FREEDOM OF RELIGION

CRITIQUE OF DISCRIMINATORY AND NONSECULAR STATE POLICY

Freedom of Religion

Critique of Discriminatory and Nonsecular State Policy

Tbilisi, 2016

Kingdom of the Netherlands

ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

EMC

Human Rights Education and Monitoring Center

The Researh was conducted within the framework of the project "Advancing Tolerance, Religious Freedom and Human Rights in Georgia". Project is financed by the Embassy of the Kingdom of the Netherlands. Ideas expressed in the research might not reflect the position of the Embassy. The authors are responsible for the content of the research.

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Print run: 400

ISBN: 978-9941-0-9371-5

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Introduction

The given document contains a critical analysis of the state of freedom of religion and applicable State policy in 2014-2016. The purpose of the report is to identify the systemic flaws in the policy, which often results in the violation of the principles of religious freedom and secularism and creates a discriminatory atmosphere for the non-dominant religious groups.

The quality of protecting religious freedom is one of the criteria for measuring the quality of democracy and pluralism in the country, while the increase of non-secular policy is largely connected to the problem of legitimacy of the political government and the social crisis in the society. That's why, often, in the periods of transition of power, the policy on freedom of religious changes significantly. In this regard, understandably, the way relationships are configured between the government and dominant religious groups, plays a decisive role.

Current challenges in Georgia in terms of the freedom of religion are of systematic nature and are the result State's non-secular and discriminatory practices formed over the years. The current legislation and the State's relations with the religious organizations are largely based on the preferential attitudes towards the Georgian Apostolic Autocephalous Orthodox Church (further Orthodox Church). Beyond the asymmetric legal and institutional environment, the non-dominant religious groups in reality experience systematic discrimination. It is noteworthy that identity based discriminatory policy also causes increased social and economic vulnerability of the groups belonging to religious minorities. The persecution in case of groups of non-dominant religious groups living as settlements and their exemption from the social structures is revealed at a larger scale and more structurally.

Since 2012, the state of freedom of religion has deteriorated considerably, as compared to the previous period. The series of conflicts involving the Muslim community, as well as, increase of religious violence against the Jehovah witnesses and bigger influence of the Orthodox Church in almost all spheres of political and social life – are the most obvious indicators of this situation. The cases of restricting the freedom of religion, revealed during the reporting period, were not unusual or isolated and were mostly manifested in the conflicts and alienation between different religious and social groups, which demonstrates that the problem is complex and requires implementing methodical policy by the State. Unfortunately, the State has responded with non-secular and discriminatory practices, as a result big part of religious conflicts have been either conserved or there are risks of escalation. Apart from inefficiency, the State's policy is openly loyal to the dominant religious institution and ethnic-religious nationalism, which calls for more criticism towards discriminatory and non-secular policy. It must be noted that the recent critical assessments of a number of national and international organizations working on human rights, confirm that the situation has deteriorated in terms of the freedom of religion.

The State reacted to these challenges by establishing the State Agency on Religious Affairs, which became a centralized agency for religious affairs. Creation of such an institution contained the risks of *taking the issues outside the realm of human* rights and politicizing them.

These fears have been confirmed by the activities of the Agency. The Agency, despite the fact that it was working under the direct supervision of the Prime-Minister, failed to efficiently settle actual disputes and problems, which points to the lack of political will for protecting the rights of the non-dominant religious organizations. At the same time, the Agency has been interfering and trying to control the autonomy of the religious organizations, which only worsened already complicated situations and created new types of challenges.

The report thoroughly reviews the important issues related to the freedom of religion, including the analysis of the constitutional agreement between the State and Orthodox Church; the practices of funding of religious organizations and legal assessment of these practices; critical analysis of important spheres of activities of the Agency on Religious Affairs; violence motivated by religious hate and inefficient policy of the State; existing challenges for the public schools in terms of equality and secularism; and the discriminatory policies of restitution of secular buildings and construction of new buildings.

The Human Rights Education and Monitoring Center (EMC) hopes that this document will contribute to the process of planning and implementing research-based policy of the State. At the same time, the report will help religious organizations, political parties, civil society organizations, activists and other relevant actors, to formulate and advocate their requests for policy change.

Research methodology and limitations

The purpose of the research is to document the existing situation in the country in terms of religious freedom and critically analyse the State's policy.

While preparing the report, the group of researchers used different methodological instruments. The group collected empirical materials the following way: requested public information from the State agencies, studied the legal background and policy documents, and conducted detailed study of the ongoing cases in courts, administrative bodies, investigative bodies and the Public Defender (it must be noted that a big number of the cases are administrated by EMC); the group also conducted field work at the places of alleged violations and in-depth interviews with the victims/witnesses; collected information using a half-structured questionnaires and collected information through media monitoring.

After processing and classifying the data collected, it was then reviewed in the light human rights standards. International and regional mechanisms that are binding for Georgia, as well as, the human rights standards as established by the Constitutional Court of Georgia, are also used in the report. On several occasions, comparative method is also used and the best practices of different countries are mentioned.

The report essentially documents and evaluates the specific cases of the violation of the freedom of religion and the revealed practices. Thus, within the studied topics, the report may not fully cover certain problems that religious groups experience in their daily life and they have never been revealed publicly. Also, while preparing some chapters of the report, the group simultaneously used the instruments for legal analysis as well as, sociological research, which made it possible to identify latent problems. While studying different issues, the differences between methodological instruments created certain asymmetry, however, the group used this differentiation considering the specifics and the importance of the given issue. At the same time, it must be mentioned that, since on several occasions the group has been unable to receive information from the State agencies, or the information was incomplete, certain measures implemented by the relevant agencies, may be absent from the document.

Main findings

In the following chapter, based on the document structure, summaries and the actual findings are laid out.

Legal analysis of the constitutional agreement

– The constitutional agreement signed between the State and the Orthodox Church of Georgia, recognized its exclusive legal status on a constitutional level and granted preferences to the Orthodox Church. This recognition was further enhanced by the normative acts, and created the discriminatory legal environment. The close cooperation between the Church and the State creates the problem of excessive affiliation;

– The relations established under a similar type of constitutional agreement have no analogy in other countries. Signing agreement between State and Church is wrong from a legal standpoint as well;

– The structural place of the agreement in the system of normative acts and some entries in the document, violate the idea of secularism, equality and the superiority of human rights;

– The possibility to evaluate important legal document in comparison to constitution and namely, right to equality is limited by the constitutional court practices. Extremely complicated procedures for making amendments in the constitution, which, inter alia, require consent of the Church, practically take the constitution beyond the sphere of popular sovereignty;

– The preferences granted to the Orthodox Church by this agreement are even more apparent in reality. Moreover, in some spheres (such as financing, transferring real estate) the subsidizing by the State happens in contrary to the conditions set by the constitutional agreement and thus the Orthodox Church has direct support.

Overview and legal analysis of financing practices of the State of religious organizations

– Besides direct funding from the budget, the State regularly transfers real estate and other material goods, as well as, additional financial resources from the government's reserve fund to the Orthodox Church. Also the Church receives regular funding from the budgets of local municipalities;

– Despite the conditions outlined in the constitutional agreement between the State and the Church, the State has not yet made any calculations of the damage the Church received during the Soviet period, consequently the practice of direct funding falls under the category of direct subsidizing and not under the category of damage compensation, which contradicts the constitutional principle of secularism;

– Starting from 2014, the funding practices of four other religious organizations (Muslim community, Jewish community, Armenian *Apostolic* Church and Roman-Catholic Church), similar to that of the Orthodox Church, is also done in the form of direct subsidizing. The relevant legislation does not include any objective, just or damage related criteria for measuring this damage. The form of funding of these four churches is discriminatory and it excludes other religious denominations, which had also suffered damage under the totalitarian Soviet regime;

– Unlike the Orthodox Church, the State fully controls the purpose and expenditures of the funding for these four religious organizations, and this contains disturbingly high risks of interference into the autonomy of the religious organizations;

– The State does not in any way estimate the property transferred to the Church, thus it becomes impossible to evaluate this as a part of the damage compensation process from the Soviet period;

– Large parts of the material goods allocated to the Orthodox Church are used for religious purposes, which violates the principle of the State's religious neutrality. The State, as a rule, does not verify the necessity of transferring real estate or other property, or financial resources or the purpose of spending these resources.

Critical analysis of the activities of the State Agency on Religious Affairs

– The institutions similar to the State Agency on Religious Affairs (the Agency) exist in other former Soviet republics as well, and despite their labile mandate, in reality impose control over religious organizations. The analysis of the experiences of those European countries (Germany, France, Italy), which the Agency often uses to substantiate its role and importance, demonstrates that its mandate, competencies and strategy are in fact very different. Unlike the agencies working on religious issues in the mentioned countries, the Agency has the issues of outside legitimacy, independency and horizontality of making a decision. The agency is less focused on the objectives of protection of religious freedom, pluralism and religious neutrality or the integration of religious groups;

– Despite the fact that it operates under the Prime Minister's direct supervision and is supposed to have significant resources for political influence, the Agency failed to settle important controversies and issues with regards to freedom of religion, which most likely points to the lack of political will;

– The Agency's approach towards the issues of religious freedom is usually not progressive and their analytical and strategic documents, notably contradict the ideas of equality and human rights. Also, its activities contain the risks of strengthening the hierarchal structures of religious organizations, as well as, the safety and control based attitudes;

– Despite the fact that according to its mandate, the Agency has mainly research functions, the Agency does not fully document and study the state of religious freedom. Moreover, the

Agency did not issue relevant assessments of the cases of serious violations and did not identify the context of religious intolerance and social alienation. Due to this policy of ignorance, the serious cases of violation are still unresolved;

– Through the Agency's activities, the State attempts to interfere and control in the autonomy of the Muslim religious organizations, which further alienates these organizations from the Agency and enhances the marginalisation of the community;

– The Agency implements the policies of funding the four religious organizations, as well as, the issues of construction of religious buildings and settling disputes between religious organizations in a non-efficient way and in violation of standards of secularism and human rights, which contains the risks for interfering in the autonomy of the religious organizations and politicizing the religious issues;

– Despite the declared increase in activities aimed at safety for religious activities the Agency does not in fact have a strategy or a plan for preventing religious extremism. Besides the State's control of the religious organizations, in the first place of Muslim organizations, as well as, the policy of non-recognition of certain religious groups and ignoring human rights protection, encourages the exclusion of religious groups, their alienation and possible radicalization.

The violence motivated by religious hate and State's inefficient and non-secular policy

– In 2014-2016, several cases of violence on religious grounds against the Muslim community have been revealed. The State failed to respond with effective and secular policy, which resulted in the repeated acts of violence and it also fuelled new conflicts with similar ideological narratives in different social spaces;

– During the religious conflicts, the Interior Ministry played a role of a passive observer and did not prevent or stop acts of violence or the limitation of rights. Moreover, on several occasions, the police used repressive force against the Muslims;

– The ongoing investigation of the well-known hate crimes does not satisfy the standards of efficient, independent and timely investigation. Nobody has been held responsible for the given cases up to now;

– Most of the latest instances of the religious conflicts have been shelved. Apart from non-usage of legal mechanisms of solving the problem, the possibilities of political negotiations have also been ignored, which led to the complete dismissal of the rights of the Muslim communities;

– The inefficient response policy in the hate crime cases, created a climate of impunity, which is confirmed by the tendency of increased violence against the Jehovah witnesses;

– It is noteworthy that apart from non-effective response, the law enforcement agencies on the institutional level are not prepared to adequately react to the hate crimes, which brings the necessity of implementing significant reforms to the daylight. The positive measures already implemented by the Prosecutor's Office and the Ministry of Internal Affairs, are inconsistent and fragmented;

– The increased use of hate language in the public space by some of the government representatives and members of various political, social or clerical groups encourages a hostile and intolerant environment towards the non-dominant religious groups, which harmfully affects their rights and social conditions.

The issue of religious neutrality and of protecting equality in public schools

– The issues of protecting religious neutrality and equality in public schools remain a systematic problem. The practices of religious indoctrination and proselytism are deep-rooted in schools' daily operations and hinder the creation of an intellectual environment based on academic knowledge. Moreover, the current environment is oppressive and hostile towards the students from non-dominant religious groups;

– In the reporting period, the internal audit department of the Ministry of Education and Science has studied only a few, isolated cases of religious indoctrination, proselytism and possible discrimination in schools, which considering the scale of the problem, is not adequate. The Ministry did not establish any facts of violation in any of the well-known cases of violation of religious freedom. The apparently unfounded decisions by the Ministry, demonstrate the absence of the political will. The Ministry of Education and Science rarely uses proactive monitoring practices to reveal the forms, reasons and the scale of religious indoctrination and proselytism in schools.

The discriminatory policy on construction of religious buildings

– One of the significant challenges for religious unions is the existing discriminatory policy in terms of construction of religious buildings. Because of its loyalty towards the dominant religious group, the local governments in most cases make unfounded decisions on cancelling or not issuing the construction permit; and often openly support the demands of the majority and exploit the religious neutrality;

– In 2014, after establishing of the State Agency on Religious Affairs, some changes have been made in legal background for construction and the agency was equipped with the right to issue recommendations with regards of such construction. Considering the nature of recommendations and the obscurity of the Agency's field of operation, the participation of the agency in the process of issuing a construction permit contains risks of taking the process outside the realms of the law, as well as, of delaying and politicizing, which has already been confirmed by the current practices.

Part 1

Legal analysis of the Constitutional Agreement

1 |
Constitutional status of the Constitutional Agreement

On March 30, 2001, an Amendment introducing the concept of a Constitutional Agreement to the supreme law was added to Article 9 of the Constitution of Georgia. On October 22, 2002, the Parliament of Georgia approved the Constitutional Agreement.

Before the approval of the Constitutional Agreement, the recommendations issued by international experts, including the Venice Commission[1] had unfortunately not been considered[2]. The Venice Commission considered the "Constitutional" status of the Agreement problematic. According to the Commission, the status of the Church came close to the constitutional status of government branches and had the potential to raise doubts and risks of the domination of religious issues over secular ones. Granting constitutional status to the Agreement could indeed raise questions regarding the compliance with the principle of a secular state, since the fundamental principle of the mentioned is the separation of church and state. In addition, with such argumentation, the Venice Commission recommended forming the agreement between the Government of Georgia and the Church, rather than between the State and the Church. [3]

Before the approval of the Constitutional Agreement, the Committees of Legal Issues, Rule of Law and Administrative Reforms and Civil Integration issued positive recommendations. In these conclusions, the issue of mutual independence between church and state was underlined. The conclusion of the former committee, without any additional discussion, declared that the Agreement complied with the internationally recognized principles and norms of international law in the field of human rights and fundamental freedoms. The conclusion of the Civil Integration Committee pointed to the meetings held with the representatives of different traditional confessions, and highlighted their support of the mentioned Agreement.

It should be noted that formation of agreements with religious organizations on different issues is an accepted practice in other countries. In parallel with separating church and state, models of cooperation based on agreement exist in Portugal, Austria, Belgium, Luxemburg, Germany, Czech Republic, Hungary, Romania, Slovakia, Slovenia, Poland, Estonia, Latvia and Lithuania. Per the constitutions of Spain and Italy, the state maintains cooperation with the Catholic Church and other religious communities (e.g. in Spain, apart from the Catholic Church agreements are formed between the Ministry of Justice and Protestant, Jewish and Muslim communities). Similarly, the Constitution of Bulgaria underlines separation of religious organizations from the state, however, also declares the Orthodox Church as a "traditional religion." The Constitution of Greece recognizes freedom of religion for other religions, but determines that Orthodox Christianity is the main religion of the state.[4]

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1 Venice Commission, Report, available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL%282001%29063-e#

2 Tsintsadze Kh., Legal Apects of Church-State Relations in Post-Revolutionary Georgia, "Brigham Young University Law Review",2007, N3,p.764;

3 Venice Commission, Report, available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL%282001%29063-e#

4 Norman Doe, Law and Religion in Europe, Comparative Introduction, Oxford Scholarship Online, 2011, pp. 4-5;

Regardless of the described practice, an analogue of church-state relations through a Constitutional Agreement of such status and normative content does not exist in other countries. There is a similarity with agreements formed between Vatican and different states; however, in the discussed case, the essential difference is also evident, since, in contrast with Vatican, the Church is not a subject of international law.[5] The "Constitutional" status of the Agreement, which in practice means its priority over internal legislation, as well as its formation on behalf of the State and by the President indeed bears certain similarities with an international agreement, despite the fact that the agreement is formed between the State and one of the religious organizations under its general jurisdiction.[6]

The Constitution of Georgia describes the interrelations between the Church and the State in the first chapter (General Provisions). Paragraph 1 of Article 9 of the Constitution establishes the principle of church-state separation. "The State declares full freedom of belief and religion, and also recognizes the special role of the Georgian Apostolic Autocephalous Orthodox Church in the history of Georgia and its independence from the State." The Constitution also defines the status of the Georgian Apostolic Autocephalous Orthodox Church. Paragraph 2 of Article 9 specifies that the relations between the Orthodox Church and the State are determined by the Constitutional Agreement between the State of Georgia and the Apostolic Autocephaly Orthodox Church of Georgia.

In the hierarchy of normative acts, constitutional agreements have the highest legal power after the Constitution and the Constitutional law.[7] On one hand, this implies that all other acts, including international agreements, should comply with the constitutional agreement. On the other hand, this means that the document itself should comply with the Constitution and Constitutional laws.[8]

Even though a Constitutional Agreement is a high-level normative act, its text is completely devoid of content related to human rights and does not even make general reference to the right to equality.[9]

The subordination of international contracts and laws to the Constitutional Agreement is a problematic legal issue, especially due to the complicated procedures of the rule for implementing amendments. Introduction of any changes and amendments in the Agreement, as well as its abolition, is impossible without agreement of parties, therefore, from the moment of its approval, the agreement *effectively* remains beyond the sphere of public sovereignty. Even in the case of agreement by both parties on any amendments or abolition, at least three fifth of the total composition of the Parliament is necessary for their approval.[10]

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5 Korkelia, Konstantine. "Towards the integration of European standards: European Convention on Human Rights and Georgian Experience, Chapter: European Convention Status in Georgian legislation."

6 Tsintsadze Kh., Legal Apects of Church-State Relations in Post-Revolutionary Georgia, "Brigham Young University Law Review",2007, N3,p.764;

7 Paragraph 2, Artcile 6 of the Constitution; Paragraph 3, Article 7 of the Law on Normative Acts;

8 Interestingly, the Constitutional Framework, as the source of church law, has one of the lowest rank in the hierarchy, see Chikvaidze D. Church Law, Tbilisi, 2008, 64;

9 Norwegian Centre for Human Rights (NCHR), The Constitutional Agreement's Departure from the Georgian Principle of Equality, 2015 p. 43;

10 Article 66, Paragraph 11 of the Constitution of Georgia;

Therefore, implementing any amendments in the Constitutional Agreement, including those with the aim of eliminating legislative asymmetry created because of privileges granted to the Church, becomes practically impossible due to the need for high level of parliamentary consensus and, especially, the agreement of the Church itself. [11]

There are different legal and theoretical assessments in relation to granting constitutional agreements superior legal power to international laws. A number of authors consider that determination of the hierarchical level of a normative act inside the country is a sovereign will of the State and universally recognized human rights norms can only be violated by such constitutional agreements that directly oppose the norms of international law, including international treaties. [12] Other authors consider that such will, specifically, the subordination of international treaties to the document regulating relations between two subjects, in its essence, represents a case of bypassing obligations assumed through international law and therefore opposes Articles 26 and 27 of the Venice Commission on international law, according to which all agreements in force are binding for their parties, should be implemented in good order and a party cannot refer to its internal legal provisions to justify the failure to implement the agreement. Georgia, as one of the parties has not presented a reservation concerning the mentioned articles and hence they are binding from the moment of ratification of the agreement. [13]

In the hierarchy of normative acts, the decision to grant such a document defining relations with a religious organization[14] a superior power over international agreements must represent a symbolic declaration of high political loyalty towards the Church and a possible attempt to bypass the obligations undertaken through international law by referring to internal regulations. Certainly, such an aim opposes the provisions of the Venice Commission and international law regarding the compulsory nature of international agreements for parties. However, before the fact of a clear opposition between the Constitutional Agreement and the international obligations accepted by the state is not established and evaluated, arguing that determination of hierarchy per se represents a violation of the obligations undertaken through the Venice Convention is an exaggerated assessment.

Furthermore, according to Article 9 of the Constitution of Georgia, in addition to the text of the Constitution itself, there is another standard for evaluating a Constitutional Agreement, which determines the necessity of compliance of the constitutional agreement with the universally recognized principles and norms of international law in the sphere of human rights and fundamental freedoms. Thus, it follows from Article 9 of the Constitution, that a Constitutional Agreement should comply not only with the Constitution and Constitutional law, but also with the said principles and norms of international law.

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11 J. "Church and State", Journal "Individual and Constitution," N1, 2001, 12;

12 Korkelia, Konstantine. "Towards the integration of European standards: European Convention on Human Rights and Georgian Experience, Chapter: European Convention Status in Georgian legislation;"

13 Norwegian Centre for Human Rights (NCHR), The Constitutional Agreement's Departure from the Georgian Principle of Equality, 2015 pp. 40-42;

14 Korkelia, Mchedlidze, Nalbandov, compatibility of georgian legislation with the standards of the european convention on human rights and its protocols, p. 207;

In this regard, it is a matter of discussion how the conflict between the Agreement and international treaties can be resolved when those, for example, the European Convention on Human Rights or the United Nations International Covenant on Civil and Political Rights, determine precisely the universally recognized principles and norms in the sphere of human rights and fundamental freedoms.

Per the formal definition of Article 6 of the Constitution and Law on Normative Acts[15], the Constitutional Agreement has a superior power in relation to any international agreement. In terms of such interpretation, the standard of compliance of the Constitutional Agreement with universally recognized principles and norms merely bears a declaratory character and cannot be implemented in practice. [16] By contrast, according to the human rights-based approach, the interpretation of Article 6 of the Constitution in conjunction with Article 9, calls for setting an exception in the Law on Normative Acts in relation to international agreements setting the universally recognized principles and norms in the field of human rights and fundamental freedoms and the subordination of the Constitutional Agreement to them. In this case, the evaluation standard for the Constitutional Agreement set by Article 9 will have a real meaning, rather than a declaratory nature. Regardless of the possibility for such interpretation, it is desirable to change the content of Article 6 of the Constitution and explicitly identify superiority of those international agreements that declare universally recognized rights and freedoms.

There is no practical possibility to assess the compliance of normative acts with international acts based on the Constitutional Court's authority. However, it is worth noting that articles 7 and 39 create the possibility to consider the universally recognized human rights, freedoms, and guarantees of citizens inherently stemming from the Constitutional principles as parts of the Constitution and thus evaluate compliance with them as compliance with the Constitution. [17]

2 |
Jurisprudence of the Constitutional Court regarding the Constitutional Agreement

It is interesting whether the Constitutional Court represents an effective mechanism for protecting the constitutionality of the Agreement, including its compliance with universally recognized rights, principles and norms.[18] To assess this, it is important to discuss the already established scope of constitutional control over the Constitutional Agreement.

15 Article 7, Paragraph 3 of the Law on Normative Acts;

16 Korkelia, Konstantine. "Towards the integration of European standards: European Convention on Human Rights and Georgian Experience, Chapter: European Convention Status in Georgian legislation;"

17 Article 39 and Article 89, Paragraph 1 of the Constitution of Georgia;

18 Article 89, Paragraph 1, Subparagraph A of the Constitution of Georgia;

In the only case related to the constitutionality of the Agreement, *Zurab Aroshvili vs. Parliament of Georgia*, the plaintiff - religious organization "Orthodox Church in Georgia," which was not subordinated to the Patriarchate of Georgia and was under the jurisdiction of the Orthodox Church of North America – was arguing that Paragraph 6 of Article 6 of the Agreement was not in compliance with Article 14 (the right to equality) of the Constitution. According to the said article of the Agreement, the state issues a license to use the official terminology of the Church in agreement with the Church. Therefore, according to the plaintiff, in contrast with the Church, it was not permitted to use the word "orthodox" to define its religious denomination without the license.

According to the interpretation of the Constitutional Court of Georgia in 2002, the Constitutional Agreement applies to the parties only and does not concern third persons. "The subjects of the relations envisaged under the Constitutional Agreement are the state of Georgia on one hand and only the Georgian Apostolic Autocephalous Orthodox Church on the other hand, excluding any other religious organizations, as demonstrated, in effect, in all articles of the Constitutional Agreement."

In addition, with regards to the obligation of the State to protect equality, the Court clarified that "forming the Constitutional Agreement with the Georgian Apostolic Autocephalous Orthodox Church does not exclude the existence of different religious organizations of Georgia and under no circumstances means limitation to their activities, moreover their prohibition, which follows from the relevant provisions in the Constitution of Georgia." As a concluding remark, the Court noted: "so any religious organization in Georgia has the right to use its symbols, terminology, or liturgical production without any permission, similarly as the Church of Georgia."

It follows from the discussion of the court that the Constitutional Agreement cannot influence the status of any other religious association or its legal situation. With such argumentation, the Constitutional Court limits the possibility to assess the discriminatory nature of the Constitutional Agreement.

The provisions of the Constitutional Agreement can certainly not be understood as an a priori rejection to grant the same rights to other religious denominations. However, the failure to apply certain analogous rights given in the Agreement to religious organizations through general legislation (e.g. the immunity of the Catholicos-Patriarch, restitution of religious buildings, protection of the religious buildings and other church items of the Church on foreign territories, legal recognition of religious marriage, and mutual recognition of certificates of education), in effect, does bring such results. While on the one hand the Constitutional Court refrains from assessing the discriminatory nature of the Constitutional Agreement and on the other the legislative base of general application is neutral and its content does not allow discussion on the unequal treatment before the Constitutional Court, the possibility to eliminate the discriminatory environment created by the Constitutional Agreement with the help of legal instrument is clearly rejected.

In addition, as noted in the decision of the Constitutional Court, the conclusion of the Constitutional Agreement only with the Orthodox Church is due to its special role in the history

of Georgia, also its existence in the independent and completed form has been decisive, while other denominations represent structural units of religious organizations existing outside the territory of Georgia.

The foundations of the mentioned conclusion of the court are unclear. In addition, even if the grounds of such a conclusion existed in the case of one religious organization, it needs to be assessed whether such a generalized conclusion can be made or whether it is the competence of the Constitutional Court to assess the existence of religious organizations in an independent and completed form, especially, to differentiate the Church from other religious denominations on the mentioned grounds.

The Constitutional Court does not exempt the state from the obligation to protect equality, but limits the scope of compliance of the Constitutional Agreement to the Constitution. If the Agreement concerns only the two subjects and hence does not limit the rights of third parties, it is unclear why it was necessary to grant it superior power to international treaties and laws. At the same time, with the argument of applying the Constitutional Agreement to two parties only, the court effectively avoided assessing the Agreement itself, which contradicts Article 9 of the Constitution, since without an effective mechanism, the evaluation standard of the Agreement can only have a declaratory character.

However, the privileges established through the Constitutional Agreement are implemented largely by their reflection in general legislation. Therefore, when the Constitutional Court fails to assess the compliance of the Agreement between two parties with the Constitution, such limitations are eliminated in the case of differentiated treatment reflected in the general legislation with the aim of implementing the Agreement.

3 |

Execution of the Constitutional Agreement

Numerous norms of the Constitutional Agreement are not self-executing and require relevant measures of implementation. In 2003, 5 special commissions were created under Order N1 of the President of Georgia; yet, these commissions have never met and fulfilled their functions. [19]

Through Decree N63 of February 21, 2012 of the Government of Georgia, a governmental commission was created to discuss the issues envisaged in the Constitutional Agreement between the State of Georgia and the Orthodox Church of Georgia. According to Article 3 of the Decree, the Commission includes 8 working groups relevant to different issues covered by the Agreement, specifically: 1. Working group on the discussion of property issues and creation of relevant legislative base for economic activities of the Church; 2. Working group on the assessment

19 Tolerance and Diversity Institute (TDI), Report - Study on Religious Discrimination and Constitutional Secularism, pp. 21-22;

of damages to the Church in XIX and XX cc. (period of loss of independence in Georgia); 3. Working group on establishing care and maintenance regimes for Church treasures protected in state museums and churches of historical importance; 4. Working group on the recognition of religious marriage through a procedure envisaged by the law; 5. Working group on establishing the chaplaincy in military formations and penitentiary institutions; 6. Working group on establishing mutual cooperation in the sphere of education; 7. Working group on defining the legal status of the Patriarchate of Georgia in foreign countries and care and maintenance of Georgian churches and monasteries abroad as well as determination of the property rights on them; 8. Working group on examining the origins of religious buildings.

Even though the issues to be discussed by working groups may also concern the interests of other religious organizations, per Article 3 of the Decree, the working groups are comprised only of the representatives of the state of Georgia and the Orthodox Church. [20]

Relevant issues were not studied by the working groups created through the mentioned Decree either. [21] Therefore, to this day, the state has never made any real attempts to execute the Constitutional Agreement by placing it into a legislative framework. Interestingly, apart from the governmental commission, the authority of the State Agency on Religious Affairs also concerns issues related to the implementation of the Constitutional Agreement. Specifically, per Article 2 (Part I, Subparagraph C) of Decree N177 of the Government of Georgia "On Approving the regulation of the State Agency on Religious Affairs," the Agency prepares recommendations related to the fulfillment of the objectives and aims of the Constitutional Agreement. Until now, the state has not cooperated with the Commission in relation to this issue and has not applied its authority to prepare recommendations. [22] In the conditions when with regard to the Constitutional Agreement, the authorities of the Commission and the Agency are not clearly separated, there is a risk that in the future interpretations offered by these two actors regarding the same issue may differ.

4 |
Relevant International Standards in relation to Agreements with Religious Organizations

Granting certain privileges to religious organizations through different agreements does not imply violation of the equality principle. It is essential that other religious organizations have the possibility to form such relations. [23]

20 Ibid;

21 Administration of the Government of Georgia, Correspondence (N 33220), 08.09.2016;

22 LEPL State Agency on Religious Affairs, Correspondence (N1/609) 16.09.2016; LEPL State Agency on Religious Affairs, reports, 2015, available at: http://religion.geo.gov.ge/geo/document/reports

23 Korkelia, Mchedlidze, Nalbandov, compatibility of georgian legislation with the standards of the european convention on human rights and its protocols, p. 207;

The European Court of Human Rights (ECHR) discusses the significance of prohibiting preferential treatment to any religious organization and neutrality,[24] as well as state obligation to eliminate discrimination during the process of granting privileges and implementation. [25] According to ECHR, while regulating any issue related to different religious denominations and belief systems, the State should maintain neutrality and impartiality, which is important for the existence of pluralism in the State and functioning of democracy. [26] Furthermore, ECHR critically evaluates the inclusion of other organizations, inter alia, the "main" religious organization of the country, in the process of recognizing other religious groups.[27]

In the case of *Ortega Moratilla v. Spain*, ECHR did not find violation of Article 14 of the Convention against the Evangelical Church, which disputed the case of discriminatory nature of tax exemptions granted to the Catholic Church regarding religious buildings. The Commission clarified that the reasonable and objective justification for differentiated treatment was the Agreement (Concordat) formed between Spain and Vatican, according to which both parties had mutual rights and obligations. The Commission noted that such agreement did not exist with the plaintiff Church, and the case materials did not reveal any attempt to form such agreement. Hence, the plaintiff had no similar obligations to those of the Catholic Church before the state of Spain. [28] It should be noted that in this case, the Commission discussed mutual rights and obligations, while the Constitutional Agreement represents a document establishing privileges, and does not envisage obligations to be fulfilled by the Church.

On the case *Savez Crkara and Others v. Croatia*, ECHR found discriminatory treatment from the State in the process of enjoying religious freedom. A religious organization was denied an agreement that would grant it the same privileged status as other religious organizations and would enable it to deliver religious education in public schools and kindergartens or to have religious marriage recognized by the State, with the justification that it had not existed since 1941 and its members did not exceed 6000 persons. The Court clarified that the Convention does not exclude the possibility of establishing special regimes with religious organizations through agreements, but for differential approach, the existence of objective and reasonable justification and the possibility to establish such relations upon the will of religious organizations is necessary. [29]

On the case of *Darby v. Sweden*, with regards to involuntary taxation with the aim of funding a specific church, ECHR noted that the State is obliged to respect the views of individuals and not force participation in funding of religious purposes. [30]

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24 Religions gemeinschaft der Zeugen Jehovas and Others v. Austria, para 92;

25 ECtHR, Jehovas Zeugen in Österreich v Austria, para. 32; Canea Catholic Church v. Greece, para 47;

26 ECtHR, Metropolitan Church of Bessarabia v. Moldova, para 116;

27 ECtHR, Manoussakis and Others v. Greece, para 43, 45;

28 W. Cole Durham and Brett G. Scharffs, Law and Religion: National, International, and Comparative Perspectives, Elective Series (New York: Aspen Publishers, 2010), 124;

29 ECtHR,Savez Crkara "Rijec Zivota" and Others v. Croatia para 85;

30 Darby v. Sweden, App. No. 11581/85; 09.05.1989, Commission, para 58;
The Supreme Court of the United States noted in one of the cases (Everson v. Board of Education of the Township of Ewing) that regardless of amount, no tax should be levied on a person if it is to be used for funding of religious organizations and institutions, regardless of their form;

Attribution of confessional aims of any religion to the State violates the secularism principle also according to the practice of the Constitutional Court of Georgia. [31]

General Comment N22 to Article 18 on Civil and Political Rights notes that: "the fact of recognizing a religion as a state, official or traditional religion or that its adherents represent a majority of the population should not become basis for violating Articles 18 and 17 of the Covenant or for discriminating against the adherents of other religions or non-believers."

In addition, in the case of *Arieh Hollis Waldman v. Canada*, the UN Committee on Human Rights notes that in relation to ensuring secular education, the aim of the State fully complies with the requirement to eliminate discrimination, and if the State decided to fund religious schools, this should take place without discriminating any religious group, based on objective and reasonable criteria in case of differentiation.

5 |
Preamble to the Constitutional Agreement

A brief overview of the general spirit of the Preamble to the Constitutional Agreement is necessary for legal analysis of the text of the Constitutional Agreement. The Preamble discusses the special role of the Orthodox Church in the history of Georgia, points to the "historical" status of state religion of the Orthodox Church and notes that a large majority of the population of Georgia remains Orthodox Christian.

The recognition of the special role of the Orthodox Church in the history of Georgia does not imply legal problems, however, the reasonability of stating the status of "historical" state religion and the role in the development of the century-old Georgian culture, as well as the statement of the fact that majority of Georgians are Orthodox Christians, is questionable.[32]

Allusion to the state religion status has a symbolic meaning and may point to the analogous role of the Church in the life of the country today, with only formal regards to the secular legislative framework. [33]

A legal environment upholding the secularism principle should not consider the services of the Church as a precondition for the Constitutional Agreement and acquire the form of legitimating its preferential treatment; moreover, it should not exclude the role of other religious groups in the development of Georgian culture.

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31 February 26, 2016 ruling of the Constitutional Court of Georgia;

32 Venice Commission criticizing the preamble for mentioning the autocephaly of the Church, "historical" status of the state religion and role in the development of centuries-old Georgian culture and religious belonging of the majority of the population;

33 Korkelia, Mchedlidze, Nalbandov compatibility of georgian legislation with the standards of the european convention on human rights and its protocols, p. 202;

Considering the place of Constitutional Agreement in the hierarchy of normative acts, the definition of the changing information regarding the religious belonging of the majority of the population as static and consideration of this factor as an important circumstance for establishing a constitutional agreement inherently implies a certain inconvenience with the spirit of the Constitution itself, since the latter does not delegate the freedom of religion and equality to the democratic process or subject it to majority rule.

6 |
Legal Review of the Main Text of the Constitutional Agreement and Relevant Legislation

6.1 Autonomy of the Church

In parallel with establishing privileges, the text of the Agreement also concerns the autonomy of the Church. Even though the Agreement alludes to the autonomy of the Church, [34] and regardless of the fact that the Agreement itself is an autonomous decision of the Church, the provisions of the Agreement reveal incorrect approaches to the autonomy of the Church. ECHR considers autonomy of religious organizations as a sphere protected under religious freedom[35] and, according to its clarification, autonomy of religion implies the right of religious communities to decide internal organizational issues independently. [36]

According to Article 2 of the Constitutional Agreement: "A priest shall be obliged not to disclose information he receives as a confessor or a cleric." Church law, rather than normative acts should regulate the obligation stemming from religious doctrine. The establishment of obligation for a cleric, rather than inclusion of this authority within the sphere of voluntary decision in the form of privilege opposes the principle of separation between church and state and illustrates interference in autonomy, thereby conflicting with Articles 9 and 19 of the Constitution. It is desirable to amend the formulation of this article to focus on the obligation of the State to ensure that the rules for questioning clerics comply with church law, rather than focuses on the obligation of a cleric to avoid violating rules established by church law.

According to Article 6, Paragraph 3 of the Constitutional Agreement, the Church shall not directly exercise business activity; hence, the State limits the Church from conducting activities allowed for other legal subjects. Nevertheless, the Church can establish a relevant legal person, to which this limitation will not apply. However, this does not exclude the incompliance of the even a "declaratory" norm with the principle of autonomy. Paragraph 4 of the same Article lists funding sources for the Church. This provision too

34 Article 1, Paragraph 2 of the Constitutional Agreement

35 ECtHR, Fernandez Martinez v. Spain, para 127; Izzettin Dogan and Others v. Turkey, paras 121, 134, 135. Hasan and Chaush v. Bulgaria, para 62;

36 ECtHR,Svyato-mykhaylivska Parafiya v. Ukraine, para 150, Serif v. Greece, para 53;

characterizes a certain frame for church activities, analogously conflicting with the essence of church autonomy.

Even though the mentioned provisions may not create factual legal problems and may be resulting from the Agreement formed voluntarily by the Church, it reflects the tendencies of exceeding proximity between church and state.

6.2 Privileges Granted to the Church through the Constitutional Agreement

6.2.1 Legal Status of the Church

The Constitutional Agreement[37] defined the status of the Church as a Legal Entity of Public Law (LEPL). After an amendment to the Civil Code of Georgia in 2011, the possibility of registering with this status under Article 1509[1] was granted to other religious organizations too.

However, the discriminatory environment for religious minorities, existing from 2002 to 2011, should be noted, since this violated religious freedom according to the clarifications of ECHR in a similar case against another country. [38]

Per Article 1509, Paragraph 1 of the Civil Code of Georgia, up until 2005, non-state organizations created for public purposes, including religious organizations, were considered as LEPL. Therefore, religious organizations were not able to register as Legal Entities of Private Law. However, since the State had not adopted relevant legislation on the status and rule for registration of religious organizations, they were unable to register as LEPL either. The Supreme Court of Georgia confirmed this in one of the cases and found it unacceptable to use the organizational-legal form of Legal Entity of Private Law of religious organizations until the adoption of relevant legislative regulations.[39]

After the 2005 amendments, religious organizations received the right to register as Legal Entity of Private Law. After another amendment in 2011, other religious organizations also received the right to register as LEPL, thereby becoming equal to the Orthodox Church in terms of legal status. [40]

It is also noteworthy that in contrast with the specificity of granting different legal status, in the Georgian reality the nominal availability of such status is not related to the supplementary differential regime.[41] With the exception of the Church, which holds privileges in relation to

37 Article 1, Paragraph 3 of the Constitutional Agreement;

38 ECtHR, Keresztény MennonitaEgyház and Others v Hungary, para 75-79;

39 Ruling 3k/599 of February 22, 2001 of the Civil, Entrepreneurial and Bankruptcy Cases Chamber of the Supreme Court of Georgia;

40 Tolerance and Diversity Institute (TDI), Report - Study on Religious Discrimination and Constitutional Secularism pp. 20-21;

41 According to Article 15091 of the Civil Code of Georgia, the Law on the Legal Entities of Public Law does not apply to religious associations registered as LEPL;

the Constitutional Agreement, rather than its status, religious organizations remain in essentially identical legal regime holding the status of either LEPL or non- profit(Non-commercial) legal entity (N(N)LE). [42]

6.2.2 Protection of Church Sacraments

The state exempts a cleric from the obligation to reveal information received as a confessor.

According to the right to equality guaranteed by the Constitution, analogous regulation applies to the clerics of other religions as well; specifically, according to Article 50, Part I, Article C of the Criminal Procedure Code of Georgia, a clergy member is not obliged to act as a witness or communicate information that he/she has come to know as a result of a confession or other act of confiding.

6.2.3 Military Service

Per Article 4 of the Agreement, clerics are exempt from military duty.

Based on the right to equality guaranteed by the Constitution, analogous regulation should apply to clerics of other religions as well.

According to the Law of Georgia on Military Duty and Military Service, Article 30, Paragraph 1, Subparagraph K, priests or students of a theological school can defer military service. [43] According to the clarification of the Supreme Court of Georgia, "priests" may include clerics of any religious organization in general. [44] Even though the mentioned regulation grants lesser privileges to religious minorities, in practice, deferring the conscription on the precondition of existence of a clerical status does not lead to essential factual difference and relevant discrimination.

Based on the Law on Military Reserve Service, Article 8, Paragraph K, clerics are exempted from military reserve service, so the mentioned regulation places clerics of different religious groups in equal conditions, in contrast with the regulations of military service.

Nonetheless, from the decision of the Supreme Court of Georgia, it follows that systematic deference of military duty could be related to certain formal problems. According to the decision, the failure of clerics to appear in the conscription commission on time could lead to relevant liabilities under the Code of Administrative Offences. [45]

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42 Erkvania, Tinatin, "The Legal Context of Interrelations between Church and State – Georgian Model" pp. 15-16;

43 Korkelia, Mchedlidze, Nalbandov, compatibility of georgian legislation with the standards of the european convention on human rights and its protocols, p. 203;

44 Ruling BS - 1599-1575 (k-11) of February 9, 2012 of the Administrative Cases Panel of the Supreme Court of Georgia; Report of the Tolerance and Diversity Institute (TDI): Study on Religious Discrimination and Constitutional Secularism pp. 45-48;

45 Ruling BS - 1599-1575 (k-11) of February 9, 2012 of the Administrative Cases Panel of the Supreme Court of Georgia; Report of the Tolerance and Diversity Institute (TDI): Study on Religious Discrimination and Constitutional Secularism p. 24;

6.2.4 Declaration of Great Ecclesiastic Holy days and Sundays as Public Holidays

According to Article 1, Paragraph 6 of the Constitutional Agreement, "As a rule Great ecclesiastic holy days and Sundays shall be declared public holidays."

Public Holidays are established by Article 20 of organic law "Labor Code." Part II of the Article envisages the possibility for the employee to request other day-offs instead of the holidays established through the law, which should be reflected in a labor contract. Even though the public holidays envisaged in the Labor Code are largely composed of the holy days of one religion, such possibility enables the elimination of unequal treatment.

6.3 Exclusive Privileges to the Church through the Constitutional Agreement

6.3.1 Immunity of the Patriarch

According to Article 1, Paragraph 5 of the Constitutional Agreement, the Patriarch of Georgia is immune. The content of "immunity" may be established by Article 75 of the Constitution, which envisages the status for the President of Georgia only. According to the mentioned norm, the President of Georgia is immune and cannot be arrested or criminally persecuted during his/her tenure.

The President is "immune" during his/her tenure only and, upon the conditions envisaged in the Constitution, he/she may be removed from office.

However, the Patriarch benefits from immunity before arrest and criminal persecution for an indefinite time, which is not allowed for any other religious leader or any other person, regardless of status. [46] Such privilege clearly violates the principle of equality and neutrality of the State. [47]

Putting the leader of one religious group above the law and recognition of immunity without exception clearly exemplifies inadmissible affiliation between the Church and the State. Recognition of such immunity opposes such fundamental principles of the Constitution as the rule of law, equality before the law, public sovereignty and legal state.

6.3.2 Recognition of Religious Marriage

According to Article 3 of the Agreement, the State shall recognize a religious marriage confirmed by Church according to the law.

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46 Norwegian Centre for Human Rights (NCHR), The Constitutional Agreement's Departure from the Georgian Principle of Equality, 2015 p. 44;

47 U.S Department of State, International Religious Freedom Report for 2015, Georgia, available at: http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dlid=256191#wrapper

Regulations related to weddings under the Civil Code of Georgia[48] do not include any norms with regard to religious marriage and do not apply the privilege established for the Church through the Constitutional Agreement to other religious organizations, which opposes the right to equality guaranteed through the Constitution. [49]

6.3.3 Education

According to Article 5 of the Constitutional Agreement, "Religious education in educational institutions shall be voluntary. Drafting, amending curriculums, teachers' appointment and dismissal shall be subject to Church proposals."

According to Article 18, Paragraph 4 of the Law on General Education, the pupils of public school shall have the right to study religion or conduct religious rituals outside of school time, if it serves the purposes of acquiring religious education. However, in contrast with the Church, there are no agreements/memoranda formed with other religious organizations regarding this issue. [50] It may be assumed, therefore, that in these conditions, the opportunity to teach relevant religions in schools upon request is not ensured for other organizations. [51]

Paragraph 2 of Article 5 of the Agreement concerns mutual recognition of diplomas, certificates, and scientific degrees issued by educational institutions.

Based on the right to equality guaranteed by the Constitution, diplomas, certificates and scientific degrees issued by relevant educational institutions should be recognized in case of other religious organizations as well.

According to Article 63^5 of the Law on General Education, before 1 January 2015 the Ministry of Education and Science of Georgia and the Patriarchate of Georgia must compile a list of unlicensed educational institutions of Georgian Apostolic Autocephalous Orthodox Church whose documents issued before September 1 2010 certifying general education are recognised by the State as provided for by the legislation of Georgia. Therefore, even though the Law on General Education does not include special regulations for the recognition of educational documents issued by the Church or other religious organizations, the mentioned regulation of the transitory provision of the law points to the direct application of the Constitutional Agreement with regards to the Church, in this specific case, as opposed to other religious organizations, towards the recognition of educational documents issues by the Church through the legislation of Georgia (Constitutional Agreement).

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48 Civil Code of Georgia, Book 5, Chapter 1;

49 Tsintsadze Kh., Legal Apects of Church-State Relations in Post-Revolutionary Georgia, "Brigham Young University Law Review",2007,N3,p.766;

50 Ministry of Education and Science of Georgia, Correspondence (N MES 2 1601053142)12.09.2016;

51 Norwegian Centre for Human Rights (NCHR), The Constitutional Agreement's Departure from the Georgian Principle of Equality, 2015 p. 48;

According to Article 89[5] of the Law of Georgia on Higher Education, before 1 January 2015 the Catholicos-Patriarch of all Georgia shall be authorized to define procedures for granting of academic degrees, other than procedures determined by the legislation of Georgia, and to grant academic degrees in accordance with such procedures in the field of Orthodox theological higher education. Documents certifying education, diplomas, granted under paragraph 1 are recognized by the State. Similarly, even though the law contains no special regulation for recognizing educational documents issued by the Church or other religious organizations, the mentioned regulation of the transitory provision of the law points to the direct application of the Constitutional Agreement with regards to the Church, in this specific case, towards the recognition of educational documents issues by the Church through the legislation of Georgia (Constitutional Agreement) as opposed to other religious organizations.

The Memorandum of understanding between the Church and the Ministry of Education and Science of Georgia envisages the creation of joint working groups, as well as elaboration of procedures for mutual and equal recognition of educational documents, academic degrees and titles issued by relevant educational institutions of the Church and the State and their legal provision. Similar memoranda have not been concluded with any other religious institution. [52]

6.3.4. Tax Exemption

According to Article 6, Paragraph 5 of the Constitutional Agreement, all ecclesiastic goods produced, imported, and delivered by Church, also donations, non-economic property and land premises shall be duty free.

Such privileges, except the exemption from land taxation of premises under church property, envisaged by the Agreement are implemented through the tax code.

Similarly, to the regime established through the Constitutional Agreement towards the Church, according to the tax code, [53] the property of any noncommercial organizations, including religious organizations, is exempted from **property tax**.

According to the tax code regulations, religious organizations are exempt from **corporate income tax** within the scope of religious activity. According to Article 9 of the Tax Code of Georgia, religious activities are not considered under economic activity. Additionally, Article 11 clarifies that Activity of those enterprises of religious organizations (associations) to publish religious (religious service) literature or produce religious items; the activities of these organizations (associations) or their enterprises connected with the realization (dissemination) of religious (religious service) literature or religious items; as well as the use of the funds received from the above activities for performing religious activities shall be regarded as equal to religious activities. This complies with Article 96, which considers only enterprises as corporate taxpayers.

52 Ministry of Education and Science of Georgia, Correspondence (N MES 2 1601053142)12.09.2016;

53 Tax Code of Georgia, Article 206, Part I, Subparagraph E;

However, the Code[54] still singles out the Patriarchate of Georgia. According to the regulation, income received through the realization of crosses, candles, icons, books and calendars used for religious purposes by the Church are exempt from corporate income tax, including by the subjects that produce such items for the Patriarchate. Even though church activities are exempt from corporate tax according to Articles 9, 11 and 96 of the Code, [55] the legislation prioritizes and grants exemption to other subjects that will produce the above items for the Church. [56]

Similarly, to the corporate income tax, the **value-added tax (VAT)** represents another tax linked to commercial activity. In this case too, as religious activity is not considered a commercial activity, religious organizations are not subject to VAT. Hence, even though the tax code[57] exempts the Orthodox Church from VAT when supplying items of religious purposes (e.g. candles, icons, and such items), such regulations also apply to other religious organizations based on Articles 9 and 11 of the code. However, in contrast with other religious organizations, other subjects responsible for constructions, reconstructions and paintings ordered by the Patriarchate are also exempt from VAT.[58]

Therefore, with regard to corporate income tax and VAT, preferential treatment of the State towards the Church is clear. Other subjects are exempt from VAT when producing crosses, candles, icons, books and calendars with religious purposes only through the orders of the Patriarchate; analogously, other subjects are exempt from VAT when constructing, reconstructing, or painting churches only through the orders of the Patriarchate. [59]

In addition, the apparently general, nondiscriminatory norms of the tax code, which do not exempt any religious organizations from land taxes, do not completely reflect the reality. The Constitutional Agreement superior to the law, a part of the Georgian legislation, exempts the Church from **land tax**.

Based on the equality principle guaranteed by the Constitution, other religious organizations and organizations implementing relevant activities through their orders, should be exempt from VAT envisaged under Article 168 of the tax code and from land taxes regulated through the Constitutional Agreement.[60]

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54 Tax Code of Georgia, Article 99, Subparagraph D;

55 Note: Wide interpretation of the Constitutional Agreement and the Tax Code could imply the consideration of production, including non-liturgical production, within the scope of religious activity as part of religious activity and the exemption of e.g. production of wine by Alaverdi Monastery from corporate income tax;

56 Public Defender of Georgia, Report, 2010, p. 313, available at: http://www.ombudsman.ge/uploads/other/0/84.pdf

57 Tax Code of Georgia, Article 168, Part I, Subparagraph F;

58 Tax Code of Georgia, Article 168 , Part II, Subparagraph B;

59 Public Defender of Georgia, Report, 2010, pp. 314-315, available at: http://www.ombudsman.ge/uploads/other/0/84.pdf

60 Tsintsadze Kh., Legal Apects of Church-State Relations in Post-Revolutionary Georgia, "Brigham Young University Law Review",2007,N3,p. 768;

6.3.5 Places of worship of the Church

According to Article 7 of the Agreement, the State recognizes orthodox churches, monasteries (acting and non-acting), their remains and land premises they are built on all over Georgia to be in the property of the Church.

Through the mentioned provision, the State implements restitution policies in relation to the real estate confiscated from the Church during the Soviet era. As the Venice Commission pointed out, it is necessary that such regulations consider the parts in personal property and exclude automatic ownership rights of the Church on such properties. [61]

Judicial practice shows that the views of the Commission were not unsubstantiated. Specifically, according to the 2004 ruling of the Supreme Court, the Patriarchate established ownership rights on a building inside the yard of the cult building, which was on the balance of the Society for the Protection of Historical and Cultural Monuments until 1900 and was then listed under the property of the legal successor foundation in 2001. The Court considered the disputed building an inseparable part of the Anchiskhati episcopal house, and therefore granted ownership rights to the adjacent building to the Patriarchate. [62]

The mentioned regulation of the Constitutional Agreement is broadly interpreted by the Courts and allows the recognition of those places of worship as the property of the Church, which have been illegally confiscated from other religious buildings and granted to the Church. [63] Therefore, restitution policy has not been implemented towards religious minorities, [64] and, in certain cases, historical places of worship belonging to other religious organizations were granted to the Church. [65]

The recognition of the ownership rights on places of worship confiscated in the Soviet period for the Church creates legitimate expectation among other religious organizations that their ownership rights towards analogous property will also be recognized. The recognition of the ownership rights only in case of the Church and implementation of restitution policy only in relation to it, with complete disregard of the problem in the case of other religious organizations and the refusal to study the issue, creates grounds for unfair treatment and is discriminatory against other religious organizations.

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61 Venice Commission Report, available: http://www.venice.coe.int/webforms/documents/?pdf=CDL%282001%29063-e#

62 Administrative and other cases chamber of the Supreme Court of Georgia, decision BS -470-408-k-04, 10 November, 2004; Tolerance and Diversity Institute (TDI), Report - Study on Religious Discrimination and Constitutional Secularism p. 31;

63 Norwegian Centre for Human Rights (NCHR), The Constitutional Agreement's Departure from the Georgian Principle of Equality, 2015 p. 45;

64 UN Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR /C/GEO/CO/4, 19 August 2014, 18;

65 Tsintsadze Kh., Legal Apects of Church-State Relations in Post-Revolutionary Georgia, "Brigham Young University Law Review",2007,N3,p. 767; 768; Report of the Tolerance and Diversity Institute (TDI): Study on Religious Discrimination and Constitutional Secularism pp. 45-48;

Based on the Law on State Property, free transfer of state property for ownership is only permitted in the case of the Orthodox Church. In the existing normative environment, the implementation of restitution policy towards religious minorities can only be limited to the transfer of places of worhip for use.[66] Therefore, the discriminatory nature of restitution policy based on the Constitutional Agreement is further strengthened by the regime of general legislation, according to which the restitution policy has not only been not implemented towards religious minorities, but also cannot be fully implemented, i.e. places of worship under state property cannot be transferred for ownership. In this regard, the regimes established by the Law on State Property and the Constitutional Agreement are coherent.[67] The nonexistence of the possibility of restitution even in the case of relevant will from the executive government puts essentially equal persons in significantly different conditions and alienates them from equal opportunities even more that it would have been the case if the restitution policy applied to the Church only. Such intensive cases of differentiation, even in the conditions of absence of classic differentiation as it is on religious grounds, are specially treated by the Constitutional Court and discussed under "Strict Scrutiny Test."[68] It should be noted that the relevant norms of the Law on State Property have been appealed in the Constitutional Court and the constitutionality of the disputed norms is under consideration.[69]

According to Article 10 of the Agreement, the State takes responsibility to negotiate with other states on protection, care and ownership of all Georgian orthodox churches, monasteries, remains, other ecclesiastic buildings, and ecclesiastic items being on their territories.

The Georgian legislation does not envisage such responsibility towards other religious groups. The existence of such exclusive privilege leads to discrimination on religious grounds.[70]

6.3.6 Partial Compensation for Property Confiscated in the Soviet Period

Article 11 of the Constitutional Agreement envisages partial compensation of material damage for property confiscated from the Orthodox Church in the Soviet Period. According to Part 1 of Article 11, the State shall acknowledge material and moral damage to the Church during the loss of state independence in XIX-XX centuries (especially in 1921-1990) being factual owner of part of the confiscated property, the State shall take responsibility to partly compensate material damage. Part 2 of the same Article envisages that a target commission shall be formed within a one-month period of signing the present Agreement. The commission shall study compensation forms, amount, terms, property and land plot transfer procedures and other details, and make drafts of proper legal acts. Until 2014, the State has not accepted such responsibility towards any other religious organization (see Part 2 – review and legal analysis of financing religious organizations).

66 Constitutional Law Clinic of the Free University of Tbilisi and Tolerance and Diversity Institute (TDI), statement, available at: http://tdi.ge/ge/news/350-religiuri-gaertianebebis-konstituciuri-sarcheli

67 Article 6^3, Paragraph 1 of the Law on State Property of Georgia;

68 Decision N1/1/493 of the Constitutional Court of Georgia of December 27, 2010 II.3.5-6;

69 Appeal 811 available at: http://www.constcourt.ge/ge/court/sarchelebi

70 Norwegian Centre for Human Rights (NCHR), The Constitutional Agreement's Departure from the Georgian Principle of Equality, 2015 p. 46;

6.3.7 Licenses and Permits

According to Paragraph 6 of Article 6 of the Constitutional Agreement, the State shall issue permissions and licenses on using official ecclesiastic terminology and symbols, also producing, importing and delivering ecclesiastic goods in agreement with the Church.

Even though the mentioned norm is not reflected in relevant legislation, the regulation points to the tendency of preferential treatment of the Church. While any religious organizations, including the Church, is a legal subject and can prohibit the use of its official terminology and symbols based on the civil norms of general application, the mentioned regulation may only be an expression of exceptional loyalty towards the Church.

6.4 Spheres of Cooperation

6.4.1 Chaplaincy

According to Article 4, Paragraph 2 of the Constitutional Agreement, chaplaincy shall be created at armed forces, prisons, and jails.

Through Order N173 of the President of Georgia of April 30, 2003, the provision of the chaplaincy in military formations and penitentiary institutions was approved.

Before 2010, the issue of realization of religious freedom by representatives of religious minorities in penitentiary institutions remained unresolved, since, according to the existing practice, the entrance of clerics of different religious organizations into these institutions required permission from the Patriarchate, representing an inadmissible discrimination against religious associations. [71]

Order N187 of the Minister of Probation and Legal Aid of Georgia of December 30, 2010 on the implementation of the right of defendants/convicts to participate in religious rituals and meet with clerics ensured the conditions to satisfy the religious requirements of defendants/convicts. The norms of the mentioned regulation are general and are not clearly limited to the consideration of religious requirements of the Orthodox Christians. However, Article 2 of the Order should be highlighted, which separates the Church from other registered religious organizations and/or traditional denominations and mentions it separately, even though for the purposes of this Order no differences exist.

Based not on the above-discussed Article 4, but Article 1 of the Constitutional Agreement, which envisages the authorization to make agreements on joint interest fields, on March 1, 2006, an agreement was concluded between the Church and the Ministry of Justice in the sphere of re-socialization of probationers and custodial convicts. [72] Based on Article 4, Para-

71 Public Defender of Georgia, Report, 2010, available at: http://www.ombudsman.ge/uploads/other/0/84.pdf

72 The agreement is available at: http://www.orthodðooxy.ge/samartali/shetankhmeba.htm

graph 2 of this agreement, the Patriarchate of Georgia, in agreement with the Ministry of Justice, shall organize the satisfaction of religious requirements of non-Orthodox probationers and custodial convicts. The subordination of religious requirements of the representatives of one denomination to the positive activities of another religious organization leads to inconvenience and is incompliant with the obligatory neutrality of the State in relation to religious issues.

There is a memorandum concluded between the State Agency on Religious Affairs and the Ministry of Probation, which aims at supporting the belief of convicts and probationers in general and implementation of their freedom of belief. [73]

At the same time, in accordance with the Constitutional Agreement, on August 17, 2014 an agreement was concluded between the Church and the Ministry of Defense. The agreement stands out for its non-secular formulations, e.g. "The parties put special importance to the maintenance, development and prosperity of Orthodox traditions […]" The agreement aims at developing a chaplaincy in the Georgian military, but the essence of it is reflected only in the cooperation with one religious organization. The agreement envisages rules for implementing the chaplaincy, including remuneration for priests and provision of areas for service and other forms of support from the Ministry.[74]

The implementation of a chaplaincy involving only one religious organization requires that it be effectively available for other religious organizations as well.

6.4.2 Education

Article 5 of the Constitutional Agreement envisages cooperation between the state and the Church, specifically, with regard to teaching religion, joint educational programs, and support to functioning educational institutions.

However, from the text, the meaning of joint educational programs or support to educational institutions is unclear. Such formulation appears declaratory and is not inherently problematic, and at its best, support to educational institutions may imply avoidance of bureaucratic complications. However, the analysis of the Law on Budget of 2016 enables more specific clarification of the responsibilities taken under this article. Specifically, the characterization of program code 4501 unambiguously notes: "For the upbringing of young people with Christian values, in different regions of Georgia (including mountainous regions), more than 70 educational-cultural and charity organizations of the Patriarchate, including, theological academies and seminaries, university, schools and gymnasiums, maternal and children's homes, boarding schools for orphans and underprivileged children, center for rehabilitation and adaptation of children with hearing impairment, vocational college and schools will be financed."

73 Ministry of Corrections of Georgia, Correspondence (N MCLA 2 15 00668876) 14.08.2015, available at: http://religion.geo.gov.ge/geo/memorandums/religiis-saagentosa-da-sasjelaghsrulebis

74 Ministry of Defense of Georgia, Correspondence (N MOD 8 16 00910106) 27.09.2016;

Article 9, Paragraph 3 of the Law on Higher Education may also be considered as a form of supporting functioning of educational institutions. According to this article, an orthodox higher education institution can exist in the form of a structural unit of the Patriarchate or as a legal entity of private law, regardless of the general regulation, according to which a higher education institution is founded in the form of a legal entity of public law or legal entity of private law. According to Article 13, requirements of the Georgian legislation do not apply to orthodox higher education institutions.

Hence, in contrast with higher education institutions founded by other religious organizations, those of the Church are not subject to legal regulations.

Article 31^1 of the same law establishes the rule for the foundation and management of orthodox higher education institutions. The fact of legal definition of the mentioned rule itself represents disregard of the autonomy of the Church. The rule should be defined by the religious organization, and not by the State. In addition, it is worth noting that the mentioned rule, in contrast with other religious organizations, allows for the definition of structure and management units different from those envisaged by the law to exist in higher education institutions of the Church. Numerous regulations[75] of the transitory provisions of the law envisage further exceptions and preferential treatment towards the Church.

In addition, the memorandum of understanding between the Church and the Ministry of Education and Science envisages the creation of a joint working group for different purposes, namely creation of manuals and curriculum for teaching Orthodox Christian religion; elaboration of procedures for the selection, training and appointment/dismissal of pedagogical personnel; creation of teaching plans for subjects related to Orthodox Christian belief; elaboration of procedures for the participation of the representatives of the Patriarchate in the process of discussing relevant curricula; funding and legal provision of property matters of educational institutions of the Church; elaboration of forms of cooperation between the Church and the State on the issues of upbringing pupils. Analogous memoranda have not been formed with any other religious organization. [76]

6.4.3 Cooperation in Social Affairs

According to Article 4, Paragraph 3 of the Constitutional Agreement, the Church and the State have the authority to implement joint programs for social protection.

On September 28, 2011, an agreement was made "On the Cooperation between the Apostolic Autocephaly Church of Georgia and the Ministry of Labor, Health and Social Protection of Georgia."

Among others, the agreement regulates the participation of the representatives of eparchies in the regional councils of care and guardianship bodies in the discussion of issues related

75 Articles 89^3-89^6; 89^9 of the Law on Higher Education;

76 Ministry of Education and Science, Correspondence (NMES 2 1601053142) 12.09.2016;

to return of children from care facilities subordinated to the Church to biological families, adoption, foster care, and transfer to other care facilities.

Analogous agreements have not been concluded between the Ministry and other religious organizations. [77]

6.4.4 Issues Related to Church Treasures

As mentioned above, according to Article 7 of the Agreement, the State considers Orthodox churches, monasteries (acting and non-acting), their remains and land premises they are built on all over Georgia to be in the possession of the Church. According to Article 8, analogous regulation applies to ecclesiastic treasure under State security protection (kept at museums and treasury, except those owned privately), with the difference that the latter is under joint ownership of the State and the Church.

Article 9 clarifies that the State and the Church shall jointly protect and care for security and protection of ecclesiastic buildings and treasure of historic-architectural and archeological-architectural values. According to the recommendation of the Venice Commission, the primary responsibility of the state to supervise such care is specified in Article 6, Paragraph 2, Article 7, Paragraph 2 and Article 9, Paragraph 2.

There are two memoranda concluded between the Church and the Ministry of Culture and Protection of Monuments, one on cooperation on issues of cultural heritage and another on the creation and approval of the regulation of a joint council discussing the issues of cultural heritage monuments of the National Agency for the Protection of Cultural Heritage. Analogous agreements/memoranda have not been signed with other religious institutions. [78]

Conclusion:

Considering the complicated procedures of amending Constitutional Agreements, focusing on the shortcomings identified through legal analysis is especially important.

An analogue of the relations between church and state through an agreement like the Constitutional Agreement cannot be found in any other country; additionally, conclusion of an agreement between the Church and the State is legally problematic.

Even in the conditions where the definition of the rank of the Constitutional Agreement in the hierarchy of normative acts is a sovereign right of the State, such a decision is not guided by human rights-based approach. The specific basis for granting an agreement between two

77 Ministry of Labor, Health and Social Protection, Correspondence (N01/67914) 06.09.2016;

78 Ministry of Culture and Monuments Protection, Correspondence (N13/13-4005) 13.10.2016;

parties a superior rank over international agreements is unclear, other than demonstrating loyalty towards the Church and maintaining the authority of the Agreement in the event of possible conflict with international agreements. In addition, it is noteworthy that the text of a normative act of such a high ranking is completely deficient of content related to human rights and does not point to the right to equality even in a general manner.

In the given circumstances, it is important that the potential existing in Article 9 of the Constitution, specifically, the requirement for the Agreement to comply with the recognized principles and norms of international law in the field of human rights and freedoms be applied for the interpretation of the existing legislative framework for the benefit of human rights. Therefore, with regard to the international treaties establishing human rights and freedoms, exceptions should be made in the relevant article of the Law on Normative Acts.

The scope of assessing the compliance of a legal document of such a high ranking with the Constitution and, especially, the right to equality, is limited by the practice of the Constitutional Court. However, the necessity of such assessment is clear with the aim of eliminating discrimination in cases where general legislation does not regulate any of the issues given in the Agreement (e.g. immunity of religious leaders, recognition of church marriage, mutual recognition of certificates of education, restitution of places of worship and protection of places of worship and additional ecclesiastic items in foreign countries), while the privilege envisaged in the Constitutional Agreement is directly applied towards the Church only and puts other religious organizations in unequal positions. Naturally, discriminatory approach does not lead to different factual circumstances only because it is not reflected in subordinated legislation, and should not be left unevaluated.

Furthermore, the Agreement and subordinated legislation jointly establish unequal opportunities for participating in certain spheres of societal relations, such as the opportunity of voluntary learning of a subject on Orthodox Christian belief or tax exemptions with regards to land tax, corporate income tax, and VAT.

In addition, the analysis of the Agreement and subordinated legislation reveals preferential approaches towards the Church, some of which may certainly not be directly related to priority enjoyment of specific rights, but are nevertheless basis for unequal treatment (e.g. support for religious education), and others are declaratory, pointing towards the tendencies of affiliation of the Church and the State.

Unequal treatment is also identified in documents prepared for the purposes of the implementation of the Agreement, for example, in the involvement of the Church in organizing the process of realizing religious requirements of the representatives of other denominations.

At the same time, the spheres of cooperation between the Church and the State, envisaged by the Agreement, also represent forms of support and preferential treatment of the Church and point to the problems of exceedingly close association.

It is important that the problems existing with regards to the fulfillment of the secular role of the State are revealed not only in the support of the Church, but also in the disregard towards the autonomy of the Church in a number of cases (e.g. establishment of clerical obligations by the agreement, limitation of commercial activities of the Church and definition of funding sources, interference in the definition of materials needed for voluntary education on Orthodox religion).

According to the clarifications of the Constitutional Court and standards established by international norms (See Chapter 4), the attribution of confessional purposes of any religion to the State violates the principle of secularism.[79] Certain provisions of the Constitutional Agreement indeed reveal discriminatory support to confessional activities. At the same time, in the wider context, the non-secular purpose of declaring preferential treatment towards the Church in the adoption of this agreement becomes clear.

The purpose of preferential treatment of the Church is clear in the Preamble of the Constitutional Agreement especially by the reference that Orthodox Christianity developed the centuries-old Georgian culture, disregarding the contribution of other religious groups.

79 Ruling of February 26, 2016 of the Constitutional Court of Georgia;

Part 2

Overview of practices of funding of religious organizations by State and legal analysis

1 | General overview

Current practices of funding can be assessed as structural reason of conducting non-secular interrelations between the State and religious organizations. The Funding of Orthodox Church and other religious organizations have different political and social contexts. For the case of Orthodox Church, funding implies obtaining church loyalty and thus gaining/maintaining own legitimacy, while the basis of funding others is interest of political control of religious organizations.

Funding of religious organizations had different political connotation under different governments. During United National Movement's (hereinafter UNM) governance, interrelations between political government and church leadership were antagonistic and in this regards funding was an instrument of restraining church resistance, taming and overcoming political crisis.[80] Large scale funding of the Church had other political and social reasons (restrain interest of the Church to gain funding from other sources, including political opponents, interest of church modernization etc.). Current secular and discriminative practice of funding of Orthodox Church was established during UNM government and functions with the same rules nowadays. In 2012, significant support[81] of Georgian Dream by the Patriarchate was observed during Parliamentary elections. Relations between the Government and the Church transformed into new format of cooperation and support and funding in this changed context serves to strengthen a loyalty towards the Church that is already high.

If in previous years, the practice of funding of religious organizations was based on exclusively preferential treatment of Orthodox Church, in 2014 the Government decided to finance four other religious organizations (Muslim community, Jewish community, Catholic Church and Armenian Apostolic Church). This decision was viewed by the Government as an effort to eliminate the previously existing discriminative practice. Although, as the new rule of funding was enabled with discriminative and non-secular principles, this decision of the Government became the subject of severe criticism of religious organizations and local[82] and international[83] human rights organizations.[84]

Under imposing strict mechanisms of accountability and regulations of spending purposes by the State in the process of funding four religious organizations, reasonable doubts have arisen regarding control of religious organizations by the Government.[85]

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80 Church and government – hybrids of power, video-recording of discussion, 2016, available at: https://www.youtube.com/watch?v=voOBWUH9pIs

81 Influence of the Orthodox Church: political processes and elections in Georgia, 2016, Kristine Margvelashvili;

82 Joint study of EMC and Tolerance and Diversity Institute (TDI), assessment of practices of state funding of religious organizations, 2016, available at: https://emc.org.ge/2016/07/16/emc-101/

83 Report on freedom of religion, 2015, US State Department, available at: http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper

84 Statement of the State Minister of Georgia for Reconciliation and Civic Equality, Paata Zakareishvili, 2014, available at:http://www.interpressnews.ge/ge/politika/270436-othkhi-religiuri-mimarthulebis-dafinansebis-proporciebs-religiuri-sakithkhebis-sakhelmtsifo-saagento-daadgens.html?ar=A&rnd=1426423584.7297

85 Statement of EMC, Legal assessment of practice of funding of four religious organizations, 2015, available at: http://bit.ly/2dQNYGU

2 |
General overview of State funding of Orthodox Church

After signing Constitutional Agreement between the State of Georgia and the Georgian Apostolic Autocephalous Orthodox Church (hereinafter Constitutional Agreement) In 2002, the funding of the Orthodox Church from different budget sources, including from central and local budgets, and reserve funds is conducted regularly. In addition to financial support, Orthodox Church gets large scale immovable as well as movable property, along with other benefits since 2002. The Patriarchy receives the biggest amount from the state's central budget in the form of an annual transfer. An amount to be transferred to Georgian Patriarchate is defined by the State Budget draft developed by the Ministry of Finance of Georgia. Accordingly, the amount of money defined for the Patriarchate of Georgia is regulated with the Law on Budget approved by the Parliament of Georgia at the end of budgetary year. Since 2002 including 2015 the Patriarchate of Georgia received 200 971 600 GEL from the State Budget. From 2009 to 2013, annual amounts varied from 22 to 27 million GEL and from 2013, the State budget allocates 25 million GEL steadily.

Analysis of State Budget Laws from recent years reveals that the majority of addressees of the money transferred to the Orthodox Church from the State Budget are educational institutions established by the Patriarchate. Purpose of spending this amount of money is defined by the Law as support of theological education. Namely, according to the Budget Law, the money transferred to the Orthodox Church is to be utilized for raising youth with Christian values in different regions of Georgia. With this purpose, more than 70 education-cultural and charity organizations of patriarchate receive the funding. Among these organizations are theological academies and seminaries, university, school-gymnasiums, maternal and children's homes, boarding schools for orphans and homeless children, rehabilitation and adaptation center for children with hearing impairment, a professional college.

As mentioned above, despite direct funding from the State Budget, the Orthodox Church also gets large-scale financial support from the Government and President Reserve Fund. It should be noted that since 2014 there has been a drastic increase of the amount transferred to the Church from reserve funds. From the Reserve Fund the Orthodox Church received 969 000 GEL in 2012, 270 000 GEL in 2013, 1 542 000 GEL in 2014 and 1 590 000 in 2015. Funding of Orthodox Church from Presidents' Reserve Fund is radically decreasing since 2014. The mentioned change should be related to the President and Executive branch constitutional mandate and also political context.

Orthodox Church steadily received funding from the budgets of self-government communities and cities. For instance, in 2014 Orthodox Church and dioceses, churches and clergy under it received 4 738 539 GEL in total; in 2015 this amount was 3 966 590. It should be noted that unlike recent years this figure has tendency of growth.

Besides funding, the State transfers large amount of movable and immovable property to Orthodox Church. When transferring the immovable property to the Church the State does

not evaluate the price and accordingly, calculation of transferred property in relation with compensation of damage caused by Soviet regime is impossible. As of December 31, 2015, according to official data of the National Agency of Public Registry, the Patriarchate of Georgia possesses 565 land plots, with total 16 742 987.82 m². (1674.3 ha)

Unlike general rule, that provides for obligation of supervision over administrative funds, property expenditure and utilization of budget expenditure and spending of budget assignations[86] by spending bodies on state budget funding, the State Audit Service does not monitor information regarding the expenditure of budget funds issued to the Patriarchate.[87]

3 | General overview of funding four religious organizations

On January 27, 2014 the Government of Georgia adopted Resolution on Implementation of certain measures related to the partial compensation of damages inflicted during the Soviet Totalitarian Regime to the religious organizations in Georgia[88]. According to the decree, the Government of Georgia confirms the damage caused by the Soviet totalitarian regime. Despite non-existence of legal obligation of compensation for material and moral damage to the religious organizations during the period reviewed, according to the principles of legal state, the Government expressed readiness to compensate material and moral damage to the Islamic, Jewish, Roman-Catholic and Armenian Apostolic religious organizations. According to the decree, considering the fact that the religious organizations registered in Georgia are not the legal successors of those religious organizations and communities that were damaged by the Soviet regime, Georgian government will give the compensation to those religious organizations that recognize the same religious doctrine or have a confessional heritage of those damaged religious organizations.[89] According to the decree, if there is more than one religious organization that has a confessional heritage of those religious organizations that were damaged by the Soviet regime, then in order to receive the compensation, they will have to unite into one legal entity, which will be authorized to receive the compensation or create the representative council, that will include representatives from religious groups that share the same religious doctrine and will be authorized to cooperate with the state authorities about receiving the compensation and having joint liability in appropriate use of received funds.[90]

86 Article 19 of the Budget Code;

87 Sub-paragraph g, paragraph 2, Article 17 of Law of Georgia on State Audit Service;

88 The Resolution N 117 of the Government of Georgia of, On Approval of the Procedure for Implementation of Certain Measures related to the Partial Compensation of Damages Inflicted during the Soviet Totalitarian Regime to the Religious Organizations Present in Georgia, of January 27, 2014;

89 Paragraph 2, Article 2 of the Resolution N 117 of the Government of Georgia of, On Approval of the Procedure for Implementation of Certain Measures related to the Partial Compensation of Damages Inflicted during the Soviet Totalitarian Regime to the Religious Organizations Present in Georgia, of January 27, 2014;

90 ib. paragraph 2, Article 3;

Based on Decree N117 of the Government of Georgia, seven religious organizations received funding in 2014-2015. In order to receive funding, two religious communities (Catholics and Muslim communities[91]) created representative council.

In 2014, based on the Decree N117 of the Government of Georgia, the amount of money allocated within the frameworks of compensating damage to four religious organizations was transferred from Reserve Fund of the Government of Georgia[92], as the Law on State Budget 2014 of Georgia was already adopted. The amount of money allocated within the frameworks of compensating damage to four religious organizations was 1 750 000 GEL in 2014.

The mentioned amount in 2015 was transferred from the State Budget to LEPL State Agency for Religious Issues with amount of 4 200 000 GEL.

In 2014 the amount transferred to Muslim community of Georgia was 1 100 000 GEL, 150 000 GEL to Jewish community, 200 000 to Roman-Catholic community and 300 000 to Armenian Apostolic Christian community. With the decree of 2015 the amount allocated for four religious organizations was doubled and consisted of 3 300 000 GEL 2015. The mentioned amount was distributed among the organizations as stated below: Muslim community – 2 000 000 GEL, Jewish community – 300 000 GEL, Roman-Catholic community – 400 000 and Armenian Apostolic Christian community – 600 000 GEL.

In accordance with the official position of the Agency, subjective figures, such as number of congregation and clergy; also number of cult buildings and conditions as of today, current necessities etc. were considered when determining the amount to be distributed among the religious organizations in both years.

In order to transfer money, the agency signed agreements with religious organizations on partial compensation for the damage caused by the Soviet totalitarian regime that obligated the religious organizations to spend the amount transferred to them with the following purposes:

– Salary and remuneration for religious activities of clergy;
– Restoration and maintenance of cult and religious buildings;
– Religious educational activities;
– Household expenses of religious organizations;
– Cultural and charity activities;

91 Note: It should be noted that LEPL Georgian Muslim Department that represents Shia branch of Islam in Georgia was denied compensation, as in accordance with resolution 117, the mentioned organization have not united in representative council with other Muslim organizations that represented Sunni congregation. Considering the abovementioned LEPL Georgian Muslim Department applied to the Constitutional Court of Georgia. The case is led by Georgian Young Lawyers' Association. According to application, discriminative treatment, prohibited with Article 14 of the Constitution of Georgia is observed compared to Christian groups. Armenian and Catholic churches are not obliged by the Resolution to establish one legal entity of public law, despite the fact that Armenian and Catholic churches are in the same schism with each other as Shias and Sunnis. Armenian and Catholic churches can receive funding without uniting, when the Shias and Sunnis have to establish joint legal entity of public law. Also according to the claim, requesting two Muslim branches separated since seventh century to unite in one organization and refusal on funding based on failure to fulfill this requirement is violation of freedom of faith and union. Detailed information on claim available at: https://gyla.ge/ge/post/saia-sakhelmtsifo-biujetidan-muslimebis-diskriminaciuli-dafinansebis-tsess-sakonstitucio-sasamartloshi-asachivrebs

92 Resolution of the Government of Georgia (N1942) 30.10.2014;

According to the agreement signed between Muslim community and the Agency in 2014, the Muslim community was obliged to spend 75% of the money received in 2014 on salary and remuneration for religious activities of clergy, and the remaining 25% of money on other purposes defined within the agreement. It should be noted that despite the blanket nature of an agreement, we can find the mentioned condition in the agreement with Muslim community only. The mentioned condition cannot be found in the agreement signed between the Agency and the Muslim community in 2015.

Within a one-month period after signing the agreement, religious organizations are obliged to submit the program of cost-estimate relevant to the purposes defined with the agreement. The religious organizations are obliged to submit interim and final reports of expenses relevant to cost-estimate program. According to the agreement, the Agency is authorized to conduct audit of the presented reports. If the audit report reveals cases of spending money that are violating agreement conditions, the State will terminate the funding in the same year. Apparently, unlike the cases of funding of the Patriarchy, the State uses strict mechanisms of monitoring of other religious organizations budgetary funding.

4 |
Legal analysis of practice of funding of Orthodox Church

The Government justifies funding of Orthodox Church and giving different kinds of benefits with Constitutional Agreement. According to Article 11 of the Constitutional Agreement, the Government confirms material and moral damage to the Church caused in XIX-XX centuries (especially in 1921-1990), in the period of losing the state independency. As the owner of the confiscated property, the State takes the responsibility to partly compensate the material damage. Constitutional Agreement links the enforcement of compensation condition with execution of specific conditions, namely second paragraph of Article 11 of the Constitutional Agreement provides that Commission will be set up on parity basis (in one-month period after signing this agreement) in order to study compensation of the damage caused, define compensation forms, quantity, conditions, property, transferring land and other details, that will prepare relevant drafts of normative acts. Accordingly, first paragraph of Article 11 of the Constitutional Agreement is not self-executing norm and the document links its usage with execution of relevant procedures by the Government. Parliament resolution on approving Constitutional Agreement provided for developing proper legislative acts and submitting to Parliament before the end of Summer Session by interactional group of the Parliament of Georgia together with Parliament Committees in order to implement provisions of the Article 11. However, the Commission set up on parity basis that was to define amount, forms, conditions of compensation to be given to Church and other rules, has never actually worked and have not developed the drafts of relevant normative acts, that after adopting would have become the basis of legal funding of the Church.

Different parity commissions created by the State with the Constitutional Agreement had only nominal meaning and have never made any specific decision.[93] Namely, the decree N1 of the President of Georgia of January 1, 2003 stipulated creation of commissions providing for measures provided in the Constitutional Agreement. Decree stipulated for establishing joint commission on issues of compensation for material damage caused to the Church in the period of losing State Independency. However, the mentioned commission have never worked nor made relevant decisions. Decree of the president of Georgia of January 7, 2003 was annulled on February 21, 2012 and the Government of Georgia adopted the Resolution N63 on February 21, 2012 on establishing a Government Committee to discuss the issues noted in the Constitutional Agreement between the Georgian Government and the Georgian Apostolic Autocephalous Orthodox Church that defined regulation of the commission and compositions of working groups. Two working groups out of eight groups established by the commission were tasked to review property issues and to work on creating relevant legal base and determination of damage caused to the Church in XIX and XX centuries (when Georgia lost the independence). However, the mentioned working groups have not worked and the commission has not made any specific decisions.

Thus, since 2002, funding of the Church from State Budget funds started without calculating compensation of damage and without taking preparatory measures defined by the Constitutional Agreement, including relevant normative acts (normative acts establishing legal basis of damage compensation). It should also be noted that the State Budget laws as well as other legal documents that provide for transferring budget funds to the Church makes no reference to conditions of the Constitutional Agreement or other legal acts. It should be noted that the scales of budget funding of the Orthodox Church are not defined by objective, foreseeable, fair criteria stipulated by law and the amount of funding is depended on political will. Obviously, practice of sporadic transfer of money and other material goods from other state funds and local self-government budgets other than budgetary funding goes beyond system of compensation of damage.

Considering the above mentioned, funding of the Orthodox Church since 2002 up until today is conducted though violating the rule defined by the Constitutional Agreement. It is only based on the political will of State, which creates a high risk of an arbitrary State in this matter, and it furthermore violates the constitutional principle of secularism.[94]

93 Tolerance and Diversity Institute (TDI), Study of religious discrimination and constitutional secularism in Georgia, Tbilisi 2014, available at: http://tdi.ge/sites/default/files/religiuri-diskriminaciisa-da-konstituciuri-sekularizmis-kvleva.pdf

94 Note: Should be noted that EMC has applied to the Constitutional Court of Georgia appealing budgetary funding of the Church. EMC considers that with mentioned norm of the Law of Budget of Georgia, state funding with amount of 23 450 000 GEL contradicts Article 19 (freedom of religion), Article 21 (right to property) and Article 14 (prohibition of discrimination) and principles of secular and democratic, legal state. According to EMC, applicants that are atheists, agnostics and secularist orthodox, forcibly participate in funding of specific religion, that is an interference in their freedom of religion and right to property and also discriminative;

5 | Legal assessment of funding practice of four religious organizations

Per resolution N117, on January 27, 2014, the Government recognized damage caused to religious organizations during Soviet totalitarian regime (hereinafter – Soviet regime) and based on legal state principles, expressed readiness to compensate material and moral damage caused to Islamic, Jewish, Roman-Catholic and Armenian Apostolic religious organizations. Despite the fact that other religious organizations (Lutheran Church, Church of Evangelical Faith, Evangelist-Baptist Church and other denominations) were also damaged during Soviet totalitarian regime, selection of religious organizations (communities) was conducted without assessing predefined, objective criteria and survey. Accordingly funding only four religious organizations to compensate damage caused during soviet period is discriminative and approaches and public statements of State Agency for Religious Issues (see, part 3), represents attempts of hierarchizing religious organizations and registering on normative level.

Transferring money to four religious organizations is conducted without fair and objective criteria related to damage. This condition indicates on using direct budgetary funding approach by the Government instead of model of compensation formally declared by resolution N117. In this sense, funding of four religious organizations becomes substantially similar to Orthodox Church funding system. Existing model gives the State opportunities to interfere with the autonomy of religious organizations and emphasizes the prevalence of political interests in funding practice. Official definition of the Government of Georgia on the existing system of funding also confirms the fact that funding of four religious organizations is conducted with direct subsidies and not based on compensation of damage. According to comments of the Government of Georgia on report of the European Commission against Racism and Intolerance (ECRI) on Georgia "*Funding of four religious organizations, provided by the Decree №117 of the Government of Georgia dated by 27 January 2014, shall not be considered as compensation or restitution for any established damage, but bears rather a symbolic character because the amount of the damage received during the Soviet totalitarian regime is unknown. Accordingly, criteria for defining amount of financial assets considers current circumstances related to those religious organizations*."[95] The government has an identical position on case *LEPL Church of Evangelical Faith vs. Government of Georgia* in Constitutional Court of Georgia.[96]

95 European Commission against Racism and Intolerance (ECRI), Report on Georgia (fifth cycle of monitoring), p. 76 p. 27, 2016, available at: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-GEO.pdf

96 Note: Should be noted that on December 10, 2014, LEPL Church of Evangelical Faith applied with constitutional claim to the Constitutional Court of Georgia. EMC represents the interests of the applicant in the Constitutional Court. Applicant Church requests to find those norms of the Resolution N117 of the Government of Georgia unconstitutional, in relation with Article 14 of the Constitution of Georgia, that excludes the possibility of compensation of damage to those religious organizations, that were also inflicted by the Soviet totalitarian regime. Additionally, the applicants consider it questionable the statement of the resolution that considers symbolic compensation for moral and material damage. According to them, amount of damage is not defined with objective, fair and damage-related criteria and thus relates annual funding of religious organizations to political will of the Government;

In order to transfer money, the agency drafts agreements with religious organizations on partial compensation for the damage caused by the Soviet totalitarian regime according to which the religious organizations are obliged to spend the compensation amount transferred to them for the purposes predefined by the Agency. In a one-month period after signing the agreement, religious organizations are obliged to submit the program of cost-estimate relevant to the purposes defined within the agreement. The religious organizations are obliged to submit interim and final reports of expenses relevant to cost-estimate program. The Agency is also authorized to conduct audit of the presented reports. If the audit report reveals cases of spending money that are violating agreement conditions, the agreement provides for termination of funding in the same year.

The mentioned practice of funding gives the State an opportunity to effectively and directly control religious organizations. The funding practice of four religious organizations shows that the amount of money transferred to them annually and period is fully depending on the conditions defined by the agency. In cases where the conditions of the Agreement regarding spending purposes are violated, the State has the right to terminate the funding that would contradict the principle of compensating the damage.

The fact that the Government have addressed the majority of the funding to the Muslim religious organizations, reinforces doubts regarding the interest of control of religious organizations. Arguments in chapter 3 show that the State had an interest of controlling Muslim religious organizations and the funding of four religious organizations was put into practice in a context of problems with Muslim community.

It should be noted that 75% of the money transferred to Muslim community is spend on salaries of Georgian Muslim Department and Georgian Muslims Union, that is a direct way of control and subordination of mentioned persons.[97]

Moreover, existing model of funding of four religious organizations implies alarmingly intense control of spending of money transferred to religious organizations by the State. Conditions of agreements signed show that the State intensively interfere in defining the purpose of spending allocated money, also in day-by-day accounting-financial activities of religious organizations. That is unacceptable form of relations with religious organizations and these mechanisms of control consist high risks of interference in independence and autonomy of religious organizations.

97 Note: should be emphasized that questions exist regarding participation of the State in establishing Georgian Muslim Department and in process of assigning Mufti (http://emc.org.ge/2015/11/26/interviu-mirtag-asadovtan/)

6 | Conclusive assessment of funding models

Article 9 of the Constitution of Georgia stipulates for absolute freedom of belief and religion. Additionally, it recognizes the outstanding role of the Orthodox Church in history of Georgian and its independence from the State. Second paragraph of the mentioned Article indicates that Constitutional Agreement shall govern relations between the State of Georgia and the Orthodox Church of Georgia. At the same time, it indicates that Constitutional Agreement shall be in full compliance with the universally recognized principles and norms of international law, specifically in terms of human rights and fundamental freedoms. Generally, regulation of relationships between churches and the states with constitutional agreements is accepted practice in other countries as well. Recognizing the outstanding role of the Church does not create legal problems if such recognition does not imply discrimination of other religious organizations.

However, as the practices of funding of the Orthodox Church and four religious organizations shows, in both cases the State tries to fit them in model of nominally restitution/compensation, however existing practices of funding work as direct budgetary funding, subsidy systems. At the initial stage of restitution model of funding, states generally decide the issues of returning confiscated property to religious organizations and only if rights cannot be restored with returning or replacing real property, monetary compensation is used. Since the State has neither assessed the amount of property damage nor studied the scales of subsequently transferred real estate or the relation of this to the damage caused in the past, it is impossible to assess process of restitution obligation. In any cases, the Orthodox Church is funded with direct subsidiary system, without studying amount of damage caused and defining the rule of compensation on the contrary of model defined within the Constitutional Agreement, which is a non-secular and non-democratic form of funding. In case of restitution, state funding of religious organizations is justified with legitimate purpose of compensating damage caused and is a form of exhaustible funding. In the case of Georgia, based on substantial disparity between *de jure* and *de facto* systems it is impossible to discuss the issues of fulfilling obligations and exhaustion.

As in the case with Orthodox Church, the State formally declared this funding of four religious organizations as part compensation model. Although, as the State has neither defined the scale of damage caused to mentioned organizations nor defined criteria that are objective, fair and related to the damage, the system of budgetary subsidizing has replaced compensation in this case also. However, unlike the case of dominant Church, the State started funding of four religious organizations without even planning the process of restitution of historic cult buildings and property confiscated in Soviet period. Illogical restitution model and the launching of direct funding rule instead of returning church property, has raised questions regarding legal and political faith in the process of returning historic buildings in future and it has moreover made the issue of constitutionality of existing system of funding disputable.

Funding practices of the dominant church and other religious organizations have different political connotations. If in the first case, political purpose of funding for the State is to gain political and social support of the Orthodox Church and reinforce its own legitimacy, in other cases interest of control of other religious organizations is dominating. The process of funding of the Orthodox Church during the previous government shows that a radical increase of funding from Budget and Reserve Funds coincided with pre-election period and a political crisis. Similar corrections are difficult to find with the new government. Although, the fact that the Government has not substantially changed the funding policy and State affiliations as well as loyalty towards the Church has become clearer in political life and institutional levels[98], indicates a deepening non-secular relation between the State and the Church.

7 |
Assessing transparency of funding systems of religious organizations and issue of accountability

Accountability of religious organizations in regards to state funding is an issue of significant public discussions. As noted above, in the case of funding of four religious organizations the Government uses strict mechanism of control of spending financial resources and accountability, but when it comes to the Orthodox Church, the State uses exceptional rule and leaves the Church outside the State monitoring. In accordance with General Administrative Code, citizens of Georgia have an opportunity to request public information regarding financing from legal entities registered under Patriarchate of Georgia as Legal Entities of Public Law. Using different models of accountability proves, again, the diverse political contexts and purposes of funding of Orthodox Church and the other four religious organizations and indicates an emerging interest in non-dominant religious organizations.

Form of accountability substantially relates to fundamentals and rules of funding of religious organizations. Using mechanisms of state control in the funding of religious organizations and accountability in damage compensation system is legally incorrect and represents a form of illegal interference in property rights and the autonomy of religious organizations. When there is a direct subsidy, that is *per se* a form of non-secular, non-democratic relation between the State and religious organizations, legitimate public interest arises regarding rationality and purpose of spending budgetary funds by supported religious organizations. Naturally, this also creates an interest of protecting the autonomy of religious organizations and the State will have to balance between these two interests of the public. Considering that the rule of funding of religious organizations in Georgia should be fundamentally overviewed, solving the issue of accountability will only be a fragmentary and insufficient attempt of solving the problem. And it will be theoretically impossible to develop fair and at the same time secular mechanisms of accountability in an inherently undemocratic funding system.

98 Consultation Committee of Framework Convention for the Protection of National Minorities, Second report on Georgia, 2016, p. 19, available at: http://new.smr.gov.ge/Uploads/1_e7beda71.pdf

8 | An overview of secularism, as legal principle

An overview of approaches of international or other national law reveals ubiquity of secularism as the principle existing in the sphere of protection of freedom of religion. Within the framework of such direct model of funding, the State actually forces taxpayers, despite the latter's' faith or possible conscientious resistance towards financing confessional activities, to fund religious organizations which are selected based on the political will of the State.

In the case of Metropolitan Church of Bessarabia and Others v. Moldova, the European Court stated that in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial and that this is fundamental in the preservation of pluralism and the proper functioning of democracy.[99] Prohibition of preferential treatment of certain religious organizations and the vital role of State neutrality is also emphasized in the case Jehovas Zeugen in Österreich v. Austria.[100]

Comment 22 on Article 18 of United Nations International Covenant on Civil and Political Rights states that the "fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers."

Additionally, the Human Rights Committee of the UN, in the case of Arieh Hollis Waldman v. Canada, found violation of Article 26 (Equality before the Law) and stated that funding Catholic schools with state funds was discriminative when other schools could exist only based on private funding. The committee stated that funding religious schools is not an obligation of the State and accordingly, providing secular public education is fully relevant with the principle of prohibition of discrimination. However, if the State should decide to fund religious schools, it should be conducted without discriminating any religious groups, and based on objective and rational criteria in case of differentiation.[101]

As already noted, prohibition of financial support of religion on national level is conditioned with principle of separation of Church from the State enshrined in constitutions of different countries,[102] in some cases this is directly stated in constitutions.[103]

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99 ECtHR, Metropolitan Church of Bessarabia v. Moldova, §116;

100 ECtHR, Religions gemeinschaft der Zeugen Jehovas and Others v. Austria, § 92;

101 ECtHR ,Arieh Hollis Waldman v. Canada, §. 10.6;

102 Norman Doe, Law and Religion in Europe, Chapter: Property and Finances of Religion, §175;

103 E.g.: Constitution of Denmark; Constitution of Ireland directly prohibits permanent funding of specific religions;

Supreme Court of the United States of America directly states in one of the cases (Everson v. Board of Education of the Township of Ewing) that no tax in any amount, can be levied to support any religious activities or institutions, whatever they may be called.[104]

In Lemon v. Kurtzman case, Supreme Court of the United States of America considers "excessive entanglement of government and religion" inadmissible based on principle of separation of religion from the State and secularism. In the case mentioned, the Court found funding system, regarding financing non-religious subjects in any religious schools, unconstitutional based on violation of secularism principle, as this rule created possibility of arbitrariness of the State, to be involved in activities of religious schools with purpose of controlling targeted spending of funding and additionally teachers of non-religious subjects could use resources received for religious reasons. The Supreme Court developed a test in the case, per which basis of any law should be the secular purpose, it should not support separate religions and should avoid "excessive entanglement of government and religion". Accordingly, the Supreme Court stated formally secular, but "dangerous" funding irrelevant with constitution.

In Larson v. Valente case, the Supreme Court of the United States of America found discrimination towards religious organizations, emphasized principles of neutrality and prohibition of preferentiality of religions, recognized violation of freedom of religion enshrined with constitution (non-establishment clause) and stated that freedom of religion can only be ensured in conditions of free competition. Per the judgement of the Court, the freedom of religion is protected only when legislators and voters have obligation to show the same attitude towards small, new, non-popular religions as their own religion or faith. With this judgment, freedom of religion and principles of neutrality and secularism were related to prohibition of discrimination on religious grounds. The necessity of establishing of this law on secular purposes and criteria was clearly emphasized in the judgement.

The principle of secularism was considered as a natural, inevitable part of freedom of religion by Supreme Court of Canada in Mouvement laïque québécois v. Saguenay (City) case. According to the Court, the State should remain neutral, must neither favour nor hinder any particular belief. The mentioned supports the maintenance of a free and democratic society. According to the judgement, if the state adheres to a form of religious expression under the guise of cultural or historical reality or heritage, it breaches its duty of neutrality, which means that state authority cannot make use of its powers to promote or impose a religious belief. In the case mentioned, the principle of freedom of religion and secularism was related to prohibition of discrimination.

In one of the cases, the Constitutional Court of Germany[105] stated that the State has an obligation of religious and ideological neutrality. Accordingly, the State cannot give the Church sovereign authority over people that are not members of the Church. The Supreme Court of Germany explained that the fact that the Church enjoyed privileged legal status during different stages of history is not relevant in such discussions; state religion in its classical form does not exist when the State and religion are separated. Based on mentioned judgement, the Constitutional Court of Germany found the Act that obliged non-religious person in mixed families to pay taxes to the Church, if spouse was member of the Church, unconstitutional.

104 Everson v. Board of Education of the Township of Ewing: Page 330 U. S. 16;

105 Mixed Marriage Church Case (1965), German Constitutional Court;

Accordingly, based on commonly recognized principles, it is unacceptable for the State to be directly associated with certain religious group and direct its influence to support religious organization. State power should not be used to derogate religions or to reinforce them. Otherwise, there is a threat of interference of religious organizations in politics, and if religious organizations are economically dependent, there is also a risk of the State interfering in the autonomy of religious organization. As constitutionalist Andras Sajo explains: "A union of secular and ecclesiastical control would equal tyranny, irrespective of the fact which one of these entities has absolute power".[106]

Of course, the principle of secularism does not imply inadmissibility of any kind of funding towards religious organizations. Funding of religious organizations can legitimately serve in implementing public function, including protecting guarantees of enjoying freedom of religion, good example of which is an institution of Chaplain.[107] Additionally, funding of religious education in public schools is also accepted, in frameworks of which teacher representatives of different denominations are financed for conducting religious classes.[108] For instance in Hungary, religious organizations with legal status are funded like state institutions and equally to them, for educational, social and healthcare events.[109] When fulfilling such public functions, religious organization with legal status, like other types of organizations is accountable to the State.[110]

It should be noted that when delegating public functions to religious organizations, the nature of the religion should be considered. Natural essence of the religion is to introduce and implement specific worldview and assert its superiority that is in antagonist relations with other ideologies.[111] For instance, financial support of religious organizations for ensuring the right

106 Andras Sajo, Constitutionalism and Secularism: The Need for Public Reason, p. 7;

107 Law of France of 1905, Article 2, Constitution of Romania, Article 29.5;

108 Norman Doe, Law and Religion in Europe, Chapter: Property and Finances of Religion, § 182;

109 Hungary: LFCRC 1990, Art 19.1;

110 Norman Doe, Law and Religion in Europe, Chapter: Property and Finances of Religion, § 177;

111 Peter Jones, "Religious Belief and Freedom of Expression: Is Offensiveness Really the Issue?," Res Publica 17, no. 1 (2011): 88; Jeremy Waldron, The Harm in Hate Speech (Cambridge, Mass.: Harvard University Press, 2014)Mass.","source":"Open WorldCat","event-place":"Cambridge, Mass.","abstract":"Every liberal democracy has laws or codes against hate speech, except the United States. For constitutionalists, regulation of hate speech violates the First Amendment and damages a free society. Against this absolutist view, the author argues that hate speech should be regulated as part of our commitment to human dignity and to inclusion and respect for members of vulnerable minorities. Causing offense, by depicting a religious leader as a terrorist in a newspaper cartoon, for example, is not the same as launching a libelous attack on a group's dignity, according to the author, and it lies outside the reach of law. But defamation of a minority group, through hate speech, undermines a public good that can and should be protected: the basic assurance of inclusion in society for all members. A social environment polluted by anti-gay leaflets, Nazi banners, and burning crosses sends an implicit message to the targets of such hatred: your security is uncertain and you can expect to face humiliation and discrimination when you leave your home. Free-speech advocates boast of despising what racists say but defending to the death their right to say it. The author finds this emphasis on intellectual resilience misguided and points instead to the threat hate speech poses to the lives, dignity, and reputations of minority members. Finding support for his view among philosophers of the Enlightenment, he asks us to move beyond knee-jerk American exceptionalism in our debates over the serious consequences of hateful speech.","ISBN":"978-0-674-41686-4","language":"English","author":[{"family":"Waldron","given":"Jeremy"}],"issued":{"date-parts":[["2014"]]}}},"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"} , 130; Silvio Ferrari, Rinaldo Cristofori, and International Consortium for Law and Religion Studies, eds., Law and Religion in the 21st Century: Relations between States and Religious Communities (Farnham, Surrey ; Burlington, VT: Ashgate Pub, 2010), 216. S. Parmar, "The Challenge of 'Defamation of Religions' to Freedom of Expression and the International Human Rights System," EUROPEAN HUMAN RIGHTS LAW REVIEW, no. 3 (2009): 6;

to education contradicts the understanding of public interest and function of the State – to be an instrument of public sovereignty. Apart from the fact that all religions are characterized by a contradiction with others, some of them can also be introducing and implementing discriminatory ideas. The state have no place to assess the legitimacy of the latter; however, when the state allows religious organizations in the public sphere, it not only has authority but also a responsibility not to reinforce ideas that contradict public sovereignty and its functions, as an instrument implementing it. Giving public authority to religious organizations that preach obedience of women as well as giving a possibility to implement these ideas could be an example of such reinforcement.[112] Precondition for discussing this issue is an existence of prior agreement that when implementing State sovereignty and secularism, also when prohibiting discrimination, the State does not support any ideology or refusal of religions through favoring atheism, but is in substantially different position from individual or religious organization and providing "safe pluralism" is its obligation and not choice. When fulfilling this obligation, secularism obliges the State to have an equal, undifferentiated approach to religions that will leave autonomic space for functioning to them.[113]

Explanations provided above fully comply with theory approaches that do not deny existence of religious motives in politics but stresses necessity of those motives be acceptable for everybody: its justification should not be based only on specific confession and reference to its transcendental opinions.[114] Additionally, it should be "interpretable" on a basis acceptable to everybody.[115] In this regard, principle of secularism is close to sovereignty principle, as it provides agreement on a fact that all members of society have common sense and possibility of participating in political decision and not only followers of certain faith are able of it.[116] This approach enshrined in Constitutional law is based on the theory of public reason by John Rawls, who also recognizes religious motive, however in a form transferred into relevant political argumentation.[117]

In Bruno v. Sweden case, the European Court differentiated between implementing confession and public functions. The court considered it admissible to tax citizens for expenses that refer to executing non-confession activities by religious organization, e.g. administration of funerals and separated it from funding that served certain confession purposes. In the given case, no authority have been transferred from the State to the Patriarchy of Georgia[118] by which the State would have implemented actions through religious organizations, as commonly accepted practice under conditions of secular state.

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112 Andras Sajo, Constitutionalism and Secularism: The Need for Public Reason, p. 19;

113 id. 11, 17–18;

114 Andras Sajo, Preliminaries to a concept of Constitutional Secularism in Constitutional Secularism in an age of Religious Revival, Susanna Mancini and Michael Rosenfeld, § 55;

115 Andras Sajo, Constitutionalism and Secularism: The Need for Public Reason, p. 1;

116 id. p. 2;

117 John Rawls, "The Idea of Public Reason Revisited," The University of Chicago Law Review, 1997,pp. 766, , 780, 783, 784, 799, 800; Rex J. Ahdar and I. Leigh, Religious Freedom in the Liberal State, Second edition (Oxford: Oxford University Press, 2013), 63;

118 Ruling of the Constitutional Court of February 26, 2016 №1/1/618 on case Citizens of Georgia – Giorgi Kekenadze, Nino Kvetenadze and Besiki Gvenetadze vs. Parliament of Georgia P.9;

System of deduction from taxes is common in European countries for those persons who voluntarily decide to support church financially. In this case, the person conducts voluntary financial contribution and is freed from taxes with relevant amount before the State.[119] Note that in systems described above, when the State allocates the money to fund church from taxable incomes, it is conducted with reasonable amounts, in accordance with voluntary decisions of the members of the church that minimizes the risks of arbitrariness of the State.

9 |
Constitutional standards of transparency of funding of religious organizations and accountability

According to Article 41, paragraph 1 of the Constitution of Georgia "Every citizen of Georgia shall have the right of access to information as prescribed by law, as well as to official documents about him/her stored in state institutions, unless they contain state, professional, or commercial secrets." Constitution of Georgia assigns special place to freedom of information. [..] without freedom of information, there is no freedom of opinion and it is impossible to provide vital discussions typical for free society and process of conflict of ideas. In order to generate opinions, it is necessary to obtain information and freedom of spreading information ensures that the opinion of the authors reaches the addressees. Besides the public meaning of freedom of information, it has significant meaning for personal and intellectual development of separate individual". [120]

Besides raising public discussions, access to official documents supports establishment of public control of public institutions that is focused on monitoring the purposes of budgetary expenditures drawn up from taxpayer' funds and also on the efficiency of the spending, in this way restricting arbitrariness of state institutions.

Despite the high public interest concerning the funding of religious organizations from budget funds, legislation of Georgia separates religious organizations with legal entity status from the circle of legal entities that have an obligation to issue public information.[121] Accordingly, interested persons do not have an opportunity to receive information from religious organizations on how state funds transferred to them are spent.

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119 Norman Doe, Law and Religion in Europe, Chapter: Property and Finances of Religion, p. 178;

120 Judgement of the Constitutional Court of Georgia of October 30, 2008 N2/3/406,408 II.პ.10;

121 Note: According to subparagraph a, Article 27 of the General Administrative Code of Georgia, administrative body, legal entity of public law funded from state or local budget have an obligation to issue public information, within such funding; according to subparagraph a, paragraph 1, Article 2, administrative body – all state or local self-government bodies or institutions, legal entities under public law (other than political and religious associations), and any other person exercising authority under public law in accordance with the legislation of Georgia; accordingly religious organizations with status of legal entity of public law are released from obligation to issue public information even in frames of financing from budget funds;

Constitutionality and existence of constitutional obligation of religious organizations to issue/not issue public information was assessed by the Constitutional Court of Georgia in the case Citizens of Georgia – Giorgi Kekenadze, Nino Kvetenadze and Besiki Gvenetadze vs. Parliament of Georgia. (№1/1/618)

Constitutional Court of Georgia rejected the claim without overviewing specifics or the factual nature of financing religious organizations. Constitutional Court based its decision mainly on the assessment of religious organizations. The court noted that with purposes of Article 41 of the Constitution of Georgia as a norm establishing the right to access official document of state bodies, only those organizations that fulfil state objectives, public authority, with or without state funding, are considered as public bodies.[122]

In conclusion, to settle constitutional dispute, the Constitutional Court of Georgia noted that in the given case, the Patriarchate of Georgia does not implement public authority and no state functions have been delegated to it, even though the State participates in its functioning through financing.

Additionally, in order to justify its own judgement, the Constitutional Court referred to Article 9 of the Constitution of Georgia and based on mentioned regulation, to constitutional principle of secularism that implies functional separation of state organs from activities of religious organizations. According to the assessment of the Court, implementing confession purposes of religious organization cannot be functionally linked to public authorities, this kind of linkage can violate secularism principle.

Accordingly, based on judgement of the Constitutional Court of Georgia, releasing religious organizations from the obligation of issuing public information is justified with the principle of secularism and independence from the State. At the same time, the Constitutional Court of Georgia shares applicants' position regarding the significance of access to information regarding the expenditure of budget funds: "argument of the applicant should be shared, according to which, an applicant should have information regarding expenditure of state budget, that refers to obligation of the State organs to provide the information, including regarding the funding transferred to religious organizations. The mentioned is most significant precondition of ensuring open governance, inevitable from States constitutional principle. The right enshrined in Article 41 of the Constitution of Georgia is directed at the State and an obligation of religious organizations independent from the State to ensure accessibility of the official documentation cannot be considered under its regulation". [123]

Thus, although the Constitutional Court of Georgia justifies releasing religious organizations from the obligation of issuing public information, it recognizes the interest of the society regarding funding of religious organizations from budget sources as legitimate and it also

122 Ruling of the Constitutional Court of February 26, 2016 №1/1/618 (on case Citizens of Georgia – Giorgi Kekenadze, Nino Kvetenadze and Besiki Gvenetadze vs. Parliament of Georgia);

123 Ruling of the Constitutional Court of February 26, 2016 №1/1/618 on the case Citizens of Georgia – Giorgi Kekenadze, Nino Kvetenadze and Besiki Gvenetadze vs. Parliament of Georgia §. 11;

imposes the burden of processing and issuing information on spending state budget on state organs.

The Courts have not assessed in mentioned judgement whether the State organs have an objective possibility to process and issue information on spending state budget in the existing legal framework. Accordingly, it is vital for the State to start working on the monitoring of funding of religious organizations and the rule of issuing information and to change existing non-transparent and non-accountable systems.

Part 3
Critical Analysis of the Activities of the State Agency for Religious Issues

1 | Political Context before the Creation of the State Agency for Religious Issues

After the transition of power, several independent religious conflicts with identical social and political narrative against the Georgian Muslim community have been observed. The State could not ensure the resolution of these conflicts through secular, human rights-based principles and chose the approach of ignoring problems through politicization of the issue. In their assessments of the conflict, state officials often used different conspiracy theories, [124] openly stressing the problem of possible political influence on the Muslim community and actively putting the issues of the necessity to study the funding of Muslim religious organizations on the agenda.

During 2012-2013, the issues related to religious freedom were managed by ad-hoc by the State Ministry for Reconciliation and Civic Equality. In these conditions, on November 29, 2013, the Government created an Interagency Commission for Certain Issues related to Religious Organizations (hereafter: Interagency Commission), the mandate of which directly reflected the arguments about research on funding for religious organizations and limited, special regulation of construction of religious buildings, prevalent in political discussions. Specifically, the Interagency Commission, headed by the State Minister for Reconciliation and Civic Equality, acquired the following obligations: 1. Analysis of legal acts related to religious organizations; 2. Elaboration of legal norms regulating the construction of religious buildings/places of worship; 3. Research on funding of religious associations; 4. Research on property issues of religious organizations; 5. Research on public religious service and religious processions; 6. Research on educational activities of religious organizations. [125] On the mentioned issues, the Commission was asked to prepare relevant recommendations and legislative amendments. Therefore, the Government managed to formally declare its objective of determining special legal regime related to the construction of religious buildings/places of worship and control over funding of religious organizations in the mandate of the Commission. The Commission had to work openly, with a participatory format; as the provision envisaged, its activities should have involved religious organizations and local and international human rights organizations. [126]

The Commission did not work for a long time. On February 19, 2014, the Government established LEPL State Agency for Religious Issues, subordinated to the Prime Minister. While commenting on the establishment of the new unit, the State Minister for Reconciliation and Civic Equality stated that the Agency would be a specialized structure to implement policies on religious issues: *"No such agency has existed before. I received tasks from the Prime Minister to get involved on different issues, therefore, it is important that a special structure was created."* [127] This way, issues related to religion, which had previously

124 Human Rights Education and Monitoring Center (EMC), Crisis of Secularism and Loyalty towards the Dominant Group (The Role of the Government in the 2012-2013 Religious Conflicts in Georgia), 2014, available: https://emc.org.ge/2013/12/05/25/

125 Decree N 305 of the Government of Georgia on the Creation of the Interagency Commission for Certain Issues related to Religious Organizations and approval of its provision, November 29, 2013;

126 Article 2, Paragraph 3 of the Provision;

127 Paata Zakareishvili's statement, 07.02.14, available here: http://www.ick.ge/rubrics/society/17312-i.html

been subordinated to the State Ministry for Reconciliation and Civic Equality and governed in a decentralized manner, was transferred under the competence of the Prime Minister. This institutional reform raised questions regarding the strengthening of control-based policies and centralization of processes. It should also be noted that religious organizations have never expressed interest towards the creation of a centralized institution specialized on issues of religious freedom. Neither were such recommendations issued by the Public Defender or local and international organizations working on human rights.

2 |
General Review of the Mandate of State Agency for Religious Issues

LEPL State Agency for Religious Issues (hereafter: the Agency) was established on the basis of Decree N177 of 19 February 2014 of the Government of Georgia. According to the Decree, the Agency represents a Legal Entity of Public Law, which implements informational, research-, scientific-educational and recommendatory activities in the sphere of religion for the Government and the Prime Minister. The Government of Georgia controls the Agency, and the Prime Minister appoints its head. The Agency researches the existing situation in Georgia in the sphere of religion, presenting it to the Government of Georgia, and implements the tasks of the Prime Minister in the sphere of religion.

Competences of the agency can be divided into the following main directions: 1. Activities related to the preparation of research, recommendations, and legislative initiatives in the sphere of religion; in this regard, the objective of preparing proposals and recommendations on the implementation of aims and objectives envisaged by the Constitutional Agreement and recommendations and proposals regarding education in the sphere of religion which should be highlighted; 2. Issuance of recommendations regarding the construction of places of worship, determination of their location, as well as transformation of different buildings and facilities into religious buildings; 3. Fulfillment of an intermediary role in the resolution of disputes and issues that could arise among religious organizations in Georgia; 4. Strengthening interreligious dialogue; 5. Fulfillment of the specific tasks of the Prime Minister in the sphere of religion.

The Agency has largely weak competences and a major part of its activities is comprised functions such as research and recommendations. Nevertheless, its rank in the executive government grants it high legitimation and makes it a strong political actor. In this regard, the analysis of the Human Rights Action Plan of the Government shows that the main responsibilities related to religious freedom are concentrated under the Agency, making it the exclusive, centralized unit working on the issue. [128]

128 Ordinance N445 of the Government of Georgia on the Approval of the Human Rights Action Plan for 2014-2015 and the creation of the Interagency Commission for Certain Issues related to Religious Organizations and approval of its provision, 9 July 2014, available: https://matsne.gov.ge/ka/document/view/2391005 As well as the Decree N338 of the Approval of the Human Rights Action Plan of 2016-2017, July 21, 2016 available at: https://matsne.gov.ge/ka/document/view/3350412

3 |
Overview of the Mandate and Competences of Agencies Related to Religious Issues in other countries

The public discussions related to the establishment of the State Agency for Religious Issues were dominated by the idea that the establishment of a centralized unit working on religious issues represented reproduction of the experience in post-Soviet countries, which implied the existence of a centralized, powerful unit of the executive government with the purpose of establishing control over religious organizations. In the ongoing discussions, the state often noted that the experience of creating such units is common across democratic countries of Europe, including France, Germany and Italy, and that such criticism is unfounded.

The presented chapter includes an overview of the mandate and activities of agencies working on religious issues in post-Soviet and European countries.[129] The experience of Western European countries is largely aimed at integration of religious organizations and protection of secularism and religious freedom in the state, while in post-Soviet countries, the mandate of such agencies is aimed at direct interference in the activities of religious organizations and their control. Comparative research clearly shows that, considering its competence and nature of activities, the State Agency for Religious Issues created in Georgia largely reflects post-Soviet experiences.

3.1 Overview of the Experience of European Countries[130]

3.1.1 Experience of France

Central Office of Organized Religions (Bureau Central des Cultes) is the legal successor of the former Directorate of Organized Religions. Its main functions include **legal expertise, research on religion, issues related to laicism,** including, management of secularism supervision units of prefectures. The Central Office has direct relations with the representatives of "major religions" in France, such as the Catholic, Protestant, Judaic, Muslim, Orthodox, Buddhist and other communities. In addition, the unit cooperates with other ministries and agencies that have special competences in terms of resolving issues of religion in specific spheres.

One of the main objectives of the predecessor, the Directorate, was legal expertise, which remained as an important activity of the Central bureau. The bureau prepares circulars on religious rights on issues such as supervision of cemeteries, places of worship, institutional support of religious practice, and regulations in French overseas. The Office also has competence in legislative amendment initiatives, construction of places of worship by communes, material and financial participation in reconstruction and legal expertise in issues of land lease.

129 Note: examples of countries discussed are precisely the ones, to which State Agency on Religious Affairs refers as relevant expereince;

130 Note: the experience of the said countries was obtained and processed through electronic communication with the relevant agencies;

The bureau also undertakes legal supervision related to the protection of religious freedom and implementation of secularism principles under the provisions of the Law on Separation of December 9, 1905.

The bureau decides issues regarding legal recognition of congregations, change of status, and mergers. Additionally, the Central Office interferes in the competences of local prefectures regarding the issuance of permissions for transfers or selling of religious property as cultural heritage.

The Office plays a key role in the application of the secularism principle in practice. It organizes seminars on this issue and ensures training of the personnel of the Ministry of Internal Affairs and other agencies. In parallel, the Office represents an advisor to the General Secretariat and prefectures in issues of secularism supervision. Cooperation with prefectures includes numerous operative aspects. In this regard, it is important that since April of 2011, all prefectures have a position in which they are responsible for overview of laicism. To this end, conferences are also organized on secularism and religious freedom to discuss practical matters related to religion and religious service.

The legal expertise of the bureau is based on best knowledge of religious phenomena, which undergo deep transformations in the context of secularization and globalization.

3.1.2 The Experience of Germany

In contrast with laicist countries, the constitution of Germany does not envisage strict separation between church and state. The State and religious associations cooperate in the issue of religious education in public schools and organize it jointly. According to the constitutional distribution of duties among the federal government and federal lands, religious issues are included in the competence of lands. The relationship between the State and religious organizations is laid out in the framework of religious freedom envisaged in the constitution and in concordats or agreements between the federal and state levels, jointly comprising the religious law of the State. The agreements and concordats are signed with the Holy Eparchy, Evangelical Church and the Jewish Community. Each agreement is succeeded by the law on its implementation, which regulates issues related to religious holidays, state subsidies, protection of religious monuments, service of community cemeteries and other state services.

The Federal Government has declared special responsibilities towards the Jewish community, reflected in the fight against any tendency of forgetting or concealing the genocide of Jews during the National-Socialist regime. The Government aspires towards public mobilization and elimination of racial intolerance and, to this end, supports organizations working on the development of relations between Christians and Jews. In this regard, the Jewish-Christian Coordination Council and Jewish-Christian International Council are especially important. Agreements on both federal and land levels regulate relations between the state and the Jewish community.

Partnerships between the Federal Government and the Central Jewish Council were formed as a long-term agreement on January 27, 2003, on the Holocaust Remembrance Day. According to the agreement, the Federal Government takes the responsibility to issue annual funding for the Central Jewish Council for the purposes of maintaining the German-Jewish cultural life (since 2012, the assistance is 10 million Euros) and implementing its international functions, development of the Jewish community, integration policies and social objectives. The assistance is available for all directions of Judaism and serves different groups in the Jewish population.

Regional scientific institutions, including the Heidelberg College of Jewish Studies, which studies Jewish culture, history and religion, receive federal assistance. The Central Archive of Jewish History in Heidelberg and the Leo Baeck Institute with its centers in Jerusalem, London and New York, as well as the archives of the Institute in the Jewish Museum of Berlin, aiming at scientific processing of Jewish history and culture, also receive state funding.

The Federal Government also participates in the funding of maintenance works on Jewish cemeteries. According to the 1957 agreement between the lands and the Jewish community, the Federal Government finances half of the expenses for maintenance and supervises abandoned cemeteries of former Jewish communes.

There are approximately 3.8-4.3 million Muslims living in Germany, representing 5% of the total population and one fourth of the migrant population. 50% of the Muslim population are German citizens. According to the latest data, approximately 2350 Islamic (including Alawites) groups are recorded across the country. 74% of Muslims are Sunni, 13% are Alawite, and 7% are Shia. The Muslim community also includes such small groups as Ahmadiyya, Mystical Sufi Unions and Ibadia. Two thirds of the Muslim population have Turkish origin; other parts have emigrated from Southeast Europe, North Africa, and Central- and East Asia.

The Federal Government has declared social cooperation to strengthen dialogue with Muslims. Since 2006, the Ministry of Internal Affairs has created the German Islam Conference with the aim of supporting dialogue with Muslims and cohabitation with people of different cultural and religious belonging. The Conference is a long-term state instrument for facilitating communication between the Federal Government, land representatives and Muslims. The aim is to improve the institutional (legal) and societal integration of Muslims. In this regard, the Ministry supports different initiatives, such as interreligious dialogue with Muslims in the form of the Islam Conference.

In Germany, the Islam Conference also exists as a framework of relations between the State and the Muslim community. The Conference represents a form of dialogue between the Muslim population and the State, working not only on the federal level, but also including the ministries of lands and ensures communication among communes. The Conference works towards public engagement and support of religious life. The issues of public order and security are discussed in relevant forums beyond the Conference scope. The Working Committee of the Conference includes experts, scientists, practitioners and representatives of religious unions. Through their participation, recommendations are prepared for different political

forums and organizational committees. The transparency of issues to be discussed and outcomes achieved also ensures the transparency of the conference.

The main aim of the conference is to improve institutional and social integration through structural integration. To this end, institutional cooperation is supported between the state and Muslims, on the basis of religious freedom. This includes theological teaching on Islam in universities and support of theological centers of Islam and education of imams.

Another program of the Conference ensures education of religious personnel. Under this program, different guidebooks and manuals of public education and language instruction are elaborated for religious clerics and other multiplicators of Islamic issues. In addition, the Conference prepares recommendations on practical issues of religious teaching, considering the ethnical, cultural and religious diversity in the everyday life of pupils.

In the initial phase of the Conference, it became clear that the aim and basis of dialogue is to ensure the inclusion and participation of Muslim population in the legal and constitutional regime of Germany. To strengthen consensus on common values, the working program of the Conference includes the theme of "gender equality," which implies working against domestic violence and forced marriage. In addition, the conference considers measures supporting the orientation of Muslims in workplace. For example, informational brochures are prepared in response to problems and issues raised in the intercultural context in enterprises and state agencies.

With the aim of prevention, the Islam Conference cooperates with the federal unit working on migration and refugees. The cooperation significantly contributed to the cooperation between Muslims and security services.

The Conference aims at reducing extremism and avoiding social polarization. To this end, a working group on "prevention works with the youth" was created. The group prepares recommendations and plans specific measures to eliminate hatred against Muslims and anti-Semitism among Muslims. The working group published a declaration on "Supporting Social Cooperation to Avoid Polarization" and adopted initiatives aimed at preventing polarization. To this end, the Conference has elaborated project support measures in the youth sphere. Funding of the program is ensured on the federal level.

To combat Islamophobia, open conferences are organized to study hatred against Muslims as a phenomenon and strategies against it, indicating explicit willingness and recognition of heightened state obligation to combat Islamophobia.

With the aim of better mutual understanding and social cohesion, the Federal Government also supports initiatives in this sphere. To this end, the Ministry of Internal Affairs funds interreligious dialogue, especially with regard to Muslims. The Federal budget funds research on interreligious dialogue and projects. Due to budget principles, projects that only concern one religion or community or serve the interests of only one religious union, are not considered. During the project implementation, high federal interest must be demonstrated.

3.1.3 Experience of Italy

The Ministry of Interior of Italy is responsible for relations with the Catholic Church and other religious organizations and, in compliance with the constitutional principles, ensures equal treatment regardless of religion. The relations between the State and the Catholic Church are regulated with constitutional principles. According to Article 7 of the Constitution, the Church and the State have independent agendas, are sovereign and legal provisions based on agreements govern their relations.

The Constitution guarantees equality of all religious denominations before the law. They have the right to organize according to their own canonical principles. Their relations with the State are regulated with the legislation that is based on the "interests" [131] of the agreement with their representatives, the final implementation of which occurs through the Parliament. The citizens of Italy, foreign nationals and stateless persons have the right to practice religion. They can disseminate their religion freely and implement religious practice, but their rituals should not contradict public morals.

The role of the Ministry of Interior in religious issues becomes especially significant after the expansion of new religions since the 1960s in relation to migration and social transformations. In this regard, the Ministry supports research activities.

In 1929, a package of rules and regulations on belief was adopted for religions in the process of establishment. Relatively later, the mentioned package was modified through the decision of the Constitutional Court and it is still being applied. After the denominations formed ad hoc agreements with the State in the form of "interests," the legislation was amended for the benefit of those rules that were introduced in the legal system through these agreements. The mentioned agreements have the status of special laws.

The Ministry of Interior also has a supervision unit, which observes religious policy and the condition of religious freedom among convicts. The unit monitors and analyses "non-Catholic" religious practice in Italy. It cooperates with prefects with the aim of finding solutions for the problems raised in the process of implementing religious freedom. Supervision also implies collection of ideas, offers and proposals to support long-term cooperation between religions and the State.

Another sphere coordinated by the Department on Religion of the Ministry of Interior is the protection of cultural heritage, which has historically been implemented by the special association Fabbricerie' and Confraternities, the members of which are appointed by the Minister of Interior.

131 Formed with the following denominations : Seventh-day Adventist church of Italy, (1988 and 1996), Assembly of God in Italy (1988), The Italian Union of Jewish Communities (1989 and 1996), Christian Evangelical Baptist Union in Italy (1995), Lutheran Evangelical Church in Italy (1995);

3.2 Overview of the Main Competences of Centralized Agencies for Religious Issues in Post-Soviet Countries

Comparative analysis of institutions for religious issues in other countries shows that centralized institutions with almost identical mandates and functions are common among post-Soviet countries. Such agencies almost copy the activities of Soviet state committees for religious issues, existing as specialized units on the governmental level. [132] Functions related to resolution of all general and specific policy issues around were concentrated in the committees. The existence of such agencies reincarnated from post-Soviet countries is mainly justified by its research and recommendatory functions and they have weak competences. In reality, they represent mechanisms for implementing religious policy and controlling religious organizations.

The President appoints the director of State Agency for Religious Affairs of Kyrgyzstan, and the Prime Minister appoints the deputies. Formally, the aim of the Agency is to monitor religious intolerance, protect religious freedom, and ensure the implementation of laws related to religion. In the process of registration of religious organizations, the Agency issues approval and has the authority to refuse or delay the registration of certain groups as religious organizations. In Kyrgyzstan, unregistered organizations are forbidden from conducting religious service or leasing space.[133]

State Council on Religious Issues of Armenia is a state agency subordinated to the Prime Minister and has no representation in the Government. Religious organizations and denominations are required by the law to register at the Council. Unregistered organizations are forbidden from publishing newspapers or magazines, leasing space, broadcasting television or radio, or inviting visitors. The law requires religious organizations other than the Armenian Apostolic Church to request special permissions from the Council for organizing public events, visits to other countries or receiving visitors from other countries. The Council is responsible for researching the activities of the organization in question and discontinuing activities of those missionaries whose activities do not comply with their status. Despite these competences, due to lack of resources, the Council's activities are largely limited to registration of organizations. [134]

State Agency for Religious Affairs of Kazakhstan was created in 2011, after the reorganization of a commission with a similar mandate in the Ministry of Culture. The Agency represents a central executive government unit, aiming at supporting interreligious relations, protecting religious freedom and preparing legislative proposals and researches related to religious freedom. The Agency

132 State Authorities for Religious Affairs in Soviet Bloc Countries. OTTO LUCHTERHANDT (57);

133 More information: https://en.wikipedia.org/wiki/Religion_in_Kyrgyzstan;

134 More information: http://www.state.gov/j/drl/rls/irf/2001/5539.htm;

monitors the activities of religious organizations and missionaries and presents proposals to law enforcement agencies on the prohibition of the activities of those individuals and groups whose activities violate the legislation of Kazakhstan. The Agency also has a hotline where citizens can submit complaints.[135]

The Committee on Religious Affairs under the Government of Tajikistan is largely responsible for registering religious groups, regulating the import of religious literature, and monitoring churches and mosques. In addition, the Committee also registers those individuals who plan to participate in pilgrimages.[136]

Councils on Religious Issues of Turkmenistan work on national and local levels and their functions include registration of religious organizations, issuance of permissions for public activities and for purchase of venues for public meetings, purchase of religious literature and hosting of foreign visitors. The Central Councils report to the President, while local councils report to the local heads of administration and the Central Council.[137]

The Council for Religious Affairs of Latvia is a governmental institution existing under the supervision of the Ministry of Justice and aiming at regulation of relations between the State and religious organizations and, in case of referrals from religious organizations, at assisting in organizational, legal or other issues.[138]

Directorate of Religious Affairs of the Bulgarian Council of Ministers is responsible for supervising state communication with churches and relevant documents, including control over their publication and dissemination, issuance of advance permissions for relations with other countries, and issuance of permissions for receiving financial contributions or other material support from other countries.[139]

The Department of Churches and Religious Societies of the Ministry of Culture of the Czech Republic is responsible for elaborating long-term strategies for relations among the State, churches, and religious societies, as well as for protection of religious freedom, registration of churches, religious organizations and associations and amendments to their main documents, creation of a database on churches and religious societies, issuance of grants to civil society organizations, churches and religious societies through tenders, and discussion and approval of issues related to budgets of churches and religious organizations.[140]

135 More information: http://www.din.gov.kz/eng/rabota_s_naseleniem/obzor_obrasheniy_grazhdan/;

136 More information:http://thediplomat.com/2015/04/tajikistan-no-hajj-no-hijab-and-shave-your-beard/;

137 More information:http://www.refworld.org/pdfid/4ad47e4f0.pdf ;

138 More information:http://www.kirchenrecht.net/lv/;

139 More information:http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17248&lang=en;

140 More information:https://www.mkcr.cz/activities-of-the-department-934.html?lang=en;

The presented overview illustrates, that in post-soviet countries the bodies engaged with religious issues are mainly under executive branch, namely under the office of Prime Minister or President. With their status and functions, the mentioned bodies represent tools for institutionalized linkage of executive governments and leaders of religious organizations, which is often directly stated in the relevant provisions.

The agencies for religious issues existing in post-Soviet countries formally have a research function. For example, the State Agency for Religious Issues of Kazakhstan aims at objective, multidimensional research and analysis of the religious situation in the country and the sings for its development. [141] The Departments for Religious Affairs in Estonia and Romania have the same functions, the former subordinated to the Ministry of Interior[142] and the latter to the State Secretariat on Religious Issues. [143] In Romania, the Secretariat records and collects information on the appointment of religious leaders or leaders of religious organizations. The research spheres of such agencies are usually "the sphere of religion" or "religious life," which are ambiguous terms, especially when they do not involve the aim of responding to the facts of violating religious freedom.

The agencies of Armenia, Azerbaijan, Uzbekistan and Romania have the function of preparing legislative proposals for central and local governments. According to their provisions, in addition to legislative proposals, these agencies regularly monitor the legislative environment and its compliance with the national legal standards related to religious freedom. The Agency of Romania also monitors the implementation of international and national legislation. [144]

It is important to note that centralized competence of issuing permits or recommendations related to the construction of religious or cult buildings is not common among the mandates of agencies for religious issues in post-Soviet counties.

Institutions created for the protection of **religious buildings as cultural heritage** represent an important part of the policies on religion. One of their main functions is reconstruction and conservation of places of worship and historical monuments (e.g. in Romania and Italy).

In post-Soviet countries, state agencies for religious issues also have the competence to intervene in **educational systems.** Their activities include coordination between the state and religious organizations in the spheres of education and culture (Estonia). The mentioned agencies cooperate with ministries of education and other relevant units and participate in the elaboration of curricula for the syllabi of religious subjects. In numerous cases, they initiate non-integrated theological teaching (Kazakhstan) and analysis of teaching plans created by schools (Azerbaijan). For example, the Committee for Religious Affairs of the Government of Uzbekistan licenses controls and registers religious educational institutions. The Committee

141 Совет по связям с религиозными объединениями при Правительстве РК: http://www.din.gov.kz/rus/deyatelnost/sovet_po_svyazyam/ КОМИТЕТ ПО ДЕЛАМ РЕЛИГИЙ МИНИСТЕРСТВА КУЛЬТУРЫ И СПОРТА РЕСПУБЛИКИ КАЗАХСТАН http://www.din.gov.kz/rus/index.php

142 More information: https://www.siseministeerium.ee/36748/:

143 More information: http://www.culte.gov.ro/hg-de-functionare-1:

144 http://www.culte.gov.ro/hg-de-functionare-1:

also organizes visits of the citizens of Uzbekistan to holy sites and theological educational institutions abroad.

In certain cases agencies engaged with religious issues in post-Soviet countries, represent mechanisms for direct control over religious organizations. Such control is carried out in the process of supervising the expenditures from state assistance. For example, in the case of Romania, financial resources received by the leaders of religious organizations from the state funds are controlled; the Agency requests information on the salary expenditures as well. The agency of Kazakhstan makes decisions on the issues of material assistance for the reconstruction of religious schools and therefore, controls the expenditure process as well.

The competences of agencies for religious issues also include authorities such as issuance of **visas and residence permits** for foreign religious activists, as well as permits for entry and stay for religious leaders who are foreign citizens. In addition, they control the circulation of religious literature. For example, the agency of Uzbekistan supervises examination/checking of religious literature imported from abroad and issued by religious organizations. In certain cases, the agencies respond to complaints from citizens and rights violations and monitor the facts of violation of religious freedom by state officials. In Bulgaria, the relevant agency validates information regarding possible as well as on-going illegal religious activity and informs the Prosecutor's Office as necessary.

4 |
Critical Analysis of the Main Directions of the Activities of the State Agency for Religious Issues

4.1 Evaluation of Research- and Analyical Activities of the Agency

The analysis of the Agency's' activities shows that a significant part of its resources has been spent on activities directed at transforming the frame of legal relations between religious organizations and the State, rather than on responding to specific instances of human rights violations or supporting the communication between the State and religious organizations in this process. In this regard, the documents published by the Agency openly reveal the interest to implement stricter regulation of the normative framework related to religious freedom, intervention in the activities of religious organizations, and introduction of hierarchy.

In the very first year, the Agency actively lobbied the idea of creating a special Law on Religion, which should have ensured the integration of existing regulations into a single act, and focused on special needs of religious organizations. However, its report[145] and the *Strategy for the Devel-*

145 State Agency for Religious Issues, Report, June-December 2014, available at: http://religion.geo.gov.ge/geo/document/reports/religiis-sakitxta-saxelmtsifo-saagentos-angarishi

opment of Religious Policy of the State[146] clearly show the political intentions of the Agency towards the legislative initiative. Specifically, the 2014 report states that the Agency studied the systems of relationship between religious organizations and states in European countries and established that, in up to 20 countries of the European Council, there are special legislations regulating the relations between the state and religious organizations. In addition, the Agency notes that its research identified special regulations regarding the rules for registering and recognizing religious organizations, conditions for registration and relevant responsible bodies, as well as forms of state funding and exemption from tax obligations. The report notes that in numerous countries of the Council of Europe, the hierarchy of religious organizations is defined by the law, there are rules for state recognition and registration of religious organizations and, importantly, these rules differ, meaning that registered and recognized religious organizations have different rights and obligations. According to the Agency, the registration process in certain countries involves two or three stages, and each stage, in turn, includes different obligations, including the responsibility of the subject of registration to present a report on the activities implemented during the year before the registering body. [147] In the Strategy document, the Agency argues for the necessity of adopting a Law on Religion, since the existing norms either have a specific character and fail to include the whole spectrum of rights and relations, or are dispersed and do not create a unified legislation. *For example, the legislation envisages the "rules for registering religious associations", but does not define "religious associations" as a legal category, or defines it for limited purposes only.* According to the Agency, the Law on Religion should firstly regulate the registration rules and status and relate the legal conditions with the status. The Agency criticizes the existing registration rules, which are insignificantly different and fail to create legal statuses including different rights and obligations. According to the Agency, the religious composition of Georgia and the existing forms of religious association require a systemic, complex approach and it is important to define legal statuses of religious associations in a way that the status stems from the objective conditions of the association, which, in itself, does not exclude the existence of certain differentiation.[148]

The assessment of the Agency shows that it does not share the spirit of the legislative amendments to the Civil Code, introduced in 2011, in terms of giving all religious organizations the possibility to select any organizational and legal form existing in the legislation. The mentioned legislative amendment eliminated the rule regarding registration with a LEPL status, which gave the possibility to use a LEPL status to the Orthodox Church only. Clearly, the amendment was not followed by the elimination of the asymmetry between the Patriarchate and other denominations on legislative and institutional levels or the discriminatory approach of the State, but it managed to symbolically demonstrate equal, non-hierarchized approaches of the State towards religious organizations through the desacralization of the LEPL status. [149] It should be noted that the mentioned legislative initiative was opposed by public demonstrations of the Patriarchate, protesting against the elimination of formal and

146 State Agency for Religious Issues, Draft Strategy Document of the Development of Religious Policy, available at: http://religion.geo.gov.ge/geo/document/saqartvelos-saxelmtsifos-religiuri-politikis

147 State Agency for Religious Issues, Annual Report, 2014, p. 15

148 Draft Strategy Document of the Development of Religious Policy, available at: http://religion.geo.gov.ge/geo/document/saqartvelos-saxelmtsifos-religiuri-politikis

149 On the registration of religious associations as legal entities of public law, B. Mindiashvili, available at: https://ge.boell.org/ka/2011/09/14/religiuri-gaertianebebis-sajaro-samartlis-iuridiul-pirad-registraciis-cesis-shesaxeb

legal differences among religious organizations. [150] After that, registration-related issues have not been raised openly in public discussions. After the establishment of the Agency in 2014, the discussions were renewed and the Agency effectively copied the hierarchization approach developed previously by the Patriarchate. Therefore, the attempts of the Agency to introduce a hierarchical model of registration and status definition should be assessed as a retrograde step against equality.

It should be noted that beyond the initiation of such amendments, the Agency already uses the concept of ranking of religious organizations and mentions the main (Orthodox Church), traditional (Catholic, Armenian Apostolic, Jewish and Muslim) and other religious associations/religious minorities, which is unfounded and unjustified by the current legislation.[151]

Additionally, it should also be noted that the initiative to adopt the Law on Religion also involves risks of deterioration of national standards related to religious freedom and state interference in the autonomy of religious organizations. The notation regarding the problematic nature of the absence of a definition of religious associations in the legislation in the strategy document is the clearest indicator of intervening policies.

While analyzing the analytical work of the Agency, the fact that the Agency does not research the challenges in terms of religious freedom or the needs of religious organizations should also be highlighted. Problems existing in this regard, as a rule, are hardly identified in the reports of the Agency or the Agency tries to disregard or underestimate those. The document of the Agency regarding the report of NGOs on the two years of government of the Georgian Dream openly notes: "In its 2014 report on religious issues, the Human Rights Watch did not have any concerns towards Georgia on the issue of religious freedom. We consider that the existing situation in terms of religious freedom has improved significantly." Furthermore, in the mentioned document, the Agency inadequately assesses the facts of religious intolerance and violence in Terjola and Kobuleti in 2014 and does not consider those from the perspective of discrimination and religious freedom. Regarding the persecution of Jehovah's Witnesses by the dominant religious group, with the support of a local religious leader and discriminatory treatment from the local municipality, the Agency noted that "The Terjola incident was not a result of religious intolerance, since the Jehovah's Witnesses themselves note that they do not have problems in terms of religious expression; there is a place of worship in Terjola, and the building under construction, according to them, is residential and has no relation to religious freedom. The basis for cancelling the construction permit was the cracks appearing on a neighboring house, due to which the neighbor, Kakhaber Makaridze, appealed." This assessment fully opposes the appeals of the Christian Organization of Jehovah's Witnesses to the national courts, in which they argue that religious freedom has been limited and the treatment has been discriminatory. [152] In relation to the Kobuleti boarding school for Muslim children, the Agency makes similarly unsubstantiated assessments. According to the Agency, the initiators of the incident are not members of an organized religious group, which means that this

150 More information: http://www.tabula.ge/ge/story/55248-droebiti-zavi

151 State Agency for Religious Issues, Report, June-December 2014, available at: http://religion.geo.gov.ge/geo/document/reports/religiis-sakitxta-saxelmtsifo-saagentos-angarishi

152 More information: http://www.kutaisipost.ge/akhali-ambebi/article/1307-iehovas-motsmeebma-therjolis-gamgeobas-quthaisis-saapelacio-sasamarthloshi-procesi-mouges

was an action of several representatives of the local population. Logically, this circumstance (even if verified) does not exclude the discriminatory and social nature of rights violations.

Clearly, in the conditions when the State does not assess facts of violations of religious freedom and the needs of religious organizations, it is impossible for it to implement adequate and human rights-based policies.

4.2 The Tendency of Strengthening Discourse of Security in Relation to Religion and its Risks

While assessing religious conflicts towards the Muslim community, state officials use conspiracy theories, point to the risks of employment of the Muslim community in the interests of certain political powers, including external powers and characterize specific incidents as cases aiming at provocation. The state officials did not consider the facts of religious violence from the human rights perspective and, in most cases, focused on immeasurable risks of security. The mentioned political narrative was reflected in the provision of the interagency commission created to study certain issues related to religious associations, which was later copied into the strategy document mentioned above. The document states that, during the recent years, the scope of policies related to religion have been narrowed down to the protection of the rights of religious minorities, while they should have included the discourse of internal and external security of the country in addition to the protection of the interests of religious groups. Among the factors of security, the Agency focuses on the following: in the border regions of Georgia, religious groups are distributed in a way that they border countries with analogous ethnic or religious belonging (e.g. the Armenian community of Samtskhe-Javakheti borders Armenia, while the Azerbaijani community of Kvemo Kartli borders Azerbaijan, and the Muslim community of Adjara borders Muslim Turkey). According to the Agency, the mentioned situation poses specific geopolitical objectives to Georgia, more specifically, to prevent the attempts of neighboring countries to interfere in the internal politics of Georgia with their own interests. With the mentioned statement, the State marginalizes a part of its citizens and creates enemy images. The assessment of specific groups living on the country territory due to their ethnic and religious identity as risk factors or as Others opposes the political concept of a nation-state and deepens processes of disintegration in the country.

After criticism from national and international organizations, the Agency is trying to change its approaches and states that the strategy document is still a draft project and the Agency is open to essential refinement of the document. Nonetheless, it should be noted that the assessments of the strategy document clearly showed the political visions and intentions of the Agency. Importantly, in the recent period, including after critical assessments were voiced from international organizations, the operative language of the Agency has changed and, in contrast with the previous years, its 2015 report tries to focus on the priorities of human rights and secularism in its activities. [153] Considering the analysis of the Agency's activities in general, such a position has only declaratory nature and attempts to conceal non-democratic approaches.

153 LEPL State Agency for Religious Issues, Report, 2015, available at: http://religion.geo.gov.ge/images/8706%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98-2015.pdf

Considering the political and social processes taking place in contemporary societies, issues related to religion may be related to the problem of security; however, it is essential that states respond to the mentioned problem with social policies based on human rights. Importantly, the reports and statements of the Agency do not reveal its strategy in relation to the potential problems of radicalization and extremism in certain religious groups and the prevention of these. Further, the reckless policies of the Agency, which considers a significant part of the population as enemies and actively interferes in the activities of religious organizations, support alienation between religious communities and their official institutions and indirectly contribute to the radicalization among religious organizations.

In this regard, the most acute problems are apparent in the Muslim communities, where the controlling policies are the clearest and strongest. In the conditions of political and social marginalization of Muslim communities (as demonstrated by their low political representation and participation, limited opportunities of employment and social development in a discriminatory social environment, and increasing tendencies of religious intolerance and violence), direct interventions of the state in the management of the administration of all Muslims of Georgia[154] and the public positioning of the Administration which expresses open loyalty to the Government and fails to consider the needs of the community, weakens the trust of the community towards the Administration and excludes the community from official religious spaces.

In this regard, the clearest illustration of this alienation between the Administration and the community is the issue of constructing a new mosque in Batumi. During the past few years, the Muslim community has been requesting allocation of land for a new mosque and support to be used for its construction. The historical Orta Jame mosque in Batumi does not accommodate all Muslims. Due to this, hundreds (500-700) of people are forced to pray on the streets every Friday. [155] A large number of Muslim women are completely deprived of the possibility to pray in the mosque. The government promised several times that it would allocate land for the construction. The last promise was given in 2013, [156] but was not followed by any specific outcomes. [157] By the end of 2014, a part of the Mufti Administration of Western Georgia addressed the Government with a statement, which required transfer of a building for a Muslim higher education institution in Batumi and a residence for the Mufti Administration instead of the reconstruction of Orta Jame or construction of a new mosque in Batumi. According to Muslims, considering the influence of the state on the Mufti Administration, this statement clearly illustrates the disregard towards the needs and interests of the Muslim community. Importantly, this statement was created in the period when the State started funding the Mufti Administration. A large portion of state funding is spent on the salaries of religious officials of the Mufti Administration. [158] It should be noted that while refusing

154 The recording of TV program – Discussions on Religion, where former Mufti of Adjara, head of the Georgian-Muslim Union Zurab Ceckhladze and his deputy Tariel Nakaidze discuss the appointment policy of Muftis and Sheikhs available: https://www.youtube.com/watch?v=WpkpuDAx1lY

155 Joint multimedia product of Liberali and Human Rights Education and Monitoring Center (EMC), available at: http://liberali.ge/articles/view/21928/lotsva-ghia-tsis-qvesh

156 Chronological review on the construction of new mosque in Batumi, available at: https://www.youtube.com/watch?v=M1i7wDyRXYM

157 Joint statement of CSOs, available at: https://emc.org.ge/2016/03/18/emc-21/

158 Human Rights Education and Monitoring Center (EMC), Legal assessment of funding of four religious organizations, available at: http://bit.ly/2dQNYGU

to satisfy the request for a new mosque, the State points to the mentioned statement. In these political circumstances, the Muslim community started a self-organized process and, in March of 2016, the Initiative Group for the Construction of a Mosque in Batumi[159] addressed the Government of Adjara, the City Council of Batumi and the Government of Georgia independently, circumventing the Mufti Administration, supported by 12,000 signatures. To this day, neither had the Government made a decision nor had it had formal communication with the Initiative Group. In the conditions of the State disregarding the interests of the Muslim community, the community was forced to purchase land in Batumi with their own resources, which will become a significant economic burden for its members. [160] The discussion of the issue related to the construction of the new mosque, illustrates the significant alienation between the community and the Administration working under state control.[161] The controlling policy of the State failed to satisfy the needs of the Muslim community and silence its discontent and the community managed to initiate a self-organized civil process. The resistance of the Georgian Muslim community in Adjara is based on civic consciousness and practices. Clearly, the development of civil political consciousness of the Muslim community is related to wider historical, political and social contexts, which should be subject to independent research. However, in the context of the presented discussion, it should be noted that regardless of the signs of self-organization, the policy of oppression and control still creates conditions for the appearance of radicalization and extremism tendencies in specific segments.

In this regard, the state policy towards Muslims living in the Pankisi Gorge is also problematic. The State only communicates with the Council of the Elderly of the so-called traditional Islam and fails to recognize the followers of Salafi Islam, who, according to locals, comprise the majority of the local Muslim community. [162] This policy of non-recognition, on one hand, hinders the state from implementing complex policies focused on social needs and, on the other hand, deepens marginalization.

It is important to note that the criticism of control-based state policies from civil society organizations received inadequate response from the Agency, which considers the mentioned as attempts to strengthen radical and terrorist groups. [163]

In conclusion, despite strengthening of a security discourse in the Agency rhetoric, the Agency has no consistent policy for the prevention of radicalization and extremism. Through retrograde policies based on strict control over religious organizations, the Agency increases security risks.

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159 Official Facebook page of the group, available at: https://www.facebook.com/permalink.php?story_fbid=581890561983598&id=471879052984750

160 Statement of Human Rights Education and Monitoring Center (EMC), available at: https://emc.org.ge/2016/09/08/emc-132/

161 More information: http://rustavi2.com/ka/news/38325

162 Documentary prepared by Human Rights Education and Monitoring Center (EMC), available at: https://www.youtube.com/watch?list=PL9DikjDdD2JHoA1DKJbRuqb41Asnqccva&v=loqMY5Pb8rA

163 E.g. see the statement of Tariel Nakaidze, the Chair of the Georgian Muslims' Union, available at: http://www.interpressnews.ge/ge/sazogadoeba/378350-qarthvel-muslimtha-kavshiris-thavmjdomare-religiis-sakithkhtha-saagentos-tsarmomadgenlebma-bodishi-unda-moukhadon-muslim-thems.html?ar=A Also see the statements of the Agency representatives on the Human Rights and Civil Integration Committee of the Parliament session, available at: http://liberali.ge/news/view/22415/religiis-saagento-imis-tqma-rom-muslimebs-vchagravt-qveyanashi-teroristebis-motsvevaa

4.3 The issue of restitution of properties confiscated during the Soviet regime and overview of Agency policies in this regard

4.3.1 General Overview of Restitution Policy

The practice of confiscation of confessional buildings during the Soviet era and the definition of property rights and religious rights in the Constitution after the restoration of independence produced the need of defining restitution policies with regard to buildings confiscated in the Soviet era.

Even though independent Georgia does not represent a direct successor of the Soviet Union and, therefore, the contemporary Georgian state system is not legally liable for the illegal actions of the Soviet totalitarian regime, the rule *in itself* cannot be considered an excluding circumstance for the restitution responsibilities. After the declaration of independence by Georgia, the religious property confiscated under the Soviet regime, which has been maintained in different forms, was transformed under the ownership of the independent state. Therefore, the State became a legal successor of a large part of cult buildings confiscated during the Soviet era.

Hence, in the conditions when the state is a legal owner of a large number of cult buildings confiscated in the Soviet era, refusal to restitute property to religious organizations by referring to the legal successor rights would have been unreasonable for a state which tries to establish a secular, human-rights based political system.

After the 90s, numerous European post-Socialist countries with similar past elaborated different legal mechanisms aiming at the restitution of confiscated properties, on similar grounds.

In contrast with the restitution practices of European countries, Georgia has never had a systemic vision towards this issue. Hence, since the declaration of independence, no legal or political documents have been created to regulate the restitution of religious buildings to religious organizations. Therefore, the restitution has been taking place sporadically, based on political will and without any special legal regulations, which makes the restitution process unforeseeable and implies risks of arbitrariness on behalf of the State.

It is important to note that a number of international organizations have issued recommendations to Georgia regarding the restitution of real estate to religious organizations.[164] Despite these recommendations, the State has not implemented effective measures.

Importantly, the restitution policies and their legal regulation differ between the Orthodox Church and other religious organizations.

164 UN Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR /C/GEO/CO/4, 19 August 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGEO%2fCO%2f4&Lang=en Advisory committee on the framework convention for the protection of national minorities, Second Opinion on Georgia, June 15, 2015, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680590fb5 U.S Department of State, International Religious Freedom Report for 2015, Georgia, available at: http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dlid=256191#wrapper

According to Article 7, Paragraph 1 of the Constitutional Agreement between the State of Georgia and the Apostolic Autocephaly Orthodox Church of Georgia, the State recognizes Orthodox churches, monasteries (acting and non-acting), their remains and land premises they are built on all over Georgia to be in the possession of Church. The mentioned norm is not self-executing and requires additional legal actions in order to ensure transfer of property from the State to the Orthodox Church. In most cases, restitution of property confiscated in the Soviet era occurs on the basis of the application of the Secretary of the Catholicos-patriarch of Georgia or a purchase agreement, in exchange for a symbolic payment. It is important to note that after the Constitutional Agreement, the State has not carried out an inventory of the real estate property or determined a comprehensive list, after the transfer of which the State would have exhausted its obligation to restitute property under the mentioned Agreement. At this stage, it is hardly possible to evaluate whether the restitution obligation has been met, also because within the scope of restitution, the Orthodox Church receives not only the existing Orthodox churches, monasteries, and their remains, but also real estate which has no historical or religious connection with the Orthodox Church.

It should also be added that in addition to the above-mentioned, during the 1990s, the Orthodox Church received religious buildings of other religious organizations in ownership without prior expert assessment of the historical ownership of those buildings, which again highlights the inconsistency of state approaches in this regard.

State policies towards non-dominant religious organizations are even less consistent. Until 2014, religious buildings were hardly restituted to religious organizations. After the creation of the Agency in 2014, the mentioned practice was somewhat transformed and the State started transferring cult buildings to religious organizations with ownership rights.

4.3.2 Overview of the Activities of the Advisory Committee on Financial and Property Issues

The Advisory Committee on property and financial issues of religious organizations was created 2014, and one of its main functions is to transfer cult buildings registered under state property to ownership of religious organizations.

The Committee includes 9 members, out of which 6 represent the Agency, specifically: 1) Head of the Agency, also the Chair of the Committee; 2) Deputy Head of the Agency – member; 3) Head of the Legal Maintenance Office – member; 4) Head of the Information-Analytical Office – member; 5) Head of the Administrative Office – member; 6) The Chief Lawyer – member; and three other members, including 1) a representative of the Department for Regional and Local Government Relations of the Government of Georgia – member; 2) an independent expert – member; and 3) a representative of the religious organization whose application is under discussion.[165]

165 LEPL State Agency for Religious Issues, Report, 2014, available at: http://religion.geo.gov.ge/geo/document/reports/religiis-sakitxta-saxelmtsifo-saagentos-angarishi

The Committee's decision has no binding power; after studying the issue, the Committee prepares recommendations for relevant bodies, on the basis of which the relevant body makes a specific decision regarding the transfer of a cult building to a religious organization. The Committee does not discuss restitution cases proactively, so for the discussion, it is necessary to have an application of a religious community or association requesting restitution.

According to the Agency, in 2014, positive recommendations were issued for "LEPL Supreme Religious Administration of Georgia's All Moslems" to transfer 44 mosques in Eastern Georgia with the right to use. In 2015, positive recommendations were used regarding 35 mosques in Adjara to the same organization, and 5 synagogues to the Jewish community, with the right to use. [166]

The mentioned practice established by the Agency is problematic in numerous ways, excluding this process completely from the essence of restitution. Firstly, the legal status with which religious organizations receive their historical buildings should be determined, since the primary purpose of restitution is to restore the primary conditions. The Agency considers the mentioned process as restitution, but legal assessment shows that religious organizations receive places of worship under their effective ownership only for a certain period, with the right to use, while the State remains the owner of the property. Therefore, this process cannot be considered as restitution.

The main hindrance to restitution with ownership rights is the discriminatory notation in the Law on State Property of Georgia, which does not allow transfer of real estate under state property with ownership rights to any other religious organization with LEPL status than the Orthodox Church. [167]

This problem is especially evident in the process of transfer of religious buildings to such religious communities that do not have direct legal successors of those religious organizations that existed in the Soviet era, or if several organizations can be regarded as successors. For example, according to the public registry, in Georgia, there are four Muslim organizations registered with LEPL status in Georgia, and none of those represent a legal successor of the Muslim organization that used to exist in the Soviet period. The main mechanism for factual separation of relations among these organizations is only the mosques under their ownership, religious leaders and jamaat. However, even this fails to adequately separate the Muslim religious organizations. For example, based on the recommendation of the Advisory Committee, the Imam Ali Juma Mosque located in the center of Marneuli was transferred with the right to use to the "LEPL Supreme Religious Administration of Georgia's All Moslems", even though the mentioned mosque is not subordinated to the "LEPL Supreme Religious Administration of Georgia's All Moslems." This creates grounds for a reasonable assumption that the Commit-

166 LEPL State Agency for Religious Issues, Report, 2015, available at: http://religion.geo.gov.ge/images/8706%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98-2015.pdf

167 Note : Due to the discriminatory nature of the norms of the mentioned law, five religious organizations appealed to the Constitutional Court and requested to find those as unconstitutional towards Article 14 of the Constitution, on July 21, 2016, since the mentioned organizations were not allowed to buy state-owned property on discriminatory grounds, available : http://tdi.ge/ge/news/350-religiuri-gaertianebebis-konstituciuri-sarcheli

tee does not research the issue comprehensively and in-depth while making a decision, which implies risks of similar precedents in the future.

Therefore, it is important for the Agency to prepare a relevant document, which would strictly regulate the procedural issues of restitution of religious buildings to religious organizations by the State and would reflect the decision-making mechanisms for disputed buildings.

The lack of such legal document renders it impossible for religious organizations to make legal appeals regarding the restitution of cult buildings through internal legal mechanisms, since this process falls under the discretionary authority of the state.

Due to the mentioned problems, the majority of religious organizations does not trust the mentioned practice of restitution and, therefore, does not raise initiatives to receive the cult buildings under their factual ownership with the right to use, and a large part of such buildings remains under state property. [168]

In the restitution process, one of the important issues is the decision of the belonging of the cult building. Due to this, according to the Human Rights Action Plan of the Government for 2016-2017, [169] one of the main responsibilities of the Agency is to "determine the historical (denominational) owner of cult- and religious buildings and transfer of the buildings; rapid, transparent and fair resolution of disputes regarding the ownership of cult- and religious buildings." [170]

The regulation of this obligation in the Human Rights Action Plan is a positive step, but while fulfilling the obligation, the Agency should consider the precedents existing in the country and their outcomes.

The Catholic Church was the first religious organization to try to resolve the ownership issue regarding a religious building disputed with the Orthodox Church. More specifically, in 2001, Catholic Church attempted to return the Kutaisi Church of Annunciation into its dominion by appealing to the court. However, the lawsuit was not resolved in favor of the Catholic Church. Both, the Tbilisi district court and Supreme Court ruled that the disputed church that had been in the Catholic dominion until 1939 was an Orthodox Church at the time of the dispute. The Patriarchate registered the Church of Annunciation under its name in the public registry on March 6, 2003, one year before the Supreme Court decision (April 27, 2004)."[171]

Considering this negative precedent, despite a large number of disputed places of worship, neither the Catholic Church, nor other religious organizations have used legal mechanisms for restitution, due to the lack of trust towards the legal system and its ineffectiveness.

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168 Note : as of December 31, 2015, the rights to ownership and use by the Diocese of Armenian Apostolic Orthodox Holy Church in Georgia are not recorded (404418803), therefore, most churches existing on the territory of Georgia are owned by the state;

169 Draft version of the Human Rights Action Plan for 2016-2017, approved on June 13, through Decree N1138 of the Government of Georgia, available at: https://matsne.gov.ge/ka/document/view/3315211

170 Ibid. 11.1.3.4 paragraph.

171 Tolerance and Diversity Institute (TDI), Assessment of the Needs of Religious Organizations in Georgia, p. 29. Available at: https://www.scribd.com/document/241773727/

4.3.3 Assessment of the Activities of the Mokhe Commission

The only precedent of an Agency decision regarding ownership of cult buildings is the activity of the Commission regarding the origins of the disputed cult building in village Mokhe, Adigeni Municipality.

In Mokhe, a building has been registered under Adigeni municipality ownership since 2007, with a club status. The local Muslim community has been requesting that the building be transferred to the Mufti Administration, since, as they argue, it represents a mosque confiscated in the Soviet era and later used as a storage, a library, and a club. According to local Orthodox Christians, however, in the past (XVI c.), the building used to be a Christian church, and after the deconstruction of churches and construction of mosques in the 1920s, a mosque was constructed with the stones of the church on the place of the disputed building. They further argue that the construction of the mosque was not completed and there has not been an active mosque on this territory; therefore, they require the building to either be transferred under the ownership of the Patriarchate or be used as a neutral building and oppose its transfer to the Muslim community. The building has been abandoned since the dissolution of the Soviet Union and faces the risks of destruction. [172]

Despite the requests of the local Muslim community, in September 2014, the Adigeni municipality announced an e-tender "on procurement of rehabilitation works on the club of village Mokhe of Adigeni municipality. The rehabilitation, according to the tender announcement, had to occur with a club status. On October 20, 2014, when the workers of the tender-winning company appeared to deconstruct the building and rehabilitate it as a house of culture, the local Muslims protested and turned them back. On October 22, 2014, the local government used large-scale police force and started clearing the building. The police used disproportionate force against local Muslims arriving at the site and protesting the unexpected and repressive decision of the state, and 14 Muslims were arrested. [173]

With the initiative of the Agency, on December 27, 2014, through protocol of meeting N1, a Commission to study the existing circumstances related to the building registered as a club in village Mokhe of Adigeni municipality (hereafter: Commission) was established. The main purpose was to examine the circumstances and all disputed issues related to the building located in Mokhe, registered as a club on the balance of the Adigeni municipality with a club status, as an inalienable property, and if found to be necessary prepare relevant recommendation.. The disputed issue related to the building is its historical-religious origin.

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172 Public Defender of Georgia, Report, 2014 , pp. 432-438, available at: http://ombudsman.ge/uploads/other/3/3509.pdf; Human Rights Education and Monitoring Center (EMC), statement, 07.10.14, available at: http://emc.org.ge/2014/10/27/emc-sofel-moxeshi-kristian-da-muslim-tems-shekhvda/; Liberali, Mokhe after Demonstrations, 26.10.2014., available at: http://www.liberali.ge/ge/liberali/articles/120981/; Netgazeti, Archbishop Theodore asking for the transfer of the building in Mokhe to the Patriarchate, 24.10.2014, available at: http://www.netgazeti.ge/GE/105/News/37306/

173 Ibid.

The Commission has the authority to determine and organize the needs and form of relevant research (including scientific research) with the aim of studying historical-religious origins of the building, as well as compilation of research findings and communication to parties. [174]

The Commission includes 12 representatives of 5 parties, out of which 4 parties are represented by administrative bodies (5 persons): 1) LEPL State Agency for Religious Issues; 2) Governor of Adigeni municipality; 3) National Agency for the Protection of Cultural Heritage; 4) Governor of Samtskhe-Javakheti. The Commission also includes 4 representatives of the Muslim community and 3 representatives of the Orthodox Church. The Head of the State Agency chair the Commission for Religious Issues, Zaza Vashakmadze.

It should be noted that, on behalf of the Muslim community, the Commission only includes representatives of the LEPL Supreme Religious Administration of Georgia's All Moslems, due to which the Muslim community of village Mokhe requested the inclusion of local Muslims or a person trusted by them. The Commission did not grant this request.

The Commission makes the decision based on consensus. As mentioned in the report of the Agency, this rule of decision-making aims to ensure that the decision made by the majority vote is not unacceptable for either party and the result to be achieved by joint research for solution and mutual agreement, rather than fight between different positions.

Since there is no legislative base governing restitution in the country, the resolution of disputes related to historical religious buildings through ad-hoc commissions and democratic procedures creates risks of taking restitution policy beyond the legislative framework and its politicization.

The Commission's activities are closed for any stakeholders. Based on the decision of February 9, 2016 the commission sessions were to be closed and the information and documentation on the Commission not public. The activities of the Commission are also closed for the Public Defender, who requested to be included as an observer. The Agency clarified in its letter that the subject of discussion of the Commission is the research of all circumstances related to the building in light of its historical-religious origin, rather that the rights and freedoms of property and/or religion or other universally recognized human rights and freedoms, due to which the Public Defender was denied the opportunity to participate with an observer status. [175]

It should also be noted that EMC requested public information regarding the Commission's activities from the State Agency for Religious Issues on numerous occasions, but in each case, the Agency clarified that the Commission is not a public body and is not obligated to issue public information. [176]

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174 Provision of the Commission to study the existing circumstances related to the building registered as a club in village Mokhe of Adigeni municipality Articles 3, 4, and 5;

175 Public Defender of Georgia, Statement regarding the inclusion of the observer of the Public Defender in the activities of the commission studying the existing circumstances related to the building registered as a club in village Mokhe,, 16.02.2015 available at: http://bit.ly/2e0Q8lL

176 Note : after the refusal to issue public information, EMC appealed to the court, and the case is being discussed at the Tbilisi City Court, available at : https://emc.org.ge/2015/11/11/mokhes-komisia-sarcheli/

Since the activities of the Mokhe Commission are completely closed to the public, the only mechanism to assess it is the annual report of the Agency. Specifically, according to the 2014 report, the main aim of the Commission is to "Eliminate the controversy created on October 22, 2014 in the village Mokhe of the Adigeni municipality and solve the causes behind the problem." [177] In the report, the Commission is viewed as an exceptional approach and format for resolution of a problematic issue. The document notes that "a precedent has been created, in which the formal selection of procedures has been rejected in the primary stages of dispute resolution. Even though the ownership of the building is not disputed from the legal perspective, through understanding the general spirit of the law, rather than its formal interpretation, dialogue is ongoing based on the essence and causes of the problem, with the aim of ensuring tolerant coexistence in a diverse environment. The factual, rather than formal, approach is clear from the provision of the Commission, which is adapted to the existing circumstances." [178] During 2015, the Commission met only three times, and the accomplishment of these meetings, according to the Agency, is the "de-radicalization of the process." [179] Even though two years have passed since the creation of the Commission, the body has taken no measures to research the historical origins of the building, so the assessment of the Agency highlights the incorrect vision of the state regarding the resolution of such disputes.

Unfortunately, the representatives of religious community and the Agency have completely different expectations with regard to the activities of the Commission. [180] De-radicalization of the situation cannot be considered as the main accomplishment of such Commission, as, given the different expectations of its activities, de-radicalization can only have a temporary, illusory nature. If the expectations of the population are not met, different consequences may follow. This is even more true in the conditions where the State has not ensured effective investigation of the unlawful detention and beating of Muslims to this day. In this regard, the report of the Advisory Committee of the Framework Convention on the Protection of National Minorities regarding the Mokhe case is significant, as it states that the necessary precondition for the reestablishment of trust between religious communities is effective investigation on the case by law enforcement agencies and persecution of specific individuals. The Committee states that the attempts at reconciliation are welcome, but mediation cannot replace the principle of the rule of law. [181]

The ineffectiveness of the Commission creates a negative precedent in relation to the resolution of the ownership of a cult building, which, in turn, will cause lack of trust towards referring to the State among other religious organizations. Considering the mentioned problems, the European Commission against Racism and Intolerance recommends the state to resolve disputes on religious property in a fast, transparent and fair manner. [182]

177 LEPL State Agency for Religious Issues, Report, 2014, available at: http://religion.geo.gov.ge/geo/document/reports/religiis-sakitxta-saxelmtsifo-saagentos-angarishi

178 Ibid.

179 LEPL State Agency for Religious Issues, Report, 2015, p. 23, available at: http://religion.geo.gov.ge/images/8706%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98-2015.pdf

180 Liberali, Unchanged requests of Mokhe Muslims, 05.05.2016, available at: http://liberali.ge/articles/view/22363/mokheli-muslimebis-sheutsvleli-motkhovna

181 Advisory committee on the framework convention for the protection of national minorities, Second Opinion on Georgia, June 15, 2015, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680590fb5

182 European Commission against Racism and Intolerance (ECRI), Report on Georgia (Cycle 5), available at: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-GEO.pdf

4.3.4 Overview of the Activities of Restitution Committees

The experience of Eastern European countries regarding property restitution and monetary compensation shows that it is important to ensure that the processes of making regulations on restitution do not remain behind closed doors and within the competence of specific political and religious leadership. In this regard, the legislative branch has an important role not only in terms of distribution of power and discussion of issues in wider circles, but also due to the financial and political significance of the case. [183] **In the evaluation of the Law on Restitution of the Czech Republic, the Constitutional Court highlighted the importance of the legislative body as the final decision-making authority.** [184] In the evaluation of the main purposes of the law, the Court argued on the necessity of limiting restitution due to the aspiration of eliminating large-scale injustices and the principle of legal certainty, and noted that the elimination of injustice due to damage from the regime cannot continue for an indefinite period.

In many cases, the issues of restitution raised by religious associations go beyond the scope of original restitution and what remains is confiscated property which cannot be restituted due to objective factors. In this case, the experience of Eastern Europe reveals two approaches: either only natural restitution is carried out, in which the property is returned in the form of existing buildings and other property (In Ukraine, restitution is limited to those buildings and facilities which are necessary for religious practice), or the state fully considers the interests of religious associations and offers further stages of restitution to religious associations. In the latter case, the restitution scheme envisages an intermediate phase in the form of transferring alternative property, and if the property offered is unacceptable for the religious organization or if the state is unable to give such an offer, the issue of monetary compensation follows. For example, in the case of Croatia, the legislation determines all three methods: 1) natural restitution, implying the return of existing property; 2) compensation of damage through alternative property, when "similar" property is granted when the original property cannot be restituted; and 3) monetary compensation. Hungary allowed financial compensation in the case of impossibility to transfer requested property in 1997. In 1997-1998, the State signed compensation agreements with different religious organizations, specifying the amount of annual compensation for a defined period, which is to replace the property requested by religious organizations. The financial compensation phase envisages spending of budget funds and their transfer to religious organizations, which again demonstrates the necessity of regulation from the legislative body.

Based on the request of religious associations executive governments often initiate legislative acts on restitution. For example, in Lithuania, the State drafted a law on restitution for existing property in September 2002. Similarly, in 2002, in Czech Republic, a Commission was created to draft a law on restitution. The main instrument of restitution is the body assigned with discussing appeals, which is regulated under the law on restitution. [185] The main mechanism

183 Law on Restitution of the Czech Republic, available at: http://www.economist.com/blogs/easternapproaches/2012/07/czech-politics-1

184 CZECH REPUBLIC CONSTITUTIONAL COURT JUDGMENT **Pl. ÚS 10/13 of 29 May 2013,** Church Restitution II; The Lawyer Quarterly 1/2012 Sp. zn. Pl. ÚS-st 21/05 of November 1st, 2005;

185 Property Restitution in Central and Eastern Europe, Bureau of European and Eurasian Affairs Washington, DC October 3, 2007 U.S. Department of State;

for return of property represents the body that discusses complaints, activities of which are regulated under the law on restitution.[186] However, on the stages of compilation of restitution requests, non-general commissions were created for requests of particular religious associations, for example, based on "Shalom" and the Jewish community of Bulgaria, the State established a commission in 2006 to discuss specific property issues. Similarly, in Ukraine, in 2006, upon the request of the leaders of religious organizations, an interagency restitution committee was created, which replaced the 2002 commission characterized by its law level of activity.

4.4 The Conflict Resolution Mandate of the Agency

State Agency for Religious Issues is authorized to act as an intermediary on behalf of the Government of Georgia and to participate in the resolution of conflicts and disputes between religious associations existing in Georgia. After the establishment of the Agency, several incidents of religious conflicts took place, among others the hindrance by the local dominant religious group of the opening/functioning of a Kobuleti boarding school for Muslim pupils in 2014 ,[187] obstacles in form of objections from the local Christians, clerics and local government to the construction of a religious building for Jehovah's Witnesses in Terjola in 2014,[188] unlawful detention and beating of local peaceful Muslims from the police during the deconstruction of a historical mosque in Mokhe village in 2014, [189] the opening of a village cemetery of local Muslim community in village Adigeni and the resulting attack of local Christians on Muslims in 2016, [190] the refusal of construction permit from the Rustavi municipality city hall for a Catholic Church on allegedly discriminatory grounds and essentially due to organized resistance of local clerics.[191] In none of these cases did the Agency fulfill its role as a mediator effectively, in spite of its high legitimacy and subordination to the Prime Minister. These conflicts remain largely conserved. As the analysis of conflict-related negotiations shows, in most cases, the Agency did not accept its responsibility to lead the mediation processes (Kobuleti, Terjola, Adigeni) and their resolution was mostly delegated to the local government. This clearly points to the absence of political will from the Agency and from the Government to resolve disputes in a timely and effective manner. Furthermore, as pointed out above, in most cases, the Agency gave inadequate assessment to these conflicts and failed to recognize religious intolerance.

186 National Assembly (Parliament) of Serbia in 2006 adopted the Law on Restitution, which foresees creation of the Agency on restitution assigned to discuss complaints and requests, available at: http://www.restitucija.gov.rs/eng/index.php

187 CSOs' Joint statement on the rights violations towards the Muslim community in Kobuleti, available at: https://emc.org.ge/2014/09/24/gancxadeba-kobuletshi-muslimta-uflebebis-shezgudvaze/

188 Human Rights Education and Monitoring Center (EMC), Legal analysis of the religious conflict in Terjola, available at: https://emc.org.ge/2014/06/25/terjolshi_gamovlenili_religiuri_dapirispireba/

189 CSOs' Statement on grave violations of the rights of the Muslim community in Mokhe, available at: https://emc.org.ge/2014/10/23/gancxadeba-moxes-incidenttan-dakavshirebit/

190 Human Rights Education and Monitoring Center (EMC), Assessment of the situation in Adigeni, available at: https://emc.org.ge/2016/03/02/emc-11/

191 Human Rights Education and Monitoring Center (EMC), appeals to the court regarding the case of the construction of the Catholic Church in Rustavi, available at: https://emc.org.ge/2015/11/19/katolikuri-eklesia-rustavi/

According to the Agency, the most important activity aimed at conflict resolution to alleviate the conflict in Mokhe of October 22, 2014 and its cause was the Commission created with its initiative. However, as the Commission has not fulfilled its objectives to assess the historical and religious origins of the building, and as the legitimacy of its composition is also arguable, the Commission format can hardly become an instrument for effective conflict resolution.

4.5 Supporting Religious Neutrality in Public Service

The analysis of specific incidents of human rights violations and public statements of state agencies shows that significant challenges remain with regards to the protection of religious neutrality in public services. This problem hinders the development of democratic and secular state institutions and facilitates discriminatory environment. In the research period, EMC documented and carried out legal response to numerous cases of violations of religious neutrality in public service. This includes the facts of participation in religious service in uniforms and blessing of personnel of the Ministry of Internal Affairs, disseminated via the official webpage of the Ministry,[192] direct self-identification of public service employees with a specific religious denomination and definition of religious activity as their own mission in public service, [193] participation of Orthodox clerics in the competition committee for the selection of public service employees, [194] violations of

192 The Ministry of Internal Affairs published information on its webpage on October 26, 2014, according to which the MIA Service Agency employees attended the Sunday Service at the Sameba Cathedral Church, after which the Patriarch blessed the Agency. The written material was accompanied by video material as well (available http://police.ge/ge/patriarqma-saqartvelos-shss-s-momsakhurebis-saagentos-tanamshromlebi-dalotsa/7272). The video shows that the blessing ceremony is attended by a large number of employees, with police uniforms. The religious leader says the following: "today, the Service Agency of the Ministry of Internal Affairs of Georgia is blessed." The Sunday service was also attended by Zurab Zubadalashvili, the Head of the Service Agency of the Ministry of Internal Affairs of Georgia, and Davit Gabelashvili, the Head of the Kutaisi Division of the Service Agency of the Ministry of Internal Affairs of Georgia. In the video, they express their gratitude to the Patriarch for the blessing.

193 The Ministry of Corrections published information on its official webpage on October 2, 2014 about the baptizing ceremony of a Turkish citizen in the N8 facility, accompanied by video material of the ceremony (available: http://www.mcla.gov.ge/?action=news&lang=geo&npid=2142). The video shows a large number of Ministry employees attending the ceremony and the statement of L.A., the Head of the Social Division of the Corrections Department, in which he identifies with a specific religious group and makes propaganda statements to support the process of Christianization. The public servant does not limit himself to a neutral overview of the ceremony, rather he welcomes the tendency of Christianization in the correctional facilities and notes that the process is a mission which he fulfills as a state representative. His statement shows that the Social Division is actively involved in the process of Christianization. In the article, based on L.A.'s statement, it is also noted that throughout years, 157 prisoners of different ethnic and religious backgrounds have been baptized.

194 Out of the 5 members of the Competition Commission created to select City Council personnel at Lanchkhuti municipality, 1 was a cleric, whose involvement in the process was justified by the Head of the commission with the motive of increasing trust. As the letter to EMC from the City Council of Lanchkhuti shows, the competition was announced for the following positions: Head of the Organizational Division of the Council Apparatus of the Lanchkhuti municipality (1 vacant position), Head of the Secretariat of the the Council Apparatus of the Lanchkhuti municipality (1 vacant position), Assistant to the Head of the Council (1 vacant position) and Chief Specialist of the Organizational Division of the Council Apparatus of the Lanchkhuti municipality (2 vacant positions). The Head of the Commission responded to the question of journalists regarding the appropriateness of the cleric in the activities of local self-government with the following comment: "I asked around and I was told that Father Mirian is a philologist, and I considered that he is an extremely honest, decent person. This does not even need my clarification and characterization, because everyone knows him. This was why I asked him and invited him to my Commission. We disturbed him, asked him, and I received positive response from Father Mirian after a few days, and I was very happy. As for any questions anyone may ask, I think no questions should be asked, since we are Orthodox Christians…", available at: http://bit.ly/2d9mWfF)

religious neutrality by the police in cases related to the Patriarchate,[195]etc. Importantly, in none of the mentioned cases did the internal monitoring units of relevant bodies find any violation of religious neutrality, which points to the absence of political will on one hand and an unclear legislative regulation problem on the other.

Importantly, the 2014-2015 Human Rights Action Plan of the Government envisaged implementation of measures aimed at increasing awareness among public service personnel in order to ensure religious neutrality in public service. According to the 2015 report of the Agency, it organized several meetings for local municipality representatives and trained 84 public servants. In the conditions when the existing legislation does not clearly determine material standards for the protection of religious neutrality in public service, the organization of information meetings without relevant legal and conceptual foundations is a fragmented effort and the approaches and standards used by the Agency during these meetings remain ambiguous. It should be noted that the 2016-2017 Human Rights Action Plan (also after EMC's recommendations), reflects the obligation of initiating the standard for protection of religious neutrality and its provision in ethical codes of particular bodies, delegated to the Government, the Public Service Bureau, and also the State Agency for Religious Issues[196]. In the draft version of the 2016-2017 Human Rights Action Plan, the Agency offered the Human Rights Secretariat of the Government to monitor the violations of religious neutrality and secularism in public services, which was not reflected in the final document.

4.6 Overview of the Activities of the Agency in terms of Supporting Interreligious Dialogue

In 2015, the Agency established an Interreligious Council, which does not represent a structural unit of the Agency and has no administrative links to it. The format of the Council envisages discussion of issues raised by the Agency and by religious communities. According to the Agency, the Interreligious Council differs from all other projects working in parallel by its format, since it unites religious associations of both the religious majority and religious minorities.

It should be noted that the Agency has not had any attempts of communication or cooperation with the Council of Religions under the Office of the Public Defender, which has more than 10 years of experience and has prepared recommendation packages on all essential issues related to religious freedom. In these conditions, creation of an alternative council appears as an attempt to create a space alternatively to the Council of Religions. When the Council of Religions has made numerous critical statements regarding the challenges existing in the country in terms of religious freedom and freedom of expression, this raises doubts about the State, and is trying to weaken such autonomous and democratic spaces. The advantage stressed by the Agency, that this platform unites the dominant religious organization too,

195 Case of the stencils made by street artists near the Patriarchate building on January 4, 2015, available at: https://emc.org.ge/2015/01/20/street-art/; Case of detained LGBT activists on May 17. 2016, available at: https://emc.org.ge/2016/05/30/emc-66/

196 Ordinance N1138 of the Government of Georgia, available at : https://matsne.gov.ge/ka/document/view/3315211

cannot be viewed as a valid argument, since the Patriarchate itself refused to participate in the Council of Religions under the Public Defender.

It should also be stressed that according to the 2016 recommendations of ECRI, the Government of Georgia was asked to increase support towards the Council of Religions, which works under the aegis of the Center of Tolerance under the Public Defender. Specifically, the Agency was asked to cooperate with the Council and use its experience and recommendations to resolve the problem of religious intolerance.[197]

5 |
The Improper use of Bonuses in the Agency

The use of bonuses for Agency personnel in 2014 and 2015 shows that the employees receive salary bonus every month, without any justification or necessity of issuance. Specifically, from June 2014 to June 2016, 21 employees of the Agency received in total 1,131,800 GEL as a salary, bonus, and salary supplement, out of which the supplement was 302, 030 GEL, with 19% (58,800 GEL) given to Zaza Vashakmadze. In Total, Vashakmadze received 137, 760 GEL from the budget as salary, bonus, and salary supplement. The receipt of salary supplements, with an amount approximately equivalent to the salary has a regular character. In addition, during 2 years, the Agency has spent 113,779 GEL on business trips of employees.[198]

According to N627 Decree of November 19, 2014, of the Government of Georgia, which approves the Concept for Reform of Public Service, a public servant receives salary supplement in the following cases: 1) working in difficult conditions; 2) fulfillment of additional work; 3) overtime work; 4) family situation; 5) number of children; 6) work abroad; as well as according to number of service years and rank. Salary supplement should be given upon the existence of relevant grounds. As practice shows, Agency employees receive salary supplements every month, without justification, which could be pointing to the fact that the insufficient legislative regulation of salary supplements is abused by the Agency.

Considering the criticism towards the Agency, it is important for the Government of Georgia, as a body carrying out state control over the Agency, to review the policy of budget expenditures by the Agency.

197 European Commission against Racism and Intolerance, Report on Georgia (Cycle 5), available at : https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-GEO.pdf

198 Human Rights Education and Monitoring Center (EMC), available at: https://emc.org.ge/2016/08/24/emc-123/

Part 4

Religious Violence and Inefficient and Non-secular Policy of the State

1 |
General overview

In 2014-2016, several grave cases of violence on religious grounds took place in Georgia (namely, in Kobuleti, the village Mokhe (Adigeni municipality) and the village Adigeni (Adigeni municipality). The cases were of social nature, and the rights of the Muslim community to represent their identity in public space and exercise other rights, were opposed by the dominant religious group collectively due to Islamophobic motives. These attempts of the dominant religious groups to socialize and privatize the public space have not been answered by the State through effective and secular policy, which resulted in the repeated acts of violence in different geographical and social spaces and it also fueled new conflicts with similar ideological narratives.

The analysis of the policy of the Ministry of Internal Affairs (hereafter, the Ministry), during religious conflicts indicates that even though the police had been mobilized at the site, they remained inactive and did nothing to stop the offense to provide the Muslim community with the opportunity to exercise their rights. The police remained a passive observer and didn't react to the ongoing cases of limiting the rights, which took place under their immediate control. The Ministry's apparent inefficient policy confirms the State's loyal attitude towards the dominant religious group and its discourse and discriminatory approach to other groups's rights. Moreover, apart from the apparently passive policy, repressive attitudes have also been revealed by the Ministry towards Muslims (Chela (2013), Mokhe (2014)), which of course, calls for an increased criticism towards the State's discriminatory policy. During the given incidents, the police used disproportional force and arbitrarily arrested the Muslims, who had gathered peacefully and spontaneously to protest the unlawful decisions by the State (demolishment of the minaret, dismantling of the historical mosque). During these incidents, cases of Ministry employees using hate language have also been revealed.

Together with the inadequacy of the police response and prevention policy, the processes of investigation of these cases also prove to be problematic. Within the frameworks of the investigation of the cases of the violence against the Muslim community, there is not a single instance of persecution of any person (or in certain cases, the offenders were charged with inadequately mild, administrative responsibility); the ongoing investigation process doesn't correspond to the standards of independent, effective and transparent investigation. As a rule, the victims are not granted the status of an injured party, which significantly complicates the process of the monitoring of the investigation.

It is noteworthy that together with non-effective response to specific cases and the absence of political will, the law enforcement agencies on the institutional level are not prepared to adequately react to the hate crimes, which brings the necessity of implementing significant reforms to the daylight.

Due to the failure by the law enforcements to fulfill their preventative and procedural positive responsibilities, the latest instances of the conflict have been shelved. The general discriminatory nature of the policy also becomes obvious due to the fact that apart from non-usage of legal mechanisms of solving the problem, the possibility of political negotiations has also been ignored, which led to the complete dismissal of the rights of the Muslim community.

The inefficient policy of the State in the well-known cases motivated by religious intolerance is confirmed by, as well the cause of, increased violence and limiting of the rights of Jehovah witnesses, „who most actively engage in preaching ; and considering widespread xenophobic views in the society, they represent the most vulnerable group. Non-effective and non-secular policy of the State, as well as the rise of the ruling party's discourse in the public space based on hate speech towards different political, social or clerical groups, encourages a hostile and non-friendly environment towards non-dominant religious communities, which are harmfully reflected on their rights and social conditions.

2 |
Overview of the Religious Conflicts revealed during the Reporting Period

2.1 The Assessment of the Religious Conflict in the village Mokhe

2.1.1 General overview of the case

In village Mokhe (Adigeni municipality), Adjarian Muslims represent the majority of the population. There is a historic building in the village, which, according to the local Muslim population, and considering the architectural design and details of the building itself, allegedly used to be mosque. Since 2007, the building has been listed as property of the local administration. In 2014, in the pre-election period, the local administration publicly promised the Muslim community to return the building to them, but later made a decision to transform the building into a cultural center, later again, following the protest from the Muslim community, decided to turn it into a public library. The negotiations were still underway regarding the transfer, when the local government, unexpectedly for the Muslim community, started demolishing the building and cleaning the site using massive police force (see the subchapter for further details).

2.1.2 The facts of arbitrary arrests and abuse of the police force

On October 22, 2014 the local administration with the help of massive police force, attempted to start rehabilitation works. As a result of this decision, the local Muslims started to gather spontaneously and peacefully near the disputed building, which was followed by willful arrests by the police using excessive power. 11 persons were charged under the article 166 (hooliganism) and article 173 of the Administrative Code (defiance to obey police orders); three persons were arrested under the article 353, paragraph 2 (resisting police as a group).[199]

199 Statement of MIA regarding the case of Mokhe, 22.10.2014, available at: http://police.ge/shinagan-saqmeta-saministros-gantskhadeba/7259

According to the witnesses, about 30 pick-up police trucks and 50-100 police officers were present near the disputed building, which exceeded the number of Muslims at the site almost twice.[200] Among the police, the employees of the Ministry, dressed as civilians, were also present. The governor of Samtskhe-Javakheti, his deputy and Adigeni Municipality head were also present.[201]

The factual background of the case indicates that during the incident the police officers on several occasions arbitrarily arrested the members of the Muslim community and used excessive power during the arrests.[202] The written explanation from the victims and the witnesses confirm that the interaction with police got tense after the police used force when arresting one of the participants of the protest, from now referred to as O.M.. The arrest itself was preceded by the question from O.M. to one of the policeman regarding the freedom of religion. Because of the way the arrest was executed, the irritated participants tried to prevent the police car from moving. The Representative of the village Mokhe and the son of the arrested person, from now on referred to as T.M, were also present. As T.M. explains, the car, which was surrounded by Muslims, suddenly started driving at a high speed and hit several people, causing an old Muslim male and a number of women to fall to the ground. According to T.M, he asked for the police car to be stopped, but his request was ignored, T.M was upset because of the violence used by the police and hit the car with his hand; he was then arrested and severely beaten during the arrest.[203] According to T.M. and other arrested, he was beaten as well as verbally insulted in the police department. The medical evidence also indicates that he had serious injuries.[204]

The factual background indicates that the police officers physically insulted other arrested as well. R.I. was arrested by the police officers while he was filming the incident; the police used force when arresting R.I and he was kicked in his head and ribs. G.B. was also arrested as soon as he came to the site; the police officers kicked him with their legs and and forced him into the car. Another episode of the police arbitrarily arresting peaceful protesters is related to the arrests of the people from the neighboring village Dertsel. According to the witnesses, the Muslims who came to the site were not allowed to move around the territory of the disputed building. The police pushed them away using physical force. As a result, some participants fell down while other were arrested on the spot. The protest participants from the village Dertsel point out in their testimonies that the police verbally and physically insulted them while arresting them and that this treatment was continued in a similar way also later as they were held in the department. According to the arrested, as soon as they were brought to the police station, their hands were twisted behind their backs; handcuffs were put on them and they were forced to stand facing the walls for some time. At this time, the police officers used hate language and called them "tatars" and "newcomers".[205]

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200 Statements recorded by Human Rights Education and Monitoring Center (EMC) from T.M., O.M., G.B., T.G., M.I. and R.I.;

201 CSOs' Statement on grave violations of the rights of the Muslim community in Mokhe, available at: https://emc.org.ge/2014/10/23/gancxadeba-moxes-incidenttan-dakavshirebit/

202 Statements recorded by Human Rights Education and Monitoring Center (EMC) from T.M., O.M., G.B., T.G., M.I. and R.I.;

203 Statements recorded by Human Rights Education and Monitoring Center (EMC) from T.M., O.M., G.B., T.G., M.I. and R.I.;

204 Medical examination report issued by ltd. Geo Hospital;

205 Statement recorded by Human Rights Education and Monitoring Center (EMC) from M.B. and M.I. ;

It is noteworthy that the police officers did not explain the charges nor the rights of the arrested, as defined by Georgian legislation, to any person arrested on administrative or criminal charges.

2.1.3 The Assessment of the Investigation process

Criminal investigation started against the persons arrested on criminal charges during the events on October 22, 2014 (T.M., O.M., and M.B.) by the main municipal service of Adigeni for resisting the police as a group under the article 353, part 2, of the Criminal Code. At the same time, following EMC's appeal on the alleged cases of arbitrary arrests and abuse of power by the police, Samtskhe-Javakheti district Prosecutor's Office started investigation under the article 333, part 1, of the Criminal Code (abuse of authority).

The investigation process of the facts of the abuse of authority does not correspond to the standards of effective investigation. Despite several requests by EMC,[206] the Prosecutor's Office refuses to grant the persons mentioned above the status of victim. According to the Prosecutor's Office, there is no ground for reasonable assumption that the crime was committed and the evidence of damage in the case.

From the Prosecutor Office's standpoint, using the complicated, double standard (for reasonable assumption that the crime was committed and the evidence of damage) is not compatible with the standard requirements of the Code of Criminal Procedure, which is not familiar with granting the status of the victim. At the same time, the evidence of the case confirms the possibility that the crime against the Muslim community was committed, causing physical and moral damage, which creates obvious grounds for granting the status of a victim to certain individuals. The refusal to be recognized as an injured party makes it impossible for the victims to monitor the process of the investigation and undermines their trust towards the law enforcements.

The international standards for human rights protection require that the victims are to be given the relevant status and acquire relevant procedural rights. In the case *Ognyanova and Choban v. Bulgaria* European Court found violation of article 2, inter alia, due to the fact that despite requests from the lawyers, the applicant was not consistently informed about the progress of the investigation. At the same time, European court pointed out that the applicant must have access to the investigation materials to the extent that he or she has an opportunity to participate in the process of appealing the final decision.[207] In the case *Khadisov and Tsechoyev v. Russia* European Court found violation of article 3, inter alia, as the applicants didn't have access to the court proceedings and were not properly informed about the progression of the investigation. At the same time, the applicants didn't have the opportunity to appeal the actions of the investigative bodies and their inactivity. Recommendation Rec(2006)8. of the Committee of Ministers on the assistance to victims points to several important principles and it mentions that States should ensure the effective recognition of, and respect for, [..] "in particular, respect the security, dignity, private and family

206 Note: EMC defends the rights of the arrested Muslims during the event in the investigation;

207 ECtHR, Ramsahai and others v. Netherlands, no. 52391/99, § 349;

life of victims and recognize the negative effects of crime on victims." [208] States should ensure that the measures set forth in this recommendation are made available to victims without discrimination[209]. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the criminal act.[210]

It is noteworthy that during investigation of the cases of arrests of the Muslims and abuse of power from the police, the factual environment for violating the principle of not allowing discrimination as defined in article 11 of Georgian law on police, and consequently, the possible motive of religious intolerance is not determined, as defined in article 53, part 3^1, while this is confirmed by the open Islamophobic and xenophobic language used by the police during the operation.

It must be mentioned that despite the existence of enough evidence in the case, which confirm the abuse of power from the police officers, and among other things, mention the specific policemen, who carried out the beating and other forms of violence, the Prosecutor's office delays the conclusion of the investigation and the start of the persecution, which demonstrates the liberal attitude towards the general discriminatory policy in the Mokhe case and points to the tendency of violating institutional and religious neutrality.[211]

2.1.4 Other relevant circumstances of the Mokhe case

In Adigeni municipality, apart from instances of religious violence (Chela, Mokhe, Adigeni) and subsequent inefficient investigation, other factors also indicate the existence of overall discriminatory environment, such as appointing those who participated in the religious conflicts in the region (Mokhe, Chela) to high public positions, the problems of employment for the members of the Muslim community in the local administrative bodies and the strengthening of non-secular relations between the local government and the priests.

The State's alleged discriminatory policy is also demonstrated by promoting of police officers Gela Kokhodze and Giorgi Kopadze, both of which participated in the Mokhe and Chela incidents. According to the Muslim community, Kokhodze, which in February of 2015 was appointed the department head of the Mokhe police department was known for his discriminatory attitudes towards Muslim community and took immediate role in the arrests and

208 COUNCIL OF EUROPE COMMITTEE OF MINISTERS, Recommendation Rec (2006)8 of the Committee of Ministers to member states on assistance to crime victims, principle 2.1. available at: http://www.coe.int/t/dlapil/codexter/Source/CM_Recommendation_2006_8_EN.pdf

209 Ibid, principle 2.2.;

210 Ibid, principle 2.3.;

211 Note: application has been submitted to the European Court of Human Rights on violation of rights by the state of the Muslim community in the village Mokhe. The applicants claim that the following principles have been violated: article 3 (Prohibition of Torture), article 8 (Right to respect for private and family life) article 14 (Prohibition of discrimination) and article 13 (Right to an effective remedy). The applicants state that government representatives' actions were inhuman and degrading. The hate language used by the police towards the Georgian Muslims was manifested in insults, which worsens the cases of ill-treatment and shows the vulnerability of the plaintiffs. The delayed and non-effective investigation, together with hate motive of the case, confirms that the state has violated the principle of prohibition of discrimination, because of that the plaintiff is asking the court to make an assessment in this regard as well. The information is available at: https://emc.org.ge/2016/09/15/emc-139/

physical insults of the Muslims in Chela and Mokhe.[212] Giorgi Kopadze, who was supervising logistics in the residence of Tao-Klarjeti Metropolitan from 2009 to January 2014 and was actively involved in the actions against the local Muslims, in 2014, was nominated as a candidate for Akhaltsikhe mayor[213] and as majoritarian MP from Akhalstikhe by the governing party.[214]

According to the local Muslim community, Muslims represent 22% of the Adigeni municipality population, but despite that, almost no Muslims are employed in the public service agencies in the municipality, and out of 30 people elected in the local representative body, only three are Muslims.[215] According to the local Muslims, the local priests are actively involved in the process of appointing people in the public service agencies, as they have strong influence over the local government. It is worth mentioning that T.M. who was illegally arrested during the incident on October 22, 2014, had been serving as an acting representative of Adigeni municipality head in several villages (including Mokhe) since June, 2014, however, despite passing all requirements of the competition committee, another person of orthodox beliefs was appointed in the position, despite the fact that this person didn't satisfy the qualification requirements (unlike T.M., this person had no higher education or relevant work experience). According to T.M., the head of the commission told him in person that he was not appointed to the position because of his participation in the incident on October 22 and for protesting the appointment of Gela Kokhodze as the head of the police department.[216] T.M. appealed to the court for the unfounded and allegedly discriminatory decision of the committee.[217]

Due to the non-secular policy of the State, the relationship between Muslims and Christians in the Adigeni municipality, become tense from time to time and certain incidents take place, which creates the risk of renewing the religious conflict. During these instances, on September 9, 2016 in the village Zarzma of the Adigeni Municipality, an incident took place between the Orthodox priest and the imam, during which, according to imam, the priest verbally insulted and blocked his way to the mosque.[218]

The above-mentioned practices point to the structural nature of the oppression and marginalization of the Muslim community, which calls for a significant transformation of the existing policy of the State.

212 More information, available at: http://sknews.ge/index.php?newsid=4897

213 More information, available at: http://sknews.ge/index.php?newsid=3613

214 More information, available at: http://www.tabula.ge/ge/story/110580-premierma-samcxe-javaxetis-regionshi-mazhoritarobis-kandidatebi-tsaradgina

215 Statements recorded by Human Rights Education and Monitoring Center (EMC) from T.M. on 03.04.2015;

216 Statements recorded by Human Rights Education and Monitoring Center (EMC) from T.M. on 03.04.2015;

217 Note: Human Rights Education and Monitoring Center (EMC) is defending T.M. in this case. Tbilisi appellate court satisfied the plaintiff's request in the administrative part and obligated the local municipality to conduct the interview again. Further information is available at: https://emc.org.ge/2015/04/10/%E1%83%90%E1%83%93%E1%83%98%E1%83%92%E1%83%94%E1%83%9C%E1%83%98%E1%83%A1-%E1%83%92%E1%83%90%E1%83%9B%E1%83%92%E1%83%94%E1%83%9D%E1%83%91%E1%83%90%E1%83%A1-%E1%83%9B%E1%83%A3%E1%83%A1%E1%83%9A%E1%83%98/

218 The information is available at: http://sknews.ge/index.php?newsid=10071

2.2 The case of discriminatory hindrance of the activities of the boarding school for Muslim students in Kobuleti

2.2.1 Overview of the factual circumstances of the case

Since September 10, 2014 the local orthodox Christian population has been protesting, and hindering, the opening and operation of the boarding school for Muslim students. On September 10, 2014 the local population hung the head of a pig at the entrance of the boarding school in order to insult the Muslim population; on September 15, they prevented the school administration from starting the school process and made the administration leave the building under the threats. Since September 15, 2014, the local population has been supervising the process of entering the school building by the Muslim community members and preventing the school from opening.

According to witness explanations and other evidence, despite continuous violent acts and threats by the dominant group, the police, which was permanently present at the site, remained an inactive observer and didn't take any action to prevent the revealed violations and to ensure the rights to property and freedom of movement for the Muslim community.

It is noteworthy that apart from the discriminatory actions of the local population, various administrative bodies also commit discriminatory acts of hindrance. Ltd. Kobuletis Wkali and Kobuleti Municipality, despite several appeals, have not yet provided the boarding house with access to sewage system, which significantly complicates the opening of the boarding house.[219]

2.2.2 The Assessment of ongoing investigation process

In the case of Kobuleti boarding school, with regards to the mistreatment of the administration and the students of the boarding school by the local population and the cases of negligence from the police officers, EMC appealed to the Prosecutor's Office in the name of school administration and other persons and requested an effective and impartial investigation to be conducted.[220]

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219 Note: based on the law on eliminating all forms of discrimination, following the decision of 2016 of the Public Defender, the request from the school administration was satisfied and Ltd. Ltd "Kobuleti Water" was given recommendation to eliminate discrimination and connect the school with sewage system. EMC represented the administration. The decision is available at: http://ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/pirdapiri-diskriminacia-religiuri-nishnit.page

220 Note: EMC submitted action to the general court, in the name of school administration and other persons based on the law on eliminating all forms of discrimination. The plaintiff requested to impose obligations to stop discriminatory actions and obstruction of the school process; also for the Ministry to relevantly perform its positive duties in terms of violating the rights and the persecution of the Muslim community, and opening and functioning of the school by implementing efficient safety measures. In both parts, EMC also requested compensation for moral damages of discrimination in the symbolic amount of one GEL. On September 19, 2016, after two years of deliberation, Batumi court announced its decision regarding the case. The court satisfied the appeal against the private individuals, but didn't share the position of the plaintiff regarding the discriminatory attitudes from the Ministry. The detailed information on the decision is available at: https://emc.org.ge/2016/09/21/emc-145/

In the case of Kobuleti boarding school, investigation has been initiated only with regards to threats under the article 151 of the Criminal Code, which does neither fully nor adequately describe the events. The continuous facts of threat, coercion, continuous and organized restraining of the right to property, freedom of movement and right to education, which has been taking place systematically since September 10, 2014 and which has been accompanied by apparent hate language, falls under the persecution, as defined in the article 156 of the Criminal Code. However, despite the repeated appeals from the applicant, the Prosecutor's Office doesn't change the qualification.

Within the frameworks of the ongoing investigation, granting the status of victims to the administration of the boarding school and other persons is still problematic. Like other religious hate crimes, the Prosecutor's Office, in this case uses complicated, double standards of assertion and indicates that there is no ground for recognizing them as the injured party (see the detailed review of the matter above subchapter 2.1). In these conditions, the victims of the limitation are devoid of the possibility to monitor the investigation process.

At the same time, investigation actions are not implemented efficiently and timely. The members of the Muslim community, who had experienced the instances of threats and coercion, were only interrogated nine months later, when the civil court started reviewing the appeal based on the law of eliminating all forms of discrimination.[221]

It is also noteworthy, that the investigation has not yet inspected the site or written the subsequent report. At the same time, despite numerous addresses from EMC, the facts of negligence among the police officers, as defined in article 342 of the Criminal Code, have not been assessed. The composition of such a crime includes public official's failure to meet its obligations due to negligence. In the present case, it is clear that the police officers mobilized at the site, demonstrated careless attitude towards the instances of violation of the rights of the Muslim community and despite the obligations defined by the law, exercised absolute inaction. According to the Georgian law on police, the police ensure the protection of public safety and order. To fulfill the mentioned task, the police, under the article 17, paragraph 2, sub paragraphs c and d of the same law, have the tasks of implementing preventative measures to prevent illegal acts and eliminating them. Also, article 11 of the law, forbids discrimination while carrying out police work and establishes the obligation of a police officer to protect and respect human rights based on the principle of equality.[222] It is obvious that in Kobuleti case, the police did not fulfill its obligations, as envisaged in the law. Instead, they gave the dominant religious group members the possibility to establish hostile, non-formal order against the members of the Muslim community.

Insufficient performance of preventative and procedural obligations from the law enforcement agencies, indicates their failure to fulfill their positive responsibilities in terms of pro-

221 EMC report on cases of violation of religious freedom and alleged discrimination on religious grounds is available at: https://emc.org.ge/2016/01/27/religion-report/

222 Note: because of the inactivity of the Kobuleti police, EMC originally addressed the General Inspection of the Ministry. However, the Inspection didn't confirm the disciplinary violations. As the case files indicate, the agency mainly questioned those policemen, which were not present at the site at the time and thus were unable to identify about the cases of violations or their own responsibilities;

tecting the right to maintain dignity, property and education for the Muslim community. In the case of 97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia, European Court of Human Rights noted that: რომ Article 3 of the State convention, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment, including such treatment administered by private individuals. Such obligation requires reasonable and effective measures for the vulnerable groups, of which the authorities were or ought to have been aware. According to the court, the positive obligation also envisages procedural aspects on investigating cases of such ill-treatment from State agents or other persons. Furthermore, Article 3 of the Convention gives rise to a positive obligation to conduct an official investigation if indicators of such mistreatment exist and it must be carried out promptly and reasonably. State's tolerance towards such acts is unacceptable and it is inconsistent with the supremacy of law. In the given case, the court established that within reasonable doubt standard, the State violated its positive obligation of prohibition of ill-treatment as defined in article 3. Also, the court noted that due to the inactivity and indifference of the State in the case of Jehovah witnesses, article 9 (religious freedom) of the European Contention was allegedly also violated. In the case of Begheluri and Others v Georgia, on the acts of persecution from aggressive religious groups againt Jehovah's Witnesses, European Court of Human Rights noted that: Even in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that [..] or ill-treatment might have occurred. A requirement of promptness and reasonable expedition is implicit in this context. A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. Tolerance by the authorities towards such acts cannot but undermine public confidence in the principle of lawfulness and the State's maintenance of the rule of law." In the given case, the court also emphasized that the State was unable to end and prevent the violence motivated by religious hatred. The State, through its representatives, which either directly participated in the acts of violence or knew about these acts, created a climate of impunity, which encouraged other acts of violence against the Jehovah witnesses and thus failed to perform its positive responsibilities.[223]

It is noteworthy that EMC, for the purposes of impartial case study and institutional independence of the investigation of the cases of negligence among police officers, continually requested for the cases to be transferred to the Prosecutor's Office for the study and investigation, which was not fulfilled. Consequently, the cases of alleged negligence among police officers remain unaddressed from the legal standpoint.

223 ECtHR, Begheluri v. Georgia, no. 28490/02, 7 October 2014, §145;

2.3 The facts of persecution and limiting the freedom of religion for Jehovah witnesses in Terjola

In June of 2014, the local population in Terjola, which identifies itself as belonging to Orthodox Church, with the leadership of the priest, protested the construction of a Kingdom Hall by the Jehovah's Witnesses. Terjola school director and teachers also took part in the protests. During the protest, the participant inaugurated cross in front of the site and threats against the health and property of the Jehovah witnesses were also heard. In the beginning, the police gave only verbal warning to the participants,[224] but they later opened an investigation under article 156 (persecution) of the Criminal Code. According to Jehovah's Witnesses, the investigation is a formality; at an early stage, only a few persons were questioned, and later this process stopped and there is no progress in the case.[225] Despite opening the investigation, Jehovah's Witnesses continued to receive threats and insults from the local population for some time. There were instances of ambush near their houses and property was damaged. Jehovah's Witnesses confirm that they turned to the police in each case of aggression from the population, but the response of the police was limited to a written warning towards the offenders. There were attempts of reconciliation as well. Only once, when a person entered the house of one of the community members, were administrative measures used and the perpetrator in question had to pay a fine.

It is noteworthy that the facts of abuse of power for discriminatory motives from public officers have also been revealed in the case.[226] However, despite all the evidence in the case, which created a reasonable doubt that the crimes have taken place, under the relevant article of the criminal code of Georgia, the Ministry did not start any investigation.

Due to the State's ineffective and non-secular policy (for the further details of the role of the State Agency on Religious Affairs, please see above part 3), in Terjola Jehovah witness case, the tendency of harassment was renewed in the later period, when, as a result of the decision of Zestaponi regional court on March 19, 2015, the administrative body was instructed to extend the construction permission, the local organized group of orthodox believers sent a letter to the Jehovah's Witnesses containing threats.[227]

224 EMC assessment about religious contradictions against Jehovah Witnesses is available at: https://emc.org.ge/2014/06/25/terjolshi_gamovlenili_religiuri_dapirispireba/

225 Recorded explanations of the lawyers of Jehovah Witnesses Christian Organization, 29.09.2016;

226 Human Rights Education and Monitoring Center (EMC), Report on limited the Freedom of Religion and alleged cases of religious discrimination, available at: https://emc.org.ge/2016/01/27/religion-report/

227 The information is available at: http://liberali.ge/news/view/16098/EMCterjolashi-iehovas-motsmeta-mimart-religiis-tavisuflebis-shezghudvisa-da-devnis-riskebi-kvlav-gac

2.4 Religious violence towards Georgian Muslim community in the village Adigeni

The Muslim community was established in the village Adigeni 30 years ago. During this period, the Muslim community didn't have its own cemetery and since Islam doesn't allow burying a deceased Muslim next to a person of different religion, the members of the community were forced to bury the dead in different villages.[228] The necessity to create separate graveyard became more apparent, when the members of the family of R.M. decided to lay him in the unoccupied place in the village. The decision was opposed by the local population, which identifies itself as belonging to the Orthodox Church and the family was forced to transfer R.M. to the village Zenavi for burial.[229]

After the mentioned incident, the Muslim community of the village Adigeni applied to the local administration in writing and asked to be given the land for the cemetery; the State Agency on Religious Affairs gave positive recommendation.

To settle the given issue, on February 29, 2016 the Muslim community gathered and met with gamgebeli (head of local administration) and his two deputies. A certain organized group (which identifies itself as belonging to Orthodox Church) came to the place of gathering and attacked their neighbor Muslims. One of the members of the Muslim community was protected from the physical violence by others, but it became necessary to hospitalize him because of heart attack; two members of the community received serious damages. According to the witnesses, the group of attackers (men) verbally insulted Muslims and called them "tatars" and "newcomers" and threatened that they wouldn't allow arranging cemetery and mosque in the village.[230] It must be noted that the Muslim community points out the negative role of the gamgebeli, since he ignored their plea for delaying the date of the meeting and didn't prevent the attack of the group. His inactivity further escalated the events.[231]

According to the Muslim community, the police was called to the site, and they normalized the situation. Based on the information from the Ministry, the investigation was launched with the first part of the article 156 of the Criminal Code (persecution).[232] However, finally, as a result of the investigative activities regarding the criminal actions the cases of religious persecution were not identified and the investigation stopped because of the lack of actions under Article 156. However, in the given case, the Akhaltsikhe District Court imposed fines for six persons for 100 GEL for their actions under Article 166 of the Administrative Code (hooliganism).[233]

228 The information is available at: http://jam-news.net/Publication/Get/ka-GE/1546

229 The information is available at: http://jam-news.net/Publication/Get/ka-GE/1546

230 Human Rights Education and Monitoring Center (EMC), Assesment of the Adigeni events, available at: https://emc.org.ge/2016/03/02/emc-11/

231 Tolerance and Diversity Institute (TDI), overview, available at: http://www.tdi.ge/ge/statement/tdi-sopel-adigenshi-muslimta-morigi-devnis-pakts-scavlobs

232 Human Rights Education and Monitoring Center (EMC), Assessment of the Adigeni events, available at: https://emc.org.ge/2016/03/02/emc-11/

233 Ministry of Internal Affairs, Correspondence, 08.08.2016;

It was in Adigeni, where during the conflict, the facts of physical abuse by the private persons towards non-dominant religious group was revealed, which, on the one hand, was the result of non-effective State policy on religious intolerance, and on the other hand, called for the adequate and stern response from the government. However, as the dynamics of the investigation process demonstrate, the Prosecutor's Office used liberal attitude and instead of legal actions, used minimal forms of responsibility envisaged for administrative misdemeanor towards the attackers.

After a conflict that lasted for two days, the argument related to the cemetery was resolved by means of negotiations between the parties and the village cemetery was segregated in a way that made it possible to arrange Muslim and Christian graves separately from each other.[234]

3 |
Analysis of violent acts against Jehovah's Witnesses

A tendency of increase concerning cases of violence and violation of rights of Jehovah's Witnesses, based on religious intolerance, has been detected lately. According to the Parliamentary report of the Georgian Public Defender, up to 45 facts of physical and verbal abuse and other violent acts against Jehovah's Witnesses have been documented in 2014. Specifically, 11 facts of physical abuse, 30 facts of verbal abuse, 11 facts of damage of religious literature and stands, 2 facts of vehicle damage and 1 fact of interference with construction. The report of the Public Defender's also reads that 37 cases of physical and verbal abuse and other forms of violent actions against Jehovah's Witnesses have been detected in 2015.[235] Among those, there were 28 facts of verbal abuse of Jehovah's Witnesses, 11 cases of physical abuse, 11 cases of literature and stand damage, 4 cases of theft from the Royal Hall and 5 cases of damage of the Royal Hall.[236] It is noteworthy that simultaneity of verbal and physical abuse and damage of religious literature and property takes place in most of the cases. In relation to the total number of offenses based on religious reasons against Jehovah's Witnesses in 2010-2012, that is 25[237], the current tendency can be considered as an indicator of radical increase of religious aggression and violence, and of a worsening situation concerning the freedom of religion. The aforementioned tendency could be determined by the ineffective policy of law enforcing bodies and empowerment of non-secular and hate speech based narratives in the public discourse.[238]

234 More information, available at: http://jam-news.net/Publication/Get/ka-GE/1546

235 Public Defender of Georgia, Report, 2015, p.485, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf

236 Ibid;

237 Human Rights Education and Monitoring Center (EMC), statement - Inefficient State policy in relation to Jehovah's Witnesses results in promotion of violence, available at: https://emc.org.ge/2015/11/28/iehovas-mowmeebi-vazisubani/

238 Media Development Fund (MDF), Hate Speech and Xenophobia, 2015-2015, Link: http://www.mdfgeorgia.ge/uploads/library/19/file/Hate%20Speech-2015-GEO-web.pdf

It is noteworthy that, along with the increase of quantitative data, signs of aggression and intolerance can also be noticed; the nature of violence has also changed. During latest period, facts of violent acts based on religious hate frequently take place during implementation of religious activities in public spaces and the expressed aggression is of collective character. In addition, as the analysis of the Public Defender's reports shows, if during previous years (2010-2012) offenses based on religious reasons were mainly nonviolent and were generally limited to verbal abuse and attacks on Royal Halls, then during 2014-2015 direct violence facts against physical persons increased, a majority of which are expressed in violation of human's physical and psychic inviolability.[239]Analysis of the statistical data of 2014-2015 shows that aggression against community members is mainly expressed in verbal insult, which is, as usual, followed by physical abuse or threats of physical abuse. Physical abuse is mainly expressed in beating; very rarely take place minor health injuries or less serious injuries. Aggression is often directed against religious items owned or held by Jehovah's Witnesses. Especially frequent are the facts of damage of religious literature and stands standing in streets. There are facts of damage of religious buildings, which is mainly expressed in the damage of external facades of Royal Halls or inventory inside them. There have been facts of damage of Royal Halls from firearms. For example, fact of shooting at the Royal Hall located in Tbilisi, 3rd Block of Vazisubani (located in the center, nearby the Police Station) has repeated several times.[240] Private living houses of community members sometimes become objects of violent damage (intrusion into houses, breaking of windows, throwing of stones), which indicates signs of individual oppression and creates hostile environment for the community. Detail analysis of violence facts shows that private persons generally commit violent acts against Jehovah's Witnesses. Still, there are cases when aggression is expressed by clerics and public authorities.[241]

According to the 2014 Parliamentary Report of the Georgian Public Defender, from the facts of offenses against Jehovah's Witnesses (up to 45 facts), investigation has been launched in 8 cases by the Article 156 of the Criminal Code (persecution), in 1 case by the Article 155 of the Criminal Code (illegal interference with conducting of religious activities), in 3 cases by the Article 125 of the Criminal Code (beating); two from the latter have been re-qualified to Article 156[242]. In two cases of offense against community members, the detained have been held guilty; one of them was imposed with the fine of Gel 3,000 and the second one was sentenced to 2 years of prison, which was counted as probation sentence for up to 2 years. According to the report, in 3 cases of criminal offenses, diversion was used in relation to the accused.[243] 2015 statistical data on the offenses against the community members shows that from the detected facts, in 4 cases, investigation was launched by the Article 125 of the Criminal Code of Georgia (beating) and fine or publicly useful works was used as punishment of the accused. In 4 cases, investigation was launched by the Article 156 (persecution) and also in 4 cases under the Article 187 (damage of other's item).[244]

239 EMC statement: Analysis of facts of violence against Jehovah's Witnesses. Link: https://emc.org.ge/2014/04/24/iehovas_mowmeta_mimart_gamovlenili-_dzaladoba/

240 EMC statement: Inefficient State policy in relation to Jehovah's Witnesses results in promotion of violence. Link: https://emc.org.ge/2015/11/28/iehovas-mowmeebi-vazisubani/

241 Public Defender of Georgia, Report, 2015, p.485, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf

242 Ibid;

243 Ibid;

244 Ibid;

Analysis of the statistics shows that offenders are persecuted by the law very rarely. Information received from the interview with representatives of the Jehovah's Witnesses Christian Organization[245] confirms that investigations most frequently are not launched on the violent facts against the community members or are suspended shortly due to absence of criminal behavior.[246] This year, representatives of Jehovah's Witnesses Christian Organization note relative increase in the response of law enforcing bodies towards serious facts of violence. According to them, even though MIA and the General Prosecutor's Office are liberal towards such offenses and use simple forms of punishment (fine, non-imprisonment sentences), such reaction still brings results for individual believers in small closed communities. The community members clarify that for serious facts of violence the Prosecutor's Office reacts based on the Criminal Code instruments and in other cases they use the Administrative Code. However, it is apparent that in the conditions of inconsistent policy of fighting against offenses motivated by religious hate, the sporadic facts of response will not change the general picture much.

The substantial problem in investigations of violent crimes against Jehovah's Witnesses is the adequate qualification. Qualification of offenses against the community members mostly does not include the indication of alleged hate motive. For example, during 2014-2015, police officers did not indicate the motive considered by the Article 53, Part 3^1 of the Criminal Code[247] in any of the cases of offenses against the community members. Jehovah's Witnesses also claim facts of violation of religious neutrality and usage of hate speech by police officers during communication with them, which deepens their marginalization and results in re-victimization.

4 |

Inconsistent policy in fighting against religious hate motivated crimes

Hate motivated crimes are of political and symbolic nature and due to prejudices, hate and/or intolerance their aim is to attack not a specific individual, but whole groups.[248] Aforementioned crimes create threats for civil peace and result in marginalization of specific groups. Considering the specific nature of discriminatory crimes and the scope of damage, it is important for the State to realize the complex character of hate motivated crimes and to oppose them with systemic damage-decrease directed approaches. Effective policy of fighting hate motivated crimes requires: conduction of detailed statistics of hate motivated crimes and comprehensive analysis of

245 Interview recorded by Human Rights Education and Monitoring Center (EMC) with representatives of Jehovah's Witnesses Christian Organization, September 29, 2016;

246 Note: Among those, problematic are the cases of damage of property of community members and religious organization. In such cases investigation is usually launched according to the Article 187 of the Criminal Code (item damage or destruction), which considers as damage only the loss over Gel 150. In most of the cases, loss caused to community does not exceed the aforementioned amount and despite the presence of signs of religious hate, the State leaves such facts without response.

247 Public Defender of Georgia, Report, 2015, p.485, available at: http://www.ombudsman.ge/uploads/other/3/3891.pdf

248 OSCE Prosecuting hate crimes, a practical guide, available at: http://www.osce.org/odihr/prosecutorsguide?download=true

their typology and causes (including dynamics of offences/crimes, evaluation of their political and economic causes); creation of specialized services with staff who has adequate knowledge and sensitivity, inside law enforcing bodies; State implementation of analysis-based complex preventive measures for fighting intolerance and xenophobia as well as of equality-supporting public policy; steps towards building confidence and decrease of damage for victims of violated rights; permanent support to professional growth and increase of sensitivity among law enforcers; development of internal monitoring criteria and launch of independent internal monitoring mechanisms; active communication and cooperation with community organizations and public organizations working with discriminated groups.[249]

Georgian State policy for fighting hate motivated crimes is inconsistent and does not allow for effective prevention of crimes. While the latest instances of violence against religious groups have had a character of social conflict and wider political and social contexts of hate motivated crimes become apparent,[250] the State is still hesitant to acknowledge the complexity of such offences and the necessity for systemic policy of fighting them.

In 2012, amendments were made to the Criminal Code of Georgia (Article 53, Part 3^1), which included the crimes committed with motive of intolerance in the list of crimes committed in aggravating circumstances. The Human Rights Action Plans of the Georgian Government for 2014-2015[251] and for 2016-2017[252] provide for the obligations of the Prosecutor's Office and the Ministry of Internal Affairs to effectively investigate hate motivated crimes and identify hate motives, develop and introduce guidelines for investigation of hate motivated crimes, collect relevant statistics and conduct systematic training of staff. Despite this declaration of obligations, the information requested from the coinciding State bodies and analysis of the criminal cases related to hate motivated crimes show that the MIA and the Prosecutor's Office, just like the Court[253] neither use the given Article nor keep the necessary statistics. At the same time, the Government and the law enforcing bodies do not have the strategy of fighting hate motivated crimes that would respond to violence based on intolerance, racism and xenophobia with systemic preventive policy.

Georgian Prosecutor General's Office developed the practical guidelines for fighting against hate motivated crimes, which also includes the rules for conducting statistics[254]. However, due

249 Ibid;

250 Note: Concerns related to radicalization and recent intensification of activities by ultra-nationalistic groups whose actions are expressly violent and place the safety of discriminated groups, among others ethnic, religious minorities under high risk, have to be noted. In this regard, see the legal assessment of the facts of violence expressed by ultra-nationalistic groups available at: https://emc.org.ge/2016/10/01/emc-155/

251 Georgian Government Decree on the Approval of the State Action Plan for Human Rights Protection in Georgia (for the years 2014-2015) and about creation of the Interagency Coordination Board for the State Action Plan for Human Rights Protection in Georgia and on approval of its Statute (for the years 2014–2015), 2014, July 9, available at: https://matsne.gov.ge/ka/document/view/2391005

252 Georgian Government Decree on the Approval of the State Action Plan for Human Rights Protection in Georgia (for the years 2016-2017), 2016, July 21, N338, available at: https://matsne.gov.ge/ka/document/view/3350412

253 Letter from the Court of Appeals of Tbilisi (N117), 07.09.2015; letter from the Court of Appeals of Tbilisi (N20964) 07.09.2015; letter from the Court of Appeals of Kutaisi (N46) 09.09.2015; response letter from the City Court of Kutaisi (N12429) 09.09.15;

254 Interview recorded by Human Rights Education and Monitoring Center (EMC) with the representatives of the Prosecutor General's Office of Georgia – Natia Mezvrishvili, Salome Shengelia, 30.09.2015

to the fact that it does not publicize the document[255] it is impossible to evaluate the trustfulness of the document. Statistics conducted by the current rule almost completely excludes identification and registration of hate motivated crimes.[256]

On December 23, 2014 Minister of Internal Affairs, based on the Human Rights Action Plan, developed the Reference N47 on "implementation of discrimination prevention and effective response to crimes of discriminatory nature, by the departments of the Ministry of Internal Affairs of Georgia". The document defines general obligations of the MIA in the process of fighting discriminatory crimes. The Reference also sets the special rule for conducting statistics based on Article 53, Part 3^1 and namely, according to the Article 2 of the Reference, in case of discriminatory crimes, in the coinciding column of the electronic program of criminal case registration – Crime Fable, must be indicated about "possible" existence of specific signs of intolerance motive and discrimination as considered in the Article 53, Part 3^1 of the Criminal Code. Information and Analytics Department of the MIA has been defined as responsible for conducting statistics. However, as the communication with the MIA shows, neither the given Reference nor the coinciding statistics are being conducted in practice According to the public information received from the MIA, Article 53 is part of the General Part of the Criminal Code and sets the initials for appointing punishment. Accordingly, aforementioned circumstances are considered when the Court assigns punishment. The letter also reads that, "Article 53 of the Criminal Code is not a circumstance qualifying a crime and its indication in the electronic program of case registration is inadvisable".[257] It is noteworthy that, Prosecutor's Office has the identical position on the usage of the Article 53, Part 3^1 of the Criminal Code. Such approach and absence of identification hate motive and its fixation in a case and absence of the rules for conducting statistics, complicates the adequate identification and fixation of a motive during investigation of hate motivated crimes and keeping statistics.

Thus, in the absence of comprehensive statistics of hate motivated crimes, it is apparent that it is impossible for the State to measure the scale, dynamics, and causes of such crimes and to implement adequate measures. Along with that, the lack of clear formal procedure for identifying violence as alleged hate motive during investigation process complicates the adequate investigation of specific cases and identification of the possible discriminative context of a case.

As mentioned above, one of the most decisive instruments for effective fight against hate motivated crimes is the formation of specialized departments within the systems of law enforcing bodies. European Commission for Racism and Intolerance (ECRI) has given Georgia the recommendation to create a specialized department within the system of the Ministry of Internal Affairs.[258] Similar recommendation has been received by Georgian Government in the framework of the Universal Periodic Review (UPR) [259]. Although, as the Government of Georgia has stated, due to the lack of resources of the Ministry and the interest of covering the whole territory of the country, formation

255 Prosecutor General's Office of Georgia, Correspondence (N13/33536), 30.05.2016;

256 Prosecutor General's Office of Georgia, Correspondence (N1354213), 18.08.2016;

257 Letter from the Minister of Internal Affairs of Georgia (N1189435) 03.06.2015;

258 The European Commission against Racism and Intolerance, Report, fifth monitoring cycle, 2015, available at: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-ENG.pdf

259 Universal Periodic Review (UPR), second cycle, Georgia, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/005/04/PDF/G1600504.pdf?OpenElement

of the centralized specialized police department would not be an effective response mechanism to hate motivated crimes. Due to the aforementioned, Government took the obligation of ensuring training of specialized police officers within every regional Police Department. [260] It is clear that the strategy of countries for fighting hate motivated crimes is individual and different countries have different models of institutional structure of police and prosecutor's office. However, best practices of states show that operation of specialized police units is an effective instrument in implementing the systemic policy of fighting discriminatory crimes and preventing victims from repeated traumas. Evaluation of the feasibility and efficiency of the Georgian Government's approach, in the conditions of the new regime, will be possible after some working experience are accumulated. Still, in the model to be discussed, it is significant to develop adequate criteria for monitoring policemen's work and empowerment of independent and transparent internal monitoring mechanism. [261]

One more problem must be emphasized in relation to hate motivated crimes. In 2015, after the foundation of the State Security Service, amendment was made to July 7, 2013 Order the Minister of Justice of Georgia on the Definition of Investigative and Territorial Subordination and investigation of crimes committed under the Article 142 (violation of human rights) and Article 142[1] (race discrimination) of the Criminal Code was referred to the State Security Service by subordination. The aforementioned approach must be the expression of the general State policy, which sees the issues related to religious, ethnic and other discriminated groups directly in security paradigm and does not actually see it in human rights context (see above, part 3). In addition, in the condition of accumulation of extensive and at the same time controversial authorities in the State Security Service (simultaneously analysis, counterintelligence, law enforcing, use of force, prevention and investigation functions) and existence of less transparent and accountability system of its operation, handover of the mandate to investigate discriminatory crimes to them creates high risk of politicization of issues related to equality.

In summary, it must be said that the institutional gaps discussed above on the one hand are reasoned by lack of knowledge of strategy and tools for fighting hate motivated crimes and on the other hand, and most importantly, indicate the absence of political will, which most clearly is confirmed by the practice of prolonged and ineffective investigation of scandalous crimes committed due to religious intolerance [262] (see above, part 4, chapter 2). Policy of clearly ineffective response by law enforcing bodies to crimes motivated by religious hate can be considered as loyalty towards dominant religious group and it violates the fundamental principles of equality and religious neutrality and creates a hostile environment for the discriminated groups.

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260 A/HRC/31/15/Add.1, para. 118.10;

261 Preventing and responding to hate crimes –A resource guide for NGOs in the OSCE region. OSCE's Office for Democratic Institutions and Human Rights (ODIHR) 2009, available at: http://www.osce.org/odihr/39821?download=true

262 Harsh statements on the given problem are being made in the reports on Georgia issued by international and regional mechanisms, including the European Commission of Racism and Religious Intolerance report, 2015, p.18, available at: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-ENG.pdf ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES report on Georgia, 2016, 18-20pp., available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680590fb5 The US Department of State special report on religious freedom, 2016, available at: http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dlid=256191#wrapper

Part 5
Problems of Religious Neutrality and Equality at Public Schools

1 |
General overview

Creating a secular and equal environment at public schools is the main challenge for the general education system. Despite the fact that the Law on General Education provides adequate material warranties to ensure religious neutrality and equality at public schools, the State policy is ineffective, and indoctrination, proselytism and discrimination form systematic pattern at public schools. A number of recent surveys[263] and human right reports[264] confirm the abovementioned assessment. As the research findings show, the ideology of ethno-religious nationalism permeates practices and everyday life of schools and the education process is turned into the space for religious preaching[265].

The displays of intolerance and hate during the past years, including the massive organized violent counterdemonstration[266] against LGBT activists on the International Day against Homophobia and Transphobia, May 17, 2013, which was attended by hundreds of youngsters, clearly showed the systemic challenges in the education system. The difficult situation in public schools was clearly and directly displayed during the religious conflicts as well. The conflict survey findings show that the anti-Islamic discourse in local communities is driven by the public schools and churches[267]. The teachers actively cultivated ideas based on intolerance in the everyday life of schools and in certain cases also created a discriminatory and insulting environment for the pupils belonging to non-dominant religious groups[268]. In some conflicts, the schoolteachers were involved themselves in meetings to restrict the rights of the religious minorities (Nigvziani[269], Terjola[270]).

Secularization of the public school policy and education system is a painful process connected with the ongoing social and political processes in society. The ongoing processes and dynam-

263 Religion at Public Schools, Human Rights Education and Monitoring Center (EMC), 2014, available at: https://emc.org.ge/2014/03/31/religia_sajaro_skolebshi/

264 Report of the Public Defender on the Situation on Human Rights and Freedoms in Georgia, 2015, pp. 700-703, available at: http://ombudsman.ge/uploads/other/3/3512.pdf The European Commission against Racism and Intolerance Report, fifth monitoring cycle, 2016, p. 22, available at: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-ENG.pdf US Department of State Religious Freedom Report on Georgia, 2016, available at: http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dlid=256191#wrapper

265 Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Georgia, 2016, p. 19, available at: http://new.smr.gov.ge/Uploads/1_e7beda71.pdf

266 SCOs' Joint Statement, 17,05.2013, available at: https://gyla.ge/ge/post/arasatavrobo-organizaciebi-17-maisis-movlenebtan-kavshirshi-bolo-dros-ganvitarebul-movlenebs-ekhmianebian-41

267 Human Rights Education and Monitoring Center (EMC), Crisis of Secularism and Loyalty towards the Dominant Group - The Role of the Government in the 2012-2013 Religious Conflicts in Georgia, 2014, available at: https://emc.org.ge/2013/12/05/25/

268 Ibid.

269 Ibid.

270 Human Rights Education and Monitoring Center (EMC), Legal Analysis of Religious Controversy Revealed in Terjola, 2014, available at: https://emc.org.ge/2014/06/25/terjolshi_gamovlenili_religiuri_dapirispireba/

ics in the social reality are directly reflected in the education system. Despite the attempt of radical reform of the public schools in 2005, which ensured institutional separation of public schools from the churches, the reform dynamics have significantly softened since 2008 and due to the resistance of the local society towards the school secularization process as well as the political crisis faced by the government only continued in its own flow[271]. The influence of church on public schools was more local and sporadic and did not have an institutional nature. Since the government transition in 2012, the influence of the Patriarchate on the Ministry of Education became open in terms of strengthening of the non-secular attitude between the state and the church in general. This was reflected on a discourse level in the public positioning of the Ministry, especially during the public discussion of the curriculum standards of the school subject "Me and Society"[272]. The interviews, conducted for the report, with religious organizations show that the influence of churches and clergy in public schools is carried out locally and is not centrally organized. However, they do confirm the increased number of cases of indoctrination and discrimination in the light of ineffective monitoring mechanism and Ministry work in general.

The systemic problems hindering secular, academic education processing at public schools can be categorized as follows: 1. Improper display of non-dominant religious and cultural systems in handbook and education curricula and non-modern interpretations of the issues related to religion and politics[273]: 2. Low level of academic training and civil education of the teachers and ineffectiveness of the systemic training programs of this direction[274]; 3. Formal and informal influence of the Patriarchy on the Ministry of Education and Science as well as on local public schools[275]; 4. Problem of ineffective monitoring mechanisms.

Despite these systemic challenges, the State does not have a consistent, systemic policy to turn the educational environment into a secular, free and non-discriminatory academic environment. Based on the communication between EMC and the Ministry of Education and Science, the Ministry does not recognize the problems, existing in public schools in terms of religious neutrality and religious discrimination, as systemic, nor has it an effective strategy against these problems. According to the Ministry, not many cases of religious indoctrination, proselytism and discrimination, that may be point to the systemic nature of the problem, are documented. However, the Ministry does not consider the factor that as a rule in cases of violation of rights parent of school students refuse to use legal assistance, as they fear

271 , Human Rights Education and Monitoring Center (EMC), Religion at Public Schools, 2014, available at: https://emc.org.ge/2014/03/31/religia_sajaro_skolebshi/

272 Netgazeti, article - The Ministry consults with Patriarchate on Me and Society Subject Standard, 2016, available at: http://netgazeti.ge/news/94841/

273 Human Rights Education and Monitoring Center (EMC), Religion at Public Schools, 2014, available at: https://emc.org.ge/2014/03/31/religia_sajaro_skolebshi/ Tolerance and Diversity Institute (TDI), Religious and Ethnic Diversity in School Textbooks, Midterm Report, 2016, available at: http://tdi.ge/sites/default/files/saxelmzgvaneloebis_analizi_tdi_2016.pdf

274 Intercultural Education Aspect Research In Higher Educational Institution Teacher Curricula of Georgia, Center for Civil Integration and Inter-Ethnic Relations (CCIIR), 2014, available at: http://cciir.ge/upload/editor/file/jurnali%20%20bilingvuri%20/politikis%20dokumentebi%20/geo/axali/interkulturuli%20umaglesebshi.pdf

275 Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Georgia, 2016, p. 19, available at: http://new.smr.gov.ge/Uploads/1_e7beda71.pdf

re-victimization due to the oppressive society and the widespread marginalization at schools. Therefore, in light of the ineffective monitoring mechanisms, the Ministry cannot use low statistical data as a reason for ignoring the problem

Moreover, the Ministry does not engage in proactive systemic monitoring, which considering the scale of the problem and severe social and human rights consequences flowing from it, will be specifically targeted at identifying and eliminating religious indoctrination, proselytism and discriminatory practices.

Below will be presented legal analysis of the decisions made by the Internal Audit Department on the cases describing violation of religious neutrality and discrimination at public schools. In the second chapter, EMC also presents the outcomes of the pilot social survey conducted with religious communities, which reveals everyday practices of indoctrination, proselytism and discrimination against the religious minorities and the social consequences that follow.

2 |

Legal Assessment of the Decisions Made by the Ministry of Education on the cases of violating Religious Neutrality and Equality at Public Schools

The information requested by EMC from the Ministry of Education and Science (*hereinafter* the Ministry) shows that the internal audit service has only studied only 7 cases, since 2012, on violation of religious neutrality and of requirements on prohibition of discrimination on religious grounds. In every case discussed, the Ministry received information of possible ongoing violation either through other institutions or organizations, or through the monitoring of other shortcomings of school system. This shows that the Ministry does not study the condition at schools in this regard proactively and through a specific methodology. The information received from the Ministry also shows that the Ministry has not carried out relevant surveys[276] to study the forms and scales of religious indoctrination and discrimination either.

It should be noted that in none of the high-profile cases describing violations of religious neutrality at public schools, including the participation of schoolteachers and pupils in the assemblies motivated by hate and intolerance during the religious conflicts in Nigvziani and Terjola, did the Ministry confirm that the violation took place. The unsubstantiated decisions of the Ministry on the mentioned cases clearly show the fear and lack of will of the Ministry to make political decisions. The Ministry has not published information on the less known cases relating to violation of requirement set by Law on General Education.

276 Ministry of Education and Science of Georgia, Correspondence 30.08.2016 (MES 2 16 00997119);

The analysis of the Internal Audit Department decisions shows that while substantiating its decisions, the Ministry adopts appropriate interpretations of relevant norms of the law on General Education. . Assessment of issues related to discrimination by the Internal Audit is especially important. Despite the fact that in separate cases Ministry does not identify the fact of unequal treatment of or other damage to a representative of a specific religious group in the form of indoctrination, it assesses non-secular environment at public schools as a trigger, provoking factor for discrimination. In addition, the Ministry criticizes the school administration for allowing the use of school resources, including facilities, space and time, for activities that are not religiously neutral and views these actions as aspects of indoctrination and proselytism.

The analysis of the decisions shows that, in many cases, the public school principals explain inactivity regarding ensuring the secular and tolerant environment as a result of avoiding resistance from the society associated with school, other teachers, pupils and parents and the interest to avoid it. This once again points out the complexity and social nature of the problem.

The decisions made since 2012, by the internal audit service of the Ministry, are discussed in details below[277].

The Case of Dzevri Public School (Terjola Municipality)

In 2014, the case of indoctrination against 4th grade pupil belonging to the religious group of Jehovah's witnesses was identified in the public school in the village of Dzveri. As the decision of Internal Audit Department reveals, the teacher made the pupils read the Lord's Prayer in the morning, before the first lesson. One of pupils, who is a Jehovah's Witness, refused. The teacher asked to provide explanation for the refusal, however, the pupil could not do so because of fear. The parent of the pupil in question later asked for explanation from the teacher and such incidents of coercion have not taken place after this. The teacher reduced the frequency of prayers to one time in a week instead of three times a week. In the same case, another incident of marginalizing a pupil. As we see in the decision of the Internal Audit Department, as rule birthdays of pupils were celebrated in the classroom and at one of the birthdays, the classmates made fun of the pupil who is a Jehovah's Witness. The pupil also suffered a face injury when classmates used force to hinder the pupil from leaving the class. In addition, the Terjola Resource Center observed so-called icon corners at the entrance of the school during the monitoring of the school. In all of these three cases, the Internal Audit Department discussed the violation of the neutrality and discrimination prohibition requirement and found violation of "c" subparagraph of paragraph 2 of the article 3[278], paragraph 10

277 Note: The correspondence with the Ministry of Education does not show the component of the activities implemented by the public school after the monitoring, thus the topic cannot be assessed in the report;

278 Law on General Education, Article 3.2.c.:The state shall ensure freedom of public schools from religious and political associations and freedom of private schools from political associations;

of the article 9[279], paragraph 2 of the article 13[280], paragraph 3 of the article 18[281] of the Law on General Education as well as of paragraph 9 of the article 4 of the Teacher Professional Code of Ethics[282] approved by the Order of July 14, 2010 by the Minister of Education and Science and sent the school a written warning. In addition, the school was tasked to follow up on the violations indicated in the conclusion, also to ensure that the school activities complied with the legislation and to report, within in a one-month period, to the Ministry on the respective measures taken.[283]

The Case of Ilia Chavchavadze School N23

A case was observed at Tbilisi School N23 in 2013 in which the teacher sold religious products (Patriarch Easter epistle and Unanimous Patriots' Certificate Forms, where a person by submitting the name, surname, father's name, address and phone number, joins the Unanimous Patriots' Army of Georgia) to pupils in the 8th grade. The Internal Audit Department criticized the teacher for using school space/facilities to sell products, without coming to an agreement with the school first. The Internal Audit Department found the inadmissible practice of religious indoctrination and proselytism established and sent the school a written warning. The school was tasked to implement efficient measures to prevent future sale of religious production among the pupils based on paragraph 2 of the article 8[284] and subparagraph "J" of the paragraph 1 of the article 33[285] of the Law on General Education. The Ministry requested a disciplinary sanction against the schoolteacher and reporting of the Internal Audit Department, within a one-month period, of the measures taken.[286]

The Case of N 158 Public School

EMC contacted the Internal Audit Department in 2015, and requested investigation of alleged facts of religious indoctrination, proselytism that took place at Public School N 158, and demanded the elimination of them. Approximately 400 pupils study at the Public School N 158, of which 30% are ethnical Azeri. In addition, up to 20 Adjarian Muslims study at the school. The request of EMC sent to the department did not disclose personally identifiable informa-

279 Law on General Education, Article 9.10.: Schools shall be obliged to take all reasonable measures to observe and prevent violation of the rights and freedoms of pupils, parents and teachers during the school hours, as well as on school grounds or adjacent areas;

280 Law on General Education, Article 13.2.: The use of the study process in general education institutions for the purpose of religious indoctrination, proselytism or forced assimilation shall be inadmissible;

281 Law on General Education, Article 18.3.: Placement of religious symbols on school grounds shall not be used for non-academic purposes;

282 Teachers Professional Code of Ethics, Article 4.9.: Teacher shall not engage the pupils in religious (except the teachers of the schools of religious education) and political propaganda;

283 Decision of the Internal Audit Department on LEPL Dzveri Public School, Terjola Municipality;

284 Law on General Education, Article 8.2.: Schools shall be entitled to restrict rights and obligations of unauthorized persons on a non-discriminatory basis during school hours or on school grounds;

285 Law on General Education, Article 33.1.J.: Ensure the safety of pupils on school grounds during school time;

286 Decision of the Internal Audit Department on Inspection of LEPL Tbilisi Ilia Chavchavadze Public School N23;

tion of concrete persons (violators or victims of the restriction of the right). As a response to the application, the Educational Resource Center visited the school and in the framework of the monitoring conducted identified religious corners at the teachers' room and 3 classrooms, as well as icons of the Virgin Mary of Iveria in 10 classrooms. Repeated facts of Burning of incense by the teachers as a religious ritual, visits by clerics to schools and blessings of staff and of the school building were also revealed. The monitoring also identified the fact of an organized visit, during which first grade pupils were taken to the church by the teacher in order to be blessed. Muslim pupils were among the participants who refused to participate in the religious ritual and stood separately. Besides events mentioned above, the Educational Resource Center also observed the marital status of a 12-year-old girl in the 7th grade, with regard to which the school administration did not act appropriately. Due to violation of the respective articles of the Law on General Education on religious neutrality, the Internal Audit Department tasked the school with taking measures to bring its activities in compliance with the legislation and to report, within a one-month period, on the activities undertaken with that purpose. Because the information regarding the child marriage included the signs of offence envisaged by the Criminal Code, the Ministry sent the materials of the case and the conclusions to the Prosecutor's Office.[287]

The Case of 300 Aragveli Public School N **75**

Upon the information submitted by the parents, the Internal Audit Department of the Ministry held a monitoring at the Public School N 75. Along with other violations, free distribution of religious product (Qorozi Magazine) by an initiative of the Georgian Patriarchate was observed. The Ministry assessed incident, found the violation of religious neutrality and sent a written warning to the school.[288]

The Case of Guram Ramishvili Public School N **20**

A case was observed at Tbilisi School N 20 in 2013 in which orthodox educational magazine Qorozi sold religious products (Patriarch Easter epistle and Unanimous Patriots' Certificate Forms, where a person by submitting the name, surname, father's name, address and phone number, joins the Unanimous Patriots' Army of Georgia) to pupils and teachers. The school principal actively participated in the process. According to the assessment of the Internal Audit Department, the school principal could not ensure the protection of security nor the protection from religious propaganda and his/her inaction allowed repetition of such facts. The Ministry sent a written warning to the school N20 and tasked the school to respond to the identified violations and to take effective measures to prevent sale of religious products to the pupils.[289]

287 Decision of the Internal Audit Department (N3003150940) on LEPL Tbilisi Public School N158;

288 Decision of the Internal Audit Department on LEPL Tbilisi 300 Aragveli Public School N75;

289 Decision of the Internal Audit Department on LEPL Tbilisi Guram Ramishvili Public School N29;

Tbilisi Public School N155

During the monitoring of the school N155 in 2014, the Monitoring and Coordination Division observed prayers (Lord's Prayer) in the 5th grade classes. When the ministry representatives started monitoring of the school, they heard the sound of prayer in the corridors: In the class, everyone was standing, including the teacher, and saying the Lord's Prayer out aloud. In the explanatory note of the teacher, he/she indicated that one of the pupils had got sick a couple of days before and so the children prayed to "help". After that, the pupils were asked to pray every day before the classes and this practice continued for almost one week. The monitoring group assessed the teacher's actions, established the fact of discrimination, and found violation of religious neutrality. According to the assessment of the Internal Audit Department, the teacher's actions created an environment in the school territory, in which pupils with different religion and faith submitted to unequal/discriminatory conditions. The Ministry sent a written warning to the school and requested a report on the measures taken to eliminate violation in a one-month period.[290]

The Case of Tbilisi Public School N159

The Internal Audit Department studied the situation at the Public School N159 based on the application made by the Center for Children's rights at the Public Defender's Officer in 2013. The application of the Public Defender's Office revealed that the second grade teacher used to check if pupils wore crosses and made them pray before the classes. As a result of the monitoring, the practice of praying before the first lesson was observed in the mentioned class. An icon corner was also found in the foyer of the school ground floor. The explanation as to why the icon corner was not replaced or removed was that the principal wanted to avoid conflict with teachers, pupils and their parents. The Ministry sent a written warning to the Public School N159 and tasked them with implementing effective measures to eliminate the violation.[291]

The Case of Rustavi Ilia Chavchavadze Public School N1

Within the framework of the monitoring, the Ministry found that a teacher sold religious CD's and candles were to pupils at Rustavi Public School N1. According to the conclusion of the Internal Audit Department, this incident occurred twice at the school in 2014-2015. The CD contained a movie that discussed interconnection of Christian, in particular, Orthodox religion and the Georgian Language, Bible themes (for example, the Tower of Babel, the Robe of Jesus), Saints. In addition, the video on the CD included excerpts from the Patriarch's preaching, comments of different clergymen, Orthodox rituals, churches, icons etc. The Ministry sent a written warning among others on the violation and requested that effective measures be taken by the school in order to eliminate the violations.[292]

290 Decision of the Internal Audit Department (N0207141010) on LEPL Tbilisi Public School N155;

291 Decision of the Internal Audit Department on LEPL Tbilisi Public School N1159;

292 Decision of the Internal Audit Department (N 0801160940) on LEPL Rustavi Ilia Chavchavadze Public School N1;

The Case of Terjola Public School N2

A number of teachers and pupils participated in the protest action in Terjola against Jehovah's witnesses in the beginning of June 2014, which was organized by the local orthodox clergy, Archpriest Spiridon Tskipurishvili,[293] the Terjola Public School N2 principal Rusudan Usupashvili, several teachers and school students also participated. The video and photo material from the place of the incident show that the pupils' actions at the protest were organized. They went, in groups, to the place in school uniform, were placed next to teachers, held banners and icons which were prepared in advance. There is also a video of the Archpriest Spiridon Tskipurishvili's speech, where the cleric directly states, that Rusudan Usupashvili, the principal of the school is one of the active participants and supporters of the action. According to the statement of the Archpriest, the school principal offered him support in the name of the school and a collection of signatures against the construction of a Kingdom Hall as well.[294]

Despite the evidence presented in the case, the Ministry informed EMC that Terjola local Resource Center studied the case, took interviews from the individuals related to the issue, including the school principal, teachers and pupils, and did not find any violation of the Law on General Education. According to the assessment of the Ministry, Rusudan Usupashvili, the principal of the school N 2, did not confirm her participation in the protest action. As for the participation of teachers and pupils, the principal pointed out that there was no suggestion or initiative from the side of the school to go to the protest action. According to the explanations of the interviewed teachers, the Internal Audit Department declared that some teachers did not confirm their participation in the action; some of them confirmed that they participated in the protest action, but only after school hours, by their own will and initiative. According to the Internal Audit Department, interviewed pupils confirmed that they participated in the action after the school day ended, by their own will and initiative.

As the case materials show, the Internal Audit Department found that part of the teachers and pupils in School N2 participated in the action motivated by religious hatred against the Jehovah's witnesses. However, according to the agency, the statements of the individuals interviewed indicate that teachers and pupils *participated in the action after school hours by their own will and initiative.* According to the subparagraph "z" of the article 4 of the Law on General Education, the school time means *the duration of the educational process determined by the School Curriculum, as well as any other event initiated, organized, controlled, financed and sponsored by a school.* The Law offers a broad explanation of the school time and includes not only the period when the lessons are taught, but also the time of any event controlled/organized by the school. Control/organization are the factual circumstances and their existence shall be confirmed not only formally (official decision, open support of officials), but factually as well. Thus, in this specific case it was vital for the monitoring mechanism to study the circumstances and identify whether the schoolteachers participating in the action controlled/organized the pupils' activity before the action and during

293 Video material of the protest action available at: https://www.facebook.com/photo.php?v=607484022694844&set=vb.378911675552081&type=2&theater

294 The statement available at (see the text at 2:23): https://www.facebook.com/photo.php?v=608770665899513&set=vb.378911675552081&type=2&theater%20https://www.facebook.com/photo.php?v=607484022694844&set=vb.378911675552081&type=2&theater

it. The factual control in the present case includes supportive, encouraging, organizing behavior before the action and during the action influencing the action of the pupils and causing it. Considering the age, vulnerability, status of the pupils, the influence of the status/authority of the teachers on the pupils' actions had to be taken into account. In order to assess the *possible* organization/control of the pupils by the teachers during the rally, the Internal Audit Department had to study the circumstantial evidence relating to the teacher's behavior during the action. The latter would reveal the facts of teachers' influence on pupils, control and support and would not be limited to finding whether the participation in the action took place during the school hours or after it.

Thus, the Internal Audit department limited itself to studying whether teachers and pupils participated in the protest during or after the school hours and did not assess the episode when the protest was ongoing, due to which it became impossible to establish the facts of control/organizing of the pupils participating in the protest by the school.

Participation of the school N2 principal in the protest action is confirmed by the photo material from the place of accident, as well as by the video of the Archpriest Spiridon Tskipurishvili speech,[295] where he names Rusudan Usupashvili, the school principal as one of the active participants/supporters of the action. The video material as well as explanations received by the Internal Audit Department confirms participation of some teachers in the action. The mentioned circumstances per se confirm the significant role of the school administration in the organization of actions motivated by religious hatred. According to paragraph 10 of article 19 of the Law on General Education, pupils or teachers shall not be subject to disciplinary inquiry for actions performed outside school time and premises, unless the school has a justified interest. In this case, even if the facts of organizing the engagement of pupils in the protest motivated by the religious hatred or the control of their behavior during the action by the teachers and school administration was not proven, still disciplinary proceedings had to be initiated against the school principal and teachers in relation to the control of pupil's actions. According to the goal of the Law on General Education, which underlines the primary significance of ensuring tolerance, religious neutrality and equality at school, the Ministry should have had a justified interest to have a legal response to the hate-motivated behavior of the school principal and teachers.

The Law on General Education defines the principles of separation of public school and religious organizations and of religious neutrality and protection of tolerance. According to paragraph 2 of the article 13 of the law, it is inadmissible to use the teaching process in the public school for religious indoctrination, proselytism or forced assimilation. Article 8 of the Law states that Schools may determine the rules of non-discriminatory and neutral restriction for the rights and obligations of pupils, parents and teachers and their associations during school hours and on school premises in order to comply with this Law and if there is a reasonable and inevitable danger to ***spreading religious hatred.*** Article 13 of the Law imposes that the schools shall observe and facilitate tolerance and mutual respect among pupils, parents and teachers irrespective of their belonging based on social, ethnic, religious, linguistic and world-view grounds.

295 The statement available at: http://on.fb.me/1xttf0s; Spiridon Tskipurishvili statement at 2.23: "As you know, a bit higher, there is the second public school. Two days ago Ms. Rusudan – school director, a very respectful woman came to me and told me that there would be signatures and support from the school side, the day after, that means, yesterday, they tell us that the Ministry of Education prohibited to involve in this issue."

In this case, in order to carry out a tolerance-oriented policy in the education system, it was important that the participation of the principal and the teacher in the actions motivated by religious hatred became subject of legal actions, but the Internal Audit Department did not assess an issue of justified interest as foreseen by Law.

It should be noted, that the case is currently under consideration by the Department of Equality of the Public Defender's Office based on the Law on Elimination of All Forms of Discrimination. The Public Defender has not rendered a decision on the issue yet.

The Case of Nigvziani Public School

A negative role of the local school during the religious conflict in Nigvziani village was observed in October 2012.[296] On November 2, 2012 the school administration engaged pupils, among them Muslim ones in the confrontation regarding the opening of a Muslim praying house. The pupils went organized by the school to the protest where they chanted that they wanted to stand together and did not want a mosque in the village. This incident of confrontation of pupils with their parents was especially traumatic for the Muslim community. The interviews taken from the schoolteachers in the frames of conducting a research show that their Islamophobia and intolerant attitude does not correspond to the modern interpretations of history, religion, politics. It is clear that the attitudes of the teachers influenced the human rights condition and social environment for the Muslim pupils at the school. In the frames of drawing up a report, EMC once again studied the situation in Nigvziani village. According to the local Muslim community, even though no incidents of violence or intolerance have been observed in the village since the conflict, there is still a problem of alienation and trust between the Christian and Muslim communities, mainly reflected in the school environment. The interviews with the parents of the pupils revealed several major problems: the growing trend of alienation and violent attitutes between the Christian and Muslim pupils, to which the school administration cannot efficiently respond or prevent; discriminatory expressions and remarks to Muslim pupils (especially stigmatizing remarks towards the pupils of the Nigvziani Mosque boarding school); inactivity and passivity of teachers and administration in eliminating these cases; violation of religious neutrality (visits to the Christian churches only, distribution of religious products at school); the problem of not employing Muslim community representatives to the administrative, teachers' or other technical positions at the public school of the village; the problem of the school bus not serving the neighborhood densely populated by Muslims in Nigvziani village resulting in Muslim pupils having to walk 3 km in order to get to school.

As a response to the request sent by EMC, the Ministry stated that no cases of violation were revealed when Nigvziani Public School was monitored. The Ministry pointed out that two Muslims on teaching and administrative positions were employed this academic year. It should be noted that the Ministry had not studied the revealed cases of violation in 2012 either.

296 Human Rights Education and Monitoring Center (EMC), Crisis of Secularism and Loyalty towards the Dominant Group - The Role of the Government in the 2012-2013 Religious Conflicts in Georgia, 2014, available at: https://emcrights.files.wordpress.com/2013/12/report_religious-conflicts_emc_geo.pdf

3 |
Review of the Pilot Survey Outcomes on Possible Discriminatory and Indoctrination Practices at Public Schools carried out in Non-dominant Religious Communities

EMC carried out a pilot survey in non-dominant religious communities in 2015 with the goal to reveal the incidents and practices of religious discrimination, proselytism,[297] indoctrination,[298] violation of religious neutrality and intolerance. The survey was carried out in 6 religious communities (Muslim community, Evangelical Baptist Church, Evangelical Faith Church (Pentecostals), Seventh-Day Adventists Church, Evangelical-Protestant Church of Georgia, Christian Organization of Jehovah's Witnesses) in Tbilisi and regions. The respondents were given self-administrated questionnaires that included both close- and open-ended questions. 110 questionnaires were completed and analyzed. Selection of the respondents was based on whether they (parent, family member, other relationship) had connection with a school pupil and had thorough information about the situation at a specific public school in terms of religious freedom and secularism.

The problems outlined in the frames of conducting the research are listed below together with narratives presented in the questionnaires.

3.1 Problem of Manifestation of Religious Identity at a Public School

The first question of the questionnaire was related to the problems of revealing religious identity experienced by pupils at public schools who belong to a non-dominant religious group. According to respondents, manifesting the religious identity is related to many obstacles, for instance the religiously homogeneous and hostile environment of the school. Within the framework of the research, two main strategic choices, and the risks related to these, of respondents were identified in this regard. Some of the interviewees mention that they reveal their religious identity at school environment but often experience violent and stigmatizing attitude because of it. According to them, manifestation of religious identity is followed by stigmatization, isolation, mockery, negative influence on school evaluation, tense relationship with school society, including classmates. In separate cases,

297 Note: Religious Proselytism is defined as an attempt to interfere in a religious faith of a person, directly or indirectly aiming to humiliate the faith through tempting or promising moral or material support, using fake means or inexperience, need of trust, lo intelligence or naivety of the person (Constitution of Greece), source: Levan Abashidze and others, Zurab Kiknadze, Tamar Kaldani. Some Aspects of Legal Regulation of Religious Relationships (Proselytism) / {Levan Abashidze, Zurab Kiknadze, Tamar Kaldani; Editor: Elguja Dadunashvli]; Union "Human for Society", Friedrich Ebert Fund – Tbilisi, 2002;

298 According to Greenwood Dictionary of Education, indoctrination is defined as teaching practice refusing potential and real rationality and autonomy of a student. Thus indoctrination uses "non-rational methods of teaching" (including influence, tradition) or is based on the subjects without rational/scientific explanation and judgment. The goal and/or result is restriction of student's freedom of thinking.

the families prefer to not reveal the religious identity as they think this will save their children from possible discrimination or marginalization and at the same time, it will make integration in the society easier. According to the respondents, it was the non-secular environment at schools experienced by themselves or by other people that compelled them to make such a decision.

The choice of revealing a religious identity or keeping it as secret in an environment, which is religiously biased, not neutral and hostile is both hard and damaging. Hiding one's religious identity ensures the feeling of security and safety through assimilation with the majority as the pupil in question is automatically considered as a member of the dominant religious group by the society but this entails having to constantly exercise control on the level of individual behavior, playing a role often contradicting his/her religion, and acting accordingly. In cases where religious identity is revealed due to ineffective and non-secular policy of the school administration, many cases of violence and hatred manifestations are observed. In some cases, the dominant religious groups are exercising verbal and physical abuse, exclusion and mockery.

3.2 Forms of violating Religious Neutrality at Public schools

A significant part of the questionnaire is related to the problem of observing the principle of religious neutrality at public schools. As the outcomes of the survey show, cases of violating religious neutrality are mainly found in the practices of teachers, such as regular religious preaching and liturgy practices (praying before the classes, church chanting). The respondents underlined the active roles of teachers in Georgian Language and Literature, History and Music A widespread practice of violating religious neutrality is collective praying during the classes and active integration of religious attributes in the school infrastructure. The practices listed are often followed by frequent invitation of the orthodox clergy, as a rule, to deliver public lectures and to bless the classrooms, visits to orthodox churches only while on excursions, practices of distribution/selling icons at school. Although attending the classes by the priest is voluntary, nonattendance is usually followed by stigmatization of pupils of different religious identities from both other pupils and the teachers.

> *"The music teacher makes children stand up before the class and start a collective praying, music teacher speaks about saints and their lives" (Jehovah's witnesses,* N *17, 2015);*
>
> *"Classes often start with collective praying of Lord's prayer, at Georgian lessons" (Evangelical-Protestant,* N *8, 2015);*
>
> *"A priest comes to school once a week and visits class and preaches. I do not participate in it" (Jehovah's witness,* N *6, 2015);*
>
> *"Visits to churches often happen at rests, because the teachers are Christians and they want every pupil to be baptized to Christians and serve to Christianity. The*

initiative of going to another religious chapel was never mentioned" (Muslim community, N*21, 2015);*

"It does not happen at my child's school, because it's private, but I have another child who goes to a kindergarten and they actively exercise religious rituals at so called "celebrations", for example, on Easter they dress kids in altar boy uniforms, in scarves, hand them candles, invite priests to the frontline, make parents wear long dresses and scarves for that day and you will never guess whether it is a liturgy or kids' celebration. I did not take my child on that day" (Evangelical Faith Church, N*11, 2015);*

"The influence is expressed by the fact that orthodox holidays are officially celebrated and children have holidays on these days, which, as a fact, does not happen on other religions' holidays" (Jehovah's witnesses, N*20, 2015);*

"Religious indoctrination is expressed by teaching orthodoxy only and cursing other directions of Christianity" Evangelical Faith Church, N *9, 2015).*

According to the assessment of the respondents, inclusion of the pupils in the religious services is so merged with everyday practices, that it is hard to distinguish it from the education process and general social behaviors. In reality, social coercion and disciplining mechanisms hide behind such practices, which reproduces the prevailing ideology of ethno-religious nationalism and those who do not fit in the dominant ideological norm are marginalized. The pupils often have to act against their own values in the ideological and non-secular social environment:

"The influence is so intense, that no one questions, if the pupils belong to other confessions. They make the whole class stand and repeat "Lord Have Mercy" hundred times etc" (Evangelical Faith Church, N 9, 2015);

"There are calls from the teachers side for the children to fast and confess. There are children like that in the class and they receive appraisal for living like this" (Evangelical Faith Church, N 7, 2015);

"If you are an orthodox, you are, so to say, "decent" citizen in the society, if not, you are humiliated and often unacceptable to the society" (Evangelical Faith Church, N 8, 2015);

"My child's classmate is a Jehovah's witness. Since my child is not radically confronted with the orthodox church, it is relatively unnoticeable. Although in case of Jehovah's witness, this child is subject of mockery and oppression almost every day and had to refuse his/her religion" (Evangelical-Protestant Church, N 11, 2015).

On the questions of who exercises engagement of pupils in the religious services, the respondents answer that these are teachers mainly, representatives of school administration, as well as pupils

themselves and parents of the pupils. According to the respondents, initiation of religious topics are done by the teachers, but the subjects are never discussed neutrally, correspondingly or thoroughly and the pupils continue discussion after the classes of the controversial issues raised that often ends with conflict or mockery. Furthermore, according to the respondents, refusal to participate in the religious service at school is often followed by unpleasant responses, expressed in a negative influence on school assessment, mockery, ignore/marginalization, physiological oppression of the religious minority representative pupils from the classmates and negative attitude of teachers. The data from the questionnaires also gives information on missing schools by the pupils, or missing schools due to fear of being made fun of or being isolated.

> *"The child does not feel good at school and does not want to go, misses classes and is behind and we both worry about it" (Evangelical Baptists, N 10, 2015);*

> *"There were cases when they made the child stand up and started telling that terrible judgment awaits him/her, the soul needs to be saved, they sacrificed for him/her and if s/he wants to, they will accompany to the priest etc, that its betrayal of the homeland. It was the case with a relative" (Jehovah's witnesses, N 13, 2015);*

> *"Because of the fact that I am Protestant, I am laughed at by children. Two of my classmates tell me almost every day that I should be thrown out of the window and burnt" (Evangelical-Protestant Church, N 13, 2015);*

> *"There were humiliating words from the teachers' side, if you are not orthodox, you, the sectarians, will never achieve anything" (Adventists, N 4, 2015).*

The explanations received from the representatives of Muslim community in Adjara show the ideological narratives inclined to indoctrination policy of the orthodox church and impairing of Islam in the region:

> *"They explained Christianity as a modern and popular religion and a Georgian shall not be follower of Islam, as it is associated with Arabic language" (Muslim community, N11, 2015);*

> *"Christianity is represented in majority in Georgia and influences both politics and public spaces. The situation is special in Batumi in this regard. Archbishop Spiridon drives from village to village with tank cars and blesses Adjarian lands. The state supports him in it" (Muslim community, N9, 2015);*

> *"Two years ago they took children on an excursion to Kutaisi, where they told the Muslim children, including my child to pray at the church. Also, as my child tells me, they praise Christianity during the History classes and call Islam a religion bagged with swords" (Muslim community, N5, 2015);*

> *"We do not reveal maybe because there are frequent discussions of religious topics in the class. They use phrases that has nothing to do with reality and insults Is-*

lam. I do not want to engage in discussion, as it will mess up my relationship with friends" (Muslim community, N17, 2015);

"They become Christians in order not be laughed at by their bystanders" (Muslim community, N11, 2015).

The respondents point out, that the school administration as well as teachers are engaged in the processes of indoctrination and marginalization of the pupils.

"When the child said that s/he was Baptist, they took him/her to priest to repent. The school principal and administrator and teacher" (Evangelical Baptist Church, N4, 2015);

"…if s/he does not baptize {to Christianity}, s/he will not have a grade" (Evangelical Baptists Church, N 1, 2015);

"The teacher asks a question during the class, if there are Pentecostals, Baptists or Jehovah witnesses in the class. Then crosses herself "God, save us from them"" (Evangelical Faith Church, N7, 2015);

"The teachers themselves have this attitude and ask children, are you Georgian? When they answer yes, the teachers say then you should be Christian. They assimilate it with nationality" (Muslim community, N18, 2015);

"The religion teacher often humiliates children like that, who belong to other faith. Often they have a status of a "traitor!" (Evangelical Faith Church, N 11, 2015);

"In 2009 the music teacher did not take into consideration my request and made the child learn the anthem text (the anthem is of religious nature). After a while the teacher spent the whole lesson on cursing the Jehovah's witnesses": "Whores", "They will burn in hell", "Worms will eat them". The teacher engaged the 2nd grade children in the discussion. One of the pupils mentioned that his/her father scolded the Jehovah's Witness women serving from door to door, chased them with threat to throw them down the stairs. The teacher praised the kid's father and called the whole class on doing the same… the whole class decided that the teacher was cursing my girl in particular, as she was the only child of Jehovah's Witness there. At that time, she was not baptized as Jehovah's Witness yet (Jehovah's witness, N12, 2015);

"In 2008 the math teacher held my elder son's hand behind his back and called the pupils, "let's draw crosses on him and make him Christian". The pupils gathered around him, drawing crosses on his face, hands one after one and then crumbled the rest of the chalk on his head. His whole face was scratched and red. On the request, "Teacher Marina, let me go or I will be very upset" the answer was "I do not care". And my elder daughter was slammed to blackboards by pupils in 2006 by pushing, thrown among the desks, her classmate (Jehovah's witness) was being

beaten and dragged on the floor, and the teacher did not react to that" (Jehovah's witnesses, N 12, 2015).

3.3 The Advisability of Teaching Religion in Public Schools

One of the most significant questions in the survey was related to the advisability of teaching religion in public school. A majority of the respondents think that teaching religion in school should be selective and voluntary, or not taught at all as they have no hope that the subject will be taught by competent, qualified staff, free from religious affiliation.

"Teaching religion at public schools makes a school into a church educational space" (Evangelical-Protestant Church, N 7, 2015);

"It is better not to teach at all; Which religion shall the teacher be of? The class will be still divided into majority and minority. It is tough for a child's psyche" (Jehovah's witnesses, N 13, 2015);

"It should not be taught, as it is the responsibility of parents to give the right information to children" (Jehovah's witnesses, N22, 2015);

"It can be taught as a part of History subject, but should be taught by history teachers and not priests" (Adventists, N 3, 2015).

According to respondents, teaching of religion at public school will worsen the discriminatory environment and increase religious hatred because of issues of religion and history being presented in a distorted, nonqualified and non-academic manner and dominated by orthodox Christianity, the practice of segregation of pupils and possible indoctrination.

"I think teaching religion is risky, as it is a lesson, it is hard to control the attitude the teacher sends to pupils regarding religions. You can never control attitudes" (Evangelical Baptists Church, N 3, 2015);

"Teaching religion in public schools would further exacerbate an already difficult discriminatory environment" (Evangelical-Protestant Church, N 11, 2015);

"It may cause conflicts and discrimination of religious minorities" (Evangelical Faith Church, N 10, 2015);

"There are pupils of different faith in the group, lessons on religion cause disagreement among children and becomes a subjects of confrontation especially in higher grades" (Jehovah's witnesses, N 14, 2015);

"The threat of religious hatred and discrimination is increasing fast and it leads to splitting society" (Jehovah's witnesses, N 4, 2015);

"It will cause division of children by faith and may cause conflict, mockery etc. among children" (Jehovah's witnesses, N 5, 2015);

"Humiliation and stress, oppression of the children representing other religions and they might miss the school often due to that" (Evangelical-Protestant Church, N 13, 2015);

"This would be the process of Christianization" (Muslim community, N 16, 2015);

"Showing the priority of one religion over another" (Adventists, N 10, 2015);

"If one religion (even Orthodox) takes monopoly on spiritual "raising" of children at an educational institution, the parents right to teach the child his/her religion is oppressed and if they teach, it will confront the prevailing religious rituals" (Jehovah's witnesses, N 9, 2015).

3.4 The Practices of Responding to cases of violating Religious Neutrality and Equality at Public Schools

According to the respondents, there are three strategies when responding to indoctrination and discrimination cases at public schools: 1) negotiation with school administration; 2) independent conflict resolution; 3) restrain from responding, as they do not expect the issue will be fairly solved. In these cases, the parents make decisions to take children to other schools to solve the problem. According to respondents, the most efficient strategy to solve the problem is to engage the principal and as a rule, the problem is solved on this level. According to the interviewed parents, if the incident of violation becomes public and legal mechanisms are used, there is a high risk that the pupils will be even more marginalized. Due to this fear, they use the strategy of solving the problems in non-formal ways.

"Then I reacted and spoke to the principal, the principal called the teachers and discussed the issue, the fact was never repeated" (Jehovah's witnesses, N 23, 2015);

"The principal listened to our problem, spoke to the teacher. And replaced the teacher from the next academic year" (Jehovah's witnesses, N 12, 2015);

"Nothing changed as a result, the aggressive attitude to the child from the teacher's side continued. It had a negative impact on the child and I could change it only by moving the child to another class". (Jehovah's witnesses, N 8, 2015);

"However, there was no result, as they were insisting, that my words should not have been trusted, because I am not Orthodox and only Orthodox are right " (Evangelical-Protestant Church, N 13, 2015).

3.5 The Experience of using legal mechanisms on the Facts Revealed as a result of the Survey

EMC addressed the Internal Audit Department regarding the cases of systemic violation revealed in the survey, without indicating the victims of the violated human rights or the possible violator, and requested elimination of non-secular and discriminative practices. The application indicated the violation of general character (active use of religious attributes in the school infrastructure, systematic practice of preaching the clergy etc.) and not specific incidents of oppressing human rights. In the current context, where representatives of non-dominant religions do not trust the internal monitoring mechanism and often refuse to discuss the facts of human rights violations because of hostile social environment of schools, the strategy of taking measures should have consisted in proactive monitoring from the side of the Ministry. However, the Ministry, at the first stage, requested identification of specific persons from the organization, later indicated that no violation of requirement of the Law on General Education were observed within the monitoring works. Despite the request send by EMC to the Ministry, EMC did not receive access to the monitoring outcomes and did not have a possibility to assess its validity. It should be also noted that the Department of Equality of the Public Defender's Office, upon the request of EMC, also studies the facts presented to the Ministry based on the Law on Elimination of all Forms of Discrimination. The described experiences of the respondents show that the internal monitoring mechanics do not work effectively on the one hand and there is no political will on the other for the Ministry to implement a systemic and proactive monitoring at public schools to ensure secular and equal environment.

Part 6
Discriminatory Policy Regarding Construction of Religious Buildings

1 |
General Overview

Construction of religious buildings is a serious challenge faced by religious communities in Georgia. Due to opposition from local dominant religious groups and a discriminatory policy of the local government, religious organizations often face serious problems when trying to construct buildings for worship or other religious purposes. Due to their loyalty to the majority of the local population, in most cases, local governments choose to suspend construction or deny permits without proper substantiation. In many cases, they openly support the demands of the dominant religious group and explicitly violate the requirement of religious neutrality.[299] Considering this political context, in an attempt to prevent possible interference with the construction of religious buildings, religious organizations are often forced to resort to alternative mechanisms of obtaining construction permits by not specifying the purpose of the building (for example, indicating that the building will not be used for religious purposes or registering a land plot in the name of a natural person who then asks for a construction permit).

Current legislation does not contain separate regulations for the construction of religious buildings and, in this way, is liberal and secular. The practice changed after the creation of the State Agency for Religious Issues in 2014, which was given the authority to issue recommendations to relevant authorities about the construction of religious buildings, determining their future location, and converting existing buildings into buildings of worship.[300] In order to exercise this authority, the Agency addressed all local government authorities in writing and requested them to request approval on all issues related to religious buildings from the Agency.[301] The ambiguity of regulations related to the nature of the Agency's decisions (recommendation or not) and the adoption procedure of these decisions threatens the legality of the Agency's participation in the process of issuing construction permits and contains risks of politicization of the process.

The practice of issuing construction permits for religious buildings since 2014 shows that the Agency's involvement has created confusion among the authorities that are actually authorized to issue construction permits. Practice shows that local government authorities, in some cases, ask for the Agency's permission for each stage of issuing a permit separately, including on urban planning issues and other matters, over which the local government has exclusive

299 Note: Considering the challenges faced by religious minorities in Georgia, the European Commission against Racism and Intolerance in its report on Georgia (fifth monitoring cycle) recommends the country to "permits for the construction of places of worship are not withheld due to religious prejudices or local protests, but that applications are processed in accordance with applicable laws."; available at: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-ENG.pdf

300 Resolution N177 of the Government of Georgia on the Creation and Approval of the Statute of the Legal Entity of Public Law State Agency for Religious Issues, Article 2, Paragraph 1, Subparagraph i): https://matsne.gov.ge/ka/document/view/2253315

301 State Agency for Religious Issues, Report, 2014, available at: http://religion.geo.gov.ge/geo/document/reports/religiis-sakitxta-saxelmtsifo-saagentos-angarishi

authority. This leads to delays in the process of granting construction permits. The Agency issues recommendations on the need for opening a religious building at a specific location and does not cover any architectural and organizational issues, however, the criteria used to assess this need are vague, creating risks of abuse by the Agency.

In its Strategy for the Development of Religious Policy of Georgia, the Agency refers to the necessity of adopting special legislation for regulating the construction of religious buildings. The Agency claims that this legislation would create a stable environment for the construction of religious buildings by religious organization. However, in reality, special regulation would create unnecessary obstacles and give rise to risks of government interference in the activities of religious organizations.

2 |
Overview of Cases of Possible Discrimination Related to Construction of Religious Buildings

Below we present cases of possible discrimination in the process of construction of religious buildings that were identified during the reporting period. These cases clearly illustrate the challenges that religious organizations face, and the discriminatory and non-secular policy of the government.

2.1 Construction of a Latin Catholic Church in Rustavi

Since April 2016, the Latin Catholic Apostolic Administration of the Caucasus has unsuccessfully been trying to obtain a permit and a permit certificate for constructing a Catholic church on a land plot owned by the religious organization in Rustavi municipality, most likely due to alleged discriminatory treatment from Rustavi City Hall.

Everything went well at the initial stage. The Catholic Church received the conditions for using the land plot for construction from the Chairperson of Rustavi City Council (Order of May 21, 2013) without encountering any problems. The process was hindered only after local radical clerical groups and congregation members publicly expressed their objections towards the construction of a Catholic Church in Rustavi.

After 2014, the Catholic Church has repeatedly appealed to Rustavi City Hall and City Council with requests to grant them the construction permit, however, the local government ignored each and every one of these requests. The Catholic Church then appealed to the city court, which rejected the appeal on July 7, 2014, based on procedural issues. However, the city court also stated that when it comes to issuing construction permits, no reply is considered to be an approval. In other words, if a permitting authority fails to issue a permit or a substantiated refusal before a legally

established deadline, the construction permit shall be deemed granted and the permit applicant may request a permit certificate. Therefore, since Rustavi City Hall and City Council did not reply to the applicant, Rustavi City Court deemed the permit to be granted.

Based on this court decision, the Catholic Church appealed to the Rustavi local government several more times and requested the permit certificate. However, Rustavi City Hall ignored these appeals as well.

During the whole time the city court was considering the case, a part of local Orthodox Christians actively protested the construction of a Catholic Church. In addition, in some cases, public officials violated religious neutrality and displayed open loyalty towards the dominant religious group. For example, on December 12, 2014, Rustavi City Hall held an oral hearing on the Catholic Church's construction permit. The hearing was attended by 50 representatives of the Orthodox Church, as well as members of Rustavi City Council and City Hall employees. Those attending the hearing, including Orthodox priests and City Council members, declared that they would not allow the construction of a Catholic Church in Rustavi. They had also brought informational materials containing discrediting statements aimed at the Catholic Church.

Legal processes around the case entered a dead end, after which the central government decided to launch negotiations with the Catholic Church. In July 2015, Catholic Church representatives met with governor of Kvemo Kartli region, who promised to assist the church in solving the problem. The meeting was also attended by the Rustavi Mayor, who offered the Catholic Church alternative land plots owned by the municipality. However, since the proposed land plots were located in the city periphery, the Church refused to give up its land plot. The State Agency for Religious Issues was also actively involved in the political negotiation process. Previously, the Agency had issued a number of recommendations supporting the construction of the Catholic Church.

After the failure of political negotiations, the Catholic Church tried to obtain the permit certificate through court. On November 13, 2015, the Latin Catholic Apostolic Administration of the Caucasus filed an administrative complaint to court against Rustavi City Hall. The plaintiff demanded that Rustavi City Hall issue the construction permit, and determined this incidence as a case of religious discrimination.

Rustavi City Hall fully rejected the existence of such a motive. It pointed to legal faultiness of the initial stage of issuing a construction permit to the Catholic Church as the reason for refusing to issue the permit. It also explained that it did not issue a reply to the Catholic Church's latest appeal because it was waiting for a reply from the Agency, to which it had appealed to express its position once again after reviewing new city planning and legal circumstances. During court proceedings the Agency explained that it only examines religious aspects when issuing recommendations and does not look into construction regulations, which is a competence of the municipality.

Rustavi City Court rejected the defendant's arguments and on June 6, 2016, fully granted the Catholic Church's claim. The court found that religious discrimination had taken place when Rustavi

City Hall invited the clergy for a meeting after the local population started protesting the construction, as well as when the City Hall ignored the plaintiff appeals for months. The court also used as evidence of discrimination explanations provided by the Governor of Kvemo Kartli, Rustavi Mayor and the State Agency for Religious Issues to the Public Defender. According to these explanations, Rustavi Mayor stated that the City Hall held a meeting in December 2014 in order to listen to the opinion of the protesting Orthodox Christians; "in December 2014, Rustavi City Hall conducted administrative proceedings based on the request of the local population not to allow the construction of a Catholic Church. The meeting was attended by the clergy ..." "the protest of the Orthodox population has since subsided". In his explanation, Rustavi mayor also says that "the Catholic Church does not have a large congregation".

This case was also examined by the Public Defender, who found that Rustavi City Hall had interfered in the religious freedom of the Catholic Church and issued a relevant recommendation. [302]

Rustavi City Hall continues to hinder the Catholic Church from obtaining the construction permit. It did not comply with the decision of Rustavi City Court and appealed it to the Court of Appeals.

2.2 Construction of a Jehovah's Witnesses Kingdom Hall in Terjola

In June 2014, another case of religious discrimination took place in Georgia, when the dominant group violated the rights of a religious minority. Several days before local government elections, local Orthodox Christians in Terjola, led by Orthodox clergy, protested the construction of a place of assembly of Jehovah's Witnesses. The local government displayed undue loyalty towards the majority and made an illegal and unjustified decision to halt the construction. Before this decision, local government representatives made public statements containing obvious signs of discrimination, which, in the end, influenced the formal decision. Even though the demands of the dominant group were satisfied by the local government, religious discrimination of Jehovah's Witnesses in Terjola continued and took the form of harassment and threats that the police did not respond to appropriately.

Jehovah's Witnesses (through a non-registered union titled Terjola) obtained the permit to construct a Kingdom Hall in Terjola on February 19, 2014, from Terjola local government. Two weeks after launch, local Orthodox Christians protested the construction. The group was led by an archpriest of a local monastery.[303] Local Christians considered it unacceptable for a Kingdom Hall to be functioning in their city. The attitudes expressed by the local clergymen and their followers constitute an attempt at religious privatization and sacralization of public space. Statements made by the protesters are a clear illustration of this: "Georgia is an Orthodox country and the government is obligated to support us and not a sect, which is lying about building a house"; "We must not allow Jehovah's Witnesses to build their nest on our land";

302 Public defender of Georgia, recommendation, 2016, available at: https://emcrights.files.wordpress.com/2016/06/e183a0e18394e18399e1839de1839be18394e1839ce18393e18390e183aae18398e18390.pdf

303 An Orthodox priest addresses protesters - https://www.facebook.com/photo.php?v=608770665899513&set=vb.378911675552081&type=2&theater

"What do we say to the 100,000 martyrs? It's not a house they are building, but a nest? Will the 100,000 martyrs believe us?"; "Supporters of homosexuals!".

On June 3, while speaking to reporters at a rally, Terjola governor M. Gurgenidze stated that the protesters did not have anything to worry about, because everything would be decided in the favor of the majority. He also said that the construction of the Jehovah's Witnesses Kingdom Hall was being conducted with blatant legal violations.[304] He stated that the territory is seismically active and that the construction was conducted without a relevant geological examination. The Municipal Infrastructure Service, a body responsible for overseeing legal violations, did not confirm this information. According to Jehovah's Witnesses, during a meeting at the local government administration, they were told that the local government would not allow the construction of a Kingdom Hall during the pre-election period.

In the end, the local government halted the construction permit, but not on the grounds previously voiced by the governor, but based on an administrative complaint filed by a citizen (K.M.). The Chairperson of Terjola Municipal Council issued an order to halt the construction permit on the same day as the complaint was filed - June 3, 2014. The author of the complaint, who lived 60 meters away from the construction site, stated that the construction threatened the integrity of his house and demanded the construction be stopped immediately. The complaint was not based on any kind of expert assessment of construction risks. Local authorities did not first examine the credibility of the complaint but, instead, automatically suspended the construction permit. According to an independent alternative geological survey conducted by Jehovah's Witnesses, the territory, where a one-story, simple building was to be constructed, is in satisfactory condition, since it does not exhibit any noticeable negative physical or geological characteristics.

Before making his decision, the governor decided to request an examination for assessing the validity of conducted engineering-geological studies and for evaluating risks to the applicant's house.[305] The decision to conduct an examination was made on July 10, 2014, but the local government ordered its launch only on August 5, citing elections as the reason for the delay. Even after the Levan Samkharauli Court Forensics Bureau issued a positive conclusion on September 29, 2014, Terjola authorities refused to lift the hold on the construction permit. Even though the examination found no risks facing the complainant's house, the municipality did not complete administrative proceedings. Moreover, it transferred the case for additional examination to the State Agency on Religious Affairs and pointed to the Agency's delay in response as the reason for the delay of administrative proceedings. The Agency responded by organizing a meeting with local Orthodox Christians, Jehovah's Witnesses and local officials with the aim of diffusing tension.

Jehovah's Witnesses appealed to Zestaponi District Court with a demand to declare administrative-legal acts null and void, extend the construction permit and make Terjola Municipal Administration and Municipal Council compensate them for moral and material damages incurred as a result of discriminatory treatment.

304 Statement of Terjola Municipality Governor Malkhaz Gurgenidze (23.06.2014), see the link at 1: 41 - https://www.youtube.com/watch?v=ZhDZ-ZKHhE0

305 Order N185 of Terjola Municipality Governor, 10.07.2014;

On March 19, 2015, Zestaponi District Court partially satisfied the claim. The court annulled the administrative acts and extended the construction permit. However, it did not satisfy the claim regarding compensation for discriminatory treatment.

Zestaponi District Court incorrectly assessed the procedural standard of considering discrimination cases determined by Law of Georgia on the Elimination of All Forms of Discrimination and the Civil Procedure Code, which, ultimately, prevented the court from making a substantiated decision. For example, the court was unable to find signs of obstruction of rights guaranteed under Georgian law, because Jehovah's Witnesses had received their construction permit and it was suspended legally, based on an administrative complaint. As for different treatment of individuals in a similar situation, the court has incorrectly chosen the subjects (comparator) for determining the incidence of discrimination. The court states that "according to the representatives of the administrative body, the interested parties have not filed any similar complaints with them and they have not suspended any other permits. The plaintiff has not provided any facts and relevant evidence proving the contrary." In other words, in order to determine a discrimination case, the Court required a case, where the Terjola local government refused to suspend a permit based on a complaint filed by Jehovah's Witnesses. Such assessment by the court is devoid of any legal argumentation and once again points to the general lack of knowledge in the common courts about the specifics of discrimination cases.

The decision issued by Zestaponi District Court was appealed by both Jehovah's Witnesses and Terjola local government to the Kutaisi Court of Appeals. The Court of Appeals satisfied the claim of Jehovah's Witnesses which demanded compensation for material damages caused by the deterioration of construction materials. However, like the District Court, it did not share the plaintiff's arguments regarding religious discrimination. Kutaisi Court of Appeals also incorrectly used the procedural standards of considering discrimination cases, and especially the burden of proof between parties, which, in discrimination cases, moves to the defendant.[306] The Court ignored this regulation and stated in its decision that the burden of proof was distributed equally and, therefore, correctly between parties.

Unfortunately, the Supreme Court also handled this dispute formally and rejected the part of the cassation complaint of Jehovah's Witnesses that demanded compensation of moral damages suffered due to discriminatory treatment. According to the Court, the cassation appeal was not admissible, because the challenged ruling did not differ from the established practice of the Court of Cassation and did not contradict the existing practice of the Supreme Court in the same category of cases. There was no need to consider the cassation complaint and for the Court of Cassation to issue a new ruling for the purposes of judicial development and establishment of a common judicial practice.[307] At the time when the Supreme Court made this decision, it had not ruled on any cases related to Law on Elimination of All Forms of Discrimination, while the practice of lower level courts in relation to cases of discrimination is inconsistent and ambiguous. This case once again highlights existing problems in the practice of considering discrimination cases in common courts. There is a clear need for increasing the common courts' knowledge in this respect, which will subsequently make the judiciary a more effective mechanism for the protection of the rights of minorities.

306 Civil Procedure Code, Article 363^3 ;

307 Supreme Court (Case N bs-813-805 (2k-15). 23.02.2016;

Jehovah's Witnesses have managed to complete the construction of a Kingdom Hall at the same location. This is essentially a result of the court dispute and not the political negotiation.

2.3 Construction of a Religious Building by the Redeemer Bible Church in Tbilisi

The following case once again emphasizes just how obscure the competence of the State Agency for Religious Issues is in the process of issuing construction permits.

On September 18, 2015, the Redeemer Bible Church received the conditions for using a plot of land (owned by the Bible Church and located in Varketili) for construction purposes (stage I of receiving a construction permit) from the LEPL Tbilisi Municipal Architecture Service. The Agency's letter on the matter, in addition to other documentation, served as the basis for this decision.

On March 16, 2016, the Redeemer Bible Church appealed to the Tbilisi Architecture Service for the purpose of approving the architecture plan of their religious building and requesting the construction permit. The Architecture Service found the application to be flawed and asked for a conclusion by the State Agency for Religious Issues on the religious function of the building and a recommendation on the proposed project and its location.

The Architecture Service found the original letter issued by the Agency during stage I of the permitting process to be insufficient and required the applicant, without any legal grounds, to present the Agency's position on the architectural project specifically, which completely exceeds the Agency's competence.

The Redeemer Bible Church appealed the decision made by the Tbilisi Architecture Service to suspend administrative proceedings on issuing a construction permit to Tbilisi City Hall.[308] The City Hall failed to come to a decision within the legal deadline, which, by law, meant rejection of the complaint. The Church then took the case to Tbilisi City Court, where it is currently being considered. It is important that the Court can correctly identify the Agency's procedural role in the process of granting construction permits for religious buildings and to strictly separate the authorities of the Agency and the local government, considering the latter is the authority responsible for issuing permits. If the Court manages to do so, it would establish a clear practice related to procedural issues of issuing construction permits for religious buildings. This Court decision would also make the nature of the State Agency's recommendation more predictable for religious organizations as well as permitting administrative bodies.

308 Note: Savior Bible Church is provided with legal assistance by Tolerance and Diversity Institute (TDI)

Recommendations

It is important that the relevant state agencies follow the recommendations given below for the purposes of protecting religious freedom, equality and religious neutrality.

The Parliament of Georgia

It is essential for the Parliament of Georgia to

– Make amendments to the existing discriminatory legislation (such as, tax code, law on state property, law on higher education, law on budget) and include the progressive standards of religious freedom, equality and religious neutrality;

– Develop the legislation on the restitution of the property confiscated during the Soviet period, which, among other things, will determine the mechanism for settling the issues of disputed buildings;

– Make positive amendments to the law on elimination of all forms of discrimination and enhance anti-discriminatory mechanisms that are already in place; in the first place, expand the authority of the Public Defender and strengthen the execution mechanisms for implementing the Public Defender's recommendations;

– Realize the faults in the practices of funding the religious organizations (damage compensation from the Soviet period) and display them according to the principles of supremacy of law, religious neutrality and democracy;

– Increase the parliamentary control over governmental actions regarding religious freedom issues.

The Government of Georgia

It is essential for the government of Georgia

– Recognize the flaws in the activities of the Agency on Religious Rights and ensure fundamental transformation of its mandate and activities. In this regard, it is important for the State to realise the risks and flaws of the activities implemented through the centralized, non-democratic agency and base its policy on the principles of supremacy of law, human rights and equality and the purposes aimed at the inclusion of religious groups;

– To always administer the State's policy for the freedom of religion by the way of protecting human rights and equality and stop the policy aimed at intervention and control especially towards the Muslim organizations;

– Ensure the removal of the competencies related to the construction of religious buildings from the mandate of the Agency;

– Stop the sporadic, uninformed policy of the Agency regarding restitution of damage from the Soviet period, as well as, on the cases of disputed buildings and help prepare the series of amendments to the legislation and policy which will be consecutive, non-discriminatory and based on the supremacy of law .

– Ensure the relevant changes in the resolution of the government of Georgia on January 27, 2014 on partial restitution of property loss in Soviet period, for the purposes of eliminating discrimination and creating objective, fair and damage-related criteria. At the same time, change the policy of the Agency, which is now based on the rationale behind the spending and control of expenditures;

– Properly realise current significant challenges in terms of the freedom of religion and create a unified strategy for protecting religious freedom, equality and religious neutrality, which will be developed with active participation of the religious organizations, including the religious council of the Public Defender's Office, civil society organizations and international organizations;

– Ensure the recommendations of relevant international and local organizations are properly reflected in the Human Rights Action Plan, and to ensure active participation of the religious council of the Public Defender's Office, civil society organizations and international organizations;

– Develop material standards for ensuring religious neutrality and ban the hate language at the public workplaces and provide effective monitoring mechanisms for these standards.

The Ministry of Internal Affairs of Georgia and the Prosecutor's Office

It is essential for the Ministry of Internal Affairs of Georgia and the Prosecutor's Office to

– Develop the strategy for fighting hate crimes, including, among other things: adopting specialized manual for police and prosecutors and putting effective executive monitoring methods and mechanisms to work; implement the methods of recording and analysing hate crime statistics; create departments inside the agencies, which will be equipped with specialized and relevant knowledge and sensitivity; develop approaches based on damage reduction and aimed at increasing trust from the victims of the restriction of rights;

– Ensure effective response to the religious hate crimes and conduct timely, independent and efficient investigation, which would include identification of hate motive and the protection of the procedural right of the defendants;

– Create and implement efficient and comprehensive policy preventing hate crimes.

The Ministry of Education and Science of Georgia

It is essential for the Ministry of Education and Science of Georgia to

– Study the practice of religious indoctrination, proselytism and discrimination in schools; actively cooperate with religious organizations, including the religious council of the Public Defender's Office, civil society organizations and international organizations in order to develop a comprehensive policy to eradicate these practices;

– Ensure proactive and effective work of inside monitoring mechanisms and ensure that education policies are managed in synchronic manner;

– Ensure the revision of textbooks and remove ethnic-religious nationalism, religious intolerance, and racism based content from these textbooks; at the same time, ensure more positive reproduction of the historical and cultural role of other religious groups;

– Understand the systemic reasons that hinder the development of secular, academic knowledge and equality-based environment in public schools, and for this purpose develop a useful, practical guide for the school administration.

Local Municipalities

It is essential that the local municipalities

– Ensure that in the process of construction of religious buildings, relevant legislation, as well as, principles for banning discrimination and religious neutrality are followed;

– At all times follow the standards of religious neutrality and human rights during religious conflicts and in other instances of or restriction of the freedom of religion.