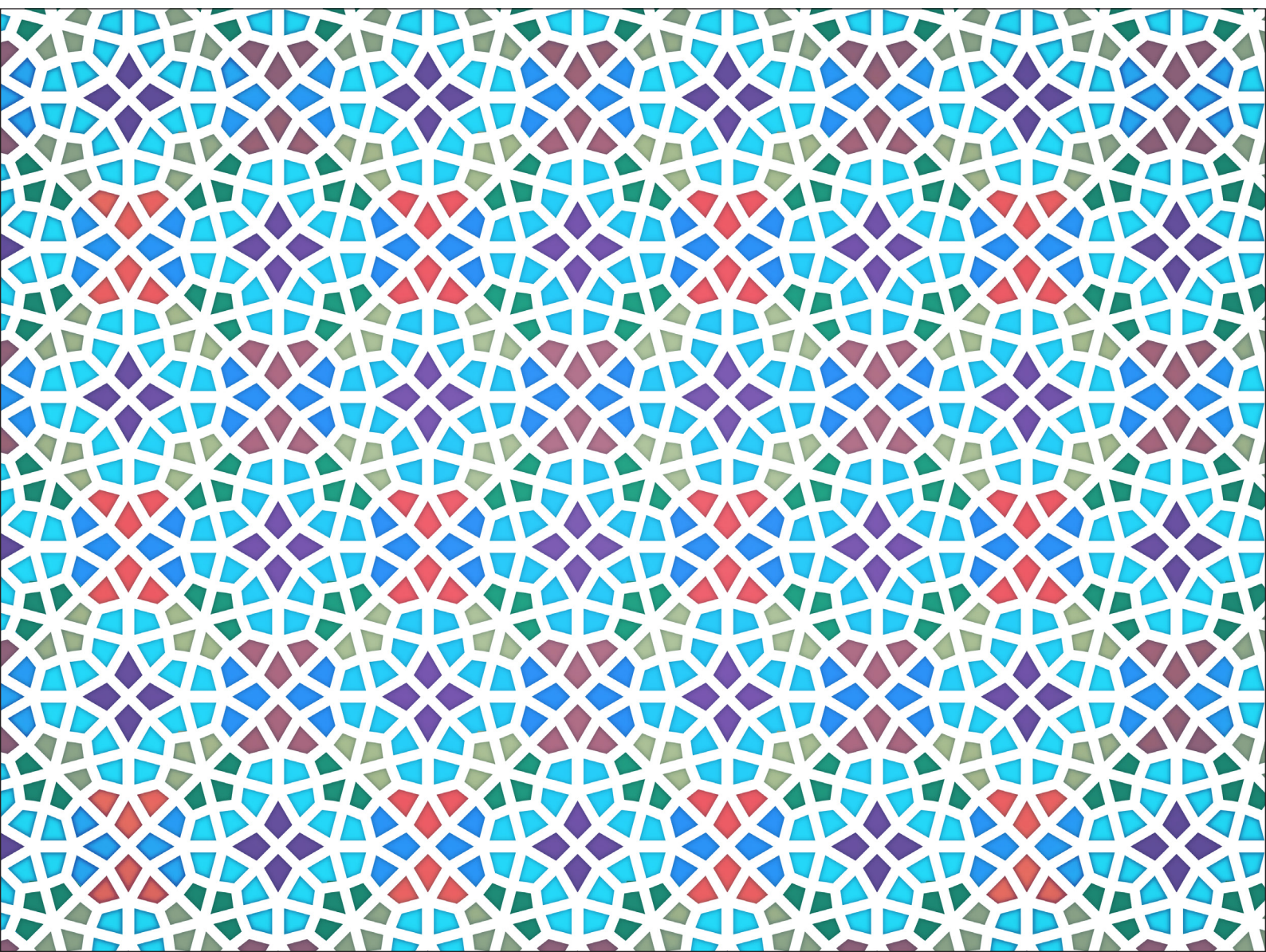




**CASES OF VIOLATION
OF RELIGIOUS FREEDOM AND
ALLEGED RELIGIOUS DISCRIMINATION**





ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

EMC

Human Rights Education and Monitoring Center

The following report is prepared by Human Rights Education and Monitoring Center (EMC) within the scope of the Supporting Freedom of Religion and Strengthening the Capacities of Religious Minority Groups in Georgia project.

This project is funded by the U.S. Embassy Tbilisi. The contents of this publication are those of the Author(s) and do not necessarily represent the views of the Department of State.

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CONTENT

CONSTITUTIONAL COURT OF GEORGIA

1. Pentecostal Church versus the Government of Georgia	5
2. Amicus Curiae regarding the constitutional claim appealing the rules of exempting religious organizations from the liability to issue public information	6

INVESTIGATION OF CRIMINAL CASES

1. The case of disproportionate use of police force and illegal detainment of Muslims in village Mokhe	8
2. The case of interference of the dominant religious group in the opening of the Muslim boarding school in Kobuleti	10

ANTIDISCRIMINATION MECHANISMS

1. General Courts	
1.1 The ongoing legal dispute on the case of the Muslim boarding school in Kobuleti against the Ministry of Internal Affairs and the representatives of dominant religious group	13
1.2 The case of alleged discrimination against Muslim person in public service on religious grounds	15
1.3 The case of dismissal of a director from the school founded by the Patriarchate on the grounds of other opinions	16
1.4 The case of delayed issuance of construction permits for the Catholic school in Rustavi on allegedly discriminatory grounds	18
1.5 The Case of Limiting Religious Freedom for Jehovah's Witnesses in Terjola with Discriminatory grounds	20
2. Public Defender	
2.1 The case of alleged discrimination against the Pentecostal Church in the process of planning the International Festival of Hope	24
2.2 A group of Students versus the Ilia State University	26
2.3 The case of alleged discrimination against persons born in Pankisi by the Tbilisi City Court	28

STRATEGIC LITIGATION ON CASES OF TRANSPARENT AND DEMOCRATIC GOVERNANCE IN RELATION TO RELIGIOUS FREEDOM

1. Appeal to the Court on the Case of the Freedom of Information Request from the University of the Patriarchate of Georgia	31
2. Lawsuit against the State Agency on Religious Affairs regarding the Mokhe religious building to the court	32

DISCIPLINARY LITIGATIONS

Review of the cases	36
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CASES OF VIOLATIONS OF RELIGIOUS FREEDOM AND ALLEGED RELIGIOUS DISCRIMINATION

During the past 2 years, the Human Rights Education and Monitoring Center (EMC) has been conducting free legal aid and strategic litigation programs for discriminated religious communities with the support of the Embassy of the United States and the Embassy of the Netherlands.

The purpose of the following document is to share information about the current cases related to violations of religious freedom and alleged religious discrimination litigated by EMC. The document includes short overview of the cases and arguments and updated information about case proceedings. As these cases reflect the gravest violations of religious freedom and reveal systemic problems, the cases and the corresponding policies of the state can be discussed as indicators of the situation in terms of religious freedom. The newsletter discusses 20 cases; the used legal mechanisms include the Constitutional Court (2 cases), criminal investigation (2 cases), courts (7 cases), and the Public Defender (3 cases). On the remaining 6 cases, EMC has submitted appeals to different public agencies.

I. CONSTITUTIONAL COURT OF GEORGIA

1. Pentecostal Church versus the Government of Georgia

Case Description: The following case questions the discriminatory and non-secular character of the compensation of four religious organizations (Muslim, Jewish, Catholic and Armenian Church communities) for the damages caused by the Soviet regime, which consecutively creates grounds for state control over religious organizations.

The essence of the dispute and justification: EMC has submitted a constitutional claim in the Constitutional Court of Georgia on behalf of the Pentecostal Church. The claim refers to the unconstitutionality of the Governmental Decree “On the Approval of Rules for Partial Compensation of Religious Groups Existing in Georgia for the Damages Caused by the Soviet Totalitarian Regime” due to inconsistency with Article 14 (Equality Principle), Article 21 (Property Right), and Section 9 of Article 42 (The right of Fair Compensation of the Damage Caused by the Government). Based on the decree, four religious organizations (Muslim, Jewish, Catholic and Armenian Church communities) will receive symbolic compensation for the material and moral damage suffered during the Soviet period. The plaintiff indicates that limiting the Compensation to only four religious organizations is discriminative; it does not envision a similar legal approach towards other religious organizations that had also been affected, materially and morally, during that period. The Plaintiff argues that the disputed act creates grounds for unjustified differentiation of other groups in the same situation. Such approach of the Government entails risks of hierarchization of religious organizations.

In addition, the plaintiff indicates that the Decree does not determine the methods for calculating the damage and compensation. Without fair and and impartial criteria of damage compensation, the current regulation comes into conflict with the constitutional principle of secularism and creates serious risks of intervention in the autonomy of religious organizations.

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Case progression: Currently, the Constitutional Court is considering the admissibility of this claim and studying the damage caused to the plaintiff during the defined period. The first hearing over this case has been held and the second hearing, during which the scholars of theology and history will be interviewed, has been planned. It has to be underlined that the defendant Government indicated in its position that the damage compensation regulation was applied only to so-called major religious organizations. The latter classification is per se discriminative and does not stem from religious preconditions.

Significance: As a result of this case, the Constitutional Court will have to discuss the principle of secularism and determine relevant legal standards. The Court is also expected to question the legitimacy of the state approach of hierarchizing religious organizations. The definition of the principles underlying the interrelations between the state and religious organizations will lead to fundamental refinement of the existing state policies of financing religious organizations, including the Georgian Orthodox Church.

2. Amicus Curiae regarding the constitutional claim appealing the rules of exempting religious organizations from the liability to issue public information

Case Description: The Plaintiff is appealing the clauses of the General Administrative Code of Georgia that exempt religious organizations holding a Legal Entity of Public Law (LEPL) status from the liability to issue public information on their financing, leading to absolute non-transparency of the financing policies.

The essence of dispute and justification: EMC submitted the legal opinion of Amicus Curiae regarding the claim of *Giorgi Kekenadze, Nino Kvetenadze and Besik Gvenetadze versus the Georgian Parliament* (#618). The claimants question the constitutionality of the clauses of the General Administrative Code of Georgia in relation with Article 41 of the Georgian Constitution, which state that religious unities with the LEPL status are exempt from the liability to share public information within the scope of their funding.

The legal opinion of Amicus Curiae indicates that the privilege granted by the General Administrative Code to religious

organizations considered as Legal Entities of Public Law makes it totally impossible to obtain public information on state funding of religious organizations. This, in turn, is an unjustified and disproportionate restriction to the freedom of information. Amicus Curiae opinion of EMC provides comprehensive assessment of the financing regulations for the Georgian Orthodox Church, as well as for four religious organizations (Islamic, Jewish, Roman Catholic and Armenian Apostolic religious entities with the status of LEPL) based on the January 27, 2014 Governmental Decree. The opinion indicates that these funding practices represent the model of direct state funding of religious organizations, rather than damage compensation, as declared in constitutional agreement between the state of Georgia and Orthodox church of Georgia and other relevant legal acts. This model comes into conflict with the constitutional principle of secularism. Considering that financing of the Georgian Orthodox Church is not subject to any kind of state supervision, and that the Church is exempt from the liability to share public information of state funding, the funding process is left out of any public control. The non-transparent legal framework of religious organizations threatens the democratic and secular nature of the Government and contains serious risks of state interference in the autonomy of religious organizations.

Significance: If the appeal is satisfied, religious organization will be held liable to issue public information regarding the activities implemented under their financing, which creates the preconditions for democratic and transparent governance. During the case discussion, the Constitutional Court will probably have to assess the existing models of financing of the Orthodox Church and four other religious organizations and determine whether they fall under the confessional or direct financing models.

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II. INVESTIGATION OF CRIMINAL CASES

1. The case of disproportionate use of police force and illegal detainment of Muslims in village Mokhe

Case Description: The case includes the facts of illegal detention and use of disproportionate force against the representatives of the Muslim community during the massive police measures planned in village Mokhe (municipality of Adigeni). More specifically, on October 22, 2014 the Main Division of the Samtske-Javakheti regional police carried out a large-scale police operation for reconstruction works in the disputed religious building in village Mokhe. During the peaceful demonstration of local Muslims against the demolition of the building, the police unlawfully arrested 14 Muslims (11 people detained under Administrative Code and 3 detained under the Criminal Code). In some cases, the police used obviously disproportionate force. The police force was used during detention and after transportation to the police department, when the Muslims were under immediate police control. For Example, Teimuraz Mikeladze, the representative of Adigeni municipality in village Mokhe, was severely beaten by police officers during detention. He was also a victim of violence after being transported to the police department. According to the witnesses, the police officers used hate speech against Muslims during the process.

The essence of dispute and justification: In the given case, EMC argues that unlawful arbitrary detention of Muslim citizens and disproportionate use of police force was in place. EMC protects the interests of each detainee during the investigation.

On December 2, 2014, following a statement by EMC, the investigative unit of the Samtskhe-Javakheti Prosecutor's Office initiated an investigation on the basis of article 353 of the Criminal Code, on alleged abuse of power.

At the first stage of the investigation, interrogations were held with each Muslim detained on October 22, 2014, confirming the abuse of force from police officers. The information obtained by EMC from the Borjomi temporary detention isolator justified that detained Teimuraz Mikeladze, had physical injuries. Also EMC presented before the investigation

the medical files from Geo Hospital, Ltd. Mr. Mikeladze was transferred to this hospital by the recommendation of a doctor in the temporary detention isolator. The medical files also confirmed Mr. Mikeladze's injuries.

By the initiative of EMC, other neutral witnesses of the events of October 22, 2014 were questioned (up to 14 witnesses). EMC served as a lawyer during the interrogation. The witnesses confirmed the facts of arbitrary detention and abuse of Muslims, as well as the use of hate speech against them.

After studying the above-mentioned factual circumstances, EMC, requested the Samtkhe-Javakheti Prosecutors Office to grant the victim status to Teimuraz Mikeladze; this would enable Mr. Mikeladze to benefit from the rights of a victim envisaged by the Procedural Code of the Criminal Law and to thereby effectively control the investigation process. The solicitation was rejected by the Prosecutor, and then challenged through the single appeal right to the supervising prosecutor, who also rejected the motion. EMC submitted such requests 3 times, at different stages of the investigation, but without any results.

It is unclear which standards of proof are used by the Prosecutor's Office while granting the victim status. The Prosecutor's Office indicates that two standards should be confirmed: it should be demonstrated that the crime was committed beyond reasonable doubt and that the person was indeed affected. The current Criminal Procedural Code does not include any standards for granting the victim status. Requirement of double standards complicates the possibilities to prove and deprives individuals from the victim status in an unsubstantiated manner, thereby also depriving them from effective participation in the investigation process. What is more, in the given case, evidence clearly points to damage, while the ongoing investigation already includes reasonable doubt.

As of today, the details of the investigation progress are unknown for the detained Muslims. The absence of victim status does not allow them to interfere in the investigation process. Despite strong interest towards the case, the Prosecutor's Office refuses to provide EMC with the details of investigation proceedings. EMC is already preparing an application to submit to the European Court of Human Rights.

Significance In the given case, EMC claims that Muslim community members were arbitrarily detained and the police used disproportionate force, interfering in a peaceful gathering of the community. At this point, the investigation about abuse of police power is not adequate to effective investigation standards. According to EMC, the refusal to use legal actions against dominant groups in identical cases and obvious repressiveness to the Muslim community by the Government (considering the case of Tchela) creates grounds to conclude that the policy of the Ministry of Internal Affairs (hereinafter MIA) is discriminative.

2. The case of interference of the dominant religious group in the opening of the Muslim boarding school in Kobuleti

Case Description: The following case relates to demonstratively ineffective policy of the state on the cases of obstructing the opening and further activities of the boarding house for Muslim pupils in Kobuleti on discriminatory and islamophobic grounds.

Since September 10, the local population of Kobuleti has been hindering the Muslim community from opening the boarding school for Muslim pupils. On September 10, 2014, they expressed their protest by placing a head of a pig on the gate of the boarding school. On September 15, they started organizing protest gatherings at the entrance of the boarding school and on the first day of school, threatened and insulted the Muslim pupils and the boarding school administration and forced them to leave the school.

Since then, the local Christian population has been controlling entry to the boarding school and forbidding Muslims from opening the building. The police failed to effectively react on the mentioned facts, eliminate the identified facts of law violation and to ensure the opening and secure functioning of the building.

EMC is litigating a criminal case, requesting to provide effective investigation. The organization also appealed to the court on the basis of the Law on the Elimination of All Forms of Discrimination.

The essence of dispute and justification: Since 2014, EMC has been referring to the MIA and Prosecutor's office on behalf of the victims. EMC provided detailed description of the cases of maltreatment of Muslim community from local

the refusal to use legal actions against dominant groups in identical cases and obvious repressiveness to the Muslim community by the Government (considering the case of Tchela) creates grounds to conclude that the policy of the Ministry of Internal Affairs (hereinafter MIA) is discriminative.

Christians, as well as negligence and ineffective action from the representatives of the Kobuleti Police Division of the Adjara Autonomous Republic. EMC requested effective, comprehensive and impartial treatment of the case regarding the facts of persecution of Muslim community members by individuals. It also requested assessment of the lawfulness of police intervention in the mentioned events. EMC also requested that the case be sent to the Prosecutor's Investigative Unit of Adjara to secure the principle of institutional independence.

In response to EMC's request, MIA informed that according to Article 151 of the Criminal Code, the Ministry is investigating only the case of threat. Specifically, this relates to the incident of September 10, 2014, when an unidentified person threatened to burn the building of the boarding school. The investigation does not consider the consecutive acts of violation of property rights, freedom of movement, and right to education, which continue to this day. In this regard, it should be noted that the investigation rejected EMC's request to change the status of the legal case and proceed on the basis of Article 156 of the Criminal Code (persecution). The investigation also refuses to study the cases of professional negligence of the police division representatives, which they justify by the MIA General Inspection Report that does not confirm the fact of violation of law by police officers.

EMC's request to transfer the case to the Prosecutor's Office for investigation was also rejected by the Chief Prosecutor. Despite the fact that dozens of people were questioned regarding the information of MIA, representatives of the Muslim community were questioned only after 9 months, when the EMC had already submitted the claim against MIA and certain individuals on the basis of the Law of Georgia on the Elimination of All Forms of Discrimination. The representatives of the Muslim community still do not have the victim status. Despite the request from EMC, the investigation did not carry out the inspection of the territory.

Given such circumstances, EMC claims that current investigation of the criminal case is not adequate to the standards of effective and independent investigation.

The case clearly shows discriminatory approach of the state, when the latter reveals demonstrative irresponsiveness to the intolerance of the dominant religious group and legitimizes the expressed hatred and social violence.

Significance: The case represents the grossest and most continuous occasion which the government has been unable to resolve, regardless of the assessments of numerous international organizations. The case clearly shows discriminatory approach of the state, when the latter reveals demonstrative irresponsiveness to the intolerance of the dominant religious group and legitimizes the expressed hatred and social violence.

III. ANTIDISCRIMINATION MECHANISMS

1. General Courts

1.1. The ongoing legal dispute on the case of the Muslim boarding school in Kobuleti against the Ministry of Internal Affairs and the representatives of dominant religious group

The essence of the dispute and justification: EMC has filed a claim in Batumi court based on Law of Georgia on the Elimination of All Forms of Discrimination, in the frames of special legal proceedings of the Civil Code. The claim refers to follow-up negative interference in student activities of the boarding school in Kobuleti. The claim filed on behalf of the school Director and one of the students' parents is against MIA and a certain individual, who, according to the Plaintiffs, organized the gatherings of the local Christian population and regularly interfere negatively in the activities of the boarding school.

In the given case, the plaintiffs allege that the defendant carried out discriminatory treatment against the plaintiffs due to religious hatred and intolerance and aimed at further obstructions not only against the opening, but also against further activities of the boarding school. The defendants and their organized groups do not allow the plaintiffs to benefit from their rights of property, freedom of movement, freedom of religion, and right to education. During several months, the members of the above-mentioned organized group took duties to control the movement of the employees and beneficiaries of the boarding school; they practically restricted entrance to the building. During the process, they used threats, hate speech, and expressed islamophobia and turkophobia.

The plaintiffs allege that the Ministry carries out its responsibilities in a discriminatory manner. In particular, MIA expressed absolute negligence toward the actions of defendants and their organized groups, illegal actions incited by religious hatred and violation of lawful property rights. As of today, it is still not possible to open the boarding school. The plaintiffs indicate ineffective handling of actions such as killing a pig in front of the Muslim boarding school and hanging the head of

The litigation of the Kobuleti case in the court represents an attempt to resolve through judicial mechanisms. In case of effective performance of the national mechanisms of legal protection, the mentioned precedent will strengthen the process of fighting for civil rights of the Muslim community. In turn, the case will reveal the main problems and perspectives of the enforcement of the Law on the Elimination of all Forms of Discrimination.

the pig on the entrance door.

The plaintiffs also point to the ineffective policy of MIA regarding other violations of the rights of the Muslim community by the representatives of the dominant religion (e.g. Nigvziani, Tsintskaro, Samtatskaro) and demonstration of the repressive policy of MIA specifically towards the Muslim community (Chela, Mokhe), which confirms religious discrimination and differentiation from the Ministry.

In the given case, the plaintiffs request the elimination of discriminatory actions of defendants, facilitation of opening and proper functioning of the boarding school by the MIA, and symbolic compensation of moral damage in the amount of 1.00 GEL.

Case progression: The claim was sent to the court by EMC on December 9, 2014. However, the city court of Batumi violated the law by ignoring Chapter XLIV⁹ of the Civil Code regarding the special procedural regime for the cases of discrimination. Instead of classifying as procedural defect, the court did not consider the case due to technical reasons. In response to this decision, EMC appealed to the Court of Appeals, which considered the appeal and returned the case to Batumi City Court for consideration. Under these circumstances, the proceeding was delayed by 3 months.

Through solicitation of plaintiff, Batumi City Court carried out on-site inspection and questioned more than 14 police officers. Employees of the Public Defender's Office and the Georgian Young Lawyers Association were also interviewed. On the next hearing, it is planned to question the representatives of Muslim community and the Kobuleti municipality.

Significance: The recent cases of social violence against Muslims have been, in certain cases, resolved through political negotiations, and in others – conserved. The litigation of the Kobuleti case in the court represents an attempt to resolve through judicial mechanisms. In case of effective performance of the national mechanisms of legal protection, the mentioned precedent will strengthen the process of fighting for civil rights of the Muslim community. In turn, the case will reveal the main problems and perspectives of

the enforcement of the Law on the Elimination of all Forms of Discrimination.

1.2. The case of alleged discrimination against Muslim person in public service on religious grounds

Case Description: Based on the Law of Georgia on the Elimination of All Forms of Discrimination, EMC submitted an administrative claim against the Adigeni municipality in the Akhaltsikhe District Court on behalf of Teimuraz Mikeladze. The claim argues that Mr. Mikeladze was a victim of discrimination. Mr. Mikeladze used to be a representative of Mokhe Municipality Administrative Unit. On October 22, 2014, during the police demolition of the religious building, police officers physically assaulted him both on site and after detention, in the police department.

The essence of the dispute and justification: On March 27, 2015, recruitment commission for Adigeni Municipality local government officials rejected T. Mikeladze on the post of representative of the Mokhe Administrative Unit. Instead, the local government appointed a local Christian, who, in contrast to the plaintiff (and other Muslim candidates), did not qualify for the established requirements of the position. Among the contestants, Mr. Mikeladze was the only one whose qualifications matched the necessary and additional requirements.

The interview with the requirement commission was merely a formal proceeding. The analysis of the interview minutes and decisions shows that the decision made by the recruitment commission was not justified; it is impossible to define the circumstances and reasons that commission relied on while making the final decision.

In the given case, the plaintiff claims that he was rejected the position due to his involvement in the October 22 and following events and his public statements regarding the case. This was the continuation of the repressive and discriminative policy of the Government against the Muslim community. It has to be noted that in each Administrative Unit of the Adigeni Municipality, except for the village Mokhe, the same representatives were re-assigned. As it was confirmed during court hearing, excluding two villages where the Muslim community represents the absolute majority, not a single

As it was confirmed during court hearing, excluding two villages where the Muslim community represents the absolute majority, not a single Muslim is employed in local municipality of Adigeni, clearly illustrating the existing discriminatory practices related to the employment of Muslims in public services.

Muslim is employed in local municipality of Adigeni, clearly illustrating the existing discriminatory practices related to the employment of Muslims in public services.

Case Progression: On October 13, 2015, the Akhaltsikhe City Court published its decision rejecting the appeal. The court did not consider the special rule for cases for discrimination and the evidences of discriminatory treatment; the testimonies of the representative of the Public Defender, the director of the Tolerance and Discrimination Institute (TDI), and the third Muslim participant of the competition were not reflected in the court order. EMC argues that the ruling of the court of first instance is unsubstantiated and clearly illegal. The organization has already appealed to the Court of Appeals of Tbilisi.

Significance: The case reveals discriminatory policy of the local government and the MIA against Muslims in Village Mokhe. The protection of Mr. Mikeladze's rights represents an attempt to criticize the current policy and to establish the truth. The protection of the plaintiff's rights will establish a good precedent for the fight of Muslims for their civil rights. In addition, the case highlights the existing discriminatory policy which hinders the representatives of the Muslim community from employment in public service.

1.3. The case of dismissal of a director from the school founded by the Patriarchate on the grounds of other opinions

Case Description: The case refers to the facts of dismissal of the Executive Director of the school founded by the Patriarchate on discriminatory grounds. On behalf of Maia Lapiashvili, EMC filed an appeal to the Signaghi Regional Court on the case of dismissal from the position of the Executive Director of St. Vakhtang Gorgasali Boarding School in Dedoplistskaro on allegedly discriminatory grounds. According to the Director, she was dismissed because she attended a training organized by the Tolerance and Diversity Institute (TDI).

The essence of the dispute and justification: The Defendant (the Boarding School) has been founded by the Patriarchate of Georgia, and according to its statute, its main purpose is to support the development of Free Christian individuals with Universal Common Values.

On May 15, 2015, Maia Lapiashvili was appointed as an Executive Director in Academic Affairs of the Boarding School; since then, had been fulfilling her duties in a due manner. The lawsuit between her and the Boarding School Administration began from September this year, when the School Director, Bishop Dimitri (Kapanadze), asked the Plaintiff to write a personal statement about leaving the institution, citing low confidence towards her. According to the explanations of the Plaintiff and other witnesses, Bishop Dimitri noted that low confidence towards Lapiashvili was caused by her attendance on the “Culture of Tolerance” training, organized by the Tolerance and Diversity Institute (TDI). According to the clarification of the Plaintiff and other witnesses, the Bishop explained that since among the attendees of the training were Rusudan Gotsiridze, the Bishop of the Baptist Evangelical Church and theologist Beka Mindiashvili, Ms. Lapiashvili should not have attended the training without the Bishop’s blessing. The Plaintiff added that the Bishop referred to Beka Mindiashvili and Rusudan Gotsiridze as “enemies of the Patriarchate.”

Ms. Lapiashvili refused to terminate her employment contract on the basis of her personal statement. After that, on September 8, 2015, the staff position of the Executive Director in Academic Affairs was eliminated through the Order of the School Director. On the above-mentioned grounds, Maia Lapiashvili was dismissed from her position without any further substantiation or compensation.

The analysis of case materials shows that the elimination of the staff position of the Executive Director in Academic Affairs did not contribute to the organizational transformations necessary for the School and represented the abuse of power from the School Administration with the aim of creating legal grounds for the dismissal of Maia Lapiashvili.

In the appeal, EMC argues that the dismissal of Maia Lapiashvili due to her attendance on the training organized by the Tolerance and Diversity Institute represents the violation of the principle of equality guaranteed by the Constitution of Georgia and personal discrimination on the grounds of “other opinions.”

The request of the appeal is to declare void the Order about the elimination of the staff position and unilateral termination of the employment contract, as well as the elimination of the consequences of discriminatory treatment of Maia Lapiashvili and her reinstatement on the previously held position. The court already started hearings on this case.

Significance: The case will create grounds for interesting practices of enforcing the Law on the Elimination of all Forms of Discrimination. During the hearing, the court will have to create a relevant definition of discrimination on grounds of “other opinions” and will also have to assess the limitations to the autonomy of religious organizations in the sphere of employment.

1.4. The case of delayed issuance of construction permits for the Catholic school in Rustavi on allegedly discriminatory grounds

Case Description: EMC submitted an administrative appeal against the Rustavi City Hall on behalf of the “Caucasus Apostolic Administration of Latin Catholics.” The Plaintiff appealed against the unsubstantiated refusal of the City Hall to issue a construction permit for a Catholic church in Rustavi and notes that the refusal was caused by discriminatory approach.

The essence of the dispute and justification: Since April 16, 2013, the “Caucasus Apostolic Administration of Latin Catholics” has been trying to obtain construction permit to build a Catholic church on the land registered under its properties in the 9th Micro District in Rustavi.

Until now, the Rustavi City Hall has set the requirements for using land for construction, which represents the first stage of issuing construction permits. The Catholic Church has approached the Rustavi City Hall and the City Assembly with the request for a construction permit. However, the permit has not been issued and no argumentation has been given; the process of discussing the request has been effectively suspended.

The decision of July 7, 2014 of the Rustavi City Court is also worth noting. In the decision, the Court noted that in cases of issuing construction permits, “silence means consent.”

This principle means that if the agency authorized to issue construction permits has not issued the permit and/or substantiated refusal within the terms determined by the law, the permit is considered issued and the applicant can request the issuance of construction permit certificate. Therefore, the Court considered the non-issuance of the permit (silence) by the Rustavi City Hall and the City Assembly as the issuance of construction permit for the religious building.

Based on this decision, the Catholic Church approached the local government of Rustavi on numerous occasions, requesting the issuance of the construction permit. The Rustavi City Hall ignored the requests. Until now, the Catholic Church has received no written response to its applications.

Part of the local Orthodox parish actively protested against the discussion process on the mentioned issue. In addition, the problem of open loyalty of public officials to the dominant religious group was identified several times. For example, around 50 representatives of the Orthodox Church parish, together with the members of the Rustavi City Assembly and the employees of the City Hall, attended the oral administrative session on the issuance of the construction permit to the Catholic Church, held in the Rustavi City Hall on December 12, 2014. The attendees, including the clergymen of the Orthodox Church and the members of the City Assembly, noted that they would not allow the construction of a Catholic Church in Rustavi. They presented information materials with discrediting statements directed at the Catholic Church.

Later, the Government initiated political negotiations with the Catholic Church. In July 2015, the Governor of Kvemo Kartli met the representatives of the Catholic Church and pledged to solve the problem. The Mayor of Rustavi also attended the meeting and offered the Church alternative lands of the municipality property. However, these lands were located in the extreme peripheries of the city, and for this reason, the Church declined the offer. It is worth noting that the State Agency on Religious Affairs was also actively involved in the negotiations; however, the Agency failed to act as a moderator and ensure effective fulfillment of its recommendations.

It is worth noting that in the recent period, the facts of hindering the processes of constructing religious buildings have acquired systemic character. Due to opposition from the dominant religious group, local municipalities often refuse to issue construction permits for minority religious organizations or hinder/elongate the process in different forms.

Taking into account the factual circumstances, EMC requests the elimination of the consequences of discriminatory actions of the Rustavi City Hall and the order to issue construction permits for the Catholic Church.

It is worth noting that in the recent period, the facts of hindering the processes of constructing religious buildings have acquired systemic character. Due to opposition from the dominant religious group, local municipalities often refuse to issue construction permits for minority religious organizations or hinder/elongate the process in different forms. Gross violation of law requirements related to religious neutrality and construction permits by the local government hinders the enjoyment of religious freedom by religious minorities. While the state has not restituted the religious buildings and religious assets confiscated from the religious minorities during the Soviet era, the hindrances in the process of constructing new religious buildings further deepens the existing discriminatory policies.

The case is currently under discussion and the court has to discuss the issue of admissibility of the complaint.

Significance: The mentioned case has special importance for supporting the Church, especially in the context of the restitution of religious buildings to the Catholic Church and discriminatory policies of construction of new Churches. The mentioned case will set a precedent for peaceful resolution of similar conflicts in favor of human rights. During the hearing, the court will have to assess the performance and mandate of the State Agency on Religious Affairs in relation to the construction of the religious building.

1.5. The Case of Limiting Religious Freedom for Jehovah's Witnesses in Terjola with Discriminatory grounds

In the beginning of June 2014, the local population self-identifying as Orthodox Christians, and several representatives of the Orthodox Church protested against the construction of King's Hall by Jehovah's Witnesses in Terjola. The director and teachers of Public School N2 of Terjola actively participated in organized protests. During a protest demonstration on June 3, the Governor of the Terjola municipality stated

that the demonstrators had no reasons to worry, since the decision would be made in their favor. He also added that the construction of King's Hall was ongoing in blatant violation of the legislation and labeled the area as seismically dangerous without any relevant geological surveys. On June 3, 2014, one of the local residents submitted an administrative appeal to the municipality, arguing that the construction of King's Hall would have negative impact on his house. Based on the mentioned appeal, the local government automatically suspended the construction permit issued earlier, and the community of Jehovah's witnesses was forced to discontinue construction works.

Even after six months since the appeal, the municipality has not made its final decision on the case, thus delaying the construction process. Even though the local municipality had collected all relevant evidence on the case, including the conclusion of the Levan Samkharauli National Investigation Bureau, which confirmed that the private property of the plaintiff faced no risks, the administrative body delayed the final decision. Considering the above-mentioned, the Christian Organization of Jehovah's Witnesses appealed to the court. The courts of first and second instance accepted the arguments of Jehovah's Witnesses regarding the violation of due dates of discussing administrative appeals and the renewal of construction permit, but did not accept the plaintiff's assessments regarding discriminatory treatment. Currently, the case is under discussion in the cassation court.

In the given case, the EMC was working in two directions:

1. A possible case of discrimination from the local municipality through illegal suspension of construction works and delaying the decision on the administrative appeal:

Due to illegal suspension of the construction of the King's Hall, violation of the terms of review of the administrative appeal, and attempts to delay the decision by the local governments, Jehovah's Witnesses decided to apply to the Court within the Special Legal Framework on Discrimination Cases included in the Administrative Procedures Code of Georgia. In the given case, EMC maintains constant coordination with the Jehovah's Witnesses and conducts meetings and legal consultations with them.

In order to strengthen the evidence of discrimination in Appeal Courts of Kutaisi and Zestaphoni, EMC requested inclusion and participation as a third party in case hearings; however, none of the courts satisfied the request. This precedent was essential for the advocacy of the legislative gap that prevented non-governmental organizations from participating in the discussions of discrimination cases. The identification of the mentioned problem and its confirmation with relevant practices made it possible to include relevant additions in the Administrative Procedural Code to enable NGOs to submit *amicus curiae* motions.

Even though the request to be involved as a third party was not satisfied, EMC prepared its written position on the case, which was annexed to the plaintiff's appeal as evidence.

It is worth noting that EMC documented the religious conflict in Terjola and appealed in writing to the Chief Prosecutor, the Ministry of Internal Affairs, the Public Defenders Office, the State Agency on religious Affairs, the State Minister of Reconciliation and Civic Equality, the Head of Terjola City Council, and the Governor of Terjola. The organization demanded reaction from these institutions and the examination of the facts of abuse of power by the investigation.

Jehovah's Witnesses appealed the decision of the Kutaisi Court of Appeals to the Supreme Court, and EMC is now planning to submit *amicus curiae* motion to the cassation court.

2. Facts of organized participation of the school administration and students in the hate-based demonstration:

EMC appealed to the Internal Audit Service of the Ministry of Education to examine the case and impose disciplinary sanctions against the director, teachers and students of Public School N2 of Terjola for organized participation in the gatherings motivated by religious hatred. However, the Internal Audit Service did not satisfy EMC's request, arguing that the collected evidence did not prove disciplinary violations from the school administration.

EMC appealed the refusal by the Internal Audit before the superior administrative body, the Minister of Education and Science, and requested annulations of the act by Internal

Audit and renewal of the case. However, the Minister refused to discuss the administrative appeal with the argument that the organization did not represent a relevant stakeholder. The decision made by the Ministry on the mentioned case clearly illustrates the absence of political will to effectively fight against the practices of indoctrination and violation of religious neutrality in public schools.

After the unsubstantiated decision of the Ministry of Education, the organization submitted a substantiated, in-depth appeal to the Public Defender based on the Law on the Elimination of All Forms of Discrimination, requesting the investigation of the case. The Public Defender is currently studying the case and has not yet made a decision.

2. PUBLIC DEFENDER

2.1. The case of alleged discrimination against the Pentecostal Church in the process of planning the International Festival of Hope

Case Description: Based on the law on the Elimination of All Forms of Discrimination, EMC submitted an application to the Public Defender's Office on behalf of the Pentecostal Church regarding the facts of allegedly discriminatory treatment from the Palace of Sports and advertising agency Outdoor during the International Festival of Hope.

The essence of the dispute and justification: The International Festival of Hope, organized by the Pentecostal Churches of Georgia, the Billy Graham Evangelical Association, and a Georgian non-profit organization, Imedi ("hope") International Festival, was scheduled for June 6-8th, 2014, in the space of the Palace of Sports. The organizers signed the lease agreement with the management of the Palace of Sports on May 30, 2013, a year in advance, and pre-paid service fees. The organizers also signed a contract with Outdoor, an advertisement company, in order to place advertisements about the Festival.

Despite the signed agreements, throughout the organization process, the organizers encountered essential hindrances and discriminatory treatment during the fulfillment of contractual obligations.

Case materials reveal that Outdoor failed to fulfill its contractual obligations completely. For example, the company removed promotional material from the Kakheti Highway and Rustaveli Avenue. Outdoor management explained its behavior by citing the directions given by the Prime Minister, who apparently did not want 'unpatriotic' posters on the way to the airport.

According to lease agreement signed with the Palace of Sports, the Palace was to be transferred to the Festival of Hope for the dates of June 4-8. On June 3, a fire broke out in the hall of the Palace. Although the fire was extinguished in ten minutes, the management of the Palace of Sports considered the event a Force Majeure and refused to fulfill its contractual responsibilities. Despite repeated requests from the organizers,

the administration of the Palace of Sports did not allow their experts into the hall to assess the risks. Expert conclusion showed that the fire had not influenced the sustainability of the facility. Due to the refusal of the administration of the Palace of Sports to fulfill their contractual obligations, the organizers had to conduct a small-scale event in the yard of the Pentecostal church.

The context preceding the Festival of Hope is important. On May 30, 2014, the Patriarchate made a special announcement, distancing itself from the Festival and emphasizing that it was not among the organizers. On June 2, 2014, the day before the fire, Giorgi Gabedava, the leader of a religious extremist group, stated that he would hinder and protest against the Festival, since the event involved non-Orthodox sermons.

After finalizing the process of evidence examination and witness testimonies, EMC submitted the application to the Public Defender's Office to study the issue and establish the fact of discrimination.

Case Progression: On December 21, 2015, after 9 months of discussion, the Public Defender made a decision to discontinue litigation with a formal argument. Specifically, according to the Public Defender, since the relevant party to the contract with defendant organizations was the Billy Graham Evangelical Association and not the Pentecostal Church, the Church could not have been discussed as a victim of alleged discrimination. Even though EMC submitted its substantiation, pointing at the relevant case laws, in which the organization argues that considering the public interests of fighting against discrimination, the status of a victim of discrimination should be defined more broadly and if the case under discussion directly influences the rights situation of a specific person, the person should be considered as an alleged victim of discrimination by the Public Defender. Regardless of the mentioned reasoning, the Public Defender did not share the arguments of the Plaintiff and defined the status of victim of discrimination in a narrow and formalistic manner. It is worth noting that even though the Public Defender's Office made the decision on the case after 9 months, the factual circumstances related to discrimination had not been examined in detail. In this regard, the case illustrated the problem of nonexistence

The mentioned case became an pure precedent of narrow and formalistic definition of the victim status. In addition, the case is interesting as it highlights the inefficiency of the existing anti-discrimination mechanisms for private persons. In this regard, the factual conservation of the case already indicates the weakness of the competence of the Public Defender towards private persons during the discussion of cases of discrimination.

of the obligation of private persons to share information with the Public Defender, which hindered the Public Defender from comprehensively examining the facts. EMC is planning to re-appeal to the Public Defender with the request to revise the decision.

Significance: The mentioned case became an negative precedent of narrow and formalistic definition of the victim status. In addition, the case is interesting as it highlights the inefficiency of the existing anti-discrimination mechanisms for private persons. In this regard, the factual conservation of the case already indicates the weakness of the competence of the Public Defender towards private persons during the discussion of cases of discrimination.

2.2. A group of Students versus the Ilia State University

Case Description: In this case, EMC is defending the interests of Ilia State University before the Public Defender. On December 24, 2012, a group of students applied to the Rector of the Ilia State University (hereinafter- “University”) and required the allocation of administrative resources to conduct a course of public lectures by Deacon Teodore Gignadze, the Leader of the Ascension Church. The application noted that the students were interested in issues related to the Orthodox Christian faith. According to the application, during several years, Deacon Gignadze is invited to different learning institutions to conduct open lectures on theological issues; his lectures, the application noted, are very popular among students. The author group required monthly allocation of the Conference Room to organize meetings with the Deacon. The application stated that the meetings did not involve religious rituals or services. The application was signed by 4 500 students.

In response to this application, the University administration invited all stakeholders to the meeting and presented their arguments for the decision to refuse the request on the organization of public lectures by Deacon T. Gignadze. To alternatively satisfy interests about theological issues, the administration offered organizing an open course of lectures in theology, inviting best lecturers in the theological tradition and restructuring the Master Program on Theology or Religious Studies.

The decision of the University to refuse the organization of public lectures by Deacon T. Gignadze was based on the Rule of Inviting External Individuals to the Ilia State University and Event Procedures, approved

The defendant claims that the evidence of discrimination is manifestly ill-founded, since the plaintiff cannot indicate unjustified differentiated treatment of essentially equal individuals on the basis of discrimination.

through Minutes of Meeting #107 of the Ilia State University Academic Council. According to the document, events should comply with several requirements, inter alia, they should serve the purposes of learning and research and respect the principles of academic freedom. It is forbidden to organize events that have discriminatory character or violate the rights of any individual or group, regardless of the social, ethnic, religious, language-, and ideological affiliations.

The essence of the dispute and justification: On the mentioned case, EMC submitted two overviews related to the appeal. The defendant claims that the evidence of discrimination is manifestly ill-founded, since the plaintiff cannot indicate unjustified differentiated treatment of essentially equal individuals on the basis of discrimination. The plaintiff cannot show that after the rule of November 28 2014 came into force, the University enabled public lectures or sermons by any representatives of other denominations with no academic degrees. Furthermore, the University does not hinder theological learning in the University, as confirmed by the contents of lectures offered by the University to the students. Moreover, other Christian, including Orthodox Christian, individuals do conduct lectures in the University. In these conditions, the Defendant considers that the case proceedings fail to comply with the competences envisioned for the Public Defender according to the Law on the Elimination of All Forms of Discrimination. According to the Defendant, the refusal to allocate University space to Deacon T. Gignadze was prescribed by the rule approved by the University Academic Council on November 28, 2014. The mentioned regulation complies with the requirements of accessibility and foreseeability. The University explained the basis for the decision and the existing limitations used in the T. Gignadze case to the applicants. In addition, the University responded to the students' interests in studying religion with systemic measures. It is also noteworthy that Deacon T. Gignadze does not have an academic degree and cannot even satisfy the formal requirements for the decision of November 28, 2014. In addition, as demonstrated through discourse analysis of his speeches, his sermons carry the connotations of hate speech, which was explained and analyzed in depth in the response.

The regulation of hate speech in the University and the creation of a secular, free academic environment is a legitimate interest

The regulation of hate speech in the University and the creation of a secular, free academic environment is a legitimate interest which complies with the conceptions of human rights and equal and legal state.

which complies with the conceptions of human rights and equal and legal state. According to internal rules and academic standards, the University enables and supports lectures and speeches related to theology, including Christian theology.

Case Progression: EMC has already submitted two objections on the case. The Public Defender is planning an oral hearing, which will be scheduled in the nearest future.

Significance: The case has special significance for the protection of the autonomy of the university and an environment free from hate speech and religious indoctrination in academic space.

2.3. The case of alleged discrimination against persons born in Pankisi by the Tbilisi City Court

On December 3, 2015, on behalf of the persons living in Pankisi Gorge, EMC appealed to the Public Defender and the High Council of Justice of Georgia with the request to study the case of alleged discrimination towards them by the Judge of the Tbilisi City Court.

The Tbilisi City Court is discussing the criminal cases of Ayuf Borchashvili, Giorgi Kh., Giorgi K. and Davit Ph. They are charged with crimes under Article 3271 (recruiting a person as a member of a terrorist organization or for carrying out terrorist activities) and Article 328 (Joining a foreign terrorist organization or a terrorist organization controlled by a foreign state or supporting this organization in terrorist activities) of the Criminal Code.

The first court hearing on the case was open, but the following hearings were partially closed by the decision of the judge. On November 25, 2015, the judge ordered only the persons born on the territory of the Pankisi Gorge to leave the hearing. The decision was based on the argument presented in the motion of the prosecutor. The hearing involved questioning of witnesses living in Pankisi who had to testify against Ayuf Borchashvili; according to the motion, considering the authority of the criminal defendant and the purposes of protecting personal safety of the hearing participants and their family members, closing of the hearing was necessary. The judge checked IDs of the attendees and asked only the persons having Pankisi as

their birthplace to leave the hearing.

According to complaint, by limiting the right of attending the hearing only to persons born in Pankisi (which essentially relates to the specificities of their ethnic background and religious identity), the judge used the rule of partial closure illegally, on the grounds of predetermined discriminatory stereotypes. During the decision-making process, the judge did not evaluate the expected concrete risks to the participants and did not assess whether these risks were substantive or reasonable. The court considered the Pankisi population as a whole, in an abstract manner, as a risk factor for the safety of attendees and through such generalization, discriminated against the persons born in Pankisi. The mentioned decision contributes to the continuation of the existing discriminatory policy and islamophobic attitudes towards the Muslim population of Pankisi and furthers their marginalization.

Due to the above-mentioned, EMC requests that:

- The Public Defender study the fact of alleged discrimination by the judge and issue a relevant recommendation due to the violation of the requirements of the Law on the Elimination of All Forms of Discrimination;
- The High Council of Justice study the alleged disciplinary misconduct of the judge of the Criminal Cases Panel of the Tbilisi City Hall and impose appropriate punishment.

Progress: The High Council of Justice has not reacted adequately on the mentioned case. On December 17, 2015, the Public Defender refused to proceed on the case with the argument that the Public Defender is not authorized to assess the commitment of discriminatory acts by a judge. In the substantiation, the Public Defender pointed to Article 3 of the Law on the Elimination of All Forms of Discrimination, according to which the law requirements also apply to the activities of public services, organizations, and physical and legal persons in all spheres, but only in the cases when these activities are not regulated under other legislative acts. EMC considers that the Public Defender's substantiation is superficial and pointing to the mentioned Article was not relevant, since the discussion of the case by the High Council of Justice should not be considered as an instrument equivalent

The jurisdiction of assessment by the Public Defender on discrimination by the court on the basis of the anti-discrimination law needs serious examination and the discontinuation of litigation on the mentioned case with a formal argument creates a bad, underestimated precedent.

to an anti-discrimination mechanism, since both cases had independent legal bases, requirements, and law restoration instruments. The jurisdiction of assessment by the Public Defender on discrimination by the court on the basis of the anti-discrimination law needs serious examination and the discontinuation of litigation on the mentioned case with a formal argument creates a bad, underestimated precedent.

IV. STRATEGIC LITIGATION ON CASES OF TRANSPARENT AND DEMOCRATIC GOVERNANCE IN RELATION TO RELIGIOUS FREEDOM

1. Appeal to the Court on the Case of the Freedom of Information Request from the University of the Patriarchate of Georgia

Case description: The following case relates to the issue of publicizing the information related to state financing of the University subordinated to the Patriarchate.

The essence of the dispute and justification: In October of this year, EMC appealed to the Tbilisi City Court Panel of Administrative Cases with the appeal requesting to order the St. Andrew the First-Called Georgian University of Patriarchate of Georgia to satisfy the Freedom of Information (FOI) Request.

The St. Andrew the First Called Georgian University is an entity of private law, founded by the Patriarchate of Georgia. Under the grant program supporting religious education, the University received assistance of 4,000,000 GEL from the state budget in the year of 2014-2015. In addition to the mentioned amount, the University received 1 million GEL from the Government Reserve Fund in 2015, with the purpose of supporting teaching and research degrees.

EMC is interested what events the University financed through the state funds. Therefore, on September 8, 2015, EMC approached the University with a FOI application, requesting the following information:

1. What programs and events were implemented by the University using the funds of the state budget in 2014 and 2014? Relevant expense reports, for 2014 and 2015 individually, about the expenditure of allocated funds and related purposes.
2. Were any additional state budget funds allocated to the University from January 1, 2014 to this date, from the reserve funds by the President of Georgia or other administrative organs?

In case of positive response, copies of relevant documents of the transfer of money and information about the expenditure

of allocated funds and related purposes.

3. Information about the number of students enrolled in the Bachelor-, Master- and Doctoral Degree Programs of the University.

It is worth noting that the Georgian legislation relieves religious organizations with the status of Legal Entity of Public Law (LEPL) from the obligation of issuing public information. However, in this case, the mentioned regulation does not apply to religious organizations with different legal-organizational forms or subjects founded by LEPL religious organizations. Therefore, if they represent public entities, they have the obligation to issue the requested public information.

In the mentioned case, since the University is financed through state funds, it represents a public entity and since the appeal of EMC was related to the expenditure of the mentioned funds, it had the obligation to issue the requested information within the period prescribed by law. Regardless of the mentioned obligation, the University did not issue the information or provide substantiated reasons for its refusal.

Due to the above-mentioned, EMC will try to obtain the requested information from St. Andrew the First Called Georgian University through its appeal submitted to the Tbilisi City Court.

Significance: EMC considers it necessary to ensure the transparency of the expenditure of state budget funds. In order to ensure such transparency, each agency, founded by the state or not, should have similar obligations to ensure the accessibility of public information to any interested parties, especially in the circumstances of high societal interest to the state financing of subjects founded by religious organizations.

2. EMC has filed a lawsuit against the State Agency on Religious Affairs regarding the Mokhe religious building to the court.

Case description: In October 2015, EMC filed a lawsuit to the Tbilisi City Court regarding its FOI request to the LEPL State Agency on Religious Affairs. The lawsuit relates to the activity of the Commission

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founded by the Agency with the purpose of studying the circumstances related to the disputed religious building located in village Mokhe and registered under the properties of the local municipality as a 'club.'

According to the local Muslim community, the building registered as a club is a mosque that was confiscated from the Muslim community during the Soviet regime. According to their clarifications, the location of the building, Muslim tombs in the village yard, the minaret entrance envisioned in the building and the traces of Muslim ornaments on the walls confirms that the disputed building is an old mosque. Therefore, the Muslim community has been trying to reclaim the religious building for years.

The mentioned building has been disputed between the local population and the municipality since October 2014, when a tender was announced on the rehabilitation of the disputed building under a status of 'library,' on the basis of the decision of the Adigeni local government. The mentioned decision was followed by peaceful protest from the local Muslim community. On October 22, 2014, the MIA planned a massive police operation to ensure forceful execution of the decision. During the operation the police arbitrarily arrested several people and used disproportionate force towards some of them.

It is worth noting that after the public discussions about the building, the Patriarchate declared that the building used to function as a Christian church and the construction of the mosque was commenced but never completed. According to the local Orthodox community, the mosque is built under a Christian Church and it is unacceptable to reinstate it as a mosque.

In order to study the circumstances related to the disputed building and prepare relevant recommendations as necessary, an "Investigation Commission on the Circumstances Related to the Building listed with a Club Status in the village Mokhe of the Adigeni Municipality" was founded on December 27, 2014 under the initiative of the State Agency on Religious Affairs. The Commission includes 12 representatives of 6 parties, 4 of which represent administrative organs: 1. LEPL State Agency on Religious Affairs; 2. Governor of the Adigeni Municipality; 3. LEPL State Agency for the Protection of Cultural Heritage;

and 4. Governor of Samtskhe-Javakheti; and 2 others are the representatives of the Muslim and Orthodox communities.

Even though the Commission has been active for almost a year, no official outcomes of its activities have been communicated. The activities of the Commission are closed to all stakeholders, including the Public Defender.

The Commission is closed to EMC as well. The organization applied to the Agency on August 17, 2015, with the FOI request on the following issues:

1. How many Sessions have been held in the period since December 27, 2014 until today? Copies of agendas and minutes of the sessions, if available;
2. Has the issue of returning the disputed building to the historical owner been discussed during the working process of the Commission?
3. The methodology defined by the Commission to study the historical-confessional background of the disputed building in village Mokhe and the participation of the Agency in this process. Any documents reflecting the relevant methodology, if available;
4. On how many occasions were any experts/specialists invited to the Commission sessions since December 27, 2014 until today? Information about first and last names and qualifications of the experts/specialists and the tasks assigned to them by the Commission. Copies of researches, recommendations, and other documents prepared by the mentioned experts/specialists about the disputed building, if available;
5. Have any research studies/recommendations/other documents been prepared by the initiative of the Agency regarding the historical-confessional background or cultural value of the disputed building in village Mokhe of the Adigeni municipality. Copies of the mentioned documents, if available;
6. What kinds of decisions, documents, etc. have been prepared by the Commission since December 27, 2014 until today about the historical-confessional background or cultural value of the building? Copies of the mentioned decisions/documents/etc.;
7. Have any funds been allocated from the budget funds of

the Agency and/or other administrative organs to support the activities of the Commission (expenses associated with the invitation of experts/specialists, administrative and other expenses). In case of positive response, information about the amount of the allocated funds and the copy of the decision regarding the allocation of state funds;

8. What stage of the process is the Commission working on and when is the issuance of the final recommendation planned?
9. The dates, agendas and minutes of any meetings of the Agency with Christian and Muslim communities under the activities of the Commission; letters with similar requests have also been submitted to other administrative organs participating in the Commission.

The Agency refused to issue the requested information with the argument that the Commission does not represent a public entity and therefore, does not have the obligation to issue public information. With the mentioned response, the Commission inadequately evaluated the information requested by the plaintiff; to specify, through its letters, EMC requested the issuance of public information related to the Commission by the Agency, under its authority, rather than the issuance of public information by the Commission.

It is worth noting that such closure of the Commission's activities by the Agency hinders the initiation of public discussions on the mentioned issue and represents a non-democratic, non-transparent procedure of decision-making.

Due to the above-mentioned, EMC will try to support the openness of the Agency performance through court decision on the appeal against the Agency.

Significance: The mentioned case will set important standards for the state-founded commissions that have de-facto public authority but are not subject to public scrutiny due to their formal status. The imposition of the liability to issue public information related to the activities of such commissions is especially important for the monitoring of the State Agency on Religious Affairs, which is a closed agency and often uses para-legal instruments. In turn, obtaining information about the activities of the commission will enable EMC and the public at large to adequately assess its ineffectiveness.

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V. DISCIPLINARY LITIGATIONS

Review of the Cases

EMC has submitted 6 appeals to different public agencies on the issue of violations of religious neutrality and requests to prohibit hate speech, including:

1. The organization appealed to the Ministry of Education regarding the participation of the director and teachers of Public School N2 of Terjola in the demonstration against Jehovah's Witnesses, motivated by religious hatred, and required relevant disciplinary liability towards them. Despite applying to the supreme administrative body, the Ministry did not confirm the violation of the requirements of the Law on General Education in the case under discussion. After completing the litigation, EMC applied to the Public Defender on the basis of the Law on the Elimination of All Forms of Discrimination. According to EMC, such cases facilitate the creation of an intolerant and non-secular environment in public schools, which, in turn, leads to the cases of indoctrination and proselytism; as a result, it is essential that the Public Defender react in a timely manner and issue recommendations to the Ministry of Education and the Public School N2 of Terjola. The Public Defender is still discussing the application.

2. **The case of violating religious neutrality** by the Head of Social Division of the Correction Department: During the baptism ceremony of a Turkish citizen, the Head of the Department said: "one of our convicts, who is a Turkish citizen, but is one of us and is historically Georgian, today returned to his origin, his roots, his breed and gene and was baptized as an Orthodox Christian." The ritual of baptism and the statement by the Head of the Division was placed on the website of the Ministry of Correction and Probation. In the video, the official said that by baptizing the convicts, his division carries out an important mission.

Based on Public Service Act, and in particular, the principle of the secular nature of public service, EMC appealed to the appropriate official of the Ministry of Corrections to request an appropriate response, but was rejected with the argument

on the predominant role of the Orthodox Church as defined in the Constitutional Treaty. EMC appealed the mentioned decision to the supreme administrative body; however, EMC was rejected with the argument that the organization did not represent an appropriate plaintiff and the case under discussion did not affect its legal situation.

3. The case of institutional participation of the Ministry of Internal Affairs in the religious worship service - Public officials in police uniforms collectively participated in the event to receive blessing. The video clip of the event was posted on the official website of the Ministry and demonstrated that the public officials belong to the dominant religion. EMC appealed to the Ministry to start disciplinary proceedings related to the incident. However, the Ministry concluded that no violations were present in the case.

4. EMC also appealed to the Ministry of Internal Affairs on the case of gross violations of the Law on Police by high-level police officials in the case of the manifest of street artists near the Patriarchy. Specifically, on January 4, street artists Mariam Natroshvili and Gvantsa Jishkariani wrote 25 000 000 in black stencil on the territory near the Patriarchate in Tbilisi and the Philharmonic Concert Hall, protesting the non-secular and discriminatory practices of financing the Orthodox Church. On January 8, the Head of the Police Department N1 of Old Tbilisi summoned Ms. Natroshvili and Ms. Jishkariani to the Police Unit on the Tabukashvili Street. The policeman did not inform Ms. Natroshvili about her status or the case for which she was summoned. In the Unit, they were accepted by policemen and 3 employees of the Security Service of the Patriarchate. When Ms. Jishkariani and Ms. Natroshvili requested a lawyer, the policemen informed them that a lawyer would not be needed since the questioning was not ongoing yet and the criminal case was not proceeding.

The Head of the Police expressed interest in Ms. Natroshvili's and Ms. Jishkariani's faith and asked if they were Christians or wore crosses.

As Ms. Jishkariani notes in her explanation, since the representatives of the Patriarchate regularly engaged in the discussion and "lecturing," she had the impression that there

were two parties present in the office: on one side, it was her and Ms. Natroshvili, and on the other – the representatives of the police and the Patriarchate, to which the Head of the Police told them: **“Imagine that you are one side and we represent the rest of Georgia.”**

The Head of the Police told Ms. Natroshvili and Ms. Jishkariani that it was the will of the Patriarch that they remained unpunished and therefore, the police was interested not in punishing someone or reacting to a particular crime, but wanted to find out why a Georgian, an Orthodox Christian would want to put such inscriptions in front of the entrance of the Patriarchate on Patriarch’s birthday.

Legal assessment of the factual circumstances of the case shows that during the discussion, the policemen were interested not in the violation of any articles of the Administrative Code, but rather, in the religious beliefs of Ms. Natroshvili and Ms. Jishkariani and self-identified with the dominant religious group. According to EMC, the policemen violated the requirements of the Law on Police regarding the protection of the secular character of public service.

EMC’s request that the MIA investigate the violations by the Head of Police of Old Tbilisi and certain other officials and conduct disciplinary proceedings was not satisfied due to inconsistency.

5. On September 19, 2015, the so-called “Bergman Gang” attacked two black citizens on the Rustaveli Avenue in Tbilisi and physically assaulted them on grounds of racial belonging. An employee of EMC witnessed the fact and informed a law enforcer. The employee was taken to the police unit as an eyewitness. In the unit, a policeman used hate speech against black citizens and expressed interest why the employee called the police. Even though the police was informed about the facts of racial discrimination on September 19, the investigation was not initiated until the alleged perpetrators publicized a video recording of the attack via social media, which was followed by societal outrage. Only after this, the Old Tbilisi Police Unit commenced the investigation. As for the facts of hate speech used in the police unit on September 19, 2014, EMC sent the detailed explanation to the MIA General

Inspection and demanded response. As the official letter of the General Inspection shows, the fact was not proved by internal investigations, however, the staff received serious warnings to protect human rights.

6. On the basis of the information acquired through pilot studies in religious communities, EMC requested the Ministry of Education and Sciences to conduct monitoring on the cases of alleged religious indoctrination and proselytism in 10 schools in Georgia. The facts referred to the systemic violations of the principle of secularism in public schools and the usage of religious attributes in schools, as well as the involvement of pupils in religious service and, in certain cases, the marginalization of religious minorities. The Ministry studied the request of EMC, but did not establish violations in any of the cases. EMC also addressed the Department of Equality of the Public Defender, requesting monitoring to identify alleged discriminatory practices and the underlying reasons. On this issue, EMC has gone through official communication with the Department, which is still studying the matter.