hierarchy within religious associations and divide the latter based on certain criteria to be prominent or to restrict the scope of work of religious organizations or even revoke registration of certain religious organizations, a fear shared across the majority of religious and human rights organizations. In January 2019, further to an initiative of a chair of the Human Rights and Civil Integration Committee at the Parliament of Georgia, a working group on religious issues was established. The Committee extended the membership invitation to religious associations, the Public Defender, representatives of non-governmental and international organizations. In addition, the State Agency for Religious Issues appeared to be quite active when it came to

working group meetings held between January and May 2019 (in total, five meetings were convened).

The chair of the Human Rights and Civil Integration Committee told the members that deliberation around possible solutions to challenges faced by religious organizations was the main reason for setting up the group. However, the issue of the adoption of a special law on religion or introducing new regulations to the existing legal framework was raised at the very first meeting.

At the working group meeting held on 1 February 2019, the Council of Religions at the Public Defender's Office disagreed with the idea to adopt a law on religion and religious organizations arguing that if adopted, the law would curb religious freedom and undermine equality among religious organizations.<sup>156</sup> This argument resulted in a rather harsh, contradictory statement from the chair of the Human Rights Committee and the head of the State Agency for Religious Issues.

A religious policy development strategy, a paper developed by the State Agency for Religious Issues, notes that "there is no stand-alone law on religion in Georgia, because of which there is a lack of legal norms of general nature [...] it is critical that a special law on religion be adopted to incorporate two aspects: 1. Norms regulating religious rights of the individual and 2. Norms for legal regulations of activities carried out by religious organizations, to define all general legal categories (including "religious association"), set forth general legal regulations including rules for the registration of religious organizations, legal status, rights and liabilities, activities, property and financial matters, issues related to religion and education, religious representation ("chaplains") and other matters."<sup>157</sup>

The head of the Agency, Zaza Vashakmadze told reporters that before setting up the working group, he had met with religious organizations who voiced the need for the adoption of the law on religion<sup>158</sup> (Importantly, the idea to adopt the special law or add respective

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156 Statement of the Council of Religions at the Public Defender's Office, 1 February 2019. Available in Georgian at: <http://www.tabula.ge/ge/story/143716-religiata-sabcho-religiur-organizaciebze-kanonis-shemushaveba-dghis-tsesrigshi-ar-unda>.

157 Strategy for Development of Religious Policy of the State Georgia, 2015. Available in Georgian at: <https://bit.ly/333xnqQ>.

158 *Georgia: Who needs a Religion Law?* By Mariam Gvartadze and Eka Chitanava, Forum 18, 15 August 2019. Available at: [http://www.forum18.org/archive.php?article\\_id=2501](http://www.forum18.org/archive.php?article_id=2501).

## **Freedom of Religion or Belief in Georgia**

clauses to the existing legal framework had been approved by those religious organizations who are recipients of state funding). At the working group meeting, Vashakmadze also argued that the number of supporters of the new law prevailed over that of opponents which meant that proponents constituted the majority of Georgia's population.

It should be noted that existing rules for the registration of religious organizations are acceptable to the great majority of religious organizations. The existing legal frameworks allow religious organizations to register as a legal entity under public law, or a legal entity under private law, or continue activities without registration. However, any changes to these rules or an introduction of a new set of criteria convey the risk of the State's incommensurable interference in the work of any of religious organizations and curbing the latter's rights.

### **2.3. DISCRIMINATORY INITIATIVE AGAINST CLERGY OF DIFFERENT FAITHS**

In 2019, the issue of abolishing the right of military service postponement for religious minority clergy was raised on the political agenda.

In Georgia, military service is compulsory for almost all young men between the ages of 18 and 27, one of the main exemptions being for clergy of any faith. On 12 March 2019, Irakli Sesiashvili, Chair of the Parliamentary Committee for Defense and Security submitted draft changes to the Parliament to revoke those norms in the Law of Georgia on Military Service which affords the clergy the right to postpone military service. In addition to this law, clergy of the Georgian Orthodox Church are also exempted under the terms of the 2002 Constitutional Agreement between the State and the Church. Pursuant to Article 4 of the Agreement, "the member of the clergy shall be exempt from military conscription". The same document defines a member of the clergy as an ordained individual such as a nun, deacon, priest and bishop in the Orthodox Church. Authors of the draft amendments also discussed the definition of the "clergy".

Pursuant to Article 30 of the Law of Georgia on Military Duty and Military Service, in a long list of individuals who have the right to postpone military service, are priests or those who study in a theological school. Therefore, abolishing the norms of the law will lead to the restriction of this



right to the clergy of all faiths however, except that of the Orthodox Church. The initiative had been prepared by the Chair of the committee without prior consultations with wider public groups.

The initiative of the Defense and Security Committee stirred discontent among the majority of religious and non-governmental organizations.<sup>159</sup> In his public statements, Sesiashvili cited the Biblical Freedom Church of Georgia as one of the reasons why he came up with the initiative. The organization was set up in 2017 and has helped around 15,000 individuals defer military service by giving them the status of a minister. However, experts and many religious groups believe that the argument about the Biblical Freedom Church of Georgia, and the need for the introduction of a definition of a clergy was just an excuse relied on by the State to revive the idea of the Religion Law.<sup>160</sup>

Ultimately, on 5 April 2019, Deputy Sesiashvili asked Parliament to postpone hearing the bill “as the issue is very complex and needs further study”.

### 2.4. LEGISLATIVE INITIATIVES ABOUT “OFFENDING RELIGIOUS FEELINGS”

There have been several attempts to restrict the freedom of expression over the past few years in Georgia<sup>161</sup>, including numerous initiatives of reckless and ambiguous legal norms to make “blasphemy” and “insulting religious feelings” punishable. These initiatives were put forward by the Government of Georgia and Parliament members. The Patriarchate of the Georgian Orthodox Church has been actively campaigning for the criminalization of “insulting religious feelings”.<sup>162</sup> Conversely, members of the Council of Religions at the Public Defender’s Office

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159 Assessment of the Initiative on Depriving Non-Orthodox Clerics of the Right to be Exempt from Compulsory Military Service, available at: <https://bit.ly/2Hk5AJQ>.

160 Mariam Gvartadze and Eka Chitanava, GEORGIA: Who needs a Religion Law?, Forum 18, 15 August, 2019, available at: [http://www.forum18.org/archive.php?article\\_id=2501](http://www.forum18.org/archive.php?article_id=2501).

161 Mariam Gvartadze and Eka Chitanava, GEORGIA: Proposed insulting religious feelings law withdrawn – for now, Forum 18, 23 February 2016, available at: [http://www.forum18.org/archive.php?article\\_id=2152](http://www.forum18.org/archive.php?article_id=2152).

162 The Patriarchate of Georgia numerous times called on introducing penalty for humiliating religious feelings. For instance: The Patriarchate’s response to Lia Ukleba’s painting, 2015. Available in Georgian at: [https://netgazeti.ge/news/72772/Deacon Michael Botkoveli: “the Patriarchate is for penalizing offending religious feelings as we have had rather bitter lessons to learn,”](https://netgazeti.ge/news/72772/Deacon%20Michael%20Botkoveli:%20the%20Patriarchate%20is%20penalizing%20offending%20religious%20feelings%20as%20we%20have%20had%20rather%20bitter%20lessons%20to%20learn,%202018) 2018. Available in Georgian at: <https://bit.ly/2Ta4B43>

The Patriarchate: “The State must ensure timely protection of religious feelings”, 2018. Available in Georgian at: <https://bit.ly/37txSfC>.

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and human rights organizations have fiercely opposed efforts to curb freedom of expression and have highlighted the risks related to the possible passing of such legislation.

Even though freedom of speech and expression is safeguarded by the Georgian Constitution and the entire national legal framework, the past few years have seen numerous cases of violence and aggression committed in the name of “offended religious feelings”. Orthodox clergy and aggressive groups have opposed freedom of speech and expression, including in media and art. For instance, in 2015, Lia Ukleba, an artist fell victim to wide-scale aggression, vitriol and threats after she painted Virgin Mary with a toy gun in her hand.<sup>163</sup> In 2016, Levan Sutidze, an anchor of TV program *Conversations around Religion* and his companions were verbally and physically assaulted by three individuals.<sup>164</sup> Assailants said journalists had insulted the Georgian Orthodox Church. In 2019, members of an extremist group *Georgian March* attacked Giorgi Gabunia, a journalist working for Rustavi 2 TV channel after the latter talked about Jesus Christ in live streaming causing harsh criticism among some groups.<sup>165</sup>

## Legislative Initiatives

### 2013

In November 2013 the Georgian Ministry of Interior initiated amendments to the Administrative Offences Code proposing to add an article for criminal responsibility in relation to insulting religious feelings. The draft amendments would have introduced administrative liability for *public expression of hatred and/or other insulting behavior against sacred religious objects, religious organizations, members of clergy or believers with the purpose of humiliating religious feelings of believers*. The initiative was met with criticism voiced by civil society organizations<sup>166</sup> and members of the Council of Religions under Public Defender of Georgia.<sup>167</sup> After waves of discontent and opposition, the Parliament did not proceed with the hearing.

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163 Suicidal Saint Stirs Controversy, Georgia Today, 02 November, 2015, available at: <http://georgiatoday.ge/news/1764/Suicidal-Saint-Stirs-Controversy>.

164 Tabula journalists attacked at Chashnagiri, a restaurant at Kote Apkhazi street. Available in Georgian at: <https://bit.ly/2MlaX9t>.

165 “Members of so-called Georgian March bar Giorgi Gabunia, a Rustavi 2 journalist from entering the TV station because of his joke”. Available in Georgian at: <https://bit.ly/2QSpC3r>.

Georgian Marsh members sieged Giorgi Gabunia’s car and insulted the journalist. Available in Georgian at: <https://bit.ly/3eNamyW>.

166 A statement of Civil Society Organizations. Available at: <https://bit.ly/2uvNX76>.

167 A statement of the Council of Religions at the Public Defender’s Office. Available at: [http://tolerantoba.ge/index.php?news\\_id=510](http://tolerantoba.ge/index.php?news_id=510).

## 2015-2016

On 2 December 2015, Ioseb Jachvliani, a ruling party MP (the Georgian Dream) submitted a draft law on amending the Administrative Offences Code for registration at the Parliament. The proposed amendment envisioned imposing an administrative penalty of the amount of 300 GEL<sup>168</sup> for the first time and 600 GEL<sup>169</sup> for repeated offences for public insult of a religious organization, a member of the clergy or a believer. The law was drafted by Zviad Tomaradze, the director of the Foundation for Demographic Development.

On 2 February 2016, the Committee on Human Rights and Civil Integration of the Parliament voted for the draft law on amending the Administrative Offences Code of Georgia at the first hearing. An explanatory note of the bill states that “for the past few years, the Georgian Orthodox Church as well as other traditional religious groups have fallen victims to open and covert attacks in the name of the freedom of speech and expression. Unidentified groups and individuals target sacred religious objects, buildings and symbols with humiliation and insult. Dozens of pages have been created on social media to specifically spread blasphemy and insult the Orthodox Church, its leader and high ranking clergy.”

Human rights organizations voiced their criticism and discontent with respect to the draft law and appealed to the Parliament against supporting the initiative in any form. Consequently, on 10 February 2016, the MP who initiated the draft law appealed to the Parliament for the withdrawal stating that because of the controversy, additional consultations were required to further improve the bill, which would require a certain period of time.

## 2018

On 26 March 2018, Emzar Kvitsiani, an MP from the Alliance of Patriots party, submitted yet another legislative initiative to the Parliament of Georgia to introduce criminal liability for insulting religious feelings. Again, Zviad Tomaradze, the founder of Georgian Demographic Society XXI, wrote the draft law.

According to the draft law an additional article would be added to the Criminal Code of Georgia to penalize “public expression of hatred towards religious sacred objects, religious

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168 Approx. 105 USD and 96 Euros

169 Approx. 210 USD and 192 Euros

## Freedom of Religion or Belief in Georgia

organizations, clergy and believers and/or public display or publication of materials with the aim to insult religious feelings of believers.” In addition, these amendments would also penalize “profaning religious buildings and other religious sacred objects, making inscriptions on or inflicting damage to such buildings or objects” with a fine or custodial measure.

An explanatory note of the draft law states that the passage of the law is important against the backdrop of growing, open or covert defamation and insult against the Georgian Orthodox Church as well as other traditional religions in the country. At a hearing of the draft law, Emzar Kvitsiani told the Human Rights and Civil Integration Committee that lately Patriarch Ilia II often falls victim to insults through Facebook. “Insult is generally a bad thing, but it is worse when it targets religion. Therefore we urge for your support!”-Kvitsiani stated.

The legislative initiative was followed by a series of negative reactions from human rights<sup>170</sup> and religious organizations which are members of the Council of Religions under the Public Defender of Georgia.<sup>171</sup> They urged the Parliament to reject the introduction of penalties for insulting religious feelings. A statement of the Council of Religions signed by 19 religious organizations says: *“We believe that we, religious associations should use only the power of words, educational activities and mentorship against religious intolerance and insult. Responding to this problem with repression will only further scale up aggression and intolerance”*.

The legislative initiative received a positive reaction from the Human Rights and Civil Integration Committee. However, the Committee members told Kvitsiani the draft needed further elaboration and that a working group had to be set up for this purpose.<sup>172</sup> The Committee called off supporting the draft at its first hearing.

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170 A statement of Non-Governmental Organizations, 25 April 2018. Available at: <http://tdi.ge/en/statement/statement-no-phobia-civil-platform-regarding-initiative-punishability-insults-religious>.

171 A statement of the Council of Religions at the Public Defender’s Office, 26 April 2018. Available at: [http://tolerantoba.ge/index.php?news\\_id=938](http://tolerantoba.ge/index.php?news_id=938).

172 Parliament to set up a working group to ban “insulting religious feelings”, Available in Georgian at <https://netgazeti.ge/news/270537/>.

## CHAPTER III. INEQUALITY IN THE GEORGIAN LEGISLATION AND JUDGMENTS OF THE CONSTITUTIONAL COURT OF GEORGIA

Despite the Georgian Constitution establishing high standards for human rights protection, the country's legal framework still includes several laws and by-laws that unjustifiably restrict the rights of minorities and create unequal conditions. Inequalities embedded in the legislation concern the acquisition of property by religious organizations, tax regulations and partial compensation of damage sustained under the Soviet regime.<sup>173</sup> State authorities have, so far, failed to take adequate measures for the elimination of discrimination in the legislation and ensure equal rights to all religious organizations.

On 3 July 2018, the Constitutional Court of Georgia set a precedent by delivering two judgments upholding claims by religious organizations.<sup>174</sup> The claimants argued that norms set forth in the Tax Code and the Law on State Property violated Article 14 of the Constitution (right to equality)<sup>175</sup> and contributed to an environment conducive to discrimination against religious organizations.<sup>176</sup>

Over the course of many years, religious organizations have urged for the elimination of inequalities in Georgian legislation. It has been routinely highlighted in reports commissioned by the Public Defender of Georgia as well as international and local organizations. In this light, both judgments of the Constitutional Court of Georgia have been pivotal for ensuring equality for religious organizations.

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173 For more information about partial compensation of damage sustained by the Soviet totalitarian regime, see Chapter 1.6. Policy and practice of State funding for religious organizations.

174 Constitutional Court granted two complaints of religious organizations <http://tdi.ge/ge/news/600-sakonstitucio-sasamartlom-religiuri-gaertianebebis-ori-sarcheli-daakmaqopila>.

175 The Constitution of Georgia, Article 11 (of the current version) – right to equality.

176 In relation to both claims, the Claimants were represented by Tolerance and Diversity Institute (TDI) and Constitutional Law Clinic of Tbilisi Free University.

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In October 2015, eight religious organizations<sup>177</sup> lodged a claim to the Constitutional Court<sup>178</sup>. The Court ruled that the norm of the Tax Code (Article 168(2)B) of Georgia which allowed a VAT exemption without the right of deduction in relation to construction, restoration and painting of churches and temples commissioned only by the Patriarchate of the Georgian Orthodox Church, was discriminatory and unconstitutional.<sup>179</sup> The contested norm granted privileges only to the Georgian Patriarchate and allowed the latter to purchase services with favourable conditions.

In July 2016, five religious organizations<sup>180</sup> lodged yet another claim to the Constitutional Court.<sup>181</sup> The claimants challenged the norm of the Law of Georgia on State Property which allowed the transfer of property free of charge only to the Georgian Orthodox Church while other religious organizations were not accorded such an opportunity. The Constitutional Court upheld the claim and ruled the contested norm as discriminatory and unconstitutional.

The defendant in the case, the Parliament of Georgia, stated that the contested norm had a legal purpose of reinforcing the special relationship existing between the State and the Orthodox Church, more specifically, by this norm the State recognized the special role of the Georgian Autocephalous Orthodox Church in the country's history.

However, in its judgment, the Constitutional Court stressed that "the recognition of the special role of the Church echoes its historical contribution and does not serve to create a preferential legal condition in favor of the Christian Orthodox religion. Nor should the historical contribution be perceived as a source of legitimacy for granting privileges. Differential treatment and affording legal preferences to the Church is not and shall not be the goal of the Constitution.<sup>182</sup> [...] Granting certain rights to the Church does not prevent other religious organizations from enjoying the same right."<sup>183</sup>

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177 LEPL Evangelical-Baptist Church of Georgia, N(N)LE Word of Life Church of Georgia, LEPL Christ Church, LEPL Pentecostal Church of Georgia, N(N)LE Transcaucasian Union of the Seventh-day Adventist Church, LEPL Apostolic Administration of Latin Catholics of the Caucasus, N(N)LE Union of Georgian Muslims, LEPL Holy Trinity Church v. Parliament of Georgia.

178 Constitutional claim N671. 9 October 2014. Available in Georgian at: <https://constcourt.ge/ka/judicial-acts?legal=2150>.

179 Judgement N N1/2/671 of the Constitutional Court of Georgia. 3 July 2018. Available in Georgian at: <https://constcourt.ge/ka/judicial-acts?legal=924>.

180 LEPL Evangelical-Baptist Church of Georgia, LEPL Evangelical-Lutheran Church of Georgia, LEPL Supreme Spiritual Administration of All Muslims of Georgia, LEPL Redeemed Christian Church of God, LEPL Pentecostal Church of Georgia.

181 Constitutional claim N811, 21 July 2016. Available in Georgian at: <https://constcourt.ge/ka/judicial-acts?legal=2155>.

182 Judgement N1/2/671 of the Constitutional Court of Georgia, 3 July 2018, Para 34-35.

183 Judgement N1/1/811 of the Constitutional Court of Georgia, 3 July 2018, Para. 23.

In relation to both claims the Court stated that discrimination can be eliminated by fully revoking privileges as well as by extending them to substantially equal entities.

The Parliament of Georgia had been given a reasonable time (six months from the day the Court issued its judgments including 31 December 2018) to amend the contested norms in the Tax Code and the Law on State Property and extend their coverage to all religious organizations as per the Court's ruling. However, the Parliament has not taken any measures to implement the legal amendments. The Parliament failed to demonstrate a will to ensure equality for religious associations. Therefore, on 31 December 2018, the norms which had been deemed unconstitutional were declared invalid.

### **3.1. DISCRIMINATORY LEGAL FRAMEWORK FOR PURCHASING STATE-OWNED PROPERTY**

One of the problems in the Georgian legislation derives from some of the norms set forth in the Law of Georgia on State Property which allows for differential treatment of religious organizations other than the Georgian Orthodox Church. More specifically, religious organizations, except for the Georgian Orthodox Church, are unable to purchase State-owned property through a direct sale or receive such property free of charge.

For example, in 2013, the LEPL Evangelical-Protestant Church attempted to install a fence around a religious building under their ownership for security purposes. However, since the Evangelical-Protestant Church was not a legal owner of the property, the State did not grant them the right to install a fence. Representatives of the Evangelical-Protestant Church appealed to the Public Defender of Georgia. However, the Ministry of Economy and Sustainable Development communicated to the Public Defender that, pursuant to the Law of Georgia on State Property, a legal entity under public law has no right to purchase State-owned property.<sup>184</sup>

Demanding religious organizations registered as legal entities under public law, to register State-owned property with the right to entitlement is discriminatory and devoid of a legal ground. For this very reason, the State has actively resorted to a policy of transferring religious buildings and other types of property to minority religious organizations without

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<sup>184</sup> 2013 Annual Report of the Public Defender of Georgia on the situation of human rights and fundamental freedoms in Georgia, P. 169.

## Freedom of Religion or Belief in Georgia

entitlement to dispose of such property. Therefore, the State remains the legal owner of property transferred to minority religious organizations.

Matters related to management, disposition and transfer of State-owned property are regulated by the Law of Georgia on State Property. Pursuant to the law, religious organizations registered as legal entities under public law, with the exception of the Georgian Orthodox Church, are not authorized to purchase State-owned property through a direct sale, exchange or receive property free of charge.

### **Who can purchase non-agricultural state-owned land?**

Pursuant to the Law on State Property,<sup>185</sup> property can be acquired by a legal entity under private law or an association of such entities. The law makes no reference to legal entities under public law with the exception of the Georgian Orthodox Church, which is authorized to acquire State-owned property through a direct sale as per a governmental resolution. Therefore, the law creates barriers for other religious organizations registered as legal entities under public law purchasing State-owned property.

### **Who can acquire State-owned agricultural land?**

The Law of Georgia on State Property<sup>186</sup> defines a list of entities eligible to privatize State-owned agricultural land. The law establishes two types of privatization: *privatization with a fee* and *privatization free of charge*.

A citizen of Georgia or a legal entity under private law is eligible to buy State-owned property through privatization with a fee while legal entities under public law, including religious organizations, have no such right.

The law makes an exception and grants a privilege to the Georgian Orthodox Church to receive agricultural land through privatization, free of charge. The same right is not accorded to religious organizations registered both as legal entities under public and private law.

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<sup>185</sup> Article 3(1).

<sup>186</sup> Article 3(2).



## Who can exchange property?

The law also defines a limited list of those entities or persons who have the right to acquire State-owned property through an exchange (in return for the transfer of the equivalent property into State ownership). Pursuant to the Law of Georgia on State Property,<sup>187</sup> the title of State property may be transferred to *natural persons, legal entities under private law, the National Bank of Georgia and the Georgian Apostolic Autocephalous Orthodox Church*. The article specifies the Orthodox Church, as an entity eligible to become an owner of State property through exchange while other religious organizations, registered as legal entities under public law, are deprived of such possibility.

None of the legal norms outlined above leave room for religious organizations registered as legal entities under public law to purchase and become the owners of State-owned property. Therefore, non-dominant religious organizations are unable to receive State-owned property or where they are eligible to do so, only with the right of use. The State remains the owner of the transferred property in this respect and religious organizations have no right to dispose of the property. This circumstance is challenging concerning the restitution of historical property confiscated by the Soviet regime from religious organizations. After the restoration of Georgia's independence, the State inherited the confiscated property.

## Property not subject to privatization

Article 4 of the Law of Georgia on State Property provides a list of State property which is not subject to privatization (both with fees and free of charge). The list includes religious and places of worship (functioning and no longer functioning), their ruins as well as land plots on which they are located.<sup>188</sup>

As of today, most religious organizations do not own their religious property nor are they able to reclaim religious buildings confiscated by the Soviet regime. The above mentioned norm also imposes restrictions when reclaiming historical property under their possession. As for the Orthodox Church, pursuant to the Constitutional Agreement, the State recog-

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<sup>187</sup> Article 3(5).

<sup>188</sup> Article 4(1), Para L.

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nizes Orthodox churches, monasteries (functioning and no longer functioning), their ruins and plots of land on which they are located throughout the country as the property of the Orthodox Church.<sup>189</sup>

Similar restrictions are stipulated by the **Law of the Autonomous Republic of Achara on Management and Administration of the Property of the Autonomous Republic of Adjara**.<sup>190</sup> The law defines a finite list of individuals and entities eligible to purchase property owned by the Autonomous Republic of Adjara. Content-wise, the contested norms are similar to those of the Law of Georgia on State Property and do not grant the right to religious minority organizations to purchase property of the Autonomous Republic of Adjara. At the same time, similar to the law of Georgia, the law of the Autonomous Republic also grants exceptions and privileges to the Orthodox Church.

On 12 August 2019, nine religious organizations<sup>191</sup> re-appealed to the Constitutional Court. The claimants sought that the Constitutional Court declare those norms of the Law on State Property discriminatory which restrict the right of religious organizations, except for the Georgian Orthodox Church, to acquire or exchange State-owned property (Articles 3(1)(2)(5)).<sup>192</sup> The claimants are represented by Tolerance and Diversity Institute (TDI) and the Law Clinic of Free University of Tbilisi. As of January 2020, the Court has not yet launched proceedings on the case.

## Constitutional Court on Discrimination Norms of the Law on State Property

On 21 July 2016, five religious organizations appealed to the Constitutional Court requesting the Court to find the discriminatory norms of the Law of Georgia on State Property un-

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189 Constitutional Agreement between the Georgian state and Georgian Apostolic Autocephalous Church, Article 7(1).

190 Law on Management and Disposition of Property of the Autonomous Republic of Adjara, Article 3(3).

191 LEPL Pentecostal Church of Georgia, N(N)LE Union of Muslims of Georgia, LEPL Apostolic Administration of Latin Catholics of the Caucasus, LEPL Transcaucasian Union of the Seventh-day Adventist Church, N(N)LE Word of Life Church of Georgia, LEPL Evangelical-Lutheran Church of Georgia, LEPL Supreme Spiritual Administration of All Muslims of Georgia, LEPL Evangelical-Baptist Church of Georgia, LEPL Georgia Diocese of Armenian Apostolic Orthodox Holy Church.

192 Constitutional claim N1440 (date of registration: 12 August 2019).

constitutional.<sup>193</sup> The claimants were represented by Tolerance and Diversity Institute (TDI) and the Law Clinic of the Free University of Tbilisi.<sup>194</sup>

With the judgment of 3 July 2018, the Constitutional Court<sup>195</sup> ruled the norm of the Law of Georgia on State Property<sup>196</sup> granting privilege of receiving State property free of charge only to the Georgian Apostolic Autocephalous Orthodox Church unconstitutional.

The Court stressed that *“the major goal of the organizations [claimants] is to carry out religious activities for which **movable and immovable property that they own is of great importance.** For instance, by exercising their right to property, religious organizations ensure necessary conditions for performing religious rites to their followers. All religious organizations have equal interest to receive property from the State free of charge and use such property for religious purposes.”*

The defendant in the case, the Parliament of Georgia, stated that the contested norm had the legal purpose of cementing the special relationship between the State and the Orthodox Church, more specifically, through this norm, the State recognized the special role of the Georgian Autocephalous Orthodox Church in the country’s history. However, the Constitutional Court stressed that *“the recognition of the special role of the Church echoes its historical contribution and does not serve to create a preferential legal condition in favour of Christian Orthodox religion.”*

The Court also stated that discrimination can be eliminated by fully revoking the privileges as well as by extending them to substantially equal entities. The Parliament of Georgia had been given reasonable time (six months from the day the Court issued its judgements including 31 December 2018) to amend the contested norm in the Law on State Property and extend its coverage to all religious organizations.

The Parliament chose not to amend the law and subsequently, on 31 December 2018, the norms which had been deemed unconstitutional were declared invalid. The Parliament was

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193 LEPL Supreme Spiritual Administration of All Muslims of Georgia, LEPL Evangelical-Baptist Church of Georgia, LEPL Pentecostal Church of Georgia, LEPL Evangelical-Lutheran Church of Georgia, LEPL Redeemed Christian Church of God.

194 Constitutional claim N811. 21 July 2016. Available in Georgian at: <https://constcourt.ge/ka/judicial-acts?legal=2155>.

195 Judgement N1/1/811 of 3 July 2018 of the Constitutional Court of Georgia. Available in Georgian at: <https://constcourt.ge/ka/judicial-acts?legal=1178>.

196 Constitutional validity of the words “Georgian Apostolic Autocephalous Orthodox” as referred to in Article 6<sup>3</sup>(1) of the Law of Georgia on State Property.

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given an opportunity to replace the contested norm with non-discriminatory content and ensure equal rights to all religious organizations to receive State-owned property free of charge. Again, the Parliament failed to express a will to accept the reasoning of the Constitutional Court, improve the legislation by demonstrating due consideration of freedom of religion and the principle of equality.

### 3.2. INEQUALITY IN TAXATION

One of the most striking examples of the discriminatory treatment experienced by religious organizations is present in certain provisions of tax legislation. The Tax Code of Georgia allows exemption in certain instances, only for the Patriarchate of the Georgian Orthodox Church granting the latter privileges which are not accorded to other religious organizations. This problem has been at the center of attention of religious minority organizations, the Public Defender of Georgia and various local and international organizations.

#### Profit Tax

Pursuant to the Tax Code of Georgia, Article 99(1) para D, profits from the sale of crosses, candles, icons, books and calendars used by the Patriarchate for religious purposes are exempt from profit tax.

The norm is ambivalent and allows for multiple interpretations. More specifically, it can be understood as a benefit applicable only to the Georgian Patriarchate provided that the latter itself is the seller of items and goods used for religious purposes. Based on such reading of the law, profit tax exemption is applicable only to the Patriarchate but not any individual who sells items used by the Patriarchate for religious purposes. However, the norm can also be read in the following manner: the profit tax exemption applies to profit gained by any individual as a result of selling goods and products used by the Patriarchate for religious purposes. With respect to this circumstance, the Constitutional Court of Georgia stated that the application of the exemption from the profit tax to other persons other than the Georgian Patriarchate, cannot be ascertained from a reading of the norm.<sup>197</sup>

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<sup>197</sup> Constitutional Court of Georgia, recording notice N1/8/671, 23 March 2017, Para 9.

## VAT

Pursuant to the Tax Code of Georgia, Article 168(1) para F, the supply of crosses, candles, icons, books, calendars and other liturgical items by the Patriarchate of Georgia used only for religious purposes shall be exempt from VAT without the right to deduction. This privilege allows the Patriarchate to adjust prices for their products/services lower than the market price since such products and services do not include VAT, resulting in lower prices.

## Import fees

The State has the right to impose the following fees on the importation of goods:<sup>198</sup> **Import fee** – the rate of which is estimated as 5% or 12% of the customs value of the goods, or as a fixed rate; **VAT** – 18% of the amount of taxable import, **excise fee** – with differentiated excise rate.

Pursuant to the Constitutional Agreement between the State and the Georgian Orthodox Church,<sup>199</sup> certain items imported by the Church are exempt from fees. However, general conditions for the calculation of fees are applicable to goods and items imported by other religious organizations.<sup>200</sup>

According to the Revenue Service<sup>201</sup> the legal ground for the application of this exemption granted to the Georgian Patriarchate lies in the Constitutional Agreement between the State and the Church. As for other religious organizations, they are subject to the general legal norms of importation taxes.

## Property tax

Pursuant to the Constitutional Agreement between the Georgian state and the Georgian Apostolic Autocephalous Orthodox Church “religious goods and items produced by the Church, in-

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198 See Commodity code search system or Articles 197, 169, 188, 188(1) of the Tax Code of Georgia.

199 Article 6(5) of the Constitutional Agreement: religious goods and items produced by the Church, including preparation, import, delivery and donation of such goods and items, as well as property used for non-economic purposes and land are exempt from taxes.

200 Legal grounds for importation fees (import fee, excise, VAT) exemption are set forth in Articles 168, 194, and 199 of the Tax Code of Georgia.

201 Letter N 21-11/48169 of the Revenue Service of Georgia; 07/05/2019.

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cluding preparation, import, delivery and donation of such goods and items, as well as property used for non-economic purposes and land are exempt from taxes". Because of this norm stemming from the Constitutional Agreement, the Orthodox Church is exempt from property tax.

According to the Tax Code, property owned by the organization or property leased to the organization except for land and property used for non-economic purposes is exempt from property tax. This provision together with Article 6(5) of the Constitutional Agreement<sup>202</sup> releases the Orthodox Church (which is the biggest owner of land) from property tax. On the other hand, neither the Tax Code nor any other normative acts provide the same arrangements for other religious organizations which are obliged to pay property tax on plots of land that they own. Respectively, the Tax Code and the Constitutional Agreement grant the privilege to only the Orthodox Church. These arrangements create an environment whereby religious organizations, other than the Orthodox Church, suffer differential treatment.

On 7 May 2019, nine religious organizations<sup>203</sup> appealed to the Constitutional Court concerning Article 201, Part 1(A) of the Tax Code of Georgia.<sup>204</sup> The claim challenges the normative content of the contested norm allowing differential treatment of religious organizations other than the Georgian Orthodox Church, as a result of which minority religious organizations pay tax on land used for non-economic purposes. The claimants are represented by Tolerance and Diversity Institute (TDI) and the Law Clinic of Free University of Tbilisi. As of January 2020, the Court has not yet started proceedings in the case.

## The Constitutional Court regarding inequalities in the tax system

In 2015, religious organizations appealed to the Constitutional Court of Georgia<sup>205</sup> against the norms of the Tax Code which put them in an unequal situation. The claimants were represented by Tolerance and Diversity Institute (TDI) and the Law Clinic of Free University of Tbilisi.

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202 Religious goods and items produced by the Church, including preparation, import, delivery and donation of such goods and items, as well as property used for non-economic purposes and land are exempt from taxes.

203 LEPL Pentecostal Church of Georgia, LEPL Union of Georgian Muslims, LEPL Apostolic Administration of Latin Catholics of the Caucasus, LELP Transcaucasian Union of the Seventh-day Christian Adventist Church, N(N)LE Word of Life Church of Georgia, LEPL Evangelical-Lutheran Church of Georgia, LEPL Supreme Spiritual Administration of All Muslims of Georgia, LEPL Evangelical-Baptist Church of Georgia, LEPL Georgian Diocese of Armenian Apostolic Orthodox Holy Church.

204 Constitutional claim N1422 registered on 7 May 2019.

205 Constitutional claim N671.

On 23 March 2017, the Constitutional Court admitted, for consideration on merits only, part of the claim concerning the wording “ordered by the Patriarchate of Georgia” as laid down in Part 2(B) of Article 168 of the Tax Code of Georgia<sup>206</sup> and constitutionality of this wording vis-à-vis Article 14 of the Constitution of Georgia.<sup>207</sup> Based on the above norm, construction, restoration and painting in churches and temples are exempt from VAT if such works are ordered by the Patriarchate of Georgia.

The Constitutional Court did not admit, to consideration on merits, part of the claim which concerned Article 99 of the Tax Code (profits from the sale of goods and items used by the Patriarchate of Georgia for religious purpose are exempt from profit tax) and Article 168, Part I, para F (supply of religious items by the Patriarchate of Georgia is exempt from VAT without the right of deduction). According to the Constitutional Court, even though the contested norms specify conditions for the exemption specifically for the Georgian Patriarchate, the systemic analysis of the Tax Code nevertheless suggests that exemption conditions also apply to other religious organizations while conducting those types of activities that are specified by the law.<sup>208</sup>

On 3 July 2018, the Constitutional Court upheld the claim and ruled<sup>209</sup> the disputed norm of the Tax Code of Georgia (Article 168, Part II, para B which prescribes the exemption from VAT tax without the right to deduction construction, restoration and painting of temples and churches when such works are commissioned by the Patriarchate of Georgia) unconstitutional.<sup>210</sup> The Court stressed that the contested norm grants a privilege to the Patriarchate to purchase services for construction, restoration and painting of churches and temples under more favourable terms. Therefore, this arrangement creates an environment enabling differential treatment of the claimants.

The Court also stressed that recognition of the special role of the Orthodox Church acknowledges its historical contribution and does not serve to create a preferential legal condition in favour of Christian Orthodox religion.

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206 Article 11 of the current version of the Constitution of Georgia.

207 Recording notice N1/8/671 of 23 March 2017.

208 Recording notice 1/8/671, Georgian Constitutional Court, 23 March 2017.

209 Judgement N1/2/671 of the Constitutional Court of Georgia, 3 July 2018. Available in Georgian at: <https://constcourt.ge/ka/judicial-acts?legal=924>.

210 Constitutional validity of the words “ordered by the Georgian Patriarchate” as set forth in Article 168(2) Para B of the Tax Code of Georgia.

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The Court stated that discrimination can be eliminated by fully revoking privileges as well as by extending them to equal entities (religious organizations). The Parliament of Georgia was given reasonable time (six months from the day the Court issued its judgments including 31 December 2018) to amend the contested norms in the Tax Code and extend their coverage to all religious organizations. However, like in other similar cases, the Parliament chose not to do so and therefore, on 31 December 2018, the normative content of the norms ruled as unconstitutional by the court were declared invalid.

### 3.3. PRIVILEGES GRANTED TO THE PATRIARCHATE BY THE LEGAL FRAMEWORK FOR HIGHER EDUCATION

The Georgian Orthodox Church enjoys a series of privileges in the field of higher education. However, no such privileges are accorded to any other religious organization.

Pursuant to Article 5 of the Constitutional Agreement between the Georgian state and the Church, both parties of the agreement shall equally and bilaterally recognize the validity of documents, scientific degrees and titles issued and granted by respective higher education institutions as a proof of higher education. Both State and Church are authorized to carry out joint programs in the field of education while the State shall provide support to the functioning of the Church's education facilities.

The Law on Higher Education defines an academic degree as *a degree awarded to a person by a higher education institution or a higher Orthodox theological education institution upon completion of the relevant cycle of academic higher education.*<sup>211</sup>

As stated in the Law, a higher Orthodox theological institution may function as a structural unit of the Patriarchate of Georgia or separately, as a legal entity under private law.<sup>212</sup> The Law on Higher Education defines higher Orthodox theological education as a higher education course based on Orthodox doctrine and culture consisting of bachelor, master and doctoral theological programs. The higher Orthodox theological educational institution shall be founded by the Catholicos-Patriarch of

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<sup>211</sup> Law of Georgia on Higher Education, Article 2.

<sup>212</sup> Law of Georgia on Higher Education, Article 9(3).



All Georgia who is also authorized to approve the statute, structure (different from the structure defined by the law) and management bodies of the higher Orthodox theological institution.<sup>213</sup>

A higher education institution established by the State can be reorganized or liquidated by the Government of Georgia. However, terms and conditions set forth by the law do not apply to reorganization and liquidation of a higher Orthodox theological educational institution which can only be reorganized or liquidated by the Catholicos-Patriarch of All Georgia. After the liquidation, the property owned by the liquidated institution will be transferred to the Patriarchate of Georgia.<sup>214</sup> In addition, higher education programs offered by Orthodox theological institutions are exempt from adhering to terms and conditions of accreditation as laid down by the law.<sup>215</sup>

Generally, a person may acquire an academic position only through an open competition while academic positions at higher Orthodox theological educational institutions may be filled based on the rule defined by the Catholicos-Patriarch of All Georgia.<sup>216</sup> Strictly defined terms and conditions for selecting and appointing individuals for academic positions do not apply to higher Orthodox theological educational institutions.

In addition, the Orthodox Church is the only one which is authorized to establish a higher theological educational institution and implement higher education programs in theology.<sup>217</sup> Such differing treatment against religious organizations has been exhibited in specific cases.

In 2016, LEPL Supreme Spiritual Administration of Muslims requested the authorization of the right to open a higher Islamic spiritual educational institution from LEPL National Center of Education Quality Enhancement. The Center<sup>218</sup> denied the request on account of Article 47<sup>5</sup> of the Law on Higher Education which grants the right to implement theo-

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213 Law of Georgia on Higher Education, Article 31<sup>1</sup>.

214 Law of Georgia on Higher Education, Article 13.

215 Law of Georgia on Higher Education, Article 63.

216 Law of Georgia on Higher Education, Article 34.

217 Law of Georgia on Higher Education, Article 47.

218 Letter MES 2 1600169172 of the National Center for Educational Quality Enhancement, 22.02.2016.

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logical educational programs only to Orthodox theological educational institutions based on the Constitutional Agreement between the Georgian state and the Orthodox Church. The Center noted that if the applicant wishes to establish an authorized education institution and issue a state-approved document certifying the completion of the education cycle, they must do so by establishing a general, vocational or higher education institution.

### 3.4. DISCRIMINATORY POLICY ON HOLIDAYS AND RELIGIOUS CELEBRATIONS

The law regulating labour relations<sup>219</sup> defines secular (seven) and religious (ten) holidays. Religious holidays are celebrated only by the Georgian Orthodox Church. There are no holidays celebrated by religious and ethnic minorities living in Georgia recognized as public holidays by the law.

Grounds for the recognition of Orthodox religious celebrations as public holidays by the law are provided by the Constitutional Agreement between the Georgian state and the Church<sup>220</sup> according to which “great religious celebrations and Sunday are declared holidays” while specific holidays are defined by the Labour Code.<sup>221</sup>

The law does not make any reference to the possibility of marking religious holidays by groups or individuals of other religions and beliefs. According to the Labour Code of Georgia,<sup>222</sup> the employee has the right to request other days off instead of the holidays defined by the law, provided that such an arrangement is allowed by contract. Thus, religious minorities can use this rule of a general nature. However, whether or not they will be allowed to use this arrangement, greatly depends on the good will of their employer.

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219 Organic Law of Georgia “Labour Code of Georgia”.

220 Constitutional Agreement between the Georgian state and Georgian Apostolic Autocephalous Orthodox Church, Article 1(6).

221 Organic Law of Georgia “Labour Code of Georgia”, Article 20(1).

222 Organic Law of Georgia “Labour Code of Georgia”, Article 20(2).

It should also be noted that employees in private or public sectors<sup>223</sup> are subject to the same arrangement with respect to public holidays. Therefore, representatives of religious minority communities whether they work in public or private institutions, also students of general and higher education establishments, have difficulties in celebrating religious holidays of their religious community.

Attending centralized exams or competitions scheduled on Saturdays in educational institutions can be a challenge for students of certain religious communities (Jewish, Seventh-Day Adventists). There are many instances whereby the state and/or educational institutions ignore the interest of various religious communities when putting together a school curriculum.

According to the International Covenant on Civil and Political Rights of the United Nations,<sup>224</sup> “in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.

Pursuant to the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the right to freedom of thought, conscience, religion or belief includes the freedom to observe days of rest and to celebrate holidays and ceremonies in accordance with one’s religion or belief.<sup>225</sup> In the general comment N22, concerning the right to freedom of thought, conscience and religion, the Office of the High Commissioner for Human Rights<sup>226</sup> states that the freedom to manifest religion or belief extends to observance of holidays and days of rest.

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223 Law of Georgia on Public Service, Article 60(3): “The rest time of an officer and the public holidays are determined by the Organic Law of Georgia – the Labour Code of Georgia”.

224 International Covenant on Civil and Political Rights of 16 December 1966, Article 27.

225 United Nations General Assembly Resolution N36/55 of 25 November 1981, Article 6(H) (Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>).

226 General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) 30/07/93, par. 4 (Available at: <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2022.pdf>).

## CHAPTER IV. CRIMES MOTIVATED BY RELIGIOUS INTOLERANCE AND STATE POLICY

### 4.1. GENERAL OVERVIEW

Religious persecution, physical and verbal assault, illegal interference with religious rituals of representatives of religious minorities, are among the most pressing and systemic problems in Georgia. While over the course of many years Jehovah's Witnesses have been the primary targets of such persecution and discrimination, the past few years have seen Muslim communities also facing the problem.

Even though a new article was added to the Criminal Code of Georgia to qualify racial, religious, ethnic, national, and homophobic or transphobic intolerance as aggravating circumstances to a crime, there is a little evidence to show that courts apply this article.<sup>227</sup> The sense of the lack of protection of minorities is also fostered by impunity of perpetrators, inadequate qualification of alleged crimes and protracted investigations causing mistrust towards law enforcement agencies.

In a decision on the supervision of the execution of Judgments of the European Court of Human Rights, the Committee of Ministers of the Council of Europe<sup>228</sup> urged the Government of Georgia to seriously consider potentially discriminatory motives of crimes, especially if committed by law enforcement officials, as aggravating circumstances.

An analysis of the State authorities' responses to offences committed on grounds of religious intolerance suggests that not only does the State struggle to qualify crimes against religious minorities as motivated by religious hatred, but it is often a direct or indirect party responsible for the violation of the rights of religious minorities.

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<sup>227</sup> Criminal Code of Georgia, Article 53.

<sup>228</sup> Committee of Ministers of the Council of Europe, Decision CM/Del/Dec(2019)1355/H46-8, 25 September 2019 Available at: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1355/H46-8E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1355/H46-8E).

It is a positive step that in 2018, the Ministry of Internal Affairs (MIA) created a human rights protection and investigation quality monitoring department. On 12 January 2018, a decree of the Minister of Internal Affairs approved the statute of the department, according to which, one of the objectives is to ensure timely response and efficient investigation of hate crimes. To improve the quality of the investigation, the department is responsible to identify shortcomings in the process of investigation and provide recommendations for timely improvements.

However, it should be noted that the mandate of the department is limited only to monitoring investigations and providing recommendations and it has no investigative function itself. The European Commission against Racism and Intolerance (ECRI) in its 2016 report on Georgia urged the State to create a special unit to investigate crimes committed on racist, homophobic and transphobic grounds<sup>229</sup>. Since the newly created department has no such mandate, ECRI considers its recommendation to be partially implemented.<sup>230</sup> The Committee of Ministers of the Council of Europe also calls for the creation of a unit with an investigative function for hate crimes.<sup>231</sup>

Hate crimes are distinguished from other types of crime by the motive of the perpetrator; if a criminal justice system does not use the concept of “hate crime”, the motive is not recognized as an essential element of the offence and the existence of hate crimes will therefore remain invisible.<sup>232</sup> Sometimes when cases of hate crime are prosecuted, the motivation in selecting the victim is not mentioned. If this happens, the opportunity and potential for the perpetrator’s punishment to have a deterrent effect on others is lost. The danger is that the message to the victim and the perpetrator is that the State does not recognize the hate motive which caused the crime.<sup>233</sup> Such crimes send a message to members of the community sharing the characteristic that they, also, do not belong, and could equally be a target. Hate crimes, therefore, can damage the fabric of society and fragment communities.

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229 ECRI report on Georgia, (fifth monitoring cycle), 1 March, 2016, Available at: <https://rm.coe.int/fourth-report-on-georgia/16808b5773>.

230 ECRI Conclusions on the implementation of the Recommendations in Respect of Georgia Subject to Interim follow-up, p. 5. 5 March, 2019, Available at: <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680934a7e>.

231 Committee of Ministers of the Council of Europe, Decision CM/Del/Dec(2019)1355/H46-8, 20 September 2019.

232 Hate Crime Laws – a Practical Guide, OSCE Office for Democratic Institutions and Human Rights (ODIHR), p.11. <https://www.osce.org/odihhr/36426?download=true>.

233 *Ibid*: p. 28.

## 4.2. INVESTIGATION OF VIOLATION OF MUSLIMS' RIGHTS IN 2012-2016

From 2012 to 2016, eight large-scale violations of Muslims' rights living in different geographic areas of Georgia were identified. In seven cases, no charges were filed, while investigation of some of the cases are still ongoing. The main reason for confrontation from the side of Orthodox Christians and/or governments is directed mostly at holding religious rituals, keeping houses of worship, religious schools or other public expressions of religious faith.

In spite of the obvious systemic violence against Muslims, the State does not admit the acuteness and the scope of the problem. Specific actions are mostly focused on short-term and superficial resolution of conflicts rather than in-depth understanding, appropriate response and prevention of future violations.

The rights of Muslim citizens, as guaranteed by law, were harshly violated in Samtatskaro, Nigvziani, Tsintskaro villages, Kobuleti, and Adigeni municipality. However, the State has not responded effectively to any of these cases. The materials of the Nigvziani incident reveal that it involved interference with religious rituals, and death threats. Similar issues were revealed in the villages of Samtatskaro and Tsintskaro, where problems had been snowballing for some time. In each of these cases, the police had passively observed developments rather than taking proactive steps to protect the safety of the believers.

In Kobuleti, where the right to property and freedom of movement of students and school administration were violated, the police, with its inaction, encouraged continuous discrimination towards Muslims by representatives of the dominant religion.

In the cases of Tsikhisdziri, Chela and Mokhe, the rights of Muslims were violated by law enforcement officers, with possible elements of abuse of power. It should also be noted that in Mokhe village, public servants regularly used hate speech directed at the Muslim community.

The European Commission against Racism and Intolerance (ECRI) questions the validity of the investigation conducted by the Office of Chief Prosecutor concerning the abuse of

power and illegal arrest in the Mokhe case.<sup>234</sup> ECRI believes that conflicts reoccur due to the inappropriate responses on behalf of the State. The report also notes that the local government played a negative role in resolving the conflicts and supported the participants of the violent protest demonstration.<sup>235</sup>

These cases show that investigation processes do not meet the standards of transparent and effective investigation – Muslims which experienced physical violence were not recognized as victims, which makes it challenging to monitor the process of investigation and finally, deprives the Muslim community to access to justice.

At the same time, it should be noted that in some cases (Nigvziani, Tsintskaro, Samtatskaro, Chela villages) the State delegated the function of conflict resolution to the Georgian Orthodox Church Patriarchate and by doing so recognized the latter as an informal broker for resolving religious issues. Therefore, the State refused to undertake its positive obligations and protect the freedom of religion or belief of its citizens.

### **Nigvziani**

On 26 October 2012, in Nigvziani village of the Lanchkhuti municipality, where resettled Muslims from Achara comprise of 30-35% of the population, the local Orthodox Church, together with their religious leaders, protested against the Friday prayer of the Muslim community. According to local Muslims, they threatened to burn down the mosque and threatened their lives.

In a 2012 Parliamentary report, the Public Defender indicated that actions of the Orthodox congregation have not resulted in any adequate reaction from the side of the law enforcement agencies as they failed or chose not to ensure the safety of affected Muslims nor take any measures for the elimination of the violence on spot.<sup>236</sup>

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234 ECRI report on Georgia, (fifth monitoring cycle), 1 March, 2016, Para 59, Available at: <https://rm.coe.int/fourth-report-on-georgia/16808b5773>.

235 *Ibid*: Para 71.

236 See 2012 Report of Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, p. 295. Available at: <http://ombudsman.ge/res/docs/2019062409162429228.pdf>.

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On 11 December 2012, the Ministry of Internal Affairs started an investigation based on Article 155(1) of the Criminal Code of Georgia, on illegal interference in religious rituals. According to the information provided by the Ministry of Internal Affairs to TDI, on 14 May 2019,<sup>237</sup> the evidence gathered during the investigation of the criminal case ruled out the existence of any crimes listed in the Criminal Code of Georgia and **the case was closed on 22 February 2019.**

### Tsintskaro

Similar to the Nigvziani incident, a series of incidents, motivated by religious intolerance, occurred in the village of Tsintskaro, Tetrtskaro municipality during the period November-December 2012. On a number of occasions, the local Orthodox Christian community members protested against the Muslim community holding religious rituals. Some local Christians believed the confrontation was due to the unauthorized removal of a cross from the gate to a newly built cemetery.

On 30 November 2012, about 40 local Christians gathered at a local worship place and verbally assaulted Muslims including the Muslim clergy. Muslims and their families had their lives threatened and houses burnt down.<sup>238</sup>

According to the information provided to TDI by the Ministry of Internal Affairs on 14 May 2019,<sup>239</sup> **signs of a crime were not found from the evidence gathered from the case and therefore, an investigation was not launched.**

On 1 December 2012, the regional division of MIA of Tetrtskaro municipality started an investigation into the damage of the entrance gates of the local cemetery, a crime punishable under Article 187(1) of the Criminal Code (damage or destruction of property), however, due to the lack of evidence establishing crime elements, the **criminal case was dismissed on 25 December 2012.**

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237 Ministry of Internal Affairs of Georgia, letter N MIA 1 19 01225385, 14/05/2019.

238 2012 Report of Public Defender of Georgia, p. 295, Available at: <http://ombudsman.ge/res/docs/2019062409162429228.pdf>.

239 Letter of Ministry of Internal Affairs N MIA 1 19 01225385, 14/05/2019.



## Tsikhisdziri

On 14 April 2013, in Tsikhisdziri village, Kobuleti municipality, employees of the Ministry of Defense were stopping local drivers, demanding they show crosses as evidence of their Christian faith and thus, establishing they are not of the Muslim faith. Several officers insulted and physically assaulted Muslim citizens.

Batumi City Court found military police officers guilty of hooliganism<sup>240</sup> and violation of property rights.<sup>241</sup> In 2013, the Batumi City Court provided TDI with the decision of 20 August 2013, however, the decision did not contain any reference to the religious hate element of the incident. At sentencing, the Court ruled that there were no aggravating circumstances to the case (as stipulated by Article 53<sup>1</sup> of the Criminal Code of Georgia – religious intolerance as an aggravating circumstance).

Batumi City Court ruled one of the accused guilty based on Articles 160(2)A and 160(3)A/B (Violation of inviolability of domicile or of any other property through violence or threat of violence by more than one person or by using official position) and Article 239(2)A (hooliganism committed by the group with the preliminary agreement); while two other persons were found guilty according to articles 160(2)A and 160(3)A/B (Violation of inviolability of domicile or of any other property through violence or threat of violence by more than one person or by using official position).<sup>242</sup>

## Samtatskaro

On 24 May 2013, another incident took place due to religious differences in Dedoplistskaro municipality. For several months, Muslims in Samtatskaro village have suffered regular persecution. Finally, the religious leader of the local Muslims was forced to temporarily leave the village.

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240 Article 239(2)A of the Criminal Code of Georgia.

241 Articles 160(2)A and 160(3)A/B of the Criminal Code of Georgia.

242 On 20 August 2013 Batumi City Court completed a case examination. Available in Georgian at: [http://www.court.ge/courts/baTumis\\_saqalaqo\\_sasamarTlo/?page=25&id=779](http://www.court.ge/courts/baTumis_saqalaqo_sasamarTlo/?page=25&id=779).

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On 24 May 2013, Orthodox Christians insulted and attacked Muslims, blocked the road, intimidated and prevented them from holding Friday prayer.<sup>243</sup> The Muslim community was unable to conduct religious rituals on 31 May 2013 or 7 June 2013. Muslims were only allowed to pray on 21 June 2013. However, after the completion of the religious ritual, several dozen Orthodox believers gathered outside the house of the Muslim religious leader threatening and verbally abusing the religious leader and his family. Witnesses also reported physical violence taking place during the incident.<sup>244</sup>

An investigation into the Samtatskaro incidents was launched on 10 June 2013 on the grounds of unlawful interference with the performance of religious rites on 24 and 31 May 2013, as per article 155(1) of the Criminal Code of Georgia (Illegal interference into the performance of religious ritual). According to the information provided to TDI by the Ministry of Internal Affairs on 14 May 2019,<sup>245</sup> the majority of the witnesses did not confirm the fact of interference with religious rituals and the **investigation remains ongoing seven years after the incident.**<sup>246</sup>

## Chela

In the village Chela of Adigeni municipality, on 26 August 2013, Muslims' rights were grossly violated and their freedom of religion was restricted on a large-scale. Unlike the previous cases, the State was involved, participating in the violence and violation of Muslims rights.

On 26 August 2013, law enforcement officers forcefully removed a minaret from Chella mosque<sup>247</sup>. The Revenue Service explained that it was imported from Turkey and violated customs legislation; therefore, it had to be disassembled. According to witnesses, at least one helicopter, about 45 highly-reinforced vehicles, a truck, a crane, up to 200 law enforcement officers, including the Special Forces participated in the process, taking control of the village of only 50 households for three hours.

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243 Felix Corley, GEORGIA: Will police protect Muslim prayers from mobs?, Forum 18, 4 July, 2013, [http://www.forum18.org/archive.php?article\\_id=1854](http://www.forum18.org/archive.php?article_id=1854).

244 Video available at: <https://www.youtube.com/watch?v=coWjkArE6DU>.

245 Letter of Ministry of Internal Affairs N MIA 1 19 01225385, 14/05/2019.

246 Letter of Ministry of Internal Affairs N MIA 3 20 00652616, 11/03/2020.

247 Authorities Remove Minaret Forcibly, Sparking Muslim Community's Protest, Civil Georgia, Tbilisi, 26 August, 2013, <https://civil.ge/archives/186767>.

According to victims and witnesses, the Ministry of Internal Affairs' officers, in parallel to the demolition of the minaret, used force against Muslims who tried to protest the dismantlement. Six Muslims sustained body injuries of various severity.

Only three months later, on 27 November 2013, the Adigeni municipality granted permission for the reconstruction of the minaret in Chela village.

According to the information provided to TDI by the MIA,<sup>248</sup> the chief division of Samtskhe-Javakheti representation started an investigation into the resistance against the police officers stipulated under Article 353(2) of the Criminal Code of Georgia. Three Muslim citizens were arrested on grounds of resisting police officers and were charged with 2,000 GEL as a measure (later, an aversion agreement in exchange for 40 hours of public service), while two other persons were charged with 400 GEL<sup>249</sup> as an administrative penalty for violation of article 173.<sup>250</sup>

**As for the alleged abuse of power by the law enforcement officers and the use of force used against the Muslims, despite multiple requests, the Prosecutor's Office did not provide information to TDI on the investigation of the alleged crime committed by the representatives of the Ministry of Internal Affairs.**

### Kobuleti

On 10 September 2014, the local Orthodox community of Kobuleti Municipality protested against the opening of the boarding school for Muslim students. They blocked the entrance to the building and nailed a pig's head to the door.<sup>251</sup> Protests continued on 15 and 16 September, where roads leading to the building were blocked and students were unable to enter the school.

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248 Letter of Ministry of Internal Affairs MIA (11700579386 0) 10.03.2017.

249 2,000 GEL is approx. 700 USD and 640 EUR; 400 GEL is approx. 140 USD and 127 EUR.

250 Article 173 of the Code of Administrative Offenses of Georgia: "Non-compliance with a lawful order or demand of a law-enforcement officer, military service person, officer of the Special State Protection Service, enforcement police officer or an employee of the Special Penitentiary Service or an equal-status person, or commission of any other unlawful act against such person".

251 Pig's Head Nailed to Planned Muslim School in Kobuleti, Civil Georgia, Tbilisi, 10 September, 2014, <https://civil.ge/archives/187124>.

## Freedom of Religion or Belief in Georgia

The police were on permanent duty at the entrance of the building from 10-15 September. Even though they observed violation of fundamental rights of Muslim students and the school administration, they did not duly respond to any of these violations.

According to information provided to TDI by MIA on 14 May 2019<sup>252</sup> an investigation was launched on 10 September 2014, on the facts of a threat, a crime punishable under Article 151 of the Criminal Code. Officers at Kobuleti District Division interviewed up to 80 witnesses, inspected the scene and conducted relevant examinations. **As of January 2020, the investigation is ongoing.**<sup>253</sup>

In parallel, the administration, the staff and parents of the students of the boarding school appealed to Batumi City Court using an anti-discrimination mechanism stipulated by the Law on Elimination of All forms of Discrimination and requested the latter to oblige private persons to stop the discriminatory treatment of and interference into the school's operation. The applicants also demanded that MIA take effective safety measures.<sup>254</sup>

Courts of all three instances assessed the offenses on the grounds of religious intolerance as direct discrimination, however, the courts did not share the position of the claimants regarding discriminatory treatment from the side of the Ministry of Internal Affairs.

At the same time, Kobuleti Water Ltd., founded by Kobuleti Mayor's Office, which was responsible for connecting the water supply to the building of the boarding school did not conduct any works, which the Public Defender assessed as discrimination and recommended the company to immediately conduct such works in favor of the school.<sup>255</sup>

The Municipal Mayor's Office of Kobuleti did not implement the recommendation of the Public Defender, in which the Public Defender filed a claim against the municipal authorities to the court and requested fulfilment of the recommendation. The City Court of Batumi

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252 Letter of Ministry of Internal Affairs N MIA 1 19 01225385, 14/05/2019.

253 Letter of Ministry of Internal Affairs N MIA 3 20 00652616, 11/03/2020.

254 Interests of claimants in court are represented by Human Rights Education and Monitoring Center (EMC).

255 Recommendation of the Public Defender towards Municipality of Kobuleti and Kobuleti Water Ltd., 23 September 2016, available at: <https://bit.ly/38o9QUz>.

upheld the claim of the Public Defender on 12 October 2018 and requested the Mayor's Office of Kobuleti to fulfill appropriate works.

"Georgian Muslim Relations", an NGO along with seven Muslims living in Kobuleti petitioned the European Court of Human Rights in 2018.

### **Mokhe**

In October 2014, a gross violation of rights of Muslims on religious grounds took place following a confrontation between local Muslims and law enforcement bodies in Mokhe, village of Adigeni. A protest led by local Muslims against the dismantling of the former mosque, currently a disputed building, was violently dispersed by the Ministry of Internal Affairs. According to witnesses, law enforcement officers were verbally and physically harassing Muslims.

The conflict in Mokhe escalated around the issue related to the return of the so-called disputable building to the Muslim community. For years, the Muslim community had been requesting the local government to return and reconstruct the building, but in vain.<sup>256</sup> During the demonstration, the police detained 14 Muslim citizens. According to the information provided by the MIA to TDI,<sup>257</sup> three of these individuals were arrested for crimes stipulated by Article 353(2) of the Criminal Code of Georgia, resistance, threat or violence against police or other members of authorities, while another 11 persons were arrested for minor hooliganism and non-compliance with lawful order or demand of a law enforcement officer as stipulated by Articles 166 and 173 of the Administrative Offenses Code of Georgia. On 23 October 2014, based on the order of Prosecutor's Office, three Muslim citizens detained for criminal offence were released; however, the investigation against them has not been suspended. According to detained Muslims, law enforcement officers verbally and physically assaulted them both at the scene as well as during detention. A 2014 report of the Public Defender states that an external inspection of the detained citizens revealed signs of physical injuries caused on 22 October.<sup>258</sup>

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256 See Chapter 5: Property related problems of religious organizations, subchapter: *Problem related to the restitution of property confiscated by Soviet authorities.*

257 Letter of Ministry of Internal Affairs MIA (11700579386 0) 10.03.2017.

258 2014 Report of Public Defender, pg. 332.

**As for the alleged abuse of power by the law enforcement officers and the use of force against Muslims, despite multiple requests, the Prosecutor's Office did not provide information to TDI on the investigation of the alleged crime committed by the representatives of the Ministry of Internal Affairs.**

On 10 September 2016, four citizens filed a complaint to the European Court of Human Rights on grounds of abuse of power by police officers and inappropriate treatment.<sup>259</sup>

### Adigeni

The Muslim population of Adigeni village, Adigeni municipality, collected signatures requesting the allocation of land for a Muslim cemetery from the Council of Adigeni in May 2015. The Muslim community first encountered the problem a few years ago, when a suitable space could not be found. Due to the lack of a separate cemetery in the village, families were obliged to bury the deceased in other villages/regions. On 25 February 2015, State Agency for Religious Issues addressed the Adigeni Municipality with the recommendation to allocate land for a separate Muslim cemetery.

On 29 February 2016, during an outdoor public gathering in the center of the village to discuss the issue, a segment of the local Orthodox Christian community attacked Muslims inflicting body injuries on two citizens, while one citizen was taken to hospital due to severe cardiac arrest.

On 1 March 2016, Adigeni district division of MIA launched an investigation into the facts of persecution of the Muslim population of Adigeni village on the grounds of religion and faith. The MIA states that the investigation did not reveal any evidence of religious persecution, so the case was eventually closed. Six persons were charged with 100 GEL<sup>260</sup> administrative fine for disorderly conduct.<sup>261</sup>

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<sup>259</sup> European Court of Human Rights, application N 54217/16.

<sup>260</sup> 100 GEL is approx. 35 USD and 32 EUR.

<sup>261</sup> Letter of MIA #1621960, 1 July 2016.

### 4.3. CASE OF VAGIF AKPEROV, FORMER SHEIKH OF THE ADMINISTRATION OF ALL MUSLIMS OF GEORGIA

The forced resignation of Vagif Akperov, the former Sheikh of Administration of All Muslims of Georgia is a clear case of the State's intrusion into the activities of religious organizations. Vagif Akperov, whose interests are represented by TDI, has been a Muslim religious leader since 1996. He participates in different formats of interreligious dialogue and is engaged in various civic activities.

Sine 2011, Vagif Akperov held the position of Sheikh (highest religious position of Shia Muslims) of the Administration of All Muslims of Georgia<sup>262</sup> and served at the central Jumma mosque of Tbilisi. In 2012, after the change of the government, the State started exerting pressure over him and interfering with the autonomy of the religious organization.

On 27 December 2013, he was summoned to one of the buildings of the Ministry of Internal Affairs (so-called "Module" building), where, according to him, he was threatened with the dissemination of his personal information and ruining his reputation. MIA staff present at the meeting also hinted that his family would experience certain problems if he refused to resign, continuing to attend the mosque, talking to human rights organizations and media instead about this occurrence.

As a result of pressure, Akperov wrote a resignation letter, as dictated by the representative of MIA, in the same building.

According to the religious leader, on 9 January 2014, the letter that he wrote under duress appeared at the session of the religious council (a management body of the Administration) and the council decided to release the Sheikh of his duties.

Since 9 January 2014 (the day his resignation took effect), he has been repeatedly contacted by strangers (he assumes, MIA representatives), offering high-paid jobs in various entities (including Georgian Oil and Gas Corporation and Gardabani Thermal Power Station), to buy his silence. However, the former Sheikh has turned down all such offers.

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<sup>262</sup> Administration of All Muslims of Georgia is a religious entity which existed before 2011 amendments of the Civic Code of Georgia as a non-entrepreneurial non-commercial entity. After these amendments, the organization registered as the legal entity of public law.

## Freedom of Religion or Belief in Georgia

On 27 April 2016, after the joint appeal of the Public Defender of Georgia and Vagif Akperov,<sup>263</sup> the Prosecutor's Office of Georgia launched an investigation into the alleged abuse of power by a state official, according to article 333(3)C of the Criminal Code of Georgia. However, relevant actions have not been taken to ensure an effective investigation, and no legal measures have been achieved. **As of January 2020, Vagif Akperov has not been recognized as a victim, no one has been charged, the case remains open.**

The case of Vagif Akperov contains signs of crime and evidences the ineffective response from law enforcement agencies on cases concerning religious minorities as well as harsh intervention of the State into the activities of religious entities.

It is important to note that the elections of the Mufti (leader of Sunni direction of the organization) of the Administration of All Muslims of Georgia were held on 25 December 2019. Right after the elections, some staff left the Administration as a sign of protest. Representatives of Muslim community argued that the State once again harshly interfered into the autonomy of the organization and the elections were held with participation of the State's security service.<sup>264</sup>

## 4.4. ANALYSIS OF THE HUMAN RIGHTS VIOLATIONS OF JEHOVAH'S WITNESSES

The violation of rights of Jehovah's Witnesses is a long sustained issue in Georgia, the number of violent occurrences targeting them and the State's response indicates the poor situation pertaining to securing the freedom of religion or belief in Georgia. Among other reasons, due to the ineffective policy of the State, deeply rooted stereotypes and an active representation of Jehovah's Witnesses, they are frequently victims of violations on the grounds of religious intolerance.

The Organization of Jehovah's Witnesses tracks every case and tries to address the issues using legal mechanisms both on national as well as international levels.

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263 Rustavi 2: Case of Vagif Akperov, 2016, available at <http://tdi.ge/ge/multimedia/rustavi-2-vagip-akperovis-sakme>

264 Four employees of Administration of Muslims quit posts in protest, 25.12.2019 <https://1tv.ge/en/news/four-employees-of-administration-of-muslims-quit-posts-in-protest/>.



#### **Chapter IV. Crimes motivated by religious intolerance and State policy**

Crimes against this religious community often include physical violence, interference with religious rituals, damaging houses of worship, assets and religious literature. For years, the response of law enforcement bodies has raised red flags. In many cases, investigations are never launched, or are prolonged for unreasonable time, crimes are often qualified inadequately, and charges are rarely made.

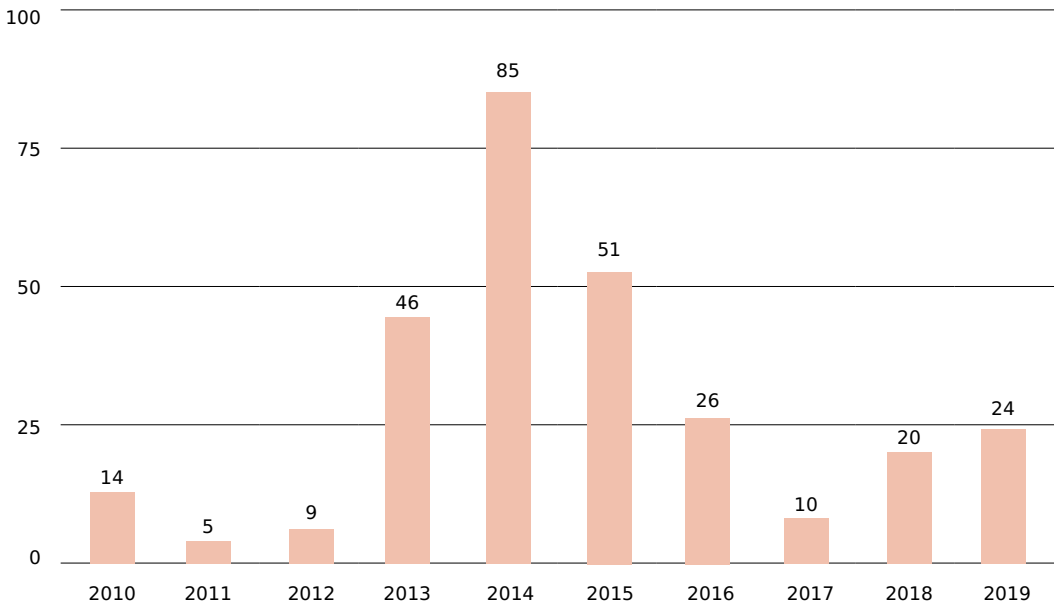
The past few years have seen persecution of Jehovah's Witnesses by Orthodox Christian religious leaders. An alleged discriminatory attitude towards Jehovah's Witnesses has been displayed by public servants, including law enforcement officers. Offences against this religious community, as a rule, are not one-off occurrences, as the perpetrators often repeatedly violate the rights of this community members on purpose.

Similar to violations against other religious groups, the reported cases involving violence against Jehovah's Witnesses have dramatically increased since 2013. This increase has been highlighted in the annual parliamentary reports of the Public Defender of Georgia as well as statistics conducted by the Jehovah's Witness community.

The case analysis suggests that the response of the State to crimes committed on the grounds of religious intolerance is inconsistent, inappropriate and delayed. Therefore, the State has failed to ensure the protection of constitutional rights of religious communities. At the same time, common courts, regardless of the motives of religious intolerance, often prescribe rather light sanctions.

It is to be noted that the situation regarding crimes committed against Jehovah's Witnesses improved in the period 2015-2019. During the previous years, investigations were not launched based on the correct articles of the Criminal Code which consider religious intolerance as the motive, but recently, more investigations are initiated based on Articles 155 (illegal interference with religious rituals) and 156 (persecution on the ground of religion or belief) of the Criminal Code of Georgia. However, regardless of an adequate qualification of the offense, the Prosecutor's Office still fails to assign the status of victim and to indict individuals for such crimes.

2010 – 2019 statistics of crimes committed against Jehovah’s Witnesses



**Remark:** In the statistical data below, the total numbers of criminal offences committed against Jehovah’s Witnesses are presented according to the years, 2010 to 2019. Each annual category consists of subcategories showing different types/cases of religious intolerance. For instance, one incident may include different types/cases of intolerance: physical violence along with property damage; or physical violence may be directed against more than one person, or it could be committed repeatedly by the same perpetrator. Consequently, the number of different types of religious intolerance and criminal offences in subcategories may exceed the number of total annual incidents.

**2019:** According to the information of the Jehovah’s Witness Christian Organization, **24 criminal offenses** have been committed against Jehovah’s Witnesses on the grounds of religious intolerance:

- ▶ Physical violence – 8
- ▶ Vandalism/destroying religious literature and/or stands, cars and other property – 7
- ▶ Vandalism/ damage of religious buildings – 5

- ▶ Interference with religious rituals – 11
- ▶ Other cases of religious intolerance – 1

**2018: 20 criminal offenses** on the grounds of religious intolerance:

- ▶ Physical violence – 8
- ▶ Vandalism/property damage – 8
- ▶ Discriminatory treatment of Jehovah's Witnesses by public servants – 1
- ▶ Other cases of religious intolerance – 3

**2017: 10 criminal offenses** on the grounds of religious intolerance:

- ▶ Physical violence – 5
- ▶ Vandalism/property damage – 2
- ▶ Discriminatory treatment from law enforcement bodies – 1
- ▶ Other cases of religious intolerance – 2

**2016: 26 criminal offenses** on the grounds of religious intolerance:

- ▶ Physical violence – 13
- ▶ Vandalism/property damage – 4
- ▶ Interference with religious rituals – 9

**2015: 51 offenses** on the grounds of religious intolerance:

- ▶ Physical violence – 18
- ▶ Vandalism/destroying religious literature and/or stands, cars and other property – 13
- ▶ Vandalism/damage of religious buildings – 12
- ▶ Interference with religious rituals – 25
- ▶ Other cases of religious intolerance – 12

**2014: 85 criminal offences** (maximum number) on the grounds of religious intolerance:

- ▶ Physical violence – 38
- ▶ Vandalism/damage of property – 26
- ▶ Interference with religious rituals – 14
- ▶ Discriminatory treatment from law-enforcers or other state officials – 3
- ▶ Other cases of religious intolerance – 11

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According to the information provided by the Jehovah's Witnesses Organization, offenses reached the peak with most of them involving physical assaults. When compared to previous years, the number of offenses targeting Jehovah's Witnesses' assets has increased. At the same time, physical violence was accompanied with verbal abuse, threats, undignified treatment, while the statements and actions of perpetrators displayed signs of religious motives.

Actions against Jehovah's Witnesses were often organized by religious persons (clergy of Georgian Orthodox Church), or with their active participation. Similar to previous years, law enforcement agencies refrained from effectively responding to and/or limiting their response to mere verbal warnings in clear cases of crime.

**2013:** The number of offenses against Jehovah's Witnesses significantly increased. **46 criminal offenses** on the grounds of religious intolerance:

- ▶ Physical Violence – 26;
- ▶ Vandalism/destroying religious literature and/or stands – 7;
- ▶ Vandalism/damage of religious buildings – 16
- ▶ Other cases of religious intolerance – 4

**2012: 9 Criminal offenses** on the grounds of religious intolerance:

- ▶ Physical violence – 3;
- ▶ Vandalism/property damage – 4.
- ▶ Other cases of religious intolerance – 2

**2011: 5 criminal offenses** on the grounds of religious intolerance:

- ▶ Physical violence – 4;
- ▶ Vandalism/property damage – 1.

**2010: 14 criminal offenses** on the grounds of religious intolerance:

- ▶ Physical violence – 11;
- ▶ Vandalism/property damage – 3.

## 4.5. COURT STATISTICS OF CRIMES COMMITTED ON THE GROUNDS OF RELIGIOUS INTOLERANCE

Available statistics of Courts examining cases of offenses motivated by religious intolerance is low. According to the Supreme Court of Georgia,<sup>265</sup> between 2014-2019:

For offenses regulated by **Article 155** (illegal interference with religious rituals) of the Criminal Code of Georgia:

- ▶ Courts of first instances only received four cases (1 in 2014, 1 in 2016, 2 in 2019)
- ▶ Courts of Appeal received one case (2015)
- ▶ The Cassation Court, during the above period of time, did not receive any criminal cases on the above-mentioned grounds.

There were guilty verdicts in one case in 2014, one case in 2016 and one case in 2019.

For offenses regulated by **Article 156** (persecution on religious grounds) of the Criminal Code of Georgia:

- ▶ Courts of first instances received 26 cases for examination (5 in 2014, 3 in 2015, 9 in 2016, 5 in 2017, none in 2018, 4 in 2019)
- ▶ Courts of Appeal received nine cases (2 in 2014, 2 in 2015, 3 in 2016, 1 in 2017, 2 in 2018).
- ▶ The Cassation Court, during the above period of time received one criminal case that was finalized in 2019.

There were guilty verdicts in 3 cases in 2014, 4 cases in 2015, 5 cases in 2016, 5 cases in 2017, 1 case in 2018 and 3 cases in 2019.

According to the Supreme Court of Georgia, in 2019 the following cases with grounds of religious discrimination were also filed for consideration in district (city) courts of Georgia:

- ▶ One case was filed under **Article 19-109** (2d) – attempted murder, motivated by racial, religious, national or ethnic intolerance.

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<sup>265</sup> Supreme Court of Georgia, Letter N 3-492-18 and N 3-27-20.

## Freedom of Religion or Belief in Georgia

- ▶ Two cases were filed for consideration under Article 11<sup>1</sup>–126 (2Z) – domestic crime, violence motivated by racial, religious, national or ethnic intolerance.

For offenses regulated through **Article 166** (interference with creation of political, public or religious unions and interference with their activities) of the Criminal Code of Georgia, none of the cases was received by common courts during the above period of time.

### 4.6. JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights (ECtHR) handed down important judgments concerning cases against Georgia with respect to the freedom of religion or belief. At present, all judgments concern the rights of Jehovah's Witnesses. In three of the cases, the ECtHR found a violation of the rights of claimants, while another case ended in settlement as the Georgian state recognized the violation of rights.

#### **97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia**

The first judgment of its kind, *97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*<sup>266</sup> was handed down by the ECtHR on 3 May 2007, which established a violation of Article 3 (prohibition of torture) and Article 9 (freedom of thought, conscience and religion), taken in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

On 17 October 1999, up to 120 Jehovah's Witnesses had a religious gathering in Gldani district, Tbilisi, where they were attacked by a group of extremist Orthodox believers led by Basil Mkalavishvili, a defrocked priest. Police officials at the scene did not react to the violence. The State's failure to act encouraged religious extremism and provoked further attacks.

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<sup>266</sup> European Court of Human Rights, Application no. 71156/01.

The ECtHR noted that the inaction of the law enforcement bodies which were responsible for conducting the criminal investigation minimized the effectiveness of any possible appeal mechanisms.

Competent bodies failed to fulfil their responsibilities in taking adequate measures to ensure that the group of Orthodox extremists demonstrated tolerance towards the claimant religious group, allowing them to exercise religious freedom.

The Court considered that the negligent attitude on the part of the police and investigation authorities, enabled Basil Mkalavishvili to continue to advocate hatred through the media and to pursue acts of religiously-motivated violence.

### **Begheluri and others v. Georgia**

On 7 October 2014, the European Court of Human Rights handed down another judgment in the case *Begheluri and others v. Georgia*.<sup>267</sup>

A collective application submitted to the ECtHR in 2002 described several attacks, with special attention paid to the case of 8 September 2000, involving a dispersal of a gathering of up to 700 Jehovah's Witnesses by extremist groups.

The application brings together four cases of violence on grounds of religious intolerance, with the direct involvement of police officers and other representatives of authorities. It also includes four other cases, where indirect involvement of these individuals was confirmed. In total, up to 30 cases are described and despite claimants requesting an investigation to be launched in each case, their complaints were refused. The applicants produced statements of more than 100 victims and witnesses of the alleged violence, photographs of police officers failing to take action while attacks were taking place, photographs of the injured applicants, as well as video recordings and photographs of Jehovah's Witnesses' meeting places that had been pillaged and ransacked.

In the given case, the ECtHR concluded that the relevant authorities were ineffective in preventing and stopping the religiously motivated violence. Through the conduct of their

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<sup>267</sup> European Court of Human Rights, Application no. 28490/02.

## **Freedom of Religion or Belief in Georgia**

agents, who either participated directly in the attacks on Jehovah's Witnesses or by their acquiescence and connivance into the unlawful activities of private individuals, the Georgian authorities created a climate of impunity, which ultimately encouraged other attacks against Jehovah's Witnesses throughout the country. Furthermore, the Government failed to redress the violations, thereby neglecting the inherent preventive and deterrent effect in relation to future violations against Jehovah's Witnesses. The relevant authorities failed in their duty to take necessary measures to ensure that Jehovah's Witnesses were able to exercise their right to freedom of religion. Various forms of violence directed against the applicants either by State agents or private individuals were instigated by a bigoted attitude towards the Jehovah's Witness community. Secondly, the very same discriminatory state of mind was at the core of the relevant public authorities' failure to investigate the incidents of religiously motivated violence in an effective manner, which confirmed that the authorities, at least, tolerated that violence.

The ECtHR concluded that there were violations of Article 9 (freedom of thought, conscience and religion) and Article 3 (prohibition of torture) taken in conjunction with Article 14 (prohibition of discrimination) of the Convention.

## **Tsartsidze and others v. Georgia**

On 17 January 2017, the European Court of Human Rights issued another judgment in the case *Tsartsidze and others v. Georgia*,<sup>268</sup> establishing a violation of Article 9 (freedom of religion) of the Convention taken separately, and in conjunction with Article 14 (prohibition of discrimination).

The application of three cases taking place during 2000-2001 was filed at the ECtHR in 2004. The applicants complained about a breach of the Convention on account of the religiously motivated violence to which they had been subjected; also on the failure of the law enforcement to prevent the violence, and the domestic courts' failure to provide redress for the violations.

At no stage of the proceedings did the domestic courts make any attempt to establish the possible discriminatory motive behind the acts of the police officers. Even more to the point,

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<sup>268</sup> European Court of Human Rights, Application no. 18766/04.



they did not ask the police why, instead of dispersing the religious gathering, they had not taken any measures to ensure that the applicants' religious rights had been adequately protected via, *inter alia*, ensuring the meeting could be conducted safely and securely.

### **Gabunia and others v. Georgia**

In the case of *Gabunia and others v. Georgia*<sup>269</sup> submitted in 2005, the applicants complained under Article 9 of the Convention taken separately, and in conjunction with Article 14 of a breach of their right to freely practice their religion. The claimants referred to religious persecution and mob attacks that took place between 1999-2003. The Government of Georgia acknowledged the violation of freedom of religion or belief and freedom from discrimination against Jehovah's Witnesses and asked the Court to strike out the case. As a result, the parties came to an agreement and thus, the State managed to avert the fourth judgment of the ECtHR against Georgia on violations of freedom of religion and belief.<sup>270</sup>

It should be noted that the Committee of Ministers of the Council of Europe, which oversees the execution of judgments of the ECtHR by member states, still does not consider the judgments on the above cases as executed. In its resolution of 25 September 2019,<sup>271</sup> the Committee of Ministers noted that the Georgian state still needs to ensure full implementation of individual measures on these cases. The Committee urged the Georgian Government to give full effect to the criminal law protection against crimes based on discriminatory motives, in particular when committed by law enforcement officials, through a general policy of considering such motives as aggravating circumstances for punishment or considering such crimes as serious crimes, and through more effective investigations.

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269 European Court of Human Rights, Application no. 37276/05.

270 European Court of Human Rights Accepts Georgia's Admission of Guilt. 24 October, 2017, <https://www.jw.org/en/news/legal/by-region/georgia/echr-accepts-georgias-admission-of-guilt/>.

271 Committee of Ministers of Council of Europe, Resolution CM/Del/Dec(2019)1355/H46-8, 25 September 2019 Available at: [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1355/H46-8E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1355/H46-8E).

## CHAPTER V. PROBLEMS RELATED TO PROPERTY OF RELIGIOUS ORGANIZATIONS

Among the major problems faced by religious minorities is the issue related to ownership of property, including houses of worship. They face barriers in attempting to regain property confiscated by Soviet authorities or obtain permits for the construction of new houses of worship. This problem is coupled with discrimination found in Georgian legislation which imposes restrictions on religious organizations, except for the Patriarchate of the Georgian Orthodox Church, to claim back or purchase property.<sup>272</sup>

### 5.1. PROBLEM OF RESTITUTION OF PROPERTY CONFISCATED BY SOVIET AUTHORITIES

In the 20<sup>th</sup> century, Soviet authorities confiscated all types of property including houses of worship owned by religious communities. After the collapse of the Soviet Union in 1991 and Georgia's independence, only the Georgian Orthodox Church was able to restore their ownership over confiscated property while other religious groups were not given such a possibility.

Pursuant to Article 11 of the Constitutional Agreement of 2002 between the Georgian state and the Georgian Apostolic Autocephalous Orthodox Church, the State recognizes the material and moral damages sustained by the Orthodox Church during the 19<sup>th</sup> and 20<sup>th</sup> centuries. By signing the Agreement, the State, as a factual owner of confiscated property, took over the responsibility to partially compensate for the material loss sustained by the Church. Since 2002, the State has provided annual allocations from the central budget to the Georgian Patriarchate.<sup>273</sup> As for property of the Orthodox Church, pursuant to Article 7 of the Constitutional Agreement, "the State recognizes Orthodox churches and cathedrals, monasteries (functional and non-functional), their ruins and land on which such buildings are located as the property of the Church". In addition to the property that had belonged to the Orthodox Church, the lat-

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<sup>272</sup> For further information on discriminatory norms in the Georgian legislation see Chapter III. Inequality in the Georgian legislation.

<sup>273</sup> For more information on these issues see Chapter I. The State and religion, sub-chapter: policy and practice of state funding for religious organizations.

ter also received property originally owned by other religious groups. The Orthodox Church uses these assets and refuses to yield them to original owners.

After the collapse of the Soviet Union, the Georgian state came to own most of the confiscated property. However, the authorities have not yet demonstrated a will to return the property to other religious communities. In fact, since Georgia's independence until the present day, no legal or political measures have been taken to ensure the return of houses of worship to religious minorities. Even though governmental and interreligious bodies have been set up on several occasions to trace the origins and historical owners of contested religious buildings, these bodies remained a formality without having undertaken any effective measures.

In 2014, a recommendatory commission related to finances and property of religious communities was set up at the State Agency for Religious Issues.<sup>274</sup> According to its mandate, which is rather vague, the commission is assigned to review matters in relation to the transfer of religious buildings and the issuing of construction permits to religious organizations. However, there are no legal grounds which would authorize either the commission or the Agency itself to interfere in administrative proceedings related to the disposition of the State-owned property or issuance of construction permits.

The process of transferring houses of worship to religious groups has been repeatedly displayed in reports prepared by the State Agency for Religious Issues as the return of the property confiscated during the Soviet totalitarian regime.<sup>275</sup> In fact, all those transactions that the administrative body label as "return" constitute a mere transfer of property however, without possession. The use of this term by the State is misleading to many. For instance, in its reports the Agency points out that during 2014-2017, 170 mosques were handed over to the Muslim community<sup>276</sup> which is distorted as the Muslim community have not received any property in ownership.

Importantly, the majority of religious buildings are monuments of cultural heritage. While the problem of historical and confessional ownership remains in limbo, the property is un-

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274 Order 6/1 of 2014 of the head of the State Agency for Religious Issues.

275 2015 Report of the State Agency for Religious Issues. Available in Georgian at: <https://bit.ly/2l637Df>.

276 2016-2017 report of the State Agency for Religious Issues, available in Georgian at: <https://bit.ly/2TbkS96>.

## Freedom of Religion or Belief in Georgia

der a looming risk of being destroyed despite the State being officially responsible for its maintenance. Meanwhile, the historical buildings transferred to the Georgian Patriarchate have lost their authenticity with the original characteristics of the buildings erased to remove evidence of their historical and confessional origin.

Due to the absence of a restitution policy:

- ▶ The State has not conducted an inventory/calculation of damages sustained by religious organizations under the Soviet regime;
- ▶ Nor has the State developed any policy with respect to compensation of damages or return of community property;
- ▶ There are no legal regulations which would allow religious groups to demand that religious property be returned to them and/or compensated against;
- ▶ Ownership of numerous religious buildings contested by more than one religious organization remain unresolved;
- ▶ The absence of a restitution policy puts religious organizations under unequal conditions vis-à-vis the dominant religious group. As of today, the Georgian Patriarchate continues to receive religious property that had been historically owned by the latter as well as new State-owned property and assets belonging to other religious groups.

In a third opinion on Georgia of 7 March 2019, the Advisory Committee on the Framework Convention for the Protection of National Minorities points out that religious minorities are confronted with structural discrimination in accessing funding possibilities and places of worship. Restitution procedures and construction permit procedures in relation to places of worship are not sufficiently transparent and are not based on clear and objective legal criteria. The Committee calls on the State authorities to ensure that the process of restitution of property to religious communities is carried out in a non-discriminatory manner.<sup>277</sup>

Problems in relation to confiscated property affect the Armenian Apostolic, Catholic, Evangelical-Lutheran, Muslim and Jewish religious communities the most.

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<sup>277</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities. Third Opinion on Georgia. Para 17 and 88, Available at: <https://bit.ly/32vJb5V>.

## Armenian Apostolic Orthodox Church

The Georgian diocese of the Armenian Apostolic Orthodox Holy Church lost numerous religious buildings to the Soviet authorities. Part of this property has been destroyed while the remaining part remains under the State's ownership. The issues related to the return of up to 10 religious buildings have remained a pressing problem over the course of many years.<sup>278</sup> The majority of the houses of worship are enlisted as monuments of cultural heritage and currently are part of the State's property. These buildings are often referred to as "contested" since the Georgian Patriarchate has also claimed the property right. The Patriarchate successfully managed to obtain the property right for one Armenian Church in 2017.<sup>279</sup>

In 2013, an interagency commission was set up to shed light over the situation with respect to Armenian religious buildings.<sup>280</sup> However, on 25 June 2015, an ordinance of 28 June 2013 which provided the grounds for setting up the commission, was revoked without yielding any tangible results.

It should be noted that the current condition of Armenian religious buildings requires immediate attention. For instance, the Shamkhoretsots Surb Astvatsatsin church in Tbilisi's Avlabari district has fallen into ruin. Since 2007, the church has held the status of a cultural heritage site and it is located in the Tbilisi cultural heritage protection zone. In 2017, the Tbilisi City Hall issued a construction permit for a several-storey building next to the church (the distance between the buildings is 4-5 metres), which blatantly violated the standards for the protection of cultural heritage sites and threatened the steadiness of the already crumbled church<sup>281</sup>. In 2009, the Mughnetsots Surb Gevorg on Akhospireli street, Tbilisi, collapsed. Similarly, in 2002, the Surb Nshan church in Old Tbilisi sustained considerable damage as a result of fire. Again, in 2012, a fire broke out in suspicious circumstances and the main pillar supporting the dome collapsed.

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278 These buildings include: in Tbilisi – Surb Nshan, Mughnetsots Surb Gevorg, Norashen Surb Astvatsatsin, Shamkhoretsots Surb Astvatsatsin, Surb Ejmiatsin, Erevantsots Surb Minas, Tandoyants Surb Astvatsatsin and Surb Nshan (Akhaltzikhe).

279 Tolerance and Diversity Institute: Government of Georgia transferred Tandoyants Temple to the Orthodox Church, <https://bit.ly/2OUb8Pr> 17 December 2017.

280 Resolution N671 of the Government of Georgia on setting up the interagency commission for the study of matters related to privately owned immovable property adjacent to Mughnis, Surb Minas and Surb Nshan churches. 28 June 2013.

281 Tolerance and Diversity Institute, Construction next to the historical Armenian Church, 11 September 2017, Available in Georgian: <https://bit.ly/2PowVyH>.

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In addition, there have been several attempts to erase the traces of the Armenian culture in churches of Armenian origin. In 2008, an Orthodox priest moved the gravestones of Armenians buried in the yard of Norashen, one of the contested churches in Tbilisi. Furthermore, unidentified persons placed a gravestone with Georgian inscription in the yard of the church. The dais of the church was also destroyed.

In the second report on the Framework Convention for the Protection of National Minorities, the Georgian Government stated that in 2011, the paperwork for the reconstruction of the Armenian churches of Mughnisi (also known as Mughnetsots Surb Gevorg), Surb Nshan and Norashen was finalized.<sup>282</sup> According to a representative of the Armenian Apostolic Church, State authorities carried out reinforcement work on Norashen church in Tbilisi. According to the third report on the Framework Convention for the Protection of National Minorities, rehabilitation works on Norashen Virgin Mary Church were completed. The works had been funded by the Foundation for the Rescue and Preservation of Historical Monuments of Georgia.<sup>283</sup>

The cases of Armenian churches, Tandoyants and Surb Nshan reveal the dire consequences caused by the absence of a restitution policy, differential treatment of religious minority communities and the State's negligence towards these issues.

### Case of Tandoyants Church

An Armenian church known as Tandoyants Surb Astvatsatsin is located at 38 Agmashenebeli Avenue, Tbilisi. Before Soviet Occupation, the church belonged to the Armenian Apostolic Orthodox Church. In 1924, the Soviet totalitarian regime confiscated the property and shut down the church. The historical and confessional origin of the church is proved by official documents issued by the State as well as numerous historical and archived sources.

Until 2017, the church was enlisted under the State's ownership. However, in 2017, the State transferred the church to the Patriarchate. More specifically, by order of the National Agen-

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<sup>282</sup>Second report submitted by Georgia pursuant to Article 25, paragraph 2 of the framework convention for the protection of national minorities. Council of Europe, 2012. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008b5b5>

<sup>283</sup>Third report submitted by Georgia pursuant to Article 25, paragraph 2 of the framework convention for the protection of national minorities. Council of Europe, 2017. Available at: <https://rm.coe.int/third-state-report-georgia/168075fc5e>

cy of State Property of 10 July 2016, the State's entitlement to the church was revoked as per request of the Patriarchate of the Orthodox Church of Georgia. On 18 July 2017, the National Agency of Public Registry made a decision to officially register the property under the Patriarchate's ownership. The decision-making body on the ownership of the property had not even looked into the confessional origin of the building.

Upon gaining entitlement to the ownership of Tandoyants Surb Astvatsatsin, the Patriarchate immediately started excavations and cleaning the church's ground. It should be noted that the church is subject to regulations stipulated by Law of Georgia on Cultural Heritage, according to which no works shall be carried out in relation to the church without a special permit.

On 5 June 2018, the Georgian Diocese of Armenian Apostolic Church lodged a complaint<sup>284</sup> against the National Agency of Public Registry at Tbilisi City Court demanding that the entitlement of the Georgian Patriarchate to the ownership of Tandoyants Surb Astvatsatsin be revoked. Simultaneously, the Georgian Diocese also filed a complaint against the State Agency of State Property in relation to the latter's decision by which the Patriarchate had encountered no obstacles while claiming entitlement over the church.

By a decision of 24 January 2019, the Tbilisi City Court ruled<sup>285</sup> against admitting the claim against the National Agency of State Property for consideration on merits on grounds of inadmissibility. The Court held that the Armenian Apostolic Church had no legal interest in this case. Therefore, the court proceedings on the claim were terminated.

The Armenian Apostolic Church challenged the Court's decision in the Tbilisi Court of Appeals. However, on 29 March 2019,<sup>286</sup> the Appeals Chamber voted against the appeal and upheld the decision of the City Court.

The legal proceedings against the National Agency of Public Registry were halted until the finalization of proceedings against the National Agency of State Property. On 12 December 2019, the Administrative Cases Panel of Tbilisi City Court decided against admitting the claim for consideration on merits. The legal proceedings of this case are ongoing.

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284 Interests of the Georgian Diocese of the Armenian Apostolic Orthodox Church are represented by TDI and EMC.

285 Judgement of Administrative Cases Panel of Tbilisi City Court, 24 January 2019. Case N3/155-18.

286 Tbilisi Court of Appeals, Chamber of Administrative Cases, 29 March 2019. Case N 3ð/705-19.

## Freedom of Religion or Belief in Georgia

Importantly, the case of Tandoyants Surb Astvatsatsin is rather significant as a judicial precedent with respect to the restitution of religious buildings in Georgia as it allowed a religious association to engage in the legal battle over winning the right to historical property. On the other hand, the judicial authorities have a responsibility of great importance to deliberate on issues around the restitution of historical property, ensuring the protection of the property right and freedom of religion or belief. What is particularly concerning is the Court's decision not to admit the case for consideration on merits. The Court decided against recognizing the Armenian Apostolic Church as a subject with legal interest with the right to challenge the lawfulness of the transfer of its historical property to another religious organization.<sup>287</sup>

### Case of Surb Nshan Church

The Armenian church of Surb Nshan at 6 Sultnishani street, Tbilisi is an 18th century monument of cultural heritage. Like other religious buildings, the church was confiscated from the Armenian Apostolic Church by the Soviet regime and was put to use for other various purposes. After the restoration of Georgia's independence, the church became State property and remains so to this day.

By an order of Tbilisi municipality of September 2016, an owner of the land adjacent to the grounds of Surb Nshan was allowed to proceed with the construction which put the church, already in a dire state, under great danger. By issuing the above order, the Tbilisi City Hall violated the interests of the Armenian Apostolic Church to maintain authenticity of a historical house of worship and protect the monument of cultural heritage.

On 10 April 2018, the Armenian Apostolic Church filed a complaint against Tbilisi City Hall to Tbilisi City Court<sup>288</sup> and demanded that the order of the Mayor of Tbilisi on a zonal agreement be revoked.

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<sup>287</sup> Justification part of the decision of Tbilisi City Court states that "the claimant failed to produce any document confirming their entitlement to contested immovable property which would generate any kind of legal right in relation to the contested property should the challenged administrative-legal act be revoked [...] The claimant failed to explain [...] how the claim will protect their rightful interests [...] if the administrative-legal act in question is rendered invalid [...] The court believes that there is no interest recognized and protected by law which generates entitlement of the claimant with respect to subject matter of the claim." (Judgement of Administrative Cases Panel of Tbilisi City Court, 24 January 2019, case N3/1555-18).

<sup>288</sup> Interests of the Georgian Diocese of the Armenian Apostolic Orthodox Holy Church are represented by TDI.



On 18 January 2019, the Administrative Cases Panel at Tbilisi City Court ruled against proceeding with the case.<sup>289</sup> Similar to the case of Tandoyants Surb Astvatsatsin church, the Court refused to recognize the Armenian Apostolic Church as a subject with legal interest whose rights and interests may be violated by the order issued by Tbilisi City Hall.

In March 2019, the Armenian Apostolic Church appealed against the judgment to the Tbilisi Court of Appeals. As of January 2020, proceedings on the case are still ongoing.

### The Catholic Church

The Catholic Church lost a significant portion of its property under the Soviet totalitarian regime. The majority of the property has not yet been regained. The Catholic Church has been trying to reclaim ownership over seven churches in six locations, Gori, Ivlița village of Akhaltsikhe municipality, in the villages of Ude and Buzmareti of Adigeni municipality, as well as in Kutaisi and Batumi. As of today, these houses of worship are owned by the Georgian Orthodox Church and are enlisted as monuments of cultural heritage.

It should be noted that in 2001, the Roman-Catholic Church, acting in the name of *Savardi*, a legal entity under private law, attempted to reclaim Kutaisi Catholic Church that had been transferred to the Orthodox Church through a legal dispute. However, the Supreme Court of Georgia argued the contested church was Orthodox since the church was used by the Orthodox Church, ignoring the fact that up until 1939 the church in question had been religious property of the Catholic Community.

Importantly, direct and exclusive ties between *Savardi* and Catholic religious organizations active in the past in Georgia had been recognized by the Holy See and confirmed by the

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289 Justification part of a decision by Tbilisi City Court states that “the claimant fails to provide evidence for direct and immediate damage sustained by them or violation of their rights and interests caused by the contested individual administrative-legal act. In addition, case files do not include any document which would prove the right of the claimant to the immovable property in question and the presence of which would qualify the claimant as a subject with legal interest in relation to the subject matter of the complaint. Considering the above said, their demand that the contested act be revoked is inadmissible since, as indicated above, the presence of legal interest, which is the paramount requirement of the law, cannot be established”. (see Judgment of Administrative Cases Panel of Tbilisi City Court, 16 January, 2019. Case N3/2172-18).

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Apostolic Administrator of the Catholic Church in the South Caucasus. However, the Court did not qualify the claimant as the legal successor of Catholic organization.

The Orthodox Church's attempts to change the appearance of Catholic churches have gone unnoticed by the State even though the churches are enlisted as monuments of cultural heritage. For instance, in 2012, the local Orthodox clergy in Ude village took over repairing the dome of Ude Catholic church at their own will. The State did not undertake any measures to ensure that the building maintains its historical appearance.

The Armenian Catholic Church of Batumi was built in 1877. After Soviet Occupation, the church was shut down. On the restoration of Georgia's independence, the church was not returned to the religious community. The monument, enlisted as a cultural heritage site, is now owned by the Georgian Patriarchate. In 2017, the roof of the building collapsed and the entire building is considerably damaged.

The Holy Mother Virgin Nativity Cathedral in Batumi was built in 1897-1902 with the support of a Catholic parishioner and benefactor, Stepane Zubalashvili. The cathedral was shut down under the Soviet rule. In the 1980s, the cathedral was rehabilitated, and its murals were restored to their original condition. Since 1989, the cathedral has been enlisted as the property of the Georgian Orthodox Church and Catholic parishioners are not allowed to perform services in the church. Part of the original frescoes in the church are damaged and murals on the walls and pillars have been removed. The Catholic Church has long been demanding that measures be taken to preserve the church, which is a monument of cultural heritage, and its historical appearance maintained, but to no avail.

## **The Evangelical-Lutheran Church**

The history of Evangelical-Lutheran houses of worship and other buildings goes back to 1817-1818 when German colonists started settling in Georgia.<sup>290</sup> German settlers constructed churches and elementary schools. For example, a small Lutheran church has functioned in Neu-Tiflis since 1834. Later on, the community started the construction of a larger Lu-

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<sup>290</sup> *Evangelical-Lutheran churches in Georgia*, Nestan Tatarashvili, 200th anniversary of the Evangelical-Lutheran Church of Georgia and South Caucasus, P.82 (Available in Georgian).

theran cathedral. By the end of 1819, there were several German settlements, Marienfield, Neu-Tiflis, Alexanderdorf, Petersdorf, Elisabethhalle, Katarinenfield followed by other settlements in other parts of Georgia.

Lutheran religious communities and parishes eventually ceased to exist under the Soviet rule. Churches built by German colonists were destroyed or had their functions changed. According to the information provided by the Evangelical-Lutheran Church, there are around 500 members of the community with the majority living in Tbilisi and Bolnisi municipalities.

Currently, several buildings and ruins remain which are of Evangelical-Lutheran origin and belonged to Georgia's German community before Soviet Occupation. Since the restoration of the country's independence Evangelical-Lutheran Church has repeatedly demanded the return of its historical property. Representatives of the Church reported that in 2015 they provided a list of historical buildings to the State Agency for Religious Issues and demanded that they be either returned the property or compensated. However, there has been no follow up to the letter.

**Neu Tiflis Church of Peter and Paul** opened in 1946 on Marjanishvili Square, Tbilisi (now, there is a residential building where the church once stood) was first shut down by the Soviet authorities in 1946 who forced German captives to dismantle the church. **St Paul Lutheran Church of Alexanderdorf** built in the 19<sup>th</sup> century no longer exists in Tbilisi. **Marienfield** church still stands in the village Sartichala, Gardabani municipality, however, it is difficult to discern the origin of the church since its appearance has been changed and its authenticity lost. The Lutheran Church of **Elisabethhalle** and a German cemetery can still be traced in the village of Asureti, Tetrtskaro municipality. The church is enlisted as a monument of cultural heritage. Part of the building is currently used for Orthodox liturgy. According to the leadership of the Evangelical-Lutheran Church, in 2009, they offered the Georgian Patriarchate to work jointly on the rehabilitation of Asureti Church and arrange space for both denominations in the church. However, the Patriarchate turned down the offer. In 2017, the Union of the German Culture Heritage Preservation in the South Caucasus, financially supported by the German Ministry of Foreign Affairs restored the roof of the **Lutheran church of Alexanderfield** in the village Trialeti, Tsalka municipality. **The Lutheran church of Katerinenfield** is now municipal property while the **Lutheran church of Traubenberg** and the community center now homes a local house of culture. The German cemetery is still preserved in the vicinity.

## **Muslim community**

The Muslim community lost numerous mosques during the Soviet regime. Part of these buildings are now destroyed while some of them have had their functions changed. For instance, the Shah Ismail Blue Mosque was destroyed in 1951 together with the Metekhi bridge. Most of the surviving mosques are currently State-owned.

Before Soviet Occupation, there were seven mosques functioning in Tbilisi together with a Shia mosque. As of today, only a Sunni mosque known as Juma Mosque (at Botanikuri street), remains, which is a place of worship for both Sunni and Shia Muslim communities.

According to the 2016-2017 report of the State Agency for Religious Issues, the State returned 170 mosques to the Muslim community all over Georgia.<sup>291</sup> However, this information is misleading: what the Agency labels as “transfer/return” is in fact the transfer of property without the right to ownership. Under these circumstances, a religious organization is restricted in their disposition of property (e.g. they cannot sell or carry out rehabilitation work on the property). In addition, the State retains the right to take back the transferred property.

The Muslim community have not yet been afforded the right to carry out work on 20 religious buildings in Achara which are about to collapse due to lack of care and maintenance.

The developments unfolding since 2014 around the mosque in the village of Mokhe, Adigeni municipality, deserves close attention in light of restitution policy.

### **The problem of the contested building in village Mokhe**

The Mokhe mosque was built in the first half of the 20<sup>th</sup> century by the Meskh Muslim community. The architectural details, typical for mosques, are still discernible on the building. During Soviet times, the building was used as a warehouse, a library and a village club. In 2007, the mosque became the property of Adigeni municipality council.

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<sup>291</sup> State Agency for Religious Issues, 2016-2017 annual report. Tbilisi, 2018.

In the 1990s, the local Muslim community started actively campaigning for the conservation and restoration of the building and repeatedly appealed to State authorities, but the efforts have not yielded any results. The Muslim community were primarily concerned with the dire need for conservation, fencing and protection of the mosque. However, in 2014, the local authorities decided to renovate the building and open a musical, choreographic and ethnographic center on its grounds.

On 18 October 2014, a company who won the tender announced by local authorities, started dismantling the building. However, as a result of a protest of the local Muslim community, the works were temporarily interrupted – the works resumed on 22 October 2014. Amidst the protest, law enforcement officers physically and verbally insulted the Muslims and detained 14 participants of the protest.<sup>292</sup>

In the aftermath of the developments of October 2014, the Georgian Patriarchate advanced towards claiming the building stating that until the 18<sup>th</sup> century, there had been a Christian church where the mosque now stands. They also stressed that the mosque is built with stones from the original Christian church. Importantly, the Patriarchate had not produced any historical evidence or expert opinion to support their claim.

In 2014, in an alleged attempt to establish the origin of the contested building, the State Agency set up a “commission to look into matters related to the building enlisted as a club and located in village Mokhe, Adigeni municipality” with representatives of local Christian and Muslim communities, local authorities, the Ministry of Culture and Monuments Protection and the State Agency for Religious Issues itself as members of the commission. Despite the demand of the Muslim community, the State Agency for Religious Issues refused to invite the independent experts and the Public Defender to participate in the work of the commission. Throughout the two years, the commission failed to attain any of the set goals nor had it taken any tangible measures. On 11 May 2017, the commission made the final decision<sup>293</sup> against transferring and returning the building to its historical owner. Instead, the mosque was transferred to the National Agency of State Property and enlisted as a monument of cultural heritage with the status of the “contested building”. The decision also set a condition under which LEPL, the Administration of All Muslims of Georgia would receive a plot of land in Mokhe to construct a new mosque.

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292 For more information see Chapter IV – Crimes motivated by religious intolerance and State policy.

293 A statement of the State Agency for Religious Issues. Available in Georgian at: <https://bit.ly/32n6W00>.

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In 2018, the local Muslim community appealed to the United Nations Human Rights Committee on matters related to the Mokhe historical mosque.<sup>294</sup> As of 2020, the appeal is yet to be finalized.

### Jewish community

Like other religious organizations, the Jewish community too, has lost religious property under Soviet rule. To this day, the State has not yet transferred any property to them and synagogues, which survived destruction under the Soviet regime, remain state property.

The Great Synagogue of Tbilisi remains under State ownership while LEPL, Georgian Jews Union has the legal privilege to use the building. The same arrangement applies to synagogues located in Gori, Akhaltsikhe, Oni, Sachkhere, Batumi (Vazha-Pshavela street 33), Martvili, and Senaki. Another of Batumi's synagogues (Nine Marti street 6), the building which has sustained serious damage over the years, also remains State property. In 2015, part of the building collapsed. In the same year, the building was handed over to the Jews Union with the right to use. The second synagogue in Akhaltsikhe (Guramishvili street) was shut down in 1953 by the Soviet authorities and converted to first, a library and then, a gym. As of today, the building is damaged and not fit for function.

Some of the property which belonged to the Jewish community in the past are currently privately owned. For instance, the former building of the synagogue in Tbilisi now homes the Royal District Theater. In 1988, the building was transferred to the State Drama Theater with the privilege to use. However, in 2001, a ruling of the Supreme Court of Georgia made the Jewish religious organization a co-owner of the building. The Union decided to relinquish the building in favor of the theater.<sup>295</sup> The decision has been challenged by the big part of the Jewish community who have repeatedly pleaded to retain ownership over the building. The building of a Jewish museum (former synagogue) at Anton Katalikosi street 3, Tbilisi, remains under State ownership.

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<sup>294</sup> A statement of the Human Rights Education and Monitoring Center – EMC submitted a complaint to the UN Human Rights Committee on the Mokhe historic mosque case, 13 April 2018. Available at: <https://bit.ly/2SULNam>.

<sup>295</sup> Tolerance and Diversity Institute, Assessment of the needs of religious organizations in Georgia, Tbilisi, 2014 [https://tdi.ge/sites/default/files/assessment\\_of\\_the\\_needs\\_of\\_religious\\_organizations\\_in\\_georgia\\_tdi.pdf](https://tdi.ge/sites/default/files/assessment_of_the_needs_of_religious_organizations_in_georgia_tdi.pdf).

## 5.2. PROBLEMS RELATED TO THE CONSTRUCTION OF NEW HOUSES OF WORSHIP

One of the core components of the freedom of religion is the right of individuals and groups to freely exercise and/or participate in religious rituals and have access to adequate spaces to do so. Georgian legislation sets forth a unified standard for the construction of any building except for those with a specific function (e.g. hydropower station, gas station etc). The general rules for issuing permits applies to the construction of houses of worship.

Matters related to the issuing of construction permits are regulated by a combination of laws and by-laws. Regardless of the fact that the law prescribes equal treatment for all individuals and entities with respect to construction, non-dominant religious groups often fall victim to discrimination.

Issuing construction permits falls within the competence of local authorities. Their discriminatory decisions are often influenced by protests of the Orthodox clergy and parishioners, who oppose the construction of houses of worship of other religious groups. The role of the State Agency for Religious Issues in relation to obtaining construction permits by minority religious communities also raises concerns as the Agency tends to encroach on the powers of local authorities without any legitimate purpose and legal basis.

The present chapter provides an overview of these artificially constructed barriers that religious minority organizations face because of the State's discriminatory treatment.

### Case of Savior's Bible Church

The case of the Savior's Bible Church is of strategic importance and aims to eliminate discriminatory practice of administrative bodies and illegal interference of the State Agency for Religious Issues in the process of issuing construction permits. TDI represented the interests of the religious organization at administrative bodies and courts.

On 19 June 2015, the religious association filed an application to the Architecture Service of Tbilisi City Hall requesting the establishment of terms and conditions for using a plot of

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land for construction. Based on the application, the Architecture Service launched administrative proceedings with the aim of obtaining a permit for the applicant to commence construction works on the plot of land owned by the applicant. The request was approved by an order of 18 October 2015 and the Architecture Service of Tbilisi City Hall established construction terms.

Pursuant to Resolution N57 of the Government of Georgia, the process of obtaining a construction permit consists of three following stages: I stage – the determination of terms for city-building (approval of terms for usage of a land plot for construction); II stage – agreement on the architectural-construction project (agreement on architectural project, construction and/or technological scheme); III stage – issuance of the permit.

Therefore, in order to complete the stage II, the religious organization filed an application to the Architecture Service of Tbilisi City Hall. In their interim response of 22 April 2016, the administrative body rejected the application. More specifically, in order to proceed with the review of the application, the Architecture Service requested a recommendation from the State Agency for Religious Issues.

The religious organization appealed against the decision to the Mayor of Tbilisi on 25 May 2016, however, at a preliminary hearing of the administrative action held on 17 June 2016, a representative of the Architecture Service failed to show up. After the expiration of one month from the day of the hearing, the religious organization filed a complaint to Tbilisi City Court requesting that the individual administrative-legal act (an interim response) of 22 April 2016 be revoked and a new act issued.

On 31 January 2017, the City Court upheld the complaint and declared that 1. Pursuant to the administrative law of Georgia, the administrative body did not have the authority to request any additional documents or information from the claimant (including a recommendation from the State Agency for Religious Issues) unless specified otherwise by the law; 2. The Architecture Service of Tbilisi City Hall had no right to order the claimant to produce any such document. The Architecture Service could, however, apply to the respective body in order to obtain additional documents or information 3. The Order issued by the Mayor of Tbilisi was based on misinterpretation of the law, which restricted the right of the claimant to use the plot of land under their ownership for construction and exploitation.



Both the Court of Appeals and the Supreme Court (judgment of 19 April 2018) upheld the decision made by the City Court.

The case described above is illustrative of the problem which has long been a matter of concern for religious organizations and NGOs. The ambiguity of the mandate and functions of the State Agency for Religious Issues allows administrative bodies to create obstacles for religious organizations. A review of the Savior's Bible Church case as well as other similar cases made it clear that the State Agency for Religious Issues demanded that local authorities consult them and obtain their recommendation for each case prior to taking a decision on issuing permits for the construction of houses of worship to religious organizations. A letter with this content was presented by the applicant to the Court.

### **Construction of a new mosque in Batumi**

The need for a new mosque has been voiced by Muslim community in Batumi over the course of many years. The only mosque in the city cannot accommodate believers who have to perform their religious rite outdoors.

Authorities have repeatedly promised the Muslim community to resolve the problem. At a meeting with representatives of the Administration of All Muslims of Georgia held on 5 October 2013, then Prime Minister Ivanishvili pledged that he would personally fund the construction of a mosque.<sup>296</sup>

The authorities have reneged on every promise they made. On the contrary – it is the authorities that have created the barriers faced by the Muslim community as they try to have a new mosque constructed. In 2014, the Administration of All Muslims of Georgia appealed in writing to the Prime Minister. The signatories of the letter waived the demand for the construction of a new mosque and expressed their consent for the enlargement of the existing mosque in Batumi (Orta Jame). They also urged the Prime Minister to grant a building for residential purposes of the Administration and another building for a Madrassa. However, the appeal had not been supported by the majority of the Muslim community and many

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<sup>296</sup> Dfwatch, Georgia to build new mosque in Batumi, 20 February, 2013  
<https://dfwatch.net/georgia-to-build-new-mosque-in-batumi-29673-18083>.

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of them stated they did not agree with the content and demands laid down in the appeal. Those with dissenting views reported that the text was likely to have been written with the direct involvement of the State Agency for Religious Issues and that Muslim community members had not contributed in compiling the letter.

Based on this appeal, the State authorities made the decision against building a new mosque in Batumi and instead, in 2015, transferred property worth GEL 4.486.400<sup>297</sup> to the Administration of All Muslims of Georgia for a mufti residence and a madrassa. The Administration received the property with the right to use.<sup>298</sup> The enlargement of the existing mosque, one of the promises that the Government had made, eventually proved to be a task impossible to execute.

In 2016, after having witnessed the failure of the authorities to deliver on their numerous promises, an Initiative Group for Mosque Construction in Batumi collected more than 12.000 signatures and petitioned for the allocation of a plot of land to Achara Government, Batumi City Hall and the Government of Georgia. However, this initiative failed to achieve progress.

After this attempt, the Foundation for the Construction of a New Mosque in Batumi purchased a plot of land and filed a request to obtain a construction permit to Batumi City Hall on 8 February 2017. On 5 May 2017, the local authorities rejected the request based on the following main justifications: 1. *The plot of land is located in a residential zone 6, which is a high intensity residential area where most of the buildings are used for residential purposes.* 2. *A house of worship requires a specific type of infrastructure with respect to traffic, transport, parking etc, which are difficult to build on the plot of land in question.*

However, interestingly, numerous religious buildings had been constructed in Batumi, including in the very same zone 6 and in some instances, plots of land for construction had been transferred by local authorities themselves to the Georgian Orthodox Church. As a justification for the refusal, the City Hall indicated an abstract interest of future residential development of the area in question and by doing so ignored the fundamental rights to property and the principle of non-discrimination.

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297 Appr. 1,482,650 Euros and 1,609,000 US Dollars.

298 Jam-News, Muslims of Batumi: the fight for a new mosque, 13 September, 2017, <https://jam-news.net/muslims-of-batumi-the-fight-for-a-new-mosque/>.

Parallel to the developments described above, since June 2017, hundreds of Muslim believers have been regularly performing religious rites outdoors, on the plot of land that they had purchased. Later they built a temporary wooden construction on the same plot to perform prayers.

On 10 June 2017, the Foundation for the Construction of a New Mosque appealed against the decision to Batumi City Court<sup>299</sup> demanding the Court to revoke the decision to decline an application for construction issued by Batumi City Hall, order the City Hall to establish construction terms for the plot of land purchased by the Muslim community, establish the case of discrimination and eliminate its consequences.

In 2017, the Public Defender examined the decision of the Mayor of Batumi to ascertain its legality<sup>300</sup> and established that the decision had been made without due examination of important circumstances and adequate justification. The Public Defender then issued a recommendation to Batumi City Hall calling on the latter to revoke its previous decision and issue a new one based on due justification and consideration of the important circumstances.

It took more than two years for Batumi City Court to complete the review of the case. At a session held on 12 June 2019, the Court offered the parties to strike a deal and gave a deadline for negotiations. Two rounds of negotiations between the parties took place on 21 June and 8 July 2019. A representative of the State Agency for Religious Issues also attended the meetings.

However, the negotiations did not yield any results. The Mayor of Batumi stated that the City Hall would only consider issuing a construction permit for a new mosque if the Foundation for the Construction of a New Mosque handed the plot of land that it had purchased to the Administration of All Muslims of Georgia. The Mayor's statement once again confirms that State authorities create the artificial barriers faced by the Muslim community in their efforts to build a new mosque. The suggestion that the Foundation give up on the plot of land purchased with financial resources of the Muslim community violates the freedom of

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299 The Foundation for the Construction of a New Mosque in Batumi and Muslim community are legally represented by TDI and EMC.

300 2018 Annual report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia. Available at: <http://www.ombudsman.ge/res/docs/2019101108583612469.pdf>.

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religion and right to property afforded to the Muslim community. Since the claimant did not receive a fair offer from the State, the case was returned to the Court.

On 30 September 2019, Batumi City Court announced the decision in relation to the Batumi mosque case. The Court upheld part of the claim of the Foundation for the Construction of a New Mosque in Batumi and established the fact of discrimination. The judge stressed that Batumi City Hall had demonstrated unequal treatment towards two different religious groups citing the fact that there had been seven Orthodox churches built in the same residential zone including those constructed on municipality-owned plots of land. The Court revoked the decision made by Batumi City Hall denying the application for construction at the first stage and returned the case to Batumi City Hall for reconsideration. The Court ruled against the part of the claim which demanded that the Court task Batumi City Hall to issue an act approving the application for construction permit for the first stage.

Batumi City Hall appealed against the Court's decision to Kutaisi Court of Appeals. On 4 December 2019, the Foundation for the Construction of a New Mosque in Batumi also lodged an appeal demanding that Batumi City Hall be directly tasked to issue a construction permit for the first stage.<sup>301</sup> As of January 2020 the case remains under review.

### **Difficulties faced by the Catholic Church in obtaining a church construction permit**

LEPL Apostolic Administration of the Latin Catholics of Caucasus faced numerous obstacles in their effort to obtain a construction permit for a church. On 16 April 2013, the Catholic Church filed an application to Rustavi City Hall requesting a permit for the construction of a church on a plot of land owned by the applicant. On 21 May 2013, Rustavi city council issued an order establishing construction terms. Pursuant to the legislation on 26 June 2013, the Catholic Church applied to Rustavi City Hall to issue a permit certificate for the second stage. However, the local authorities did not issue an act approving the application nor did they notify the applicant of the denial.

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<sup>301</sup> "Batumi City Hall appeals against the decision of the City Court on the construction of a new mosque in Batumi, Tolerance and Diversity Institute, 2019. Available in Georgian at: <https://bit.ly/37ULPTJ>.

The Apostolic Administration of the Latin Catholics of Caucasus filed an administrative complaint against Rustavi City Hall. The church demanded the Court to order Rustavi City Hall to issue a construction permit. The Rustavi City Court indicated in the decision of July 7 2014 that after the expiration of a deadline for the City Hall to approve or deny the application, the permit is considered as issued. Based on the decision, the Catholic Church addressed the Rustavi City Hall several times and demanded to issue a permit. The Rustavi City Hall did not respond to these applications either.

On the later date of November 13 2015, the Apostolic Administration of the Latin Catholics of Caucasus lodged a claim to Rustavi city court demanding a permit certificate to be issued, establishment of discrimination and the elimination of consequences of discriminatory treatment. While reviewing the claim, the court decided to separate the claims and single out those that were based on the Law of Georgia on the Elimination of All Forms of Discrimination from an administrative law suit as a result of which the Catholic Church withdrew part of the claim concerning the establishment of discrimination and the case proceeded only on the issuance of the permit certificate.

On 6 June 2016, Rustavi City Court upheld the claim and ordered Rustavi City Hall to issue a permit to the Apostolic Administration of the Latin Catholics of Caucasus for the construction of a church building on a plot of land under the Administration's ownership. However, Rustavi City Hall appealed against the decision to the Tbilisi Court of Appeals.

What is particularly striking in this case, is the length the local authorities had gone to artificially hamper the process of issuing a construction permit. At the same time, the minutes of a meeting that a representative of the Public Defender had with the Governor of Kvemo Kartli, reveals that Rustavi City Hall representatives had met with Orthodox community and Orthodox clergy members to discuss the expediency of issuing a construction permit by local authorities. At the same time, Rustavi City Hall issued a resolution to change the status of a plot of land owned by the claimant so that the construction of a church on the plot of land would require a special zonal agreement.

Along with the legal battle, in September 2016, prior to the Pope's visit, local and central authorities brokered a deal and offered to the Catholic Church to exchange the land which they owned for another plot of land in Rustavi. According to the authorities, the construction of the

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church on a new plot of land would not cause discontent among the Orthodox community. After four years of legal battle and resistance, the Catholic Church decided to accept the discriminatory offer. At last, the new church was opened in Rustavi in October 2018.

### Obstacles for Jehovah's Witnesses in Terjola

On 19 February 2014, the head of Terjola City council issued a resolution to grant a permit to the non-registered union, *Terjola*, to start construction on their own plot of land.

The construction was soon followed by waves of protest from the Georgian Orthodox Church clergy and part of Orthodox community. On 3 June 2014, an adjacent land owner petitioned the municipal council against the construction and demanded that the work be terminated for alleged risks to integrity and sustainability of their residence and nearby motorways. On the day of receipt of the application, the head of the municipal council issued an order<sup>302</sup> terminating the construction permit issued earlier.

The issuance of the order was preceded by protest rallies organized by the Orthodox clergy and their supporters. The director of a local public school, teachers and pupils were reported to have participated in the rallies. These waves of protests presumably influenced the decision of the State.

During a review of the administrative complaint, the union *Terjola* presented results of a geological-engineering examination, according to which, the construction had no negative impact on the environment and contained no risks to the nearby motorways and other real estate.<sup>303</sup> A similar report had been produced by the LEPL Levan Samkharauli National Forensics Bureau. Regardless of these reports and conclusions, the local authorities did not issue an act to allow the continuation of the construction works.

It should be noted that the local self-government violated the terms of administrative case processing as they awaited a recommendation from the State Agency for Religious Issues.

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302 Order N244 of Terjola municipality of 3 June 2014.

303 2014 annual report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia. Available at: <http://ombudsman.ge/res/docs/2019062409381078741.pdf>.

In its decision, the Kutaisi Court of Appeals indicated that local authorities had not made a decision on the appeal as “materials had been sent to the State Agency for Religious Issues so that the Agency reviewed documentation and issued recommendations.”<sup>304</sup>

Union *Terjola* appealed against the decision of the administrative body to Zestaponi District Court. On 19 March 2015, the District Court partially upheld the appeal and decided against ordering the defendant to compensate for the material and moral damage. However, the Court ordered Terjola municipality to issue an individual administrative-legal act revalidating the construction permit issued on 19 February 2014.

In parallel to the legal proceedings, in April 2015, representatives of the State Agency for Religious Issues, local Orthodox community and Orthodox clergy met in Terjola. The State Agency for Religious Issues recommended the local authorities to allocate alternative land to Jehovah’s Witnesses in order to ensure “peaceful coexistence.”<sup>305</sup>

The decision of the Zestaponi District Court was appealed to the Kutaisi Court of Appeals which ordered the administrative body to pay GEL 1.420<sup>306</sup> as compensation against the damage. Terjola Municipal Council appealed this decision to the Supreme Court of Georgia, however, the Supreme Court considered the claim as inadmissible and upheld the decision of the Kutaisi Court of Appeals.

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304 Decision of the Kutaisi Court of Appeals on the case N3/ბ–221–15.

305 Mariam Gvartadze and Eka Chitanava, GEORGIA: State obstructs building new non-Georgian Orthodox places of worship, Forum 18. [http://www.forum18.org/archive.php?article\\_id=2118](http://www.forum18.org/archive.php?article_id=2118).

306 Appr. 470 Euros and 510 US Dollars.

## CHAPTER VI. RELIGION IN PUBLIC SCHOOLS

### 6.1. VIOLATION OF RELIGIOUS NEUTRALITY AND DISCRIMINATION IN PUBLIC SCHOOLS

The Law of Georgia on General Education, adopted in 2005, recognizes religious neutrality and non-discrimination as one of the core principles of public schools. The law aims to create a learning environment based on the principles of secularity and equality for all students. However, indoctrination and proselytism in public schools remain a problem.

Displaying religious symbols in public schools often serve non-academic purposes. Representatives of minority religious groups told TDI that students often face differential treatment due to their religion, and on many occasions, derogatory terms are used to describe specific religious groups or beliefs.

In 2019, TDI developed a guidebook for school teachers entitled *Lessons of Tolerance* based on the findings of the research.<sup>307</sup> The guidebook is designed to highlight problems related to freedom of religion or belief and ethnic diversity in Georgia's public schools and offers recommendations to these problems.

Taking national exams and attending various competitions held on Saturdays create problems for students from certain religious minority groups. For instance, members of the Seventh-Day Adventist Church report that students from this congregation have problems attending events, school tournaments and final exams held on Saturdays. The same problem is shared by members of Jewish community. The Council of Religions at the Public Defender's Office recommended that the Ministry of Education and Science revise the policy and consider the interests of various religious groups when organizing the school calendar.<sup>308</sup> However, as of today, no effective steps have been taken to address the issue. In addition, no holidays, celebrated by religious minority groups, are declared as public holidays by Georgian legislation which could be considered as differential treatment.

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<sup>307</sup> Teaching Tolerance, TDI, 2019. Available in Georgian at: [http://tdi.ge/sites/default/files/tolerantobis\\_gakvetilebi\\_0.pdf](http://tdi.ge/sites/default/files/tolerantobis_gakvetilebi_0.pdf).

<sup>308</sup> Recommendations issued by the Council of Religions at the Public Defender's Office of Georgia (2017). [http://tolerantoba.ge/failebi/inglisuri\\_broshura\\_sasxalxo\\_\\_\\_damcveli\\_\\_1\\_\\_44654.pdf](http://tolerantoba.ge/failebi/inglisuri_broshura_sasxalxo___damcveli__1__44654.pdf).



## Ineffectiveness of the work carried out by the Internal Audit Department of the Ministry of Education and Science

The Internal Audit Department of the Ministry of Education and Science is legally responsible for overseeing the work of public schools' adherence to legal norms in the sphere of general education.<sup>309</sup> A decision to launch an inspection is made by the Minister based on a motion of the Department's head. A statement made by any person can serve as a ground for inspection.<sup>310</sup> As explained by the Ministry of Education and Science,<sup>311</sup> the Audit Department may follow up on information received through a hotline or delivered in other forms in order to establish an offence or disciplinary misconduct.

Based on information provided by the Ministry, between 2017 and 2018 the Internal Audit Department received 10 reports of alleged religious indoctrination, proselytism and discriminatory treatment. The Department launched an inspection in two cases and issued eight reports. The violation of religious neutrality was established in two cases and the schools in question were directed to respond to the violations outlined in the report. In 2019, the Internal Audit Department did not receive any reports concerning alleged violation of religious neutrality.<sup>312</sup>

The Ministry is authorized to proactively monitor the implementation of the Law on General Education in public schools and identify potential violations of the rights of students.<sup>313</sup> Cases of discriminatory treatment of students on grounds of religion and systemic violation of neutrality in public schools are routinely highlighted in the reports of the Public Defender, as well as international and local organizations which provide sufficient grounds for the Internal Audit Department to proactively investigate the situation in public schools. However, the Department has not conducted any research or study to identify cases involving the violation of religious neutrality, indoctrination, or proselytism.

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309 Order №89/6 of the Minister of Education and Science, Article 6(M) of the Statute of the Internal Audit Department of the Ministry of Education and Science of Georgia. Available in Georgian at: <https://matsne.gov.ge/ka/document/view/4472158?publication=0>.

310 Ibid, Article 19 (3).

311 Letter MES 8 17 00205897 of the Ministry of Education and Science of 2 March 2017.

312 Letter N MES 1 19 01783229 of the Ministry of Education, Science, Culture and Sport of 31 December 2019.

313 Order #89/6, Article 12(1) of the Minister of Education and Science on approving the statute of the Internal Audit Department.

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The recent years have seen a number of grave alleged violations of the law in public schools, which appear to have gone unnoticed by the State authorities.

One such incident took place in October 2014 in one of Tbilisi's public schools when under-aged students physically assaulted one of their peers. The beating was motivated by religious intolerance as the victim said Christian miracles were myths. Information about the incident was released to the media by the victim's brother. In response, the Ministry of Education and Science stated that the incident represented "a one off occurrence".<sup>314</sup> Then-Minister Tamar Sanikidze gave the following statement to the media:<sup>315</sup> "I cannot say the situation is alarming with this respect, or there is a growing trend [...] I think we should not give much consideration to bullying based on religion in schools".<sup>316</sup>

On 1 January 2014, the Orthodox Christian community of Terjola town gathered to protest against the construction of a Jehovah's Witnesses Kingdom Hall<sup>317</sup>. Teachers and a school director were among the participants of the protest rally, which took place during school hours early in the day, as well as students aged 8 to 13 of School N2<sup>318</sup>. Video footage of the rally, spread through social networks, featured an Orthodox priest expressing gratitude to the school director for the latter's support and their contribution to collecting signatures against the construction of a Jehovah's Witnesses Kingdom Hall.<sup>319</sup> The Internal Audit Department of the Ministry of Education and Science reported that the students participated in the rally at their free will and that there had not been any attempts from the school administration to indoctrinate or proselytize the students. Therefore, the Department did not consider the incident as a violation of the law even though there was organized participation of the school students in the rally and open support expressed by the director to Orthodox parishioners as well as hate speech targeting Jehovah's Witnesses which provided a clear ground for deliberations and called for an adequate response.

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314 Information is available in Georgian at: <http://www.tabula.ge/ge/story/88966-arasultslovnebi-skolashi-religiuri-bulingisa-da-indoqtrinaciis-pirispir>

315 Minister of Education and Science of Georgia in 2013-2016.

316 Information is available at: <http://georgiatoday.ge/news/3018/Non-violent-Communication-Institute-on-Bullying%3A-Don%E2%80%99t-Hurt%2C-Don%E2%80%99t-Label>.

317 Natalia Antelava, Georgia: Orthodoxy in the classroom, BBC, 7 May 2015, <https://www.bbc.com/news/world-europe-32595514>.

318 Mariam Gvartadze and Ekaterine Chitanava, GEORGIA: State obstructs building new non-Georgian Orthodox places of worship, 5 November 2015, Forum 18, [http://www.forum18.org/archive.php?article\\_id=2118](http://www.forum18.org/archive.php?article_id=2118).

319 Video footage of the rally is available at: <https://www.facebook.com/378911675552081/videos/608770665899513/>.

## **Alleged discrimination and violation of the rights of a Muslim student in Mokhe village**

The Ministry of Education and Science failed to adequately respond to an alleged case of discrimination and violation of the rights of a Muslim student in Mokhe village during 2016-2017. In a report prepared on the case, the Internal Audit Report justified an attempt by the school administration banning the Muslim student from wearing a hijab at school.

On 11 December 2016, a 12<sup>th</sup> grade student T.B., attending a Batumi public school, submitted paperwork which was required to change school under a mobility scheme. The applicant wanted to move to a school in Mokhe village. On 22 December, the student received a notice from the school warning her that her request will be rejected if she continued to wear a hijab while attending school. The school administration explained that it was prohibited to wear a headscarf per a statute of the school.<sup>320</sup> The school director continued differential treatment of the student after the latter's enrollment in Mokhe school.<sup>321</sup>

It should be noted that during the same period of time the school director, an active parishioner and supporter of the Orthodox Church, actively participated in protest rallies against a contested construction in Mokhe village and made anti-Muslim statements.<sup>322</sup>

According to information provided to TDI on 27 February 2017, the Internal Audit Department of the Ministry of Education and Science, based on the examination of the case, established that T.B. did not suffer discrimination nor a violation of her rights in Mokhe public school.<sup>323</sup>

However, it should be noted that the Internal Audit Department misinterpreted the Law of Georgia on General Education by, for example, deeming a headscarf as a reli-

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320 Assessment of Internal Audit Report on Mokhe public school. Tolerance and Diversity Institute (TDI). Available at: <http://tdi.ge/en/statement/assessment-internal-audit-report-mokhe-public-school>.

321 Statements of the Human Rights Education and Monitoring Center (EMC). Available in Georgian at: <https://emc.org.ge/2017/02/08/emc-213/>.

322 For more information about Mokhe's contested building, see the section *Investigation of incidents involving violation of Muslims' rights in 2012-2016 and Problem of the restitution of property seized by Soviet authorities*.

323 Report N0902171610 of the Internal Audit Department of the Ministry of Education and Science of Georgia

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gious item which, according to the law, cannot be displayed on school grounds (Article 18). Conversely, neither the law nor the school statute restricts students wearing headscarves or any religious attire in school. According to the conclusion of the Audit Department, despite the fact that the internal regulations of the school do not forbid wearing a headscarf, some kind of restrictions can still be established for school students, for instance having dyed hair.

The report of the Internal Audit Department provides justification for the prohibition of headscarf by preventing ethnic or religious tensions: *“some of individuals in the school make a connection between wearing a headscarf and developments outside the school, more specifically, the one around the construction of a religious building in Mokhe village, Adigeni municipality. For this reason, in order to ensure that learning process at the school is not disrupted by tensions on any ground, the school administration is authorized to deliberate and introduce restrictive norms, within the limits of the law, to prevent possible root causes from causing confrontation on school grounds, and demand that all individuals obliged to act in accordance to the school statute, adhere to such restrictions.”*

TDI believes that restricting the freedom of religion for a student in the context of the so-called disputed building in Mokhe is not legally justified. Exercising fundamental human rights, including the manifestation of religious belief, cannot be viewed as a trigger for conflict.

On 21 September 2017, the Public Defender addressed the Ministry of Education with a general proposal calling for the implementation of effective measures to ensure religious neutrality, free expression of religious identity of students and prevention of religious discrimination in public schools<sup>324</sup>.

In 2017 however, another case of alleged discrimination against a student wearing a headscarf was reported in Karajala village, Telavi municipality.<sup>325</sup>

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324 General proposal of the Public Defender. Available in Georgian at: <http://www.ombudsman.ge/geo/zogaditsinadadeba/saqartvelos-saxalxo-damcveli-sadjaro-skolebshi-moswavleta-indoqtrinaciis-faqtebs-exmianeba>.

325 Director of Karajala school turned the student away for wearing hijab. Available in Georgian at: <https://bit.ly/30smChE>.

## 6.2. SCHOOL TEACHERS' PARTICIPATION IN LECTURES DEDICATED TO "GEORGIA'S ALLOTTED TO VIRGIN MARY"

On 8 June 2019, news about dozens of public school teachers from various regions attending theological lectures dedicated to The Day of Allotment to Virgin Mary was reported in the media and social networks.<sup>326</sup>

Teachers were reported to have been instructed to attend lectures<sup>327</sup> without providing any information as to what the subject of the lectures would be. Attendees later said that lectures were dedicated to the essence of Christianity and the gospel and lacked interactivity. Importantly, the majority of teachers from Tsalka attending the lecture in Rustavi, were Muslims. They too had no information on the planned activity. Nor did they know anything about the topic of the lecture.

An alleged violation of religious neutrality took place in October 2019 during a meeting of the clergy from Skhalta Diocese, professors at St. Tbel Abuseridze Teaching University, and school directors in Keda municipality. At the meeting, which took place in the Keda Educational Resource Center, participants discussed matters related to the celebration of Georgia's Allotted to Virgin Mary. Directors of public schools found themselves involved in events of a religious nature. Moreover, there had been reports that Orthodox clergy tasked school directors to talk about Achara's Christian past in schools.

On 8 May 2019, the Parliament of Georgia announced the 12 May as the day of Georgia's allotted to Virgin Mary at an extraordinary session through a fast-track procedure<sup>328</sup>. This move was a response to an initiative of the Patriarchate of Georgia.<sup>329</sup> 900,000 GEL<sup>330</sup> was allocated from the governmental reserve fund for celebrations and various events dedicated to the holiday. According to a Government approved action plan, Tbilisi and regions were to host various events dedicated to the day of Georgia's allotted to Virgin

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326 Information available in Georgian at: <https://bit.ly/2tj1Q7K>.

327 Information available in Georgian at: <https://bit.ly/2FOuXTj>.

328 Parliament sets 'Day of Georgia's Allotted to St. Mary', Messenger, 10 May, 2019 [http://www.messenger.com.ge/issues/4392\\_may\\_10\\_2019/4392\\_gvanca1.html](http://www.messenger.com.ge/issues/4392_may_10_2019/4392_gvanca1.html).

329 In times of trouble, the Georgian government turns to Mother Mary, Eurasianet, 28 May, 2019, <https://eurasianet.org/in-times-of-trouble-the-georgian-government-turns-to-mother-mary>.

330 Approx. 323,741 USD and 298,185 Euros.

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Mary including literary events, conferences, movie screenings, performances, folk dancing and singing etc.

As noted above, ensuring religious neutrality and eliminating discrimination in public schools have remained a pressing problem. Rather than supporting tolerance and diversity, and measures for the elimination of discrimination in public education space, including capacity building of teachers, the State authorities remain unfazed by public school teachers participating in religious events held by the Orthodox Church.

The practice of involving teachers in the celebrations dedicated to Georgia's Allotted to Virgin Mary contradicts the principle of the separation of the State and church enshrined in the Constitution. This act also violated the following requirements embedded in the Law of Georgia on General Education: one of the goals of the state policy in the field of general education is to ensure the freedom of public schools from religious and political associations (Article 3); Proselytism or forced assimilation shall be inadmissible in the study process in general education institutions. It shall be inadmissible for schools to use their powers and resources in a way, directly or indirectly, against pupils, parents, teachers or their associations (Article 13); It shall be inadmissible to impose such obligations upon pupils, parents and teachers that fundamentally contradict their belief and confession (Article 18).

## **6.3. INTOLERANCE AND LACK OF RELIGIOUS/CULTURAL DIVERSITY IN SCHOOL TEXTBOOKS**

### **Content of school textbooks**

The poor qualification of school teachers and administrative staff, together with the ineffective policies of the Ministry of Education tasked with ensuring religious neutrality, the content of textbooks also contribute to creating an environment that is conducive to intolerance in public schools. According to findings of the research conducted by TDI in 2016,<sup>331</sup> textbooks for Georgian Language and Literature, History and Civic Education for 9<sup>th</sup>-12<sup>th</sup>

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331 Tolerance and Diversity Institute (TDI) A Report on Religious and Ethnic Diversity in School Textbooks. Available at: [http://tdi.ge/sites/default/files/analysis\\_of\\_textbooks\\_tdi\\_eng.pdf](http://tdi.ge/sites/default/files/analysis_of_textbooks_tdi_eng.pdf).

grades fail to deliver the objectives of the National Goals of the General Education of Georgia which aim to raise the tolerant citizen.

An analysis of the content of the textbook reveals that they are mostly written from the perspective of the ethnic and religious majority when addressing Georgian history in the mono-religious and ethnocentric context which is particularly striking. Therefore, the main discourse of the textbooks target ethnic and religious majority as the key audience, ignoring the fact that the circle of readers is not only limited to ethnic Georgians and Orthodox Christians.

Further, in some instances, when it comes to discussing or depicting Christianity, Orthodox Christianity or ethnic Georgians, narration often switches to the first person.

“Saint George, one of **our** greatest and one may say, the most venerable saints, was from Cappadocia...”

**History of Georgia, 9<sup>th</sup> grade**

There are texts which display Georgians and representatives of other ethnic groups, Orthodox Christians and other religious communities through a dichotomy of “**guests and hosts**”, “**us and others**” depending on who native Georgians are as opposed to “emigres” or “the sheltered”. Teaching the Georgian History from this perspective not only contradicts legal approach, but also undermines the interest of fostering civic integration and nurturing a culture of tolerance.

“Georgian people peacefully coexisted with representatives of other ethnicities – Jews, Armenians, Greeks, and many others whom Georgia gave **shelter** at times of their hardships and who then shared good times and bad times with the country”.

**History of Georgia, 9<sup>th</sup> grade**

Several chapters in the textbooks of Georgian literature as well as history use xenophobic references without corresponding comments from authors or editors of the textbooks while some questions and comments of the authors of the textbooks can represent examples of biased and xenophobic narration.

In addition, some texts are based on stereotyped attitudes and these attitudes are attributed to certain ethnic or religious groups, portraying them as a common negative characteristic feature of the entire group.

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“Kurds. Drenched in sweat: as if you are walking past a Jewish mikvah. Alas, is everything losing its nature in Tiflis?!”

“Assyrian Street Sweeper” – women tucked in their clothes as if they have put on everything they had – when you bump into them – a bitter stench of sweat will immediately catch your nose... Assyria is suffocating the Lion of Iran. His offspring is a street sweeper in Tiflis. His offspring are boot polishers.”

**Homework:** Analyze the given excerpt and create a “portrait” of persons described in this excerpt. Describe their appearance, clothing, activities, characters, nationality, profession, etc.

**Civic Education, 10<sup>th</sup> grade**

The content of the textbooks tends to overlook the role in historical or literary processes of these groups, historical figures or authors who have different identities. For instance, characters and authors from minority ethnic and religious backgrounds are underrepresented in textbooks (for instance, in the context of Catholicism, there is no reference to Sulkhan-Saba Orbaliani nor do texts refer to works of Catholic missionaries and scientists, or the role of Armenian, and German benefactors in the development of culture, city life and architecture, charity work, and that of Muslim Georgians in the fight for the country's independence).

Pursuant to the Law of Georgia on General Education, school education must be of an academic character and classroom process must be separated from religion (this principle also applies to textbooks and discourse). However, authors of history and literature textbooks often resort to non-academic language. There are instances when clerical publications and legends are presented without academic distancing, for example, King Mirian's miracle – the destruction of shrines, and St Andrew's preaching are described as a scientifically proved historical fact rather than a religious narrative.

In addition, some texts use incorrect, derogatory and non-academic terminology while describing various religious or ethnic groups (for instance, Gregorian Church, sect and sect followers, “Tatars” to denote citizens of Georgia with ethnic Azerbaijani background etc).



## Selection and approval of school textbooks

In 2017-2018, the Ministry of Education compiled a list of approved new school textbooks for 1<sup>st</sup> to 6<sup>th</sup> grades. Since 2019, the Ministry has been approving new textbooks for basic education.

In 2019, stakeholders welcomed a decision of the Ministry of Education and Science to invite human rights experts to work together with specialists in the field and under the coordination of Public Defender to evaluate all textbooks for the 7<sup>th</sup> grade submitted for review. Submitted textbooks were assessed to ascertain to what extent they reflected on tolerance and diversity culture and met the human rights and non-discrimination criterion. The Ministry plans to invite field experts to assist in the process of approval of school textbooks for the 8<sup>th</sup> grade in 2020.

In 2018, TDI developed a guidebook for authors of textbooks offering recommendations to address gaps and flaws identified in the textbooks. Rather than focusing on a syllabus of a specific grade or stage, the guidebook highlights general trends to be considered while compiling textbooks for Georgian Language and Literature, History and Civic Education so that the contents of respective textbooks are in line with the Law on General Education and the National Curriculum. The guidebook can be used as a reference point in the process of compiling any textbook for any grade.<sup>332</sup> In 2018-2019, TDI established fruitful cooperation with a group of authors and publishers and brought both the guidebook and the recommendations to their attention.

## Society and I: Review of the subject standards and respective changes

A new subject titled Society and I was introduced to grades 3<sup>rd</sup> and 4<sup>th</sup> during 2018-2019 academic year.<sup>333</sup> However, a working process on the standard started as early as 2014 and was finalized by the Ministry of Education and Science following a series of heated debates

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332 A guidebook for authors of school textbooks (TDI), 2018. Available in Georgian at: [http://tdi.ge/sites/default/files/tdi\\_brochure.pdf](http://tdi.ge/sites/default/files/tdi_brochure.pdf).

333 Letter MEC 11701438459 of the Ministry of Education and Science, 24/11/2017.

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and controversies on 18 May 2016.<sup>334</sup> The subject aims to develop civic awareness based on democratic values among students. The standard was developed through collaborative efforts of teachers, experts and psychologists.

The initiative of the Ministry of Education and Science was perceived as an attempt to undermine traditional values of the Orthodox clergy and their supporters. The original version of the standard included a chapter “what I believe and what I trust in” as well as discussion topics “why we should never commit violence in the name of religion, why we should respect people with different faith” etc. The standard also made a reference to such terms as “tolerance”, “minority”, “gender”. However, none of these topics and terms are found in the finalized version of the document.

One year later, in February 2016, then-Minister of Education and Science, Tamar Sanikidze said the Ministry had some consultations with the Georgian Patriarchate concerning the chapters on religion and family.<sup>335</sup>

In the end, the Ministry decided against including the chapter “Morality, faith, and religion”, the draft version of which offered the following discussion topics: “why and how to express respect towards people regardless of their religion”, “why we should not commit violence in the name of religion” etc. The final version does not make reference to such terms as “tolerance”, “minority”, “gender identity”.<sup>336</sup>

Minister Sanikidze said the Constitutional Agreement between the State and the Church was the reason for close cooperation with the Georgian Patriarchate while working on the subject standard and noted that if the State is working on religion related issues in the field of education, it shall have consultations with the Patriarchate.<sup>337</sup>

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334 *Ibid.*

335 Information available in Georgian at: <http://netgazeti.ge/news/94841/>.

336 Information available in Georgian at: <http://www.tabula.ge/ge/story/100858-sapatriarqo-saxelmdzghvanelodan-amovaghebinet-terminebi-mag-genderuli-identoba>.

337 Information available in Georgian at: <http://www.tabula.ge/ge/story/104551-sanikidze-sapatriarqostan-mushaobisas-xelshekrulebas-vekrdnobit>.

# RECOMMENDATIONS

## THE GOVERNMENT AND THE PARLIAMENT OF GEORGIA SHOULD:

1. Abide by the Constitutional principle of separation of State and religion;
2. Avoid the influence of the Georgian Orthodox Church (Patriarchate of Georgia) over political decisions and legislative initiatives;
3. Amend the State Funding system of religious organizations to remove the privileges granted to the dominant religious organizations (which contradicts the principle of separation of State and religion) and put all religious communities in an equal position;
4. Eliminate the discriminatory practice of selection and funding of religious organizations for the purpose of symbolic “compensation” for the damages inflicted during the Soviet regime; Make a complete record of religious communities affected during the Soviet rule and develop objective, transparent and fair criteria for compensation in close cooperation with the affected religious communities, Council of Religions under the Public Defender and human rights organizations;
5. Consider and evaluate all risks related to the restriction of freedom of religion or belief and equality, reject legal initiatives aimed at regulating the activities of religious organizations, and refrain from defining “religion” and “a religious organization” in legislation.

## THE PARLIAMENT OF GEORGIA SHOULD:

6. Refrain from adopting a law that would prevent clergy from non-Georgian Orthodox religious communities to postpone compulsory military service;
7. Avoid adopting legal regulations restricting freedom of expression that would impose administrative or criminal liabilities for “insulting religious feelings”;
8. Take action to urgently eliminate the discrimination in Georgian legislation granting privileges and certain rights to only the Georgian Orthodox Church; Consider the deci-

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sions of the Constitutional Court of Georgia of 3 July 2018 that declared the provisions of the Law on State Property and Tax Code discriminatory and unconstitutional;

9. To foster equity among religious organizations and eliminate discrimination, amend the Law on State Property of Georgia so that all religious communities (registered as legal entities of public law, as well as legal entities of private law) should enjoy the same rights as the Georgian Orthodox Church, in particular to:
  - ▶ Acquire non-agricultural State-owned land through a direct sale (*Article 3(1)*)
  - ▶ Acquire agricultural State-owned land with a fee or free of charge (*Article 3(2)*)
  - ▶ Acquire State-owned property through an exchange (in return for the transfer of the equivalent property into state ownership) (*Article 3(5)*)
  - ▶ Abolish the provision of State Property Law that bans privatization of State-owned religious buildings (functional and non-functional), their ruins as well as land plots on which they are located (*Article 4(1), Para L*)
  
10. Amend the Tax Code of Georgia in order to ensure equality and non-discrimination of religious communities, in particular to:
  - ▶ Amend the provision of the Tax Code of Georgia, which does not exempt religious organizations other than the Georgian Orthodox Church from property (land) tax used for non-economic purposes (*Article 201, Part 1(A)*);
  - ▶ Grant the right of exemption from VAT for construction, restoration and painting of temples and churches to all religious communities registered as legal entities of public or private law noting that the provision of the law which granted this right only to the Georgian Orthodox Church was declared unconstitutional by the Constitutional Court of Georgia in 2018 (*Article 168, Part II, para B*);
  - ▶ Revise the provision of the Tax Code of Georgia which exempts from tax the supply of crosses, candles, icons, books, calendars and other liturgical items used for religious purposes only for the Georgian Orthodox Church (*Article 168(1) para F*);
  - ▶ Update the provision of the Tax Code granting a tax exemption to profits from the sale of crosses, candles, icons, books and calendars used for religious purposes only to the Patriarchate of Georgia (*Article 99(1) para D*);
  - ▶ Apply the exemption from import fees on import and supply of religious items to all religious organizations. The Georgian Patriarchate is exempt from the import taxes under the terms of the Constitutional Agreement, while the Tax Code does not grant the same rights to other religious organizations.

11. Develop the legislative framework for the return/restitution of the property confiscated during Soviet times. Religious communities should be given the possibility to regain their property or/and receive compensation;
12. Amend the Law on Higher Education to allow other religious organizations other than the Patriarchate of Georgia to establish higher education institutions and carry out theological programs;
13. Recognize religious and cultural holidays of different religious and ethnic groups other than the Georgian Orthodox in the Labor Code of Georgia.

### **TO THE SUPREME COUNCIL OF THE AUTONOMOUS REPUBLIC OF ACHARA:**

14. Prohibit discrimination, amend the provisions of Law on the Management and Administration of the Achara Autonomous Republic Property allowing only the Georgian Orthodox Church to purchase State property. This right should extend to all religious organizations.

### **TO THE GOVERNMENT OF GEORGIA:**

15. The Prime Minister of Georgia should review the mandate and activities concerning the State Agency for Religious Issues and reconsider the necessity of its existence, as the Agency fails to comply with fundamental principles of human rights, including the fundamental principle of protection of freedom of religion or belief;
16. Eliminate urgently the practice of interference into the autonomy of religious minority organizations by the State Agency for Religious Issues;
17. Consider the authoritative recommendations of international organizations (ECRI, Committee of Ministers etc) and cooperate with the Council of Religions under the Auspices of the Public Defender on issues related to the freedom of religion;
18. Study the extent of the damage inflicted by the Soviet totalitarian regime experienced by religious communities and record the confiscated property;

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19. Establish a competent commission to identify the owners of disputed religious buildings. Create an appropriate legislative framework to address the issues therein;
20. Examine the lawfulness of transferring seven Catholic churches (in Gori, Ivrita village of Akhaltsikhe Municipality, villages of Ude and Buzmareti of Adigeni municipality, Kutaisi, and two churches in Batumi) to the Georgian Patriarchate and ensure the restoration of the right to the Catholic Church;
21. Prohibit all forms of reconstruction and renovation of historical religious buildings historically owned by other religious organizations currently under the ownership of the Georgian Orthodox Church;
22. Examine the legitimacy of transferring the Armenian Tandoyants Church (located on 38 Agmashenebeli avenue, Tbilisi) to the Georgian Orthodox Church in 2017 and prevent all forms of construction, archeological or other works carried out by the Georgian Patriarchate;
23. Ensure full access to archived materials to religious organizations and researchers in order to collect data and relevant documents concerning historical property.

### **24. To the Government of Georgia, Ministry of Economy and Sustainable Development of Georgia, LEPL National Agency of State Property:**

Suspend the transfer of disputed property to the Georgian Patriarchate until the resolution of the issue;

Return currently State-owned religious buildings which was confiscated during the Soviet period to their historical owners: Armenian Apostolic Church, Evangelical-Lutheran Church, Muslim and Jewish communities.

### **25. To the Government of Georgia, National Agency for Cultural Heritage Preservation Georgia:**

Ensure the conservation, protection and proper maintenance of all religious buildings that are cultural heritage sites and/or are currently under State ownership.

**26. To National Agency of Public Registry:**

The NAPR should use a non-discriminatory approach when registering religious organizations and improve the practice of applying Article 1509 during the registration of religious organizations as legal entities of public law.

**27. To central and local government administration:**

Eliminate the discriminatory practice of restricting the access to public space for religious minorities, allow them to freely celebrate holidays, festivals and carry out various events in a public space.

**TO THE MINISTRY OF INTERNAL AFFAIRS AND THE PROSECUTOR'S OFFICE OF GEORGIA:**

28. Respond properly and promptly to crimes committed on the grounds of religious intolerance, determine hatred as a motive and be guided by the fundamental principle of the protection of human rights;
29. Maintain comprehensive, coherent statistics on the crimes committed on the ground of intolerance in order to collect data;
30. Investigate crimes committed against religious minorities relying on the appropriate articles of the criminal legislation recognizing religious intolerance as a motive of a crime;
31. Provide information to interested human rights organizations and the public on ongoing investigations into high public interest cases, including on the alleged violation of Muslims' rights by law-enforcement officers in villages Mokhe and Chela;
32. The Prosecutor's Office should investigate alleged crimes committed on the grounds of religious intolerance against Muslims in villages Chela (2013) and Mokhe (2014) in a timely and effective manner and respond appropriately to the cases of alleged abuse of official powers by Ministry of Internal Affairs officers;

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33. The State should respond to the cases of alleged interference of Muslims rights in Samtatskaro (2013) and Kobuleti (2014) in an efficient and adequate manner and timely conclude the protracted investigations;
34. The Prosecutor's Office should grant victim status to the affected Muslims in the cases of crimes committed on grounds of religious intolerance in 2012-2014;
35. The Prosecutor's Office should conduct an investigation into the alleged case of forced resignation of the former Sheikh Vagif Akperov of the Administration of Muslims of All Georgia in a timely and efficient manner;
36. The State should respond promptly, effectively and adequately to each case of alleged human rights violations against Jehovah's Witnesses;
37. The Prosecutor's Office should grant victim status to Jehovah's Witnesses who suffered violence due to their religious beliefs;
38. The Prosecutor's Office should charge the alleged offenders of crimes committed against Jehovah's witnesses with the appropriate qualifications foreseen by the criminal law;
39. The Ministry of Internal Affairs and Prosecutor's Office of Georgia should raise employees' awareness on religious neutrality and human rights matters;
40. The Ministry of Internal Affairs should consider the recommendation of European Commission against Racism and Intolerance (ECRI), according to which the human rights department of the Ministry of Internal Affairs should be equipped with an investigative mandate to respond effectively to hate crimes.
41. **The Ministry of Internal Affairs and the Revenue Service of the Ministry of Finance** should eliminate the discriminatory practice targeting religious minorities when crossing the state border and importing religious literature; reviewing travel documents for an unreasonable length, searching luggage without reasonable doubt and requesting to present written permission from other religious organizations etc.



42. **The Ministry of internal Affairs and the Revenue Service of the Ministry of Finance** should raise awareness and conduct trainings for border police and customs officers on human rights, non-discrimination, the freedom of religion and professional ethics issues.

### **TO THE SUPREME COURT OF GEORGIA:**

43. Consider Article 53<sup>1</sup> of the Criminal Code of Georgia indicating intolerance as an aggravating circumstance when charging for offenses committed on the grounds of religious intolerance;
44. Maintain complete and comprehensive statistics on the crimes committed on the grounds of intolerance, to obtain comprehensive information on hate crimes;
45. Consider all cases in a timely and effective manner within the timeframe set by law, so that the parties are not deprived of their right to a fast and effective justice system.

### **TO LOCAL SELF-GOVERNMENT BODIES:**

46. Eliminate discriminatory approaches in the process of granting construction permits to religious minority organizations and dismantle the artificial barriers; Exclude the non-legally binding involvement of other administrative bodies, such as the State Agency for Religious Issues; Refrain from requesting written permission from the Agency of religious organizations when applying for construction permits;
47. Be guided by the principles of religious neutrality and protection of equality while allocating funding to religious organizations.
48. **Batumi City Hall should:** Consider the decision of Batumi City Court on the Batumi New Mosque case, eliminate the discriminatory practice and issue a construction permit on a mosque immediately.

### **TO THE MINISTRY OF EDUCATION, SCIENCE, CULTURE AND SPORT OF GEORGIA:**

49. The Internal Audit Department of the Ministry should conduct a large-scale investigation into public schools and monitor schools proactively in order to identify violations

## Freedom of Religion or Belief in Georgia

of religious neutrality, indoctrination and proselytism, including the display of religious items for non-academic purposes, as it is prescribed by the law;

50. The Ministry's Internal Audit department should use existing legal mechanisms effectively to respond to cases of alleged religious discrimination promptly and adequately;
51. Identify religious discrimination and violations of religious neutrality, establish a special group/unit, responsible for monitoring and responding to violations in public schools, with the participation of non-governmental organizations and the Public Defender's Office;
52. Increase training of the Inspectors of Internal Audit Department to raise awareness and sensitivity towards the freedom of religion or belief and non-discrimination;
53. Raise awareness among school administrators and teachers, prepare guidelines that reflect the requirements of the Law of Georgia on General Education, the principles of protection of religious neutrality and promoting a tolerant environment in public schools. The document should be prepared with the participation of experts and non-governmental organizations working on freedom of religion or belief issues;
54. Evaluate Teachers' attitudes towards tolerance through exams;
55. The standard of professional ethics for school directors should reflect the skills needed to develop the environment for intercultural education and tolerance;
56. School textbooks should include historical events, literary texts and civic values reflecting religious and ethnic diversity and foster a culture of tolerance;
57. Public school teachers and administration representatives should not be forced to participate in religious activities. Eliminate practices, such as that in 2019, where teachers were forced to attend meetings and lectures in various regions of Georgia dedicated to the Day of Georgia's Allotment to Virgin Mary.





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