

Chapter 1. Protection of Freedom of religion in 2017-2019

This chapter of the report aims to summarize the situation in terms of protection of religious freedom in 2017-2019, how the state policy and practice developed to protect religious freedom and equality, as well as the principle of a secular state. It should be mentioned, that every important challenge and problem of the state policy towards religious minorities will be independently analyzed in the following chapters of this report.

The situation in terms of protection of religious freedom has not substantially improved in 2017-2019. The systemic and institutional problems that were repeatedly criticized in the assessments of international or local human rights organizations are still relevant. Also, this period was not positively distinguished in terms of the restoration of rights and justice in individual cases. Legislative and executive authorities several times demonstrated damaging initiatives for freedom of religion and equality, including on the stage of constitutional amendments.

The reforms initiated at the Ministry of Interior Affairs and Prosecutor's Office related to the policy of combating discriminatory crimes can be assessed in part positively, including, the establishment of a Department for Human Rights Protection and Monitoring of Investigation Quality in the Ministry of Internal Affairs in 2018, which, among other competencies, will coordinate and monitor hate crime policies. Despite the positive institutional reforms in the system, the investigation of the continuing persecution on religious grounds has not advanced so far.

An important event in terms of positive development was the two decisions made by the Constitutional Court of Georgia regarding the Tax Code and the Law on State Property.¹ In July 2018, the Constitutional Court of Georgia in these cases made important statements related to the equality and unreasonable preferences granted to the Orthodox Church. In particular, the court declared unconstitutional the Tax Code provision, which exempts from VAT payment the construction, restoration, and painting of temples and churches ordered by the Patriarchate (Article 168, Part 2, Subparagraph B). The disputed norm put the Georgian Patriarchate in an advantageous position and made it possible to purchase services on more favorable terms. Also, the court declared unconstitutional the provision of the Law on State Property, which provides for the possibility of transfer of state property free of charge only to the Apostolic Autocephalous Orthodox Church of Georgia (Article 6 (3) paragraph 1). According to the court's reasoning in both cases, the recognition of the special role of the Church is related to its historical merits and does not serve to create a privileged legal status for the Orthodox Christian religion in the present. The historical merits cannot be undertaken as a legitimate source of existing privileges. Differentiation and creation of privileged legal conditions to the Church are not and cannot be the constitutional goal. [...] granting certain rights to the Church does not mean to obstacle exercise with similar rights for other religious organizations. In relation to both constitutional complaints, the constitutional court indicated that eradication of discrimination was possible via cancellation of discussed privileges, or via its uniform application to substantially equal persons. The unconstitutionally

¹ Constitutional Court Granted Two Complaints of Religious Organizations, available at: <http://tdi.ge/ge/news/600-sakonstitucio-sasamartlom-religiuri-gaertianebebis-ori-sarcheli-daakmaqopila>; The judgment of the Constitutional Court, 2018, 3 July, N1/2/671; The judgment of the constitutional court, 2018, 3 July, N 1/1/811;

recognized norms were declared invalid since 31 December 2018. Despite the progressive decisions supporting the equality of religious organizations, they are not still reflected in the relevant legislative acts by the Parliament of Georgia. However, the Parliament and the Executive branch also actively considered other proposals and initiatives that would have detrimental consequences for religious freedom and equality, which will be discussed in more detail below.

1.1. Institutional and systemic problems

During the reporting period, the systemic and institutional problems that were criticized until 2017 were still relevant. Among the systemic problems remains the preference of the Georgian Orthodox Church at the level of legislation and policy and the granting of privileges different from other religious organizations. Such problems were identified in the reports of the United States Department in 2017, 2018, and 2019.² The privileged situation of an Orthodox Church is reflected in the practice of financing, transfer of movable and immovable property on central as well as on self-government levels. The privileges are also reflected in the state's restitution policy, which creates unequal conditions for other religious organizations. On the other hand, domination is strengthened on the legislative level, which was partially recognized as unconstitutional.

The signs of intervention in the activities of the Administration of Muslims of All Georgia

The practice of excessive control of religious organizations and gross interference in their activities by the state was evident in 2017-2019 as well. Such practice seems particularly acute on the example of the Administration of Muslims of All Georgia. The influence of the State Security Service (SSS) on this religious organization in previous years was also indicated by other Muslim organizations, as well as human rights organizations.³ Administration of Muslims of All Georgia was often criticized to be directed and under the control of State authorities, which does not express the real interests of the Muslim community in the crises, nor holds institutional independence.

Critical questions were raised on control signs, when all of a sudden, in the conditions of the forced election process, on 25th December of 2019, a new mufti of western Georgia in the Administration of Muslims of All Georgia was elected in Batumi.⁴ The non-transparent and hasty election process caused serious dissatisfaction in the Muslim community, including, three employees who left the Administration as a sign of protest. According to them, the election was held under pressure from the State Security Service and, disregarding democratic procedures, SSS preferred candidate was chosen. In general, the

² US State Department Report on Freedom of Religion in Georgia, 2017; -<https://emc.org.ge/ka/products/ashsh-is-sakhelmtsifo-departamentis-angarishi-sakartveloshi-religiis-tavisuflebis-kutkhit-arsebul-mdgomareobaze-1>; US State Department Report on Freedom of Religion in Georgia, 2018, <https://emc.org.ge/ka/products/ashsh-is-sakhelmtsifo-departamentis-spetsialuri-angarishi-sakartveloshi-religiis-tavisuflebis-mdgomareobas-afasebs>; US State Department Report on Freedom of Religion in Georgia, 2019; <https://emc.org.ge/ka/products/ashsh-is-2018-tslis-angarishi-sakartveloshi-religiis-tavisuflebis-shesakheb>;

³ How the state tries to control Muslim organizations? EMC, 26 November, 2015. available a <https://emc.org.ge/ka/products/rogor-tdilobs-sakhelmtsifo-muslimuri-organizatsiebis-gakontrolleba>

⁴ What does the new Mufti say on the possible involvement of State Security Service in the election; <https://netgazeti.ge/news/417680/>;

organizational arrangement of the Administration and the study of election procedures demonstrate its weaknesses and signal high risks of political instrumentalization.⁵

At first sight, the power is decentralized within the organization, however, major governing competencies are concentrated in the hands of the Executive Director, appointed for uncertain time and of the Founding Board of variable composition, which is dependent on no other branch of power.⁶ In addition to the general problems in the governing system, the processes that emerged during the 2-day elections in December 2019 were alarming. The authority of the Mufti of Western Georgia Beglar Kamushadze expired in November 2019. Nevertheless, it was not known in advance to the members of the Administration when the elections of a new mufti would be held. The information about the elections for the members of the religious council became known only the night before the elections, on December 24. The former employees of the Administration declared that it was late last night during a telephone conversation when the members of the religious council were informed to whom they should support in the elections. According to them, the elected mufti Adam Shantadze stated in private conversations with them that he was not going to vote for this position. Also, members of the religious council did not have the opportunity to express their free will under open voting conditions. Former employees of the Administration also recall the case of illegal communication of a State Security Service employee due to criticism towards the election process.⁷ This case of gross interference in the activities of a religious organization has deepened the perception in the Muslim community that the state is openly interfering in the activities of a religious organization.

The work of the State Agency in Religious Issues (SARI)

Among institutional problems, the activities of the State Agency in Religious Issues (SARI) is still actual. The agency, founded under a government decree in 2014 to address challenges to religious freedom, has appeared that its work falls far short of understanding human rights standards and its functions are focused on controlling religious organizations and supporting the dominant religious group. This is evidenced by the fact that so far no progressive initiative has been voiced by the Agency to promote equality on religious grounds and freedom of religion. On the contrary, the agency often brought back to the agenda the regressive ideas and initiatives related to security, hierarchization, and interference of religious organizations. This was manifested, for example, when Agency supported the constitutional amendments to the article on freedom of religion, on basis of which it would be possible to interfere in the freedom of religion to protect state security. This initiative was not implemented as a result of active advocacy and engagement of the Venice Commission, local and international human rights actors, as well as of religious organizations. Apart from this, the Agency actively lobbied the adoption of the Law on Religion, which itself contained the risks and interests of limitation of religious organizations and interference in their activities. This initiative will be analyzed in detail in Chapter 2 of this report.

It is noteworthy, that the establishment of the Agency was preceded by the religious conflicts that emerged before 2014, which indicates that the Agency was originally intended to resolve conflicts by strengthening control. It is also obvious that the state, including SARI, has not taken positive steps to restore trust between religious communities in any of the religious conflicts in different regions of

⁵ Elections in the Administration of All Muslims of Georgia, EMC, 30 December, 2019. <https://emc.org.ge/ka/products/archevnebi-sruliad-sakartvelos-muslimta-sammartveloshi>

⁶ ibid.

⁷ ibid.

Georgia. The Agency has mainly advisory functions within its mandate, especially in the context of transferring property to religious associations, although, also, this body has important powers in determining religious policy. According to the Human Rights governmental Action Plan for 2018-2020, SARI is the main responsible body in the executive branch. A report by independent human rights adviser Maggie Nicholson on the progress of Georgia's human rights strategy for 2014-2020 states that the agency, as the major responsible authority for freedom of religion, enjoys low confidence, indicating the need to review its status.⁸

Also, the Council of Europe Commission against Racism and Intolerance (ECRI) in its interim report published on 5 March 2019 placed critical emphasis on SARI.⁹ ECRI considers that the Georgian authorities have not complied with the recommendations made in the fifth periodic review of 1 March 2016. In particular, despite the Commission's recommendation, co-operation has not been strengthened with the Council of Religions set up within the Public Defender's Center for Tolerance, which is a more representative body and enjoys greater trust among religious organizations. The Commission assessed in 2019 that there are still no examples of communication and cooperation between the Religious Agency and the Council, which would be necessary for the Agency to regain some trust from religious organizations.

At a time when a low level of public trust in the SARI is evident and it is also heavily criticized by international partners, it is still a key player from the executive branch within the Human Rights Action Plan. On the other hand, systemic problems may also include the content of the Human Rights Action Plan, which does not meet the real challenges that have existed for years in terms of protecting religious freedom.¹⁰ Amongst these challenges is the obligation to eradicate discriminatory provisions in the legislation, including according to the judgments of the constitutional court in 2018; the obligation to develop legislation, mechanisms, and policies for the return (restitution) of property confiscated from religious organizations/communities during the Soviet period; a duty to facilitate the elimination of discriminatory practices in the construction of religious buildings; the obligation to review the funding practices of religious organizations and the commitment to equality in the process; the responsibility to resolve current and ongoing religious conflicts and eliminate social alienation between religious communities. Eight cases of religious intolerance of social nature were revealed in Georgia since 2012 - Nigvziani (2012), Tsintskaro (2012), Samtatskaro (2013), Chela (2013), Kobuleti (2014), Mokhe (2014), Adigeni (2016), Terjola (2014).

Neither the agency nor any other government body was found to be working to restore trust between religious communities, and in 2017-2019, new sources of conflict emerged in Shida Kartli - Dzama Gorge, Adigeni Municipality - in the villages of Kikibo and Dertseli. The agency has not taken a responsibility to mediate in any of these tense situations. At the same time, the Agency was inactive in solving the problem related to the construction of a new mosque in Batumi. It was not actively involved in the

⁸ Maggie Nicholson, Implementation of the National Strategy for the Protection of Human Rights in Georgia, 2014-2020 Progress, Challenges and Recommendations as to Future Approaches, 2019, pp. 37-38.

⁹ ECRI Conclusions on the Implementation of the Recommendations in Respect of Georgia Subject to Interim Follow-up, adopted on 5 December, 2018, Published on 5 March, 2019, Available at:

https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680934a7e?fbclid=IwAR3LpX9rD6dS9J8MZwZ-ZGq_eSOLDaRrVYO8kxFPR6gnTKU7D04r_czH3yA

¹⁰ Protection of Religious Minorities - Report on the monitoring of the implementation of human rights strategies and action plans for 2016-2017, EMC, October, 2018. <https://emc.org.ge/en/products/religiuri-umtsiresobebis-datsva-adamianis-uflebata-datsvis-strategiebisa-da-samokmedo-gegmebis-shestrulebis-monitoringis-angarishi>

negotiations that took place in parallel with the trials between the Batumi Municipality and the Mosque Construction Fund, and if the agency was involved anywhere, it took problematic positions.

One of the manifestations of systemic and institutional problems was the decision made by the Agency regarding the mosque in the village of Mokhe in Adigeni Municipality. The conflict between the Christian and Muslim communities in Mokhe in 2014 over the disputed mosque was resolved by the Agency in 2017.¹¹ The decision of the Mokhe Commission set up under the auspices of the Agency was an attempt to preserve the conflict at the expense of human rights rejection, and it is legally and socially problematic for several reasons. The Agency did not assess the historical and confessional origins of the disputed building and tried to conserve the conflict with a political solution to the issue. According to the Commission's decision, the disputed building was transferred to the state and was granted a status of cultural heritage. Apart from this, a land plot was transferred to the Administration of All Muslims of Georgia for a new mosque. Via such a political solution, the Agency tried to remove the issue from the human rights area and had not created a precedent of legal resolution of similar disputes.¹² It is noteworthy, this was the only religious conflict where the Agency tried to resolve the problem, while in other cases, it was not even engaged as a mediator, as prescribed under its mandate. The critical assessment of the Agency's mandate and activities is represented in Chapter 3.

1.2. Discriminatory policy of funding the religious organizations

One of the challenges to protect the rights of religious minorities is existing non-secular and discriminatory funding practices. The signs of non-secular policies and instrumentalization of the Patriarchate for political purposes are most evident in the practice of funding. The practice of financing is a way of gaining the loyalty of the Patriarchate in the hands of the government, which in many cases damages the democratic process and also involves the risks of using the church for political purposes.

The study showed that in addition to the annual budget subsidies in 2016-2018, the practice of transferring financial and property resources to the Patriarchate through other mechanisms is increasing.¹³ Comparing to 2016-2017, in 2018 the amount of property transferred to the Patriarchate had increased. According to the information of LEPL National Agency for State Property, it becomes evident that in 2016-2018, not only the land plots that were its historical property but also other land plots registered in the state ownership was transferred to the Orthodox Church. The real estate is being transferred to the Patriarchate's ownership at a symbolic price, for 1 GEL, or completely free of charge. The state usually never indicates the purpose for which it transfers the property, nor determines the market value before the transfer. Therefore, it is unknown what value the real estate is transferred to the Georgian Patriarchate annually.

¹¹ Joint statement of NGOs concerning violation of Muslims' rights in village Mokhe, EMC, 23 October, 2014: <https://emc.org.ge/en/products/gantskhadeba-mokheshi-musliimta-uflebebis-ukheshi-darghvevis-taobaze>

¹² EMC assesses the final decision of the Mokhe Commission, EMC, 12 May, 2017, <https://emc.org.ge/en/products/emc-mokhis-komisiis-saboloo-gadatsqvetilebas-afasebs>

¹³ The government of Georgia continues to transfer large amount of immovable property to the Patriarchate. EMC, 29 March 2019. <https://emc.org.ge/ka/products/sakartvelos-mtavroba-agrdzelebs-sapatriarkostvis-didi-odenobit-udzravi-konebis-gadatsemis-praktikas>

It should be noted, that in addition to the growing trend of real estate transfers, the traditionally dominant religious organization continues to receive additional subsidies from the central or self-government budgets. The transfer of these funds, without any legitimate public purpose, takes place almost regularly.

It should also be noted that, apart from the Patriarchate, 4 other religious organizations receive funding.¹⁴ Although the funding of these organizations is nominally aimed at compensating for the damage caused during the Soviet period because the state does not have objective criteria for damages and calculation of the compensation according to the number of parishioners, clergy, religious buildings, the funding is ongoing under the logic of direct subsidies, which violates the principles of the secular state. It should be noted that the state has excessive control over the funding process of the four religious organizations, checks the purpose of funding and the appropriateness of the expenditure, and, if necessary, leaves the leverage for its suspension or termination. At the same time, when funding in some cases is a weapon to influence over religious organizations, this condition worsens a general picture. Apart from this, such a funding policy does not include other religious organizations, which may also have been harmed during the Soviet period, creating a substantially unequal and discriminatory situation.

Discriminatory Policy of Restitution

Although religious organizations, for several decades, have been raising the issue of returning religious buildings confiscated from them during the Soviet era, the state has not taken any responsive measures, and legislation and policies related to restoration have not yet been developed. Under a constitutional agreement with the Georgian Orthodox Church in 2002, the state recognized the patriarchate's ownership (Article 7) over the Orthodox churches, monasteries (active and inactive), their ruins, and the land on which they are located, throughout Georgia. However, the state has not made the same decision about other religious organizations, which is why other religious organizations do not own even the traditional religious buildings where they worship. Clearly, in such circumstances, the fate of religious buildings that are not under the actual ownership of a religious organization or are disputable is more critical. It should be noted that since 2014, the State Agency has been transferring religious buildings to religious organizations with the right to temporary use. However, this process is fragmental, inconsistent, and, most importantly, it does not lead to the recognition of organizations' ownership of this property. The absence of restitution legislation and policies is linked to the interest of protecting and restoration of cultural heritage beyond the protection of property rights. The large part of the non-refunded property has high historical and cultural value and is actually at the risk of destruction and loss of authenticity.

A manifestation of the inequality of restitution policy is the transfer of a historical Armenian Tandoyants Church to the Patriarchate.¹⁵ Although the Human Rights Action Plan set out obligations to resolve disputes over disputed places of worship, a new case of dispute over a historical worship place arose during the reporting period. In particular, on July 10, 2017, the LEPL National Agency of State Property revoked the state ownership of real estate where the historic Armenian Church of Tandoyants is located, based on this decision, on 26 July 2017, the National Agency of Public Registry registered the

¹⁴ The report of State Agency in Religious Issues, 2016-2017, pp. 9-11.

¹⁵ EMC and TDI call on the State to immediately put a stop to the illegal acts of damaging the Tandoyants Historical Armenian Church, 30 March 2018, <https://emc.org.ge/en/products/emc-da-tdi-sakhelmtsifos-moutsodeben-aghkvetos-tandoiantsis-istoriul-samkhur-eklesiaze-mimdinare-ukanono-fizikuri-zemokmedeba>

real estate under the ownership of the Patriarchate.¹⁶ The historic church was handed over to the Patriarchate without proper study, and information about the transfer was received by the Armenian Diocese in Georgia a few months later. The litigation initiated by the Armenian Diocese over the arbitrary transfer of a historical worship building to another church has not yet yielded tangible results.¹⁷

The case of Imam Ali mosque in Marneuli should also be noted in relation to the restitution policy,¹⁸ which is a historical mosque and autonomously managed by the local council for years. Regardless of the fact, that one of the most influential mosques in Marneuli is functioning democratically and has never had neither institutional nor with any other links with the Administration of All Muslims of Georgia, the State transferred the mosque under the ownership of exactly this religious organization, which itself is state-supported. The litigation is ongoing on behalf of the local council.¹⁹ The problems of restitution policy and international experience will be analyzed in detail in Chapter 4.

1.3. Important cases of violation of religious freedom

The Case of New Mosque Construction in Batumi

The construction of a new mosque in Batumi in 2017-2019 has become a vivid example of the struggle for religious freedom and equality. The Muslim community, despite decades of demanding a new mosque in Batumi and receiving similar promises from several governing powers, is still unable to obtain a permit to build a mosque on land acquired through its initiative and efforts. On May 5, 2017, the Batumi City Hall refused to issue a permit for the construction of a new mosque on a plot of land acquired by a large self-organized group of the Muslim community. The Muslim community has been arguing in court for two years over the groundless and discriminatory decision.

After the protracted trials and the illusory negotiation processes created by the Batumi City Hall,²⁰ on 20 September 2019, Batumi City Court took a historic decision, as upheld the majority of criticism of the Muslim community towards the City Hall's decision. The court found that the legal act issued by the Batumi City Hall, which rejected authorization of a new mosque in Batumi, was illegal and discriminatory. It should also be noted that as part of the negotiations, the Batumi City Hall and the State Agency in Religious Affairs were actively trying to persuade the New Mosque Construction Fund to transfer the land they owned to the Administration of All Muslims of Georgia, after which they would be able to obtain a construction permit. Against the background of such persistent term of the

¹⁶ EMC and TDI: statement on the case of arbitrary transfer of the historical Armenian Church to the Georgian Patriarchate, 12 March, 2018. <https://emc.org.ge/en/products/emc-da-t-di-sapatriarkostvis-tandoiantsis-eklesiis-tvitnebuli-gadatsemis-sakmeze>

¹⁷ The policy of erasing collective memory-the case Tandoyants Church, 12 April, 2018. <https://emc.org.ge/ka/products/tandoiantsis-eklesiis-sakme-kolektiuri-mekhshirebis-tsashlis-politika>;

¹⁸ EMC has launched a legal dispute over the restoration of the Imam Ali Mosque in Marneuli, EMC, 27 September, 2017. <https://emc.org.ge/ka/products/emc-ma-marneulshi-imam-alis-mechetis-restitutsiis-problemastan-dakavshirebit-sasamartlo-dava-daitsqo>.

¹⁹ *ibid.*

²⁰ EMC and TDI point to the delay in the construction of a new mosque in Batumi, 13 February, 2018. <https://emc.org.ge/ka/products/emc-da-t-di-batumshi-akhali-mechetis-msheneblobis-sakmis-gachianurebaze-utiteben>

negotiations, the state's discriminatory state policy was once again revealed, and its aim to recognize only religious organizations under its control as subjects of any relationship with the state.

Regardless of such historic achievement, the City Hall appealed the Batumi City Court's decision, which indicates that local government not only does not express any will to enforce the fair judgment and timely and effectively restore the rights violated with discriminatory treatment, but also tries to delay the process with the artificial application of dispute mechanisms. Such an approach further deepens the perception of inequality and unfairness in the Muslim community and contradicts the idea of a legal and inclusive state.

[The case of Nugzar Mgeladze](#)

During the reporting period, another noteworthy case concerns Nugzar Mgeladze, a resident of the village of Akhalsheni in Tsalka, who was refused by the local self-government to build a house on his land. The refusal of the construction permit was justified because the designated place was located in a cultural heritage zone. However, the City Hall officials openly stated at the meeting that the reason for the refusal was that the presented building structure on the drawing looked more like a mosque project than a residential house. This was the reason for rejection, which contains discriminatory signs and therefore became noteworthy.

On July 9, 2019, based on the EMC's statement, the Public Defender addressed to the Mayor of Tsalka Municipality and the Director-General of the National Agency for Cultural Heritage Preservation with a recommendation and requested to annul a decision refusing Nugzar Mgeladze on construction and to annul the letter of Cultural Heritage Agency which was a ground of City Hall's decision.

With the support of EMC, Nugzar Mgeladze filed a lawsuit in the court against the decision of Tsalka City Hall and the letter of the Cultural Heritage Agency. During the hearing, it was found that the Tsalka Municipality was not properly involved in the Cultural Heritage Agency in the construction authorization process, which precluded the City Hall from meeting the requirement of the circumstances investigation and the legality of the refusal of the construction permit.

On July 20, 2019, Tetrtskaro District Court took a decision-supporting Nugzar Mgeladze's position. The refusal of the Tsalka City Hall to issue a construction permit was annulled and the City Hall was instructed to issue a new act after a thorough investigation of the circumstances and proper involvement of the Cultural Heritage Agency. The decision was not appealed and entered into force. Tsalka City Hall is still processing the construction authorization and corresponding with the Cultural Heritage Agency on a building project.

EMC supports Nugzar Mgeladze in the process of obtaining a construction permit, but the process is being adjourned, the applicant submitted a changed building project to the Cultural Heritage Agency and waits for the approval.

[The case of Kobuleti Boarding House](#)

Another important case ongoing in 2017-2019 was related to the Kobuleti Muslim Boarding house. Since September 2014, due to the resistance of the local population and persecution on religious grounds, the Muslim community is still unable to open a boarding school for students in Kobuleti. It should also be noted that after four years of dispute, the Supreme Court of Georgia in this case partially upheld EMC's

cassation appeal on part of the responsibility of the Ministry of Internal Affairs and returned it to the Court of Appeals for review.²¹ The court found that due to police inactivity and negligence, the Ministry had failed to fulfill its positive obligation to avoid persecution and violence. For now, the case is still being reviewed by the Supreme Court. The court did not find that police inaction was discriminatory.

It should be noted that the Kutaisi Municipality's non-fulfillment of the Public Defender's recommendation regarding the boarding house case was recognized by the Batumi City Court and the respondent was requested to take necessary measures to connect the boarding house to the sewerage system. This was the first case, when Public Defender, as a mechanism for equality, addressed to the court for the fulfillment of its recommendation. However, the municipality still enforces neither the court's decision nor the recommendation of the Public Defender. The Supreme Court is hearing the non-fulfillment case now.

Despite numerous proceedings ongoing at the national level for 5 years, the Muslim community is still unable to open a boarding house. For all this period, the State failed to restore justice, including the timely and effective investigation of religious persecution by individuals, the detection of hate speech in the case, the granting of victim status to applicants, and the launch of an investigation into possible criminal misconduct by police officers.²²

[The seizure of the mowing lands from the local Muslim farmers in villages Kikibo and Dertseli](#)

During the reporting period, the dominant role of the Orthodox Church was revealed in another case related to the transfer of property. In 2018, another illegal and conflicting decision was issued in Adigeni Municipality against the interests of the local Muslim community.²³ In particular, in October 2018, the mowing lands in village Dertseli (approximately 8 Hectares), which was traditionally used by local Muslim farmers for years and unfortunately, was not registered under their ownership, was transferred to the Orthodox Church according to the decision of National Agency of State Property. The Patriarchate indicates to the ruins of the orthodox church on the same land. The state, apart from the non-examination of the historical past of these ruins, transferred to the total amount of land plots, including the surrounding land (approximately 1 Hectare) and other neighboring lands to the Patriarchate. The Muslim community does not claim any ownership on the land where allegedly the church ruins exist, however, the community does not see the need to fully transfer the vital mowing lands to the Patriarchate, especially since they, through various official documents, confirm the fact of the legal use of these lands and that state agencies knew or should have known their legal interest in these lands.

²¹ In Kobuleti Muslim Boarding House case, the Supreme Court concluded the problem of MIA's inaction, EMC, November, 2018; <https://emc.org.ge/en/products/kobuletsi-muslimuri-pansionis-shss-s-umokmedobis-problema-aghiara>

²² EMC took the case of Kobuleti Boarding House to the Strasbourg court, EMC, 28 May, 2019. <https://emc.org.ge/ka/products/kobuletis-pansionis-sakmeze-emc-m-strasburgis-sasamartlos-mimarta>

²³ The land used by the Adigeni local muslims were transferred to the Patriarchate, EMC, 11 October, 2019. <https://emc.org.ge/ka/products/mitsa-romlitats-adigenshi-muslimi-mosakhleoba-sargeblobda-sapatriarkos-gadaetsa>; EMC: The lands of Mulism Peasants in Adigeni was illegally transferred to the Patriarchate, 11 October, 2019. <https://emc.org.ge/ka/products/emc-adigenshi-muslimi-glekhebis-mitsebi-sapatriarkos-ukanonod-gadastses>; The locals of villages Kikibo and Dertseli on the disputed lands, EMC, 17 October, 2019. <https://emc.org.ge/ka/products/sofel-kikibosa-da-sofel-dertselis-mosakhleoba-sadavo-mitsebze>

Whiteile Adigeni municipality remembers several serious religious conflicts, such negligent or deliberate actions lead to even greater social alienation between the two religious communities.

The cases of damaging the Armenian Churches in Javakheti

In 2018-2019, the number of cases of damaging the Armenian churches in Samtskhe-Javakheti also increased. On November 4, 2019, it was reported in the media that unidentified persons had damaged icons and church items in the chapel of the Armenian Apostolic Church near the village of Khulgumo.²⁴ It is noteworthy that the church items in the same chapel were damaged several months before the incident on November 3, although the investigation on the fact had not any results. The investigation on the fact of burning the books and icons in a small Catholic sanctuary (niche) in the village of Vale in 2018 also ended without results.²⁵

1.4. Other noteworthy processes in 2017-2019

In 2017-2019, representatives of the executive²⁶ and legislative branches²⁷ have put forward several problematic initiatives on issues of freedom of religion, which do not give a promising sign of positive changes in this area.

In 2018, the State Agency in Religious Affairs, as well as the Ministry of Education, Science, Culture, and Sports, announced an initiative to return the subject of the history of religions to the school curriculum.²⁸ In conditions when the state has not been able to provide effective prevention of religious indoctrination, proselytism, discrimination in public schools for years,²⁹ introducing lessons in the history of religions will further strengthen the formalization of existing negative practices and the influence of

²⁴ Armenian worship place was raided in Akhalkalaki, Liberali, 4 November, 2019.

<http://liberali.ge/news/view/46614/akhalqalaqshi-somkhuri-samlotsvelo-daarbies>

²⁵ EMC: Damage to Catholic chapels has increased in Samtskhe-Javakheti, 5 November, 2019. <https://emc.org.ge/ka/products/emc-samtskhe-kavakhetshi-katolikuri-eklesiebis-dazianebis-faktebi-gakhshirda>

²⁶ A representative of the State Agency in Religious Affairs spoke about teaching the subject of religion at school, Liberali, 1 October, 2014. <http://liberali.ge/news/view/12429/religiabis-saagentos-tsarmomadgenelma-skolashi-religiis-sagnis-stsavlebis-shesakheb-isaubra>;

²⁷ We do not welcome the development of a special law on religious organizations - the Council of Religions, Liberali, 1 February, 2019. <http://liberali.ge/news/view/42898/religiuri-organizatsiebis-shesakheb-spetsialuri-kanonis-shemushavebas-ar-mivesalmebit--religiata-sab>; The law of religion is discussed with the participation of religious organizations <http://amag.ge/index.php/news/item/474-2019-02-02-12-13-12>

²⁸ EMC responds to the statement of the Minister of Education on the introduction of the subject of Religious history, 23 January, 2018. <https://emc.org.ge/ka/products/emc-relgiis-istoriis-sagnis-shemotanaze-ganatlebis-ministris-gantskhadebas-ekhmianebe>; Should the children study religion at schools, Radio Tavisufleba, 3 October, 2014. <https://www.radiotavisupleba.ge/a/shemdegi-gakvetili-religia/26618666.html>

²⁹ Freedom of Religion – Critique of Discriminatory and Nonsecular state policy, EMC, pp. 131-154. <https://emc.org.ge/en/products/kvleva-religiis-tavisufleba-sakhelmtsifos-diskriminatsiuli-da-arasekularuli-politikis-kritika>; The problems of religious neutrality and equality at public schools, EMC, 5 July, 2017. <https://emc.org.ge/ka/products/religiuri-neitralitetisa-da-tanastoruflebianobis-datsvis-problemebi-sajaro-skolebshi>; EMC reacts on the case of religious indoctrination in public schools in the Highlands of Adjara, 1 November, 2019. <https://emc.org.ge/en/products/emc-maghamltian-acharashi-sajaro-skolebis-religiuri-indoktrinatsiis-fakts-ekhmianebe>; Based on EMC appeals, the Public Defender calls on the Ministry of Education to take concrete measures in cases of discrimination on the grounds of religion, 22 September, 2017. <https://emc.org.ge/ka/products/emc-is-mimartvebis-safudzvelze-sakhalkho-damtsveli-ganatlebis-saministros-moutsodebs-religiuri-nishnit-diskriminatsiis-shemtkhvevebze-konkretuli-ghonisdziebebi-gaataros>

the dominant religion.³⁰ Given the systemic challenges in terms of the quality of textbooks and the teaching process, as well as the teachers' qualifications, it is clear that the existing education system is not ready to introduce the subjects of religious history or culture in public schools with neutral, academic approaches without religious preferences.³¹

One of the alleged violations of religious neutrality was revealed on October 30, 2019, in Keda Municipality. A video recording was released on the Facebook page of the eparchy of Skhalta Apostolic Autocephalous Church of Georgia depicting a meeting of the religious authorities of Skhalta Eparchy, the professors of St Tbel Abuseridze Teaching University, and Keda Municipality high school teachers. According to the video recording, the meeting took place in Keda Resource Center and discussed the celebration of the Day of Allotment to Mother Mary. During the meeting, the clergy instructed the school principals to talk about the Christian past of Adjara in schools, which was agreed by some school principals in the comments given to the media.

It must be noted that establishing the Allotment to Mother Mary day-off gave an incentive to the new wave of religious indoctrination among public school teachers. For instance, the society is informed about the events cycle in June concerning the Allotment to Mother Mary festivities planned for high school teachers. Those events were being carried out according to the orders issued by the Regional Resource-Centers and by on behalf of the Ministry. High school teachers were briefed with fundamentally confessional lectures on the Day of Allotment to Mother Mary. Similar cases were observed in locations, where the majority of teachers were of Muslim faith (for example in Tsalka).³²

Violations of religious neutrality are also pointed out by the Public Defender in its 2017 report, which states that the problem is to prevent violations of religious neutrality in general education institutions and, in the event of an incident, to respond effectively.³³

During the reporting period, Parliament voiced several regressive initiatives regarding freedom of religion. Among them, perhaps particularly alarming was the initiative introduced in 2017 within the constitutional amendments, which changed the grounds for restricting freedom of religion and belief. In particular, instead of existing formulation, which justifies limitation of freedom of speech, opinion, conscience, belief, and religion only for the protection of other's rights (Article 19 (3) with the older edition), the amendments broadened the legitimate aims of restriction and indicates that "restriction is possible, only under the law, if it is necessary for the democratic society or to ensure public safety, prevent crime, protect the health, administer justice or protect the rights of others".³⁴ Such an extension of the grounds of interference with freedom of religion or belief was contrary to the recommendations

³⁰ EMC responds to the statement of the Minister of Education on the introduction of the subject of the history of religion, January 23, 2018. <https://emc.org.ge/ka/products/emc-relgiis-istoriis-sagnis-shemotanaze-ganatlebis-ministris-gantskhadebas-ekhmianebe>

³¹ Shalva Tabatadze, Teaching of Religion in Public Schools, <https://www.tdi.ge/ge/page/religiis-savleba-sajaro-skolebshi>

³² According to some of the teachers, the ministry forcibly took them to the lectures on the Day of Allotment to Mother Mary, On.ge, 8 June, 2019. <http://go.on.ge/1489>

³³ The Parliamentary Report of Public Defender, 2017, p. 159.

³⁴ Draft and Context of Constitutional Amendments Related to Freedom of Religion, Netgazeti, June 28, 2017 <https://netgazeti.ge/news/204334/>

of the Venice Commission and international standards for the protection of this freedom.³⁵ In its final report, the Venice Commission directly recommended to the Georgian Parliament the need to remove "national security" and "justice" from the text of the Constitution as the grounds of restriction, because this significantly increased the risk of illegitimate interference and pointed to several European Court rulings.³⁶ As a result of the advocacy of religious organizations and human rights actors, the problematic provisions were not reflected in the Constitution. It should be noted that the SARI did not take positions in support of high standards of religious freedom in the process either.

In 2018-2019, a discussion was held at the parliamentary level to ban the wearing of religious attributes, the niqab, and burqa of Muslim women in public spaces,³⁷ also on the criminalization of insult to religious sentiments.³⁸ Exactly during the discussion of these bills, a working group was set up at the initiative of the Chairwoman of the Committee on Human Rights and Civil Integration to discuss and resolve issues related to freedom of religion. Exactly during this discussion, the chairwoman of the committee initiated to adopt a special law on religion,³⁹ which contains high risks of reviewing the existing liberal rule of registration of religious organizations, of defining religion and religious organizations, and in general to hierarchize religious organizations. A representative group of religious organizations opposes the adoption of the special law.⁴⁰

It is noteworthy that several meetings of the working group of the committee, where religious organizations discussed the systemic problems they face, could not be continued, which strengthened the initial expectations that the working group did not have clear goals, what it served, and what the Parliament was trying to achieve by creating such format. At the same time, it remains unclear what values and political red lines the government has when discussing issues of religious freedom.

³⁵ EMC's Appeal to the Parliament Regarding Planned Constitutional Amendments on Freedom of Religion, 25 September, 2017. <https://emc.org.ge/en/products/emc-is-mimartva-parlaments-religiis-tavisuflebastian-dakavshirebit-konstitutsiashi-dagegmil-tsvlilebebze>

³⁶ Venice Commission, Draft opinion on the draft revised Constitution as adopted by the parliament of Georgia at the second hearing on 23 June, 2017. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2017\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2017)006-e); pp. 9-10.

³⁷ Ombudsperson - Wearing a burqa and niqab may be discriminatory, but I do not think that banning women from wearing these clothes will protect their rights, Interpressnews, January 16, 2019. <https://www.interpressnews.ge/ka/article/528831-ombudsmeni-burkis-da-nikabis-tareba-shezazloa-iqos-diskriminaciuli-tumca-ar-vpikrob-rom-kalebistvis-am-tanisamosis-tarebis-akrzalva-ikneba-mati-uplebebis-dacva/>

³⁸ Coalition for Equality calls on parliament not to pass bill criminalizing insult to religious sentiments, 25 April, 2018. <https://emc.org.ge/ka/products/koalitsia-tanastorobistvis-moutsodebs-parlaments-ar-daushvas-religiuri-grdznobebis-sheuratskhqofis-kriminalizebis-kanonproektis-migheba>; Kvitsiani Initiative Provides Punishment for Insulting Religious Feelings, Liberal, April 3, 2018. <http://liberali.ge/news/view/35561/kvitsianis-initsiativa-religiuri-grdznobebis-sheuratskhyofistvis-sasjels-itvalistsinebs>

³⁹ The Council of Religions believes that the adoption of a special law on religious organizations should not be on the agenda, Comersant, 1 February, 2019. <https://comersant.ge/ge/post/religiata-sabchoshi-miichneven-rom-religiuri-organizaciebis-shezaxeb-specialuri-kanonis-shemushaveba-dgis-wesrigshi-ar-unda-dadges>

⁴⁰ Religious organizations oppose the adoption of the special law, Netgazeti, 1 February, 2019. <http://netgazeti.ge/news/337867/>

At the parliamentary level, the legislative initiative of the Chairman of the Committee on Defense and Security, Irakli Sesiashvili, voiced in March 2019 is also noteworthy.⁴¹ This initiative provides an apparent deterioration of legislation in the field of freedom of religion and the deprivation of the right to defer compulsory military service to the clergy of all religions except the Orthodox clergy. According to Sesiashvili, the necessity of the amendments is caused by the drawbacks in existing legislation and the preservation of the right of the Orthodox clergy is conditioned by the constitutional agreement concluded between the state of Georgia and the Orthodox Church. The initiative contradicts the idea of human rights and the principles of equality, as it seeks to address legislative gaps at the expense of restricting the rights of specific groups. Besides, the fact that the deferment of compulsory military service for Orthodox clergy is regulated by a constitutional agreement does not in itself justify putting another group in a discriminatory position.⁴² Such initiatives further strengthen already existing asymmetric and unequal situation between religious groups.

1.5. Conclusion

During the reporting period, the state did not take significant measures to protect religious freedom and equality, and the existing systemic and institutional challenges remain unchanged. Some positive changes were seen in the policy of combating hate crimes, although positive institutional changes had not reflected on the severe cases of religious freedom restriction and persecution. Even the human rights governmental plan, which typically imposes positive obligations on relevant government agencies, has for several years failed to address the fundamental shortcomings of freedom of religion legislation and administrative practice. The sphere of freedom of religion is exactly that issue, where politics finds it most difficult to turn positive. This reality can be explained, on the one hand, by the excessive loyalty of the authorities to the Patriarchate and, on the other hand, by the historically demonstrated negligence and distrust towards non-dominant religious groups.

The asymmetry and inequality in the field of religious freedom are even more pronounced in regions densely populated by non-dominant religious groups, where the authorities have historically pursued an exclusive policy and the practices of exclusion are demonstrated in almost all layers of social life for these groups (see special chapters below).

During the reporting period, government officials constantly attempted to introduce new regressive legislative initiatives that would further aggravate an already unequal and asymmetric legal environment in the area of religious freedom. Importantly, the active work of the Council of Religions under the Public Defender and human rights actors deterred these regressive initiatives. However, the existing context does not allow the same actors to set up positive initiatives and achieve change. Among them, a significant part of the recommendations of the Council of Religions of previous years remains unfulfilled and the government does not have solid and properly organized communication with this unique platform of religious associations.

⁴¹Non-Orthodox clergy may no longer have the right to defer compulsory military service, InterpressNews, 13 March, 2019. <https://www.interpressnews.ge/ka/article/536831-aramartlmadidebelma-sasuliero-pirebma-shesazloa-samxedro-savaldebulo-samsaxuris-gadavadebis-uplebit-vegar-isargeblon>

⁴²Coalition for Equality Criticizes Initiative to Deny Deferment of Compulsory Military Service to Non-Orthodox Clergy, March 14, 2019, <https://emc.org.ge/ka/products/koalitsia-tanastorobistvis-kritikulad-afasebs-aramartlmadidebeli-sasuliero-pirebistvis-samkhedro-savaldebulo-samsakhuris-gadavadebis-uflebis-chamortmevis-initsiativas>

In the current period, the SARI, which had previously come up with proactive and more ambitious initiatives, seemed more passive and inactive, and its main area of activity was to manage the funding process of the four religious organizations. The main reason for the passive state of the Agency should be the deep distrust towards it. The main criticism of SARI for its security perspectives and working methods with religious organizations was still relevant during the reporting period. This criticism has been consistently heard by international organizations, which, unfortunately, has not become a reason for a real change in government approaches in this direction. It should also be noted that SARI's one of the goals is to create the illusion of a democratic and inclusive relationship between the state and religious associations and to weaken the Council of Religions as an actor under the Public Defender. However, it is clear that the platforms created by the agency are not inclusive enough and do not inspire the trust of religious organizations.

Against the background of the existing systemic challenges, the severe cases of restriction of the rights of non-dominant religious organizations and communities still appeared, which have not been the subject of proper response and restoration of rights so far. The state has not addressed non of the religious conflicts against the Georgian Muslim community. It is also important to note that in recent years, religious organizations actively try to apply to the legal mechanisms for the restoration of their rights, and in some cases, they have important achievements (the decisions of the constitutional court of 2018, the case of construction of the catholic church in Rustavi, Batumi new mosque construction case, etc.).

Finally, the government must share the recommendations made over the years by several international organizations, local human rights actors, and religious organizations themselves. However, this policy will not be possible until the state understands the importance of pursuing an inclusive, equal, and just policy towards religious organizations and communities and does not have the legitimacy to pursue such a policy. Political authorities permanently lack legitimacy and public trust in our reality, therefore they chose the policy based on the continuous loyalty towards dominant religious organizations and granting them privileges. Such attitudes are being strengthened in the pre-election period. Such policy heavily influences the social and rights conditions of non-dominant religious groups and in general, harms the just and democratic state-building process. It is essential that the legislative body to timely eradicate existing legal drawbacks in the field of freedom of religion (e.g. the regulations on financing religious organizations, discriminatory provisions in the law on state property, discriminatory rules in the Forrest Code) and legal gaps (e.g. absence of the regulations related to the restitution). At the same time, Human Rights governmental action plan should become an effective mechanism, which would undertake all existing systemic problems and relevant steps to address them (including the radical revision of the mandate of SARI; elaboration of policy and legal initiatives on restitution; eradication of discriminatory practices while constructing religious buildings, creatin of a secular and inclusive environment in public schools). In this regard, the policy on freedom of religion must be established by the government and relevant governmental agencies in active consultation with the Ombudsperson, the Council of Religions, and human rights actors.