

RECOMMENDATIONS

DEVELOPED BY THE

COUNCIL OF RELIGIONS

UNDER THE AUSPICES OF THE PUBLIC DEFENDER OF GEORGIA

2020

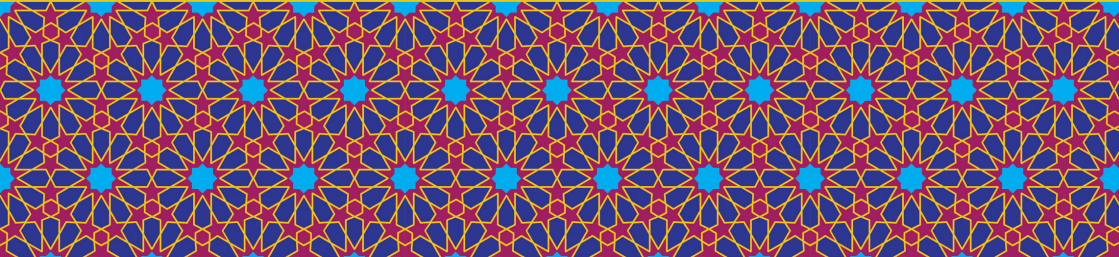


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Council of Religions of the Public Defender of Georgia

The Council of Religions of the Public Defender of Georgia was established on June 21, 2005. The Council of Religions is the largest forum of religious confessions in Georgia. It currently involves 32 religious groups.

The key principles of the Council's work are the protection of freedom of religion, the promotion of multilateral dialogue between religious groups, the promotion of a tolerant and equitable, peaceful atmosphere, sharing social responsibility jointly, and the promotion of civic integration.

The Council of Religions, on the one hand, is an advisory body to the Public Defender, and on the other hand, it co-operates with various state agencies, the media and NGOs.

Through its cooperation with various agencies, the Council of Religions has reached multiple successes of key importance over the years, including the introduction of the existing legislation on the registration of religious groups and the reduction of the conditions for restricting freedom of religion in the Georgian Constitution;

The content of the activities of the Council shall be determined independently by its members. The Board of Religious Councils discusses the challenges facing religious communities and ways to overcome them.

The council also seeks to respond to public problems and periodically makes recommendations to the authorities. Decisions in the Council of Religions are made through democratic discussions based on the equality of its members.

The activities of the Council of Religions are coordinated by the Tolerance Center at the Public Defender's Office.

Recommendations of the Council of Religions of the Public Defender

1. We religious associations within the Council of Religions of the Public Defender of Georgia rely and are guided by the goals and objectives stated at the establishment and operation of the Council in 2005;

Considering the legal norms of freedom of religion and equality enshrined in Georgian law and international human rights treaties,

We are guided by the principle of separation of state and religion guaranteed by the Constitution of Georgia;

Therefore, we address the Georgian authorities and the media with relevant recommendations and suggestions.

2. The following recommendations of the Council of Religions express the general vision developed by the consolidated efforts of the member religious associations regarding what steps should be taken in order to:

- Develop a tolerant environment,
- Fully safeguard the freedom and equality of religion;
- Ensure the religious neutrality of the state

The proposed recommendation document is a result of the long-standing work of the Council of Religions of the Public Defender, of the Public Defender's staff, as well as of experts working in the field, reflecting on systemic and specific problems related to freedom of religion and equality, and ways to resolve them.

The list of recommendations for 2020 was preceded by the recommendations of the Council of Religions for 2012 and 2017, some of which may have been considered by government and the media, but there remains a large list of recommendations addressing qualitatively new problems and suggestions for action, presented in this document. The 2020 recommendations of the Council of Religions at the Public Defender's Office covered the following issues:

1. Legislative regulation of freedom of religion;
2. Crime motivated by intolerance;
3. State policy in the field of freedom of religion;

4. Property and property issues;
5. Crossing the Border and the Import of Religious Literature
6. Police conduct in the regions inhabited by ethnic / religious minorities;
7. Education;
8. Reflect diversity, confront hate speech and anti-Western propaganda, and examine the role of the media.

3. The Council of Religions approves of and joins with the recommendations of the Committee of Ministers of the Council of Europe, as well as the European Commission against Racism and Intolerance to Georgia, which emphasizes the importance of active communication and co-operation between the Council of Religions and the Government of Georgia in addressing these problems.

- **The Committee of Ministers of the Council of Europe** calls on the authorities to take steps to deepen cooperation between the State Agency for Religious Issues and the Council of Religions in order to overcome religious intolerance.¹
- The European Commission against Racism and Intolerance (ECRI) recommends that the Georgian authorities increase their support for the Council of Religions, which operates under the auspices of the Public Defender's Tolerance Center. In particular, the government should instruct the newly established State Agency for Religious Issues to cooperate with the Council of Religions and use its experience and recommendations to address the issue of religious intolerance.²

We hope that the recommendations of the Council of Religions under the Ombudsman will be taken into consideration by the Government of Georgia and that they will make a significant contribution to the development of a culture of tolerance in Georgia, the protection of freedom of religion and the establishment of equality.

1. Council of Europe, H46-8 Identoba and Others group v. Georgia (Application No. 73235/12), Supervision of the execution of the European Court's judgments, 25 September 2019, available at: <https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22CM/Del/Dec%282019%291355/H46-8E%22%5D%7D>]

2. ECRI, Conclusions on the implementation of the recommendations in respect of Georgia, Subject to interim follow-up, Adopted on 5 December 2018, available at: <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680934a7e>

1. Legislative regulation of freedom of religion

Introduction

Georgian legislation ensures freedom of religion and belief to a high standard. The Constitution separates religion and the state, protecting the freedom of belief, religion and conscience of all people. Freedom of expression, opinion, and association are also protected and no discrimination is allowed, including discrimination on the grounds of religion.

There is no special law on religion and religious organizations in Georgia - the rights, duties and activities of religious bodies are regulated by various different laws.

The non-dominant religious communities, unlike the Georgian Orthodox Church, are placed in an unequal position by the discriminatory norms reflected within the various laws, which for many years the religious communities have been demanding be eliminated by the state.

Concerning freedom of religion and equality, the Constitutional Court of Georgia made crucial case law decisions in 2018. The court upheld two claims by religious organizations, ruling as unconstitutional the provisions of the Tax Code and the Law on State Property, which created unequal conditions for religious organizations.³ The court also explained, regarding the equality of religious organizations and the role of the Georgian Orthodox Church, that “differentiation and the creation of a legally advantageous position for the [Orthodox] Church is not and cannot be the purpose of the Constitution.”

The communities included in the Council of Religions have repeatedly noted that the reason for the systemic problems encountered by non-dominant religious groups in Georgia is the lack of political will and/or the inaccurate, discriminatory policies, and it is not related to the lack of legislative regulation. In spite of this, in recent years, the Georgian government has more than once expressed its willingness to adopt laws restricting religious activity and freedom of religion.

In 2019, the question of adopting a special law on religion and religious communities or adding new regulations to various laws, was actively discussed. Most member organizations of the Council of Religions do not support the adoption of such a law and believe that it involves a high risk of unlawful interference in the activities of religious communities - moreover, it could introduce a hierarchy and discrimination.

3. Decisions of the Constitutional Court of Georgia of 3 July, 2018: Constitutional Claims N. 671 and 811.

In recent years there have been multiple attempts to restrict freedom of religion and expression. Several legislative initiatives were introduced to the Parliament, concerning the application of administrative or criminal penalties to the abuse of so-called 'religious feelings'. The Council of Religions believes that criminalizing the abuse of religious feelings, or legalizing its punishment in any way, would endanger freedom of speech and expression, jeopardize pluralism and the possibility of broad discussions about key issues, and will become a tool against critical thinking.⁴

In 2017, the Georgian government attempted to restrict freedom of religion and belief on rather unjustified and vague grounds. The article in the constitution, which guarantees freedom of religion and belief, was added to provide for such conditions of interference that do not comply with international norms and pose a high risk of an unlawful state interference⁵ with the law. As a result of critical assessments by the Council of Religions and international and local organizations, Parliament has removed the problematic statements that may restrict freedom of religion.

1.1. Religion and religious organizations law initiative

Problem: The question of the adoption of a special law for religion and religious bodies has been repeatedly raised in different forms in recent times. In January 2019, on the initiative of the Chairman of the Committee on Human Rights and Civil Integration of the Parliament of Georgia, a working group for Freedom of Religion was established. The representatives of religious communities, the Public Defender's Office, and non-governmental and international organizations were invited for participation. The State Agency for Religious Issues actively participated in the meetings. Five meetings of the working group were held from January-May 2019. The proposal of a multilateral dialogue-like format by the state certainly deserves a positive evaluation. However, while the Chair of the Human Rights Committee established, as the goal of those meetings, the hearing of problems expressed by the representatives of religious communities, and the seeking of solutions to those problems, the assemblies held at the same time in the Parliament of Georgia discussed as one of the major topics the adoption of a special law on religion and religious bodies, or amendments of various laws by adding new regulations regarding the issue. In this regard, the Council of Religions developed a joint position and made a statement to the participants of the working group at the meeting on February 1, 2019. The Council declared that the adoption of the law might entail multiple risks of restricting the freedom of religion and equality of religious organizations. The Council of Religions has repeatedly

4. See Statement of the Council of Religions on the draft-law "Abuse of Religious Feelings" http://tolerantoba.ge/index.php?news_id=937

5. Amendment to the Article 16 of the Constitution, which guarantees freedom of religion and belief, added "State Security", "Crime Prevention" and "Justice" as legitimate grounds for restricting freedom of religion.

emphasized that religious legislation in Georgia is more or less complete and that the activities of religious organizations do not require further regulation. We believe that the definition of religion and religious associations should not be the prerogative of the state. In addition, the existence of such a definition carries a high risk of the state applying a hierarchy and dividing religious bodies into different categories, limiting their activity and/or their existence.

It should be noted that the existing registration procedure for religious organizations is acceptable to the vast majority of religious communities. Religious communities may opt either to be registered as a legal entity of public law or a legal entity of private law, or to exist without registration. Legislation does not restrict religious affiliation by such criteria as the number of parishioners, the age of the religious group, a division into traditional and non-traditional groups, etc. Changing the existing rule and establishing additional criteria raises the risk that the state may interfere illegally in the activities of one or more religious communities and limit their functioning.

The current legislation on construction and building permits is comprehensive and liberal. The legislation for the construction of religious buildings does not require a special legal regulation to enable religious organizations operate within the law and, at the same time, to build a religious building without additional bureaucratic and restrictive procedures. The problems that the non-dominant religious groups face in the process of acquiring a building license are introduced by the state through some artificially created obstacles and discriminatory practices. The introduction of special legislative regulations for the construction of religious buildings will only deepen this discriminatory practice even further.

Recommendations to the Parliament and the Government of Georgia

1. All the risks related to restricting freedom of religion and equality should be taken into consideration and assessed in the legislative process, and considering the accompanying dangers, the adoption of a special law on religion and religious communities should not appear on the legislative and executive agenda;
2. The Parliament of Georgia shall be guided by the principles of freedom and equality of religion protected by the Constitution and shall not initiate any amendments to any of the different legislative acts that may further regulate and restrict the activities of religious organizations. Among them:
 - 2.1. Abstain from defining religion and religious organization
 - 2.2. Abstain from applying changes to the existing rule of registration of religious organizations;

- 2.3. Abstain from making amendments to current legislation on building and construction licenses and from imposing special regulations of construction upon religious organizations.

Problem: In 2019, the question of limiting the right to suspend the compulsory military service of the clergymen of non-dominant religious groups was raised. The Chairman of the Committee of Defense and Security of the Parliament of Georgia presented to the Parliament a legislative initiative, according to which the norm that permits clergy to suspend their compulsory military service would have been abolished in Georgian Law. This right is also granted exclusively to the clergy of the Georgian Orthodox Church under a separate constitutional agreement between the state and the church. Therefore, the abolition of the law on military service would remove this right from clergy of all religious groups except the Orthodox Church. The authors of the legislative initiative also discussed the definition of clergyman. We reckon that the definition of clergyman should not be subject to the discretion of the state; at the same time, the risks of arbitrariness and unlawful interference in religious activities may arise.

Recommendations to the Parliament and the Government of Georgia

1. No amendment to the law on compulsory military service should deprive clerics of the right to suspend their compulsory military service;
2. The legislator may not define the concept of clergyman.

1.2. Discriminatory legislation regarding state property

Problem 2.1: Legislation on the acquisition of state property by the non-dominant religious groups is discriminatory. The Georgian law on state property only permits the Orthodox Church to be the acquirer of state property either by purchase or free of charge. Other religious communities with the same legal status do not enjoy the same right. Religious groups have been calling for the elimination of inequalities in the Georgian legislation for many years and changing the discriminatory environment that has been systematically reflected in the reports and recommendations of the Public Defender of Georgia,⁶ Council of Religions under the auspices of the Public Defender of Georgia,⁷ and international and local organizations. In 2016, religious groups appealed to the Constitutional Court of Georgia to eliminate discrimination from the state property law. In an important case-law decision on July 3, 2018, the

6. See Parliamentary Reports of the Public Defender of Georgia: <http://ombudsman.ge/geo/sa-parlamento-angarishebi>

7. See Recommendations of the Council of Religions: http://tolerantoba.ge/index.php?id=1281619908&sub_id=1345202134

Constitutional Court upheld the claim of the religious communities; It held that Article 6³ of the State Property Law was discriminatory because it permitted the free transfer of state property only to the Georgian Orthodox Church, while the other religious groups of the same legal status were deprived of the same right.⁸ The court declared the statutory content of the article unconstitutional and gave the Georgian Parliament a reasonable, six-month deadline (as of December 31, 2018) to make relevant changes to the law. Nevertheless, the Parliament of Georgia did not amend the discriminatory legislation within the prescribed period.

The Constitutional Court's interpretation of the equality of religious organizations should also be emphasized. The court noted that religious communities play a special role in securing freedom of religion in the state. Their primary purpose is to perform religious services for which possession of chattels and real estate is important. Therefore, all religious organizations have an equal interest in receiving state property and using it for religious purposes. That is why the entities compared - the Georgian Orthodox Church and other religious communities - present as essentially equal entities.

The court also spoke about the role of the Orthodox Church and explained that the appreciation of the special role of the church is related to its historical achievements and does not serve to create a privileged legal status for it in the present. Differentiation and the creation of a legally advantageous situation are not the end in itself for the Constitution.⁹ On the basis of the discriminatory norms of the State Property Law, the non-dominant religious organizations are deprived of the right to either purchase or acquire free of charge state property, as well as to own historic property that has been accounted for on the state register since Georgia's independence. By law, the state-owned religious and ceremonial buildings are not subject to privatization. This issue is also problematic in terms of the restitution to their historical owners of property confiscated from them during the Soviet era. Much of the confiscated historic property is now owned by the state, and its return (besides the absence of the will of the state) is hindered by the discriminatory legislation. The right to own such property can be acquired only by virtue of Article 7 of the Constitutional Agreement between the State and the Church of Georgia.

To the Parliament of Georgia:

- » Analyze and consider the decision of the Constitutional Court of Georgia made on July 3, 2018, which confirmed discrimination and declared the rule

8. Constitutional Court of Georgia, Decision of July 3, 2018, Constitutional Claim of Religious Organizations No. 811.

9. Decision of the Constitutional Court №811 of July 3, 2018, Motivational Part, par. 10, 24.

of law on state property unconstitutional; Consider the Court's judgment on the equality of religious organizations;

- » Amend Paragraph 1 of Article 63 of the Law on State Property in accordance with the decision of the Constitutional Court of Georgia made on July 3, 2018 and make the right to transfer state property free of charge equally available to all religious organizations - both the Orthodox Church of Georgia and all religious organizations registered under the legal status of public and private law;
- » Amend Article 3, Paragraph 1 of the Law on State Property and the right to purchase state property equally to all religious organizations - both the Orthodox Church of Georgia and all religious organizations registered under the legal status of public and private law;
- » Amend Paragraph 2 of article 3 of the Law on State Property and the right to privatize agricultural land by purchase or for free and apply it equally to all religious organizations - both the Orthodox Church of Georgia and all religious organizations registered under the legal status of public and private law;
- » Amend the Paragraph 5 of Article 3 of the Law on State Property and extend the right to exchange property equally to all religious organizations - both the Orthodox Church of Georgia and all religious organizations registered under the legal status of public and private law;
- » Repeal the Subparagraph "M" of Paragraph 1 of Article 4 of the Law on State Property, according to which state-owned religious and ceremonial buildings (both functioning and inactive), their ruins, and the land on which they are located are not subject to privatization.

1.3. Discriminatory tax legislation

Problem: The unequal tax law applying to religious communities has been a problem for years. The Tax Code of Georgia, in some respects, provides exemptions only to the Georgian Orthodox Church, while all other religious bodies are subject to the same tax liability. Discriminatory tax laws have been discussed for many years by the Council of Religions,¹⁰ the Public Defender,¹¹ and local and international organizations.

10. See Recommendations of the Council of Religions: http://tolerantoba.ge/index.php?id=1281619908&sub_id=1345202134

11. See Parliamentary Reports of the Public Defender of Georgia: <http://ombudsman.ge/geo/saparlamento-angarishebi>

The Government's Human Rights Action Plan since 2016 imposes a commitment upon the State Agency for Religious Issues to prepare relevant legislative initiatives to eliminate discriminatory legislation, including unequal taxation.¹² However, the Agency has not prepared a legislative initiative in this regard.

In 2015, eight religious associations appealed to the Constitutional Court of Georgia and demanded that the Georgian Tax Code be declared unconstitutional. On July 3, 2018, the Constitutional Court upheld the claim of the religious communities and considered as discriminatory the Subparagraph "b" of Paragraph 2 of Article 168 under the Tax Code which exempts from VAT tax the construction, restoration and painting of churches only when such work is commissioned by the Georgian Patriarchate.¹³ The court explained that this dubious norm allows the Patriarchate to obtain services with better conditions and at a lower cost than other religious organizations, which constitutes discriminatory treatment.

The court notes that the purpose of appreciating the special role of the Orthodox Church in the history of Georgia is not to promote Orthodoxy as a religious faith over other religions and to create a privileged legal position in the present.¹⁴ Nevertheless, the Parliament of Georgia did not amend the discriminatory tax legislation within the prescribed period of time. In addition, apart from being discriminatory, the existing tax regime places a significant financial burden upon the non-dominant religious organizations.

To the Parliament of Georgia:

- » Amend the Subparagraph "b" of part 2 in Article 168 of the Tax Code of Georgia, which exempts from value added tax payment only the construction, restoration and painting of temples and churches commissioned by the Patriarchate of Georgia. The Constitutional Court declared the above mentioned norm to be unconstitutional, and since the Parliament of Georgia did not make any changes, the norm was declared invalid. Following the new formulation, the right should apply equally to all religious organizations - both the Orthodox Church of Georgia and all religious organizations registered under the legal status of public and private law;

12. See Parliamentary Reports of the Public Defender of Georgia: <http://ombudsman.ge/geo/saparlamento-angarishebi>

13. Decision of the Constitutional Court of Georgia of July 3, 2018, Constitutional Claim No. 671 of Religious Organizations.

14. Constitutional Court №671 of July 3, 2018, Motivational Part, par. 9, 34, 35.

- » Amend Subparagraph “V” of Part 1 in Article 168 of the Tax Code of Georgia, which exempts suppliers of religious articles from value added tax payments only when supplying the Patriarchate with crosses, candles, icons, books, calendars and other religious objects used for ceremonial purposes. This tax exemption shall apply equally to all religious organizations - both the Orthodox Church of Georgia and all religious organizations registered under the status of legal entity of public and private law;
- » Amend Article 99 of the Tax Code of Georgia, which exempts only the Georgian Patriarchate from profit tax only when such profits are from the sale of crosses, candles, icons, books and calendars used for religious purposes. This right should apply equally to all religious organizations - both the Orthodox Church of Georgia and all the religious organizations registered under the status of legal entity of public and private law;
- » According to Article 6, Paragraph 5 of the constitutional agreement between the State of Georgia and the Georgian Apostolic Autocephalous Orthodox Church, property and land of the Church used for non-economic purposes are exempt from taxation. The similar articles of the Tax Code of Georgia do not provide for the exemption of other religious communities from land taxation, which produces inequality. Exemption from taxation of the property and land of religious organizations used for non-economic purposes should apply equally to all religious organizations - both the Orthodox Church of Georgia and all religious organizations registered under the status of legal entity of public and private law;
- » Replace the wording in the above mentioned articles with a neutral terminology that may apply equally to all religious communities. For example, the “church” should be replaced by a “religious building for worship”.
- » According to Article 6, Paragraph 5 of the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia, the import and delivery of church products are exempt from taxation. Similar articles in the Tax Code of Georgia do not offer the exemption from the import and export tax on religious objects to other religious groups. Import and export for religious purposes carried out by religious organizations shall be exempt from taxation and shall apply equally to all religious organizations - both the Orthodox Church of Georgia and all religious organizations registered under the status of legal entity of public and private law.

1.4. Anti-discrimination legislation

Problem: On March 15, 2018, the Supreme Court of Georgia issued a ruling regarding the Boarding House case in Kobuleti. In this case, the Supreme Court did not find that the police officers had discriminated against the Muslim community by their inaction. The case concerns the attachment of a pig's head to the boarding house building by certain individuals, as well as preventing Muslims from entering the building. The lower courts have found discrimination against the Muslim community by private individuals. As for the police, who failed to maintain order, to open a boarding house to public and let it function properly in this case, were not found guilty of discrimination by any court in Georgia. The European Court of Human Rights finds discrimination when, due to insufficient police mobilization, the state fails to protect a vulnerable group from being discriminated against by individual attackers.

To the Georgian Parliament:

- » The Parliament of Georgia should amend the Law on the Elimination of all Forms of Discrimination, which would mean that the state's failure to fulfill its positive obligations regarding equality would be considered discrimination.

1.5. Offense against religious feelings

Problem: In April 2018, a bill criminalizing the abuse of religious sentiment was introduced to Parliament. The explanatory note refers to the frequent direct and covert attacks on traditional religions.¹⁵ The Parliamentary Assembly of the Council of Europe (PACE) stated: "in the past, national law and practice concerning blasphemy and other religious offences often reflected the dominant position of particular religions in individual states. In view of the greater diversity of religious beliefs in Europe and the democratic principle of the separation of state and religion, blasphemy laws should be reviewed by the governments and parliaments of the member states. ...Blasphemy, as an insult to a religion, should not be deemed a criminal offence".¹⁶

15. Report of the Public Defender of Georgia on the State of Protection of Human Rights and Freedoms in Georgia, p. 145; United States Department of State • Bureau of Democracy, Human Rights, and Labor GEORGIA 2018 INTERNATIONAL RELIGIOUS FREEDOM REPORT p.6.

16. PACE Recommendation 1805 (2007) on "Blasphemy, religious insults and hate speech against persons on grounds of their religion.

The Venice Commission agrees with this view.¹⁷ The Venice Commission does not consider it necessary to criminalize the insult of religious feelings.¹⁸ Besides, according to Paragraph 1 in Article 239 of the Criminal Code of Georgia, it is already punishable to publicly call for violent action to deepen the divide between religious groups, if that call creates a clear, direct and substantial threat of violence.

Additional criminal regulations protecting religious sentiments would be contrary to the above recommendations of the Council of Europe and the Venice Commission. At the same time, the Council of Religions has repeatedly expressed its position on the criminalization of the insult of religious feelings. The Council considers that this kind of event should be opposed by preaching and discipline, not by legislative prohibition.

To the Parliament of Georgia:

» Do not pass a bill penalizing the insult of religious feelings.

1.6. The holidays of religious minorities

Problem: According to Article 20 (1) of the Labor Code of Georgia, Orthodox Christian Days are declared as holidays: January 7 - Nativity, January 19 - Epiphany, Easter Dates, May 12 - Day of Georgia's Allotted to Virgin Mary and Commemoration of St. Andrew the First Called, August 28 – Dormition of the Mother of God, October 14 – Feast Day of Mtskheta; November 23 – St. George's feast day. The Labor Code has not declared the festivals of other religions as holidays. According to Article 20, Paragraph 2 of the Labor Code of Georgia, an employee may, on the basis of the labor contract, request other days off instead of the taking holidays during the above mentioned days. However, the legislation does not specify what these days may be. At the same time, requesting holidays on the festivals of other religions requires the consent of the employer. Under the circumstances, in which the legislator itself defines the days when Orthodox Christians have the right to enjoy their holidays, the members of other religious

17. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) REPORT ON THE RELATIONSHIP BETWEEN FREEDOM OF EXPRESSION AND FREEDOM OF RELIGION: THE ISSUE OF REGULATION AND PROSECUTION OF BLASPHEMY, RELIGIOUS INSULT AND INCITEMENT TO RELIGIOUS HATRED Adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October, 2008, Paragraph 63. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2008\)026-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)026-e)

18. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) REPORT ON THE RELATIONSHIP BETWEEN FREEDOM OF EXPRESSION AND FREEDOM OF RELIGION: THE ISSUE OF REGULATION AND PROSECUTION OF BLASPHEMY, RELIGIOUS INSULT AND INCITEMENT TO RELIGIOUS HATRED Adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October, 2008, Paragraph 64. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2008\)026-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)026-e)

communities are treated unequally when their holiday during their religious festivals may depend on the consent of their employer.

Recommendation to the Parliament of Georgia

- » Start a discussion with the Council of Religions about the declaration in the Labor Code of the religious festivals of other religions as official holidays.

2. Crimes motivated by intolerance

The Ministry of Internal Affairs has taken a positive step in combating crimes motivated by religious intolerance. In January 2018, the Ministry of Internal Affairs of Georgia created the Human Rights Department to monitor hate crime investigations, identify gaps in the process and develop proposals to remedy them.¹⁹

At the same time, the Ministry of Internal Affairs, compared to previous years, is increasingly using the articles of the Criminal Code which specifically prohibit hate crime.²⁰ For example, in 2018, 14 of the 23 ongoing cases at the Ministry of the Interior Affairs were classified as crimes of persecution for faith or belief (Article 156 of the Criminal Code). Five of the cases are classified as the offense of obstructing religious rites (Article 155 of the Criminal Code), one case concerns the illegal interference with the activities of a religious community (Article 166 of the Criminal Code).

There has been little progress in the courts in terms of aggravated sentencing for offenders who have committed acts of religious hatred. From 2016 to 2018, the Tbilisi City Court aggravated the sentences for two of the cases on charges of religious hatred. Also the decision of the Senaki District Court made on May 11, 2016 is noteworthy, when a defendant assaulted a Jehovah's Witness for distributing literature with religious content. The Senaki District Court noted that because the crime was committed on the grounds of religious intolerance, no lighter sentence could be imposed than imprisonment.

Nonetheless, significant challenges remain: the government's policy on hate-motivated crimes focuses mainly on repression and less on prevention. Problems with timely investigation of the crimes committed and their victim status still pose a problem.

2.1. Investigation of hate crimes

Problem: Although most of the cases in the investigation are defined by the articles of the Criminal Code that relate to the motive of religious hatred, there is still a small number of cases where the articles that are not directly related to the motive of hatred are used; For example, crimes against Jehovah's Witnesses are classified by

19. ECRI CONCLUSIONS ON THE IMPLEMENTATION OF THE RECOMMENDATIONS IN RESPECT OF GEORGIA SUBJECT TO INTERIM FOLLOW-UP *Adopted on 5 December, 2018, page 5* <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-re-spe/1680934a7e>

20. United States Department of State • Bureau of Democracy, Human Rights, and Labor GEORGIA, 2018 INTERNATIONAL RELIGIOUS FREEDOM REPORT, page 7.

the government as violent crimes (Article 126 of the Criminal Code) and not by the relevant articles on hate crimes.²¹

The problem with combating hate crimes is that they are not properly investigated, and the perpetrators of the crime are not identified and prosecuted. Typically, Jehovah's Witnesses get attacked in public places in the presence of lots of witnesses. Victims indicate that the facts of the attack are recorded by external surveillance cameras. Victims often give the names of their alleged perpetrators, but they are still not prosecuted.²²

Mistrust towards law enforcement agencies is compounded by the fact that victims are not usually granted the status of a victim.²³ If the victim was granted victim status, the materials of the investigation would become available. This would determine the extent to which the Ministry of Internal Affairs had undertaken all the necessary investigative actions to establish the identity of the perpetrator and bring him to justice.

While the creation of the Human Rights Department of the Ministry of Internal Affairs was undoubtedly a step forward, it is also a fact that it has no investigative function. In situations such as this, when religious minorities are distrustful of investigative bodies and, at the same time, the Human Rights Department of the MIA has more knowledge and sensitivity than a regular investigator on hate crimes, it is important that it should also have an investigative function.

Ministry of Internal Affairs:

- » To classify the attacks on grounds of religious intolerance for those articles of the Criminal Code that deal with hate crimes;
- » To carry out all necessary investigative actions within a reasonable time and in an effective manner to identify and prosecute the perpetrators of religious intolerance;
- » Grant victim status to a victim of a crime motivated by religious hatred;
- » Assign investigative functions to the Human Rights Department.

21. United States Department of State • Bureau of Democracy, Human Rights, and Labor
GEORGIA 2018 INTERNATIONAL RELIGIOUS FREEDOM REPORT page 11 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, p. 146.

22. 2018 Report of Jehovah's Witnesses on Religious Freedom in Georgia.

23. Public Defender's Report on the State of Human Rights and Freedoms in Georgia, p. 146.

To the Prosecutor's Office of Georgia:

- » Publish statistics of religiously motivated hate crimes according to years.

2.2. Vitali Safarov's Case

Problem: On June 27, 2019, the Tbilisi City Court found two persons guilty of aggravated group murder in taking the life of human rights defender Vitali Safarov (Subparagraph (e) of Article 109 (2) of the Criminal Code), but were found not guilty of murder on grounds of national intolerance. Both convicts were sentenced to 15 years in prison. The Tbilisi City Court's decision is currently being appealed at the Tbilisi Court of Appeal. It is important for the Court of Appeal to return to the question of whether the murder was committed on the grounds of national intolerance. Since Jewish identity is related to religion, it is therefore advisable to include this case in the recommendations of the Council of Religions. The motive of hatred in the case is revealed by the anti-Semitic, offensive phrases uttered right before the murder. The European Court of Human Rights obliges states to pay due attention to discriminatory expressions used during the commission of a crime.²⁴ Based on the practice of the European Court of Human Rights, it is also crucial to determine whether the perpetrators are members of ultra-right wing groups.²⁵ A number of witnesses questioned by the Court of First Instance stated that defendant G. S. was a follower of Nazi ideology. The fact that the murder of Vitali Safarov happened following a joke made by Vitali Safarov to the friend of his murderers, does not exclude the motive of hatred. The existence of the latter is reinforced by both attackers' offensively emphasizing the Jewish origin of the victim before the assassination, and insulting him on this ground.

To the Tbilisi Court of Appeals:

- » Consider the available evidence, witness testimony on the motivation for national (anti-Semitic) intolerance in the murder of Vitali Safarov.

Recommendation to the Government of Georgia

- » Assess the risks coming from hate groups and respond appropriately to the violent acts committed by them.

24. Public Defender's Court of October 4, 2019, Amicus Curiae, p. 14. <http://www.ombudsman.ge/res/docs/2019100717365940559.pdf>

25. Public Defender's Court of October 4, 2019, Amicus Curiae, p. 15. <http://www.ombudsman.ge/res/docs/2019100717365940559.pdf> ECtHR, Milanovic v. Serbia, no. 44614/07, 14/12/2010, § 98

3. State Policy Regarding Freedom of Religion

The state's policy towards freedom of religion has not changed substantially during the reporting period, and the systemic challenges facing religious organizations and groups still remain fundamentally unresolved. In spite of the obligations taken on by the Government Action Plan for Human Rights, as well as the historical decisions made by the Constitutional Court on July 3, 2018 (see above), the Georgian Government and Parliament have not taken any proper measures in order to eliminate the systemic discriminatory practices in the field of religious freedom (including the discriminatory elements in the Tax Code and the Law on state property, and the non-recognition of obligations of restitution towards the non-dominant religious groups).

Side by side and on more than one occasion, initiatives were proposed to the Parliament which entailed significant risks of undermining legal standards related to freedom of religion. These initiatives were largely supported by government officials. They included the issue of introducing national security into the constitution on the grounds of freedom of religion; adopting a special law on religion; the issue of the prohibition of the wearing of hijab, niqab and burqa in public places, and an initiative to abolish the existing rules on the dismissal of clerics from non-dominant religious communities.

During the reporting period, the issue of the reorganization of the LEPL State Agency for Religious Issues was raised once again,²⁶ which should have become part of the overall process of reorganization of the government and its agencies. However, despite the Prime Minister's public statement, the agency's status and mandate have not changed.

Recent reports published on the issue of freedom of religion point to the lack of trust of religious organizations in the State Agency for Religious Issues and to the problem of democratic communication with religious organizations. Among them, the Advisory Committee to the Framework Convention for the Protection of National Minorities (FCNM) states that religious minorities expressed in their discussion their low confidence in the State Agency for Religious Issues and, at the same time, demonstrated high confidence in the Public Defender's Council of Religions, which unites 33 religious organizations and creates a a framework of independent organizations for them.²⁷

26. Statement by Human Rights Organizations, available at: <https://emc.org.ge/ka/products/adamianis-uflebebbe-momushave-organizatsiebi-religiis-sakitkhata-sakhelmtsifo-saagentos-gauk-mebis-taobaze-mtavrobis-gadatsqvetilebas-ekhmianebian>

27. Third Opinion on Georgia adopted on 7 March 2019, FCNM, available at: <https://rm.coe.int/3rd-op-georgia-en/1680969b56>

According to the recommendation of the **European Commission against Racism and Intolerance (ECRI)**, calling on the Georgian government to strengthen communication between the State Agency for Religious Issues and the Public Defender has not been implemented and the Agency has not taken serious steps to cooperate with the Council. The Commission emphasizes that tensions, rather than cooperation, have been observed between the two bodies and their positions on freedom of religion do not coincide.²⁸

3.1. Mandate of the State Agency for Religious Issues

Problem: The State Agency for Religious Issues (hereinafter referred to as the Agency) was established in 2014 and operates under the direct supervision of the Prime Minister of Georgia. In the government system, the Agency is the main agency responsible for freedom of religion, and official policy documents (including the government's human rights action plan) see it as an addressee of the state's core responsibilities in this area.

The establishment of the agency was met with skepticism by a number of human rights organizations and religious organizations as it could potentially lead to the creation of an institution akin to the "Ministry of Religion" in post-Soviet countries. Suspicions regarding the agency were further compounded by the fact that the agency was set up without consulting and obtaining proper recommendations from religious organizations and human rights activists.²⁹ Nonetheless, some religious organizations welcomed the idea of having a government responsible for religious issues that would take into account their needs and concerns.

Although, at first glance, the agency has a functioning advisory mandate, the agency did not submit to the Government and Parliament progressive recommendations and outlooks based on human rights that would lead to a positive change in the legislation and policy of freedom of religion.³⁰

However, beyond the advisory function, the agency is sometimes directly involved in the resolution and management of religious and financial matters, with the most

28. ECRI, Conclusions on the implementation of the recommendations in respect of Georgia, Subject to interim follow-up, Adopted on 5 December 2018, available at: <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680934a7e>

29. Recommendations of the Council of Religions under the Public Defender, 2017, available at: http://tolerantoba.ge/failebi/qartuli_broshura_saxalxo____damcveli_87902.pdf

30. Protecting Religious Minorities - Monitoring Report on the Implementation of Human Rights Strategies and Action Plans, Center for Human Rights Education and Monitoring (EMC), 2018, Available at: <https://emc.org.ge/ka/products/religiuri-umtsiresobebis-datsva-adamianis-ufleba-ta-datsvis-strategiebisa-da-samokmedo-gegmebis-shesrulebis-monitoringis-angarishi>

important part of the agency's work being the management of the funding of the four religious organizations and the conduct of the Property and Financial Commission.

To the Government of Georgia:

- » The government should comprehend the concerns of religious organizations and human rights activists about the mandate and activities of the State Agency for Religious Issues and. In consultation with key representatives, and the ombudsman, including the Ombudsman's Council on Religions, to discuss the need for the body with such a mandate and authority to exist, or to substantially modify its mandate and approaches;
- » The government should strengthen the consultation process with the Public Defender's Council of Religions, including establishing human rights strategies and action plans based on the Council's recommendations and systematic consultations.
- » The government should pursue a policy of freedom of religion with the state's religious neutrality and inclusiveness, applying the highest standards and principles of religious freedom and equality;
- » The Government should study thoroughly the negative practices of possible interference and control in the institutional independence of religious organizations and eliminate them immediately;
- » Understand issues of freedom of religion and security, not as mutually opposed, but as interconnected and mutually supportive interests, and to understand the importance of a sustainable security policy,³¹ carried out primarily through the protection of human rights, including the protection of freedom of religion and the building of an inclusive society;
- » The Government should take into account the severe social effects of cases of violations of religious freedom against the non-dominant religious groups, implement positive policies aimed at overcoming religious estrangement, building trust between communities and carrying out a positive policy for developing a tolerant social environment;
- » The government should develop an outlook policy for the return of historic places of worship confiscated during the Soviet era, prepared in agreement with the Public Defender's Council of Religions and human rights activists,

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

and ensure that the confiscated property is transferred to the historical owners with the right of ownership or an adequate exchange of property (or monetary compensation). It is essential that the restitution policy and related legislation also include a fair mechanism and procedures for resolving disputed historical places of worship;

- » Provide timely and appropriate intervention and ending satisfactorily any severe cases of the violation of freedom of religion and equality (including the construction of a new mosque in Batumi, and various cases of the confiscation of places of worship from their historical owners);

3.2. The practice of funding religious organizations

Problem: In 2014, the Georgian government started funding four religious organizations (The Muslim Community, The Jewish Community, The Catholic Church and The Diocese of the Armenian Apostolic Church in Georgia). The decision was viewed as a positive initiative by the government to eliminate discrimination in the field of financing religious organizations, and to expand the circle of funded religious groups. However, religious organizations and human rights activists pointed out the discriminatory content of the funding system and in some cases viewed it as a mechanism to interfere with the internal autonomy of religious minorities.³²

Funding for four religious organizations causes discrimination. The government offers compensation only to four religious organizations for the damages they suffered during the Soviet era, while other religious organizations and groups (including The Lutheran Church, The Evangelical Baptist Church, The Faith Gospel Church, The Yazidis) were also persecuted. It is unclear on what legitimate basis the government has selected only four religious organizations.

Although the government's decision to fund religious organizations referred to compensating for the damage done by the Soviet totalitarian regime, the amount of funding was calculated on criteria such as the number of religious buildings, clergy, and parishioners. In the process of determining the amount and extent of funding, none of the criteria was related to the amount and magnitude of the damage.

32. Recommendations of the Council of Religions under the Public Defender, 2017, available at: http://tolerantoba.ge/failebi/qartuli_broshura_saxalxo____damcveli_87902.pdf also

State Funding Policy for Religious Organizations (2014-2015), Center for Human Rights Education and Monitoring (EMC) and Institute for Tolerance and Diversity (TDI), available at: <https://emc.org.ge/ka/products/kvleva-religiuri-organizatsiebis-sakhelmtsifo-dafinansebis-politika-2014-2015>

Thus, the practical ignorance of damages as the real basis for funding has limited the funding of the four religious organizations to a 'subsidy' logic.³³

Another significant problem emerged within the funding process of the four religious organizations, which required the agreement and / or association of the various religious organizations within a particular religion and substantially violated the right to freedom of association. In this regard, the constitutional lawsuit filed by the Supreme Muslim Clerical Division of Georgia disputes the record of a government resolution dated January 27, 2014 requiring two Muslim religious groups - Shi'ites and Sunnis - to form a single legal entity or representative body in public law. In the case of this request not being met, the religious group would face the loss of the opportunity to receive funding from the state budget.³⁴

Thus, the existing funding system nominally fits into the compensation model, although in fact religious associations receive direct subsidies without objective and reasonable criteria for compensation, the amount of which depends on the political will of the government.

At the same time, it should be noted that the funding process for the four religious organizations is also subject to government financial control. The government not only determines the purpose of spending in contracts with religious organizations, but also reserves the power to suspend or terminate it in the event of expediency of funding, auditing, and problems identified in this regard. This approach is fundamentally in conflict with the idea of compensation, which is a mechanism for restitution of property rights.

To the Government of Georgia:

- » The government should change existing practices of funding religious organizations and subject them to the principles of equality, protection of religious freedom and religious neutrality. For this purpose, it is recommended that the Government, on the basis of consultation with the Public Defender, the religious organizations within the Council of Religions, as well as other religious organizations, and human rights activists working for religious freedom, should work on a tax system for funding religious organizations, which enables the income tax payer to choose the

33. Recommendations of the Council of Religions under the Public Defender, 2017, available at: http://tolerantoba.ge/failebi/qartuli_broshura_saxalxo____damcveli_87902.pdf

34. GYLA Appeals Rule on Discriminatory Funding of Muslims from State Budget to Constitutional Court: <https://gyla.ge/ge/post/saia-sakhelmtsifo-biujetidan-muslimebis-diskriminaciuli-dafinansebis-tsess-sakonstitucio-sasamartloshi-asachivrebs#sthash.uc1xdWgl.dpbs>

appropriate religious organization, or a social / charity / humanitarian body and transfer the appropriate share to it from the income tax;

- » It is essential that the Government should broaden the circle of religious organizations provided for by the Government of Georgia's resolution of January 27, 2014 (No. 177), based on an independent and objective investigation and calculation of the persecution of religious organizations during the Soviet era; However, it is essential that the resolution establishes objective and reasonable criteria for damages.

3.3. Governmental Human Rights Action Plan

Problem: The National Human Rights Strategy and Governmental Action Plan is a document of basic outlook and policy in the field of human rights. However, the commitments outlined in the various yearly plans for freedom of religion do not substantially address the fundamental challenges facing religious organizations and are limited to writing general obligations only. Various yearly plans do not reflect such significant challenges in the area of freedom of religion as: 1. The elimination of specific, religiously discriminatory records in the legislation; 2. The development of a comprehensive and consistent plan of government anti-discrimination policy on religious grounds; 3. The development and implementation of legislation and policies related to restitution; 4. The elimination of discriminatory practices related to the construction of places of worship; 5. The formulation and planning of work aimed at relieving tension and restoring confidence between religious communities; 6. The revision of existing funding practices to bring them in line with democracy, religious neutrality and human rights standards. However, the State Agency for Religious Issues is mainly considered the responsible body for the implementation of the plan's obligations, which is a problematic decision in the light of the criticism of this agency's activities and policies. However, the issue of the proper participation of the Council of Religions under the Public Defender in the process of monitoring the development and implementation of the Action Plan remains unresolved. It should also be noted that there is a problem in regard to the weak control of the Parliament over the implementation of the government plan: it is limited to a single report on the implementation of the annual plan and Parliament has no effective supervisory tool.

To the Government of Georgia:

- » The government's human rights plan should be built upon the fundamental challenges facing religious organizations and groups;
- » In the process of drafting the Action Plan and monitoring its implementation, the Government should ensure the systematic participation and hearing of the Council of Religions under the Public Defender;
- » The government should develop effective and realistic parliamentary control over the implementation of the Human Rights Action Plan, including the adoption of a Parliament resolution mandating the government to fulfill its obligations and establishing a parliamentary mechanism for monitoring their implementation.
- » Define the qualitative criteria as indicators of the performance of a government plan's activities, and consider the reports / recommendations of the Ombudsman and the Council of Religions as an instrument to monitor its performance.

4. Problems regarding the ownership and property of non-dominant religious groups

Freedom of religion and belief includes the opportunity to gather, build religious buildings, pray, participate freely in religious ceremonies, and have an appropriate space in which to practice this right.³⁵ Nevertheless, property and property issues remain one of the major and systemic challenges for the non-dominant religious communities. They face problems both in the construction of new religious buildings and in the return of historic property. Inconsistent and, in many cases, discriminatory state policies are also accompanied by unequal legislative measures.

In the 20th century, under the Soviet totalitarian regime, religious organizations were deprived of religious buildings and other types of community property (cemeteries, educational institutions, etc.). After the restoration of Georgia's independence, the state's policy of restitution of confiscated historical property was applied only to the Georgian Orthodox Church.³⁶ Apart from its own property, the Georgian Patriarchate has also been given the historical property of other religious associations which it still enjoys and refuses to return them to their historical owners. After the collapse of the Soviet Union, much of the ownership of confiscated property was transferred to the Georgian state, though the state never expressed a willingness to return the property to other religious communities.

The non-dominant religious communities often face artificial and discriminatory obstacles in the process of constructing new religious buildings. Often, local self governing bodies refuse to grant construction permits to religious organizations and dismiss them with unreasonable, and discriminatory explanations.³⁷

For non-dominant religious groups, ownership of property is also problematic. They are granted the right to use, but not to own, much of the property that has been transferred and which is not considered to be among the group of so-called *controversial buildings*. In 2018, the Constitutional Court of Georgia noted that real estate and chattels owned by a religious organization plays an important role in

35. UN Human Rights Committee, General Comment 22, Par. 4; United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 6 (a).

36. Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia, 2002, Article 7.

37. In recent years, the most prominent examples of such practices include the suspension of the construction of a religious building for Jehovah's Witnesses in Terjola (2014), the denial of permission to build a Roman Catholic cathedral in Rustavi (2013-2016), the refusal to build a new mosque in Batumi (2017).

the performance of religious activities.³⁸ Therefore, all religious organizations have an equal interest in obtaining property from the state and using it for religious purposes.³⁹

Systemic problems experienced by non-dominant religious groups surrounding the ownership of real estate, the restitution of historic property, and the construction of new religious buildings are highlighted in the reports of the Public Defender of Georgia and numerous local and international organizations. For example, the European Commission against Racism and Intolerance (ECRI) urges the state to resolve disputes over religious property in a speedy, transparent and fair manner and to consider permits for the construction of new religious buildings not in accordance with religious prejudices but with legislation.⁴⁰ The Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe notes in a report issued in 2019 that the problem of restitution has remained unresolved and the risk of deteriorating historic buildings is still increasing. The Committee shares the concern of religious minorities over the return of property and the construction of new religious buildings, and calls on the Georgian authorities to make the process transparent and base it solely upon objective legal criteria.⁴¹

4.1 The return of religious buildings confiscated during Soviet times

Problem: The question of returning religious buildings confiscated by the Communist government during Soviet times and identifying the historical owner of the disputed monuments remains unresolved until today. The state has not taken any real steps to recover the historic property of non-dominant religious communities, nor has it developed appropriate policies and legislation. The problem of restitution is most acutely faced by the Armenian Apostolic, Roman Catholic, Evangelical-Lutheran Churches, and the Muslim and Jewish communities.

The question of transferring the historical property of non-dominant religious groups to the Georgian Orthodox Church is also somewhat problematic. After the restoration of independence, the state transferred ownership of the buildings that belonged to other religious communities to the Georgian Patriarchate, in addition to its historical property. This practice continues to this day.

38. Constitutional Court's Decision of July 3, 2018, Constitutional Claim No. 811.

39. For greater details see chapter - "Discrimination within Legislation".

40. European Commission Against Racism and Intolerance (ECRI), Report of the Fifth Monitoring Cycle on Georgia, published on March 1, 2016.

41. Third Report of the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe on Georgia, 7 March 2019.

The problem concerning these buildings that has been unresolved over the years, is also evident from the poor conditions of these buildings. Religious buildings are, in most cases, unprotected until the historic owner is identified, they are vulnerable to the dangers of damage and demolition, and their maintenance and restoration do not usually appear on the government's agenda. Those buildings, however, which have fallen into the hands of other owners, lose their authenticity and historical-confessional appearance.

To the Government of Georgia:

- » With the participation of the Public Defender, the Council of Religions of the Public Defender, experts in the field of academics and non-governmental organizations, a special commission has to be set up as soon as possible to develop a clear plan for the restitution process.
- » Recognize the extent of property damage inflicted on religious communities by the Soviet totalitarian regime, including providing documentation of confiscated property. Ensure the involvement of relevant religious organizations and experts in the process.
- » Provide the full access for religious associations and scholars to archival materials in order to enable them to collect data and relevant documents on their historical property without hindrance.
- » The religious buildings presently under the ownership of the state that were confiscated during the Soviet era should be returned to their historical owners: Armenian Apostolic, Evangelical Lutheran Churches, Muslim and Jewish communities.
- » Examine the legitimacy of transferring the six parish churches of the Roman Catholic Church to the Patriarchate of the Georgian Orthodox Church and recover the rights of the Roman Catholic Church.
- » Prior to returning religious buildings to their historic owners, ensure the conservation, protection and proper maintenance of those buildings that constitute sites of cultural heritage and / or are currently owned by the state.
- » To prohibit all forms of illegal manipulation, reconstruction, and alteration of the historical-confessional appearance of the religious buildings, which are historically owned by other communities and currently owned by the Georgian Orthodox Church; the state should immediately take measures to conserve and preserve these types of buildings.

- » Examine the legitimacy of transferring the historical Armenian church of “Tandoyants” located in #38, Agmashenebeli Ave., Tbilisi, to the Georgian Orthodox Church in 2017; immediately stop on the site any construction, archaeological and other types of works carried out by the Georgian Patriarchate.

To the Parliament and the Government of Georgia:

- » With the participation of the Public Defender, the Council of Religions under the Public Defender, experts in academia and non-governmental organizations, develop a draft law on the restitution of religious and community property, defining the rules, criteria, responsible agencies and timelines for the restitution of historic property confiscated during the Soviet period.
- » Adopt legislation which includes the elimination of discriminatory norms in the Law of Georgia on State Property that prevent non-dominant religious communities from acquiring state property rights. Consider the spirit of the crucial decision of the Constitutional Court of Georgia made on July 3, 2018, which found the existence of an unequal legislative model for the free distribution of state property to religious groups to be discriminatory. Ensure that non-dominant religious organizations are given ownership of the property that they nowadays can merely use, but not own.

4.2 Construction of religious buildings

Problem: The legislation in Georgia on the construction of religious buildings is liberal and does not apply a special legal regime to the construction of religious buildings. However, religious communities, often face discriminatory delays or refusals in the process of acquiring construction permits by the local authorities who are directly responsible for issuing construction permits.

Despite the court ruling, Rustavi City Hall extended the process for four years and refused on a discriminatory basis to grant the Georgian Roman Catholic Church permission to build a new church. The City Mayor of Batumi unjustifiably refused a construction permit for the new mosque in Batumi in 2017. In this regard, the Public Defender of Georgia found that the City Hall’s decision was made without examining the relevant circumstances of the case and without proper justification. By a decision dated to September 30, 2019, the Batumi City Court found discrimination in the case against the construction of a new mosque in Batumi, it annulled the decision of the

City Hall regarding the refusal of the first stage in issuing the construction permit and returned the case for reconsideration back to the Batumi City Hall.

In addition, the role of the State Agency for Religious Issues under the Prime Minister of Georgia is problematic. Its competencies include providing recommendations on the construction of ceremonial-religious buildings and defining their locations. Current practice shows that the recommendations of the State Agency for Religious Issues are primarily concerned with the need for religious buildings in the relevant area for religious communities and they do not include an assessment of the legal circumstances surrounding the construction. It is also unclear on what criteria the agency may determine the appropriateness of the needs of a religious community and the location of the religious building. Although the recommendation of the State Agency for Religious Issues is not mandatory and has no binding legal force, it is often the cause of an impediment to administrative construction, related to the issuance of a building permit, as confirmed by a court decision.⁴² A religious organization trying to build a religious building in Tbilisi since 2015 was refused a construction permit by the Office of Architecture of the Tbilisi City Hall in 2016, and requested them to submit a recommendation from the State Agency for Religious Issues. The court found in the case that under Georgian law the administrative authority was not authorized to request any additional documents or information from the applicant, including the submission of a recommendation from the State Agency for Religious Issues, unless specifically required by the law.

To local self governing bodies and the Government of Georgia:

- » Eliminate discriminatory practices related to the construction of religious buildings;
- » Act, in the process of issuing construction permits to religious minorities' associations, in strict compliance with the Constitution and legislation of Georgia;
- » In the process of issuing building permits to religious associations, local self governing bodies should desist from creating artificial obstacles, involving unauthorized administrative bodies in administrative procedures, and delaying artificially the resolution of the matter;
- » Exclude from the mandate of the State Agency for Religious Issues the right to issue recommendations over the construction and location of religious buildings;

42. See Decision of the Board of Administrative Cases of the Tbilisi City Court of 31 January 2017 in Case N3 / 5502-16; Decision of the Chamber of Administrative Cases of the Supreme Court of Georgia of 19 April 2018 in Case N 330310016001446326.

- » Batumi City Hall must act within the framework of the Constitution of Georgia, to take into consideration the decision of the Batumi City Court of September 30, 2019 and to grant the construction permit to “The Fund for the Construction of a New Mosque in Batumi” as soon as possible.

5. Crossing the Border and the Import of Religious Literature

Problem: Representatives of non-dominant religious communities often face problems while crossing the state border and importing religious literature. When checking travel documents, they are often detained at the state border for an unreasonable period of time.⁴³ In some cases, luggage is examined on the basis of unwarranted suspicion.

In addition, non-dominant religious groups often face obstacles in bringing religious literature to Georgia. According to established practice, in some cases, when refusing to import religious literature, they are asked to submit written permission to the Georgian Patriarchate or, in the case of a Muslim, to a Muslim organization, “LEPL Supreme Religious Administration of Georgia’s all Muslims”. In some cases, however, Revenue Service officers point out that the content of religious literature should be thoroughly examined since the literature imported by non-dominant religious organizations is perceived as a threat.

Georgian legislation does not require the submission of a permit, license or certificate when importing printed products across the border. Accordingly, the existing practice of requiring extra documents at the customs checkpoint is illegal and unjustified.

There are cases when non-dominant religious organizations are asked to pay import duties when importing religious literature. According to the Tax Code of Georgia, the import of books is exempt from tax.

It is important that on April 25, 2017, the Public Defender of Georgia detected an obvious discrimination by the Ministry of Internal Affairs of Georgia and the LEPL Revenue Service against Muslims in the process of crossing the border. The Public Defender recommended both agencies ensure the protection of religious neutrality at customs checkpoints and to requalify the staff that is directly responsible for visa and passport control and relevant customs procedures.

Ministry of Internal Affairs and Revenue Service of Georgia:

- » The Ministry of Internal Affairs should study the issues created by the representatives of non-dominant religious communities when crossing the state border of Georgia and importing religious literature and to respond

43. This practice is particularly common towards the Muslim citizens of Georgia.

promptly and effectively to them;

- » Border Police and Revenue Service staff should be trained on human rights, non-discrimination and the norms of professional ethics.

6. Police in the areas populated by ethnic / religious minorities

Problem: The issue of appropriate police operations in areas densely populated by religious / ethnic minorities is of fundamental importance. Due to cultural elements, linguistic peculiarities, social isolation and political alienation, trust in public institutions, especially the police, is often low among minority groups.⁴⁴ The problem of low trust in public institutions within the local community often results in an abstinence from the use of legal mechanisms, which creates problems of impunity and weak legal protection. In some regions, trust in the police weakens even more due to the control-oriented approach on the part of the police.

To make the strategy of the police towards minorities more democratic and community-oriented, police representation in these regions must be based on objective data and research-based approaches. However, it is important to have a fair employment policy in this respect at police stations in areas populated by minorities.⁴⁵

The need for an appropriate police communication strategy with the local community should also be highlighted as a distinct issue, since it should be based on an accurate knowledge of the particularities of history, culture, ethics, and traditions of the religious / ethnic group, as well as respect for their cultural identity.

To the Ministry of Internal Affairs:

- » It is important to study, critically and objectively, the gaps in police practices in the areas populated by religious / ethnic minorities and develop and implement a comprehensive strategy and action plan;
- » Enhance the knowledge of police officers about the history, religion, culture, and traditions of religious / ethnic minorities residing in Georgia and, for this purpose, introduce appropriate courses of retraining programs for the Ministry of Internal Affairs and the Prosecutor's Office;

44. OSCE, Recommendations on Policing in Multi-Ethnic Societies, available at: <https://www.osce.org/hcnm/policing-recommendations>

45. Geneva Centre for the Democratic Control of Armed Forces (DCAF), International Police Standards Guidebook on Democratic Policing, Senior Police Adviser to the OSCE Secretary General, 2008, available at: <https://www.dcaf.ch/international-standard-guidebook-democratic-policing>

- » Encourage the employment, in law enforcement roles, of members of the local communities;
- » Establish democratic and transparent channels of communication with local community members and religious organizations in the police communication strategy, in order to identify the interests, concerns and needs of the local community and to apply more effective preventive policies;
- » Create and offer a special training course of teaching and re-training programs on police work strategies and tactics when dealing with religious / ethnic conflicts and tensions;
- » Strict adherence to religious neutrality by the police and the prohibition of hate speech; the creation of a realistic policy of robust response to acts of hate or religious intolerance.

7. Education

The recommendations of the Council of Religions of the Ombudsman of Georgia are based on an analysis of the current situation in the field of education, and the implementation of the recommendations issued in previous years, and cover three main areas - early, general and higher education.

Laws regulating early, general, and higher education include articles calling on educational institutions to protect religious impartiality and create a non-discriminatory environment.

Nevertheless, reports by the Public Defender, surveys by NGOs, and representatives of various religious denominations confirm that the principle of impartiality is often violated in kindergartens and public schools. Students of Georgian higher education, belonging to different ethnic and religious groups, as well as foreign students, often face discriminatory and neglectful attitudes from their peers as well as from administration and academic staff.

Parents of the children and students of religious and ethnic minority backgrounds say that their attempts to escape uncomfortable situations may be accompanied by further discrimination and stigmatization, which makes them avoid discussing such facts openly. The Ombudsman and the Council of Religions have for years called on the State and Ministry of Education to show their political will and take effective action to eliminate such situations, but no appropriate steps have been taken so far.

In recent years, the Ministry of Education has made several attempts to increase civic responsibility, and even awareness of tolerance through introducing a new subject and a textbook - Citizenship, as well as new training modules - but the Ministry of Education had to give up several times and reject certain initiatives in response to protests coming from the Georgian Patriarchate and some radically minded organizations, due to a lack of clear political will on the part of the Ministry.

The Council of Religions under the Public Defender of Georgia welcomes the decision of the Department of National Curriculum of the Ministry of Education to amend the guidelines for textbook approval and to add criteria for "compliance with legal and ethical norms" to the textbook evaluation criteria.

The Council of Religions also welcomes the Ministry's decision to include experts selected by the Public Defender, who evaluate the textbooks in accordance with legal and ethical norms.

In recent years there have been talks of introducing a new subject - “religion” into schools. In today’s situation where religion is already a source of discrimination and the school fails to adhere to the principle of neutrality, where teachers often tend to belong to different religions, bringing the teaching of religion into schools may pose serious risks.

7.1. Early and preschool education

Problem: The early years are crucial in a child’s life. The experience gained during this time will accompany the child throughout her/his life. Although the Law on Early and Preschool Education (2016) does not regulate the religious neutrality of early and preschool institutions, Article 23 states that “education for children should be provided, regardless of their physical, cognitive, sensory, social, emotional, linguistic, ethnic, racial, religious, gender or other characteristics”.

The “early, preschool and education standard” approved by the Government of Georgia in 2017 calls for sensitivity to these characteristics of preschool staff members. However, complaints to the Ombudsman and the experience of early education organizations say that kindergartens often suffer from lack of neutrality in cases of imposing religious rituals (prayers) and manifesting intolerance toward various religions. Kindergartens are designed with prayer corners. There are cases, especially in areas densely populated by religious minorities, where children are forced to engage in public prayer rituals at various religious celebrations.

The Council of Religions believes that an integral part of early years education reform, at this stage of education, should be to adhere to the principle of neutrality and embed an awareness of tolerance in children.

To the Parliament of Georgia:

- » **Amend the Law on Early and Preschool Education** and add to it the provisions regulating religious neutrality in kindergartens.

To the Preschool Education Development Department:

- » In developing an action plan, **the Division of Preschool Education** should consider the importance of adhering to the principle of religious neutrality in early and preschool institutions and provide an educational resource that will assist early education professionals in creating a tolerant environment at nurseries.
- » **The Preschool Education Development Department**, in collaboration

with the **Teacher Professional Development Center**, amended the Teacher Professional Training Module (06/29/2018; N97/n) devoting more time to the promotion of an awareness of tolerance among educators. The agents should cooperate with the Council of Religions and relevant experts in this process.

- » **The Preschool Education Development Department**, in collaboration with **the Teacher Professional Development Center**, should prepare special training modules for the directors of early and pre-school education institutions, which will increase the competence of directors in carrying out an anti-discriminatory, bullying-free, tolerant and inclusive policy.

7.2. General education - school environmental management and professional development

Problem: The Council of Religions has, from time to time, been studying existing challenges in the field of general education and issuing recommendations to the Ministry of Education.

The Law on General Education (2005) ensures religious neutrality in public schools, although the principle of school neutrality is often violated in public schools. The principles stated in the law are in contradiction with the places of worship erected around school grounds and the so-called prayer corners displayed inside school buildings. Religious rituals and common prayers are frequently performed in the classroom, and the schoolchildren are often required to attend religious ceremonies organized by the school authorities during school hours.

To avoid further tensions, representatives of religious minorities simply avoid public protests, and the Ministry has been unable for years to take effective preventive measures against such incidents. Low levels of tolerance awareness and poor management skills when dealing with an ethnically and religiously diverse classroom, as well as weaknesses in control mechanisms lead to increased discrimination, lack of religious tolerance, and the rise of indoctrination and proselytism in schools.

The Council of Religions welcomes the decision made by the National Center for Teacher Professional Development to offer teachers a training module on the issues of anti-bullying and tolerance (available since 2016) and also the Center's cooperation with the Institute for Tolerance and Diversity on starting a new joint training module – "Tolerance Lessons".

The Council, at the same time, considers it essential that there be a permanent re-training program in this area for school directors, as the role of the school principal is

to create an environment of mutual respect between teachers and pupils, teachers and parents and the staff. In general, the sensitivity of the school environment to values of tolerance is so low that it is necessary to take broader and more complex actions to change substantially the situation.

To the Ministry of Education, Science, Culture and Sport of Georgia:

- » **The Department of General Education Management and Development, together with all relevant departments and educational resource centers,** should develop an effective system for evaluating and supporting schools, including a tool for assessing school curriculum content and structural development. One of the important components of this tool should be the evaluation of and support for the school in implementing anti-discriminatory, bullying-free, tolerant and inclusive policies (the Ministry should cooperate with the Council of Religions under the Public Defender in developing the evaluation tool). While working on this process, it is important for the Ministry to ensure that members of the monitoring and support team are sensitive to ethnic and religious issues.
- » **The National Center for Educational Quality Enhancement of Georgia** must make an amendment to Annex N3, approved by the decree dated April 30th, 2013, and add a self-assessment questionnaire on the requirement of private and public schools to implement anti-discrimination, bullying-free, tolerant and inclusive policies at school.
- » **The Department of General Education Management and Development** should update the school principal's evaluation standards, and apply the requirement for competence in implementing the school's anti-discrimination policy.
- » **The National Center for Teacher Professional Development** should develop a special mandatory training program for principals that will enhance their competence in implementing anti-discriminatory, bullying-free, tolerant and inclusive policies. In developing the program, the Center will cooperate with the Council of Religions at the Public Defender's Office and its experts.
- » **The National Assessment and Examinations Center** should assess the competence of the school management in recognizing and addressing the multicultural environment experienced by candidates in the school principals' certification exams.

- » **The National Curriculum and General Education Departments** should focus on strengthening the multicultural education component in the new school model.
- » Publish educational resources on the creation of an anti-discrimination environment on the web-site of the electronic library, managed by the **Education Management Information Center**: el.ge and inform school principals, administrators, and teachers about it. Include in those resources a textbook developed by the Institute for Tolerance and Diversity - "Tolerance Lessons".

7.3. General education - textbooks and teaching religion

Problem: As mentioned above, the Department of National Curriculum of the Ministry of Education has amended the textbook approval rule and added the criteria for "compliance with legal and ethical standards" to the textbook evaluation criteria. Also, the process of writing the textbooks should involve experts selected by the Public Defender who evaluate the textbooks as being in compliance with legal and ethical norms. However, the recent decision of the Ministry of Education, which gives schools the freedom to choose any subject and include it in the main subject line, is disturbing - (Amendment to National Curriculum, August 8, 2019, No. 164 / n). Such an approach may lead significantly to the rise of confessional religious instruction in schools and soon go beyond the control of the Ministry of Education.

To the Ministry of Education, Science, Culture and Sport of Georgia:

- » **The Department of National Curriculum**, in conjunction with the Education Management Information Center, will continue to involve the representatives of the Public Defender in the process of textbook approval and ensure that subject matter experts are aware of the "criteria for compliance with legal and ethical norms".
- » **In the process of textbook approval, a team of experts from the Ministry of Education** will work with the Council of Religions of the Public Defender to verify the reliability and accuracy of information in the textbooks on religion.
- » **The Department of National Curriculum**, in view of the sensitivity of the topic of religion, should refuse to introduce religion in any form in public schools and instead to reinforce the teaching component of religions in subjects such as history and citizenship.

7.4. Higher Education

The requirement for an anti-discrimination and multicultural environment is a pressing problem for higher education institutions. The Law on Higher Education requires higher education institutions to treat students and academic staff equally (Article 16.1 (d)) and prohibits any discrimination on the grounds of religion or ethnicity (Article 3.2 (h)).

The higher education institutions of Georgia embrace students from different ethnic and religious backgrounds, as well as foreign students. They often face discriminatory and neglectful attitudes from their peers as well as from administration and academic staff.

To the Ministry of Education, Science, Culture and Sport of Georgia:

- » **The Department of Higher Education and Science Development of the Ministry of Education, Science, Culture and Sport of Georgia** should cooperate with the state institutions of higher education regarding adherence to the anti-discrimination policy and the relevant ethical code.
- » **The National Center for Education Quality Enhancement of Georgia**, in evaluating teacher training programs, should develop a criterion that will make the course compulsory in teacher training programs, which on the one hand will prepare future teachers for diverse classroom management and on the other hand provide appropriate knowledge about religions.

8. Hate speech, anti-Western propaganda, reflection of diversity, and the role of the media

In recent years, the dynamics of intolerant, xenophobic messages have been increasing. Various studies confirm that media outlets occupy the first place in hate speech sources.

The results of research on anti-Western propaganda ⁴⁶ show that, for example, in 2018 various types of messages increased, including the threat of the loss of religious identity.

In the context of the spread of religious intolerance and hate speech, the tendency toward demonization of the West on the one hand, and the positive portrayal of Russia as an alternative to the West on the other hand, become predominant.

Insufficient and unqualified media coverage of religious issues encourages xenophobic attitudes in society and produces unfair stereotypes among the citizens in this respect.

The media has social responsibility to the public, which implies the realization of its rights along with performing its duties to the public. The GPB has special responsibility in this regard, and its responsibilities are regulated by several articles of the Law on Broadcasting.

Problem: The Georgia Public Broadcasting has for many years been required to comply with Article 31 of the Law on Broadcasting and, in order to represent the public interest and needs, set up public councils authorized to draw up recommendations for the Public Broadcaster with direct public participation. Although such councils have now been established after a long delay, it is important for the public to see the results of their effective work, and their existence would not only give the impression of formal implementation of the law.

Problem: According to Article 16 of the Law on Broadcasting, the programs of the Georgian Public Broadcasting must reflect the ethnic, cultural, linguistic, religious, age and gender diversity of the society; these requirements of the law are only partially fulfilled by the GPB. The media generally lacks qualified information about religions and the contributions made by representatives of different religions to the development of Georgian history and culture.

46. Media Development Foundation, Anti-Western Propaganda, 2018. http://www.mdfgeorgia.ge/geo/view_research/169

Problem: The media rarely discusses and analyzes issues such as the root causes of xenophobia and hate speech, the replication of anti-Western propaganda, and what can be done to mitigate these trends.

To the media organizations, to the Georgia Public Broadcasting (the Channel 1 of Georgia):

- » The Council of Religions acknowledges that freedom of speech and expression is one of the most essential fundamental human rights, calling on the state to firmly uphold this right and not to interfere with media activity. At the same time, the Religious Council considers that the media has a social responsibility to the public, and therefore exhorts it to understand this and to take responsibility for ethical norms and standards for maximum self-control: to abstain from spreading information containing unreasonable, discriminatory, fake news, hate stereotypes and anti-Western propaganda.
- » The Council of Religions reckons that the public boards of the First Channel should ensure effective inclusion of different religious denominations and ethnic groups. At the same time, the channel should provide public media outlets with representatives of various religious associations with an opportunity to express their views on current events in society.
- » In general, in the media space, and in particular in Georgian Public Broadcasting, educational programs that will promote religious tolerance and raise public awareness of the principles of religious diversity and freedom of religion in a democratic environment, should be encouraged.

