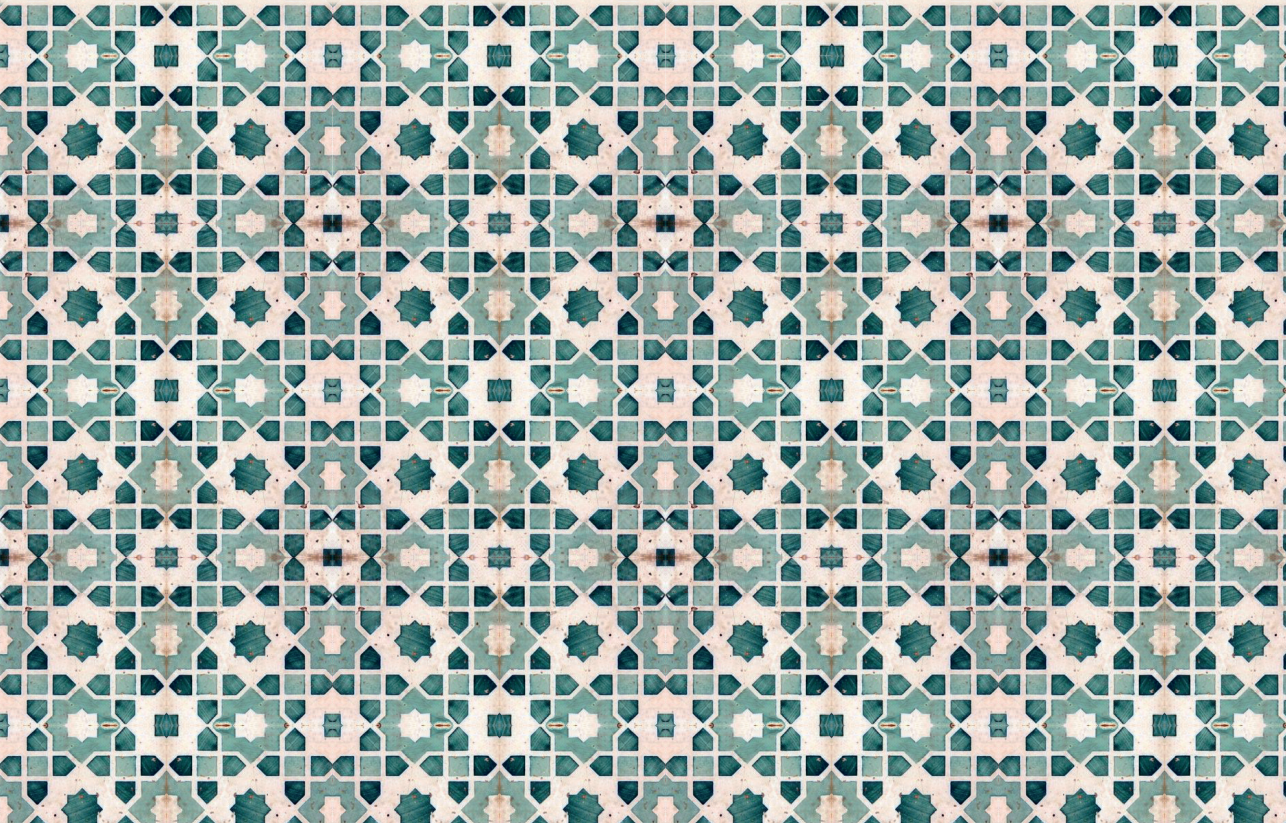




EMC

Overview of Cases on Restriction of  
Religious Freedoms and Discrimination





**USAID**  
აშშ-ის საგარეო სახმელეთო პოლიტიკის დეპარტამენტი

ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი  
**EMC**  
Human Rights Education and Monitoring Center

EAST • WEST  
MANAGEMENT  
INSTITUTE  
კანონის უზენაესობის მხარდაჭერა  
საქართველოში (PROLoG)

The present report was prepared in the framework of the project – “Increasing Access to Justice for Discriminated Religious Communities” - financed by the program “Promoting Rule of Law in Georgia (PROLoG) implemented by the East-West Management Institute (EWMI).

*The report is made possible by the generous support of the American people through the US Agency for International Development (USAID). Responsibility for the content of the report lies entirely with the authors. Views expressed in this publication do not necessarily reflect the views of the U.S Government or United States Agency for International Development.*

**Supervisor:** Tamta Mikeladze

**Authors:** Mariam Begadze, Eto Gvritishvili, Ketu Chutlashvili

**Editor:** Lasha Kavtaradze

**Designer:** Tornike Lordkipanidze

**Cover:** Salome Latsabidze

*The printing, copying, redistribution, or retransmission of the Material without express written permission of the Center is prohibited.*

© Human Rights Education and Monitoring Center (EMC)

Address: Irakli Abashidze 12a, Tbilisi, Georgia

Tel: +995 032 2 23 37 06

[www.emc.org.ge](http://www.emc.org.ge)

[humanrightsemc@gmail.com](mailto:humanrightsemc@gmail.com)

<https://www.facebook.com/EMCRIGHTS/>

# **Overview of Cases on Cestriktion of Religious Freedoms and Discrimination**

Human Rights Education and Monitoring Center

EMC

2017

# Contents

<b>Introduction</b> .....	6
<b>Disputes brought before the Constitutional Court</b> .....	10
1. E.A., L.G., S.V., N.S., T.N., T.K. vs. the Parliament of Georgia .....	10
<b>Disputes brought before the European Court of Human Rights</b> .....	12
1. Mikeladze and others vs Georgia .....	12
2. Dzerkhorashvili and others v. Georgia .....	13
<b>Disputes brought before the common courts</b> .....	16
1. Discriminatory refusal on construction of a Catholic Church in Rustavi.....	16
2. Arbitrary and discriminatory denial of entry into Georgia to Azerbaijani journalist .....	19
3. Discriminatory interference with the activities of the Muslim boarding school .....	21
4. Discriminatory refusal of Batumi new mosque construction.....	24
5. Detention of LGBT activists on May 17 2016.....	27
6. Dismissal of Jehovah's Witnesses from work.....	30
7. The secrecy of the Prosecutor's hate crime guideline .....	32
<b>Current disputes brought before the Public Defender, as the Mechanism of Equality</b> .....	35
1. Discriminatory harassment against Muslim students at Mokhe public school .....	35
2. Discriminatory refusal of the Government to transfer land under state ownership for the Construction of a second Mosque in Batumi .....	40
3. Discriminatory use of police powers against the Muslim community on the border and customs check.....	41
4. Discriminatory refusal of the local Government to connect Kobuleti Boarding school to the sewage system .....	43
5. Discriminatory termination of the contract with the Kiwi Vegan Cafe.....	44
6. Discriminatory ousting of gay persons from a nightclub in Batumi.....	45
7. Case of T.A., K.A. and M.A. related to denial of entry into Turkey .....	46

<b>Disputes brought before administrative bodies</b> .....	50
1. Unauthorized wood construction for praying in the Batumi new mosque area .....	50
2. Arbitrary transfer of Imam Ali Mosque of Marneuli to the administration of all Muslims of Georgia .....	51
3. Refusal of alternative military service .....	54
 <b>Ongoing cases brought before the investigation</b> .....	56
1. Violence against Muslim community in the village of Adigeni .....	56
2. Persecution related to boarding school's operation in Kobuleti .....	58
3. Case of homophobic violence against L.K. ....	61
4. Case of homophobic violence against N.kh.....	61
5. Case of homophobic violence against N.G. ....	63
6. Raid on a bar in Agmashenebeli Avenue motivated by xenophobia .....	64

# Introduction

The present document summarizes cases litigated by Human Rights Education and Monitoring Center (EMC) on equality rights. Predominantly the document provides an overview of cases, which relate to restriction of religious freedoms, discrimination based on religious identity, as well as different opinion and crimes motivated by homo/bi/transphobia in 2016-2017. The cases describe particularly important and symptomatic facts of restriction of religious freedom in the recent period. They provide an opportunity to assess human rights condition of religious minorities and identify core challenges faced by them.

In the reporting period, EMC litigated two important cases before the Constitutional Court, which concerned the discriminatory financing of four religious organizations in accordance with the Gov't resolution #117 and non-secular financing of the Patriarchate in accordance with the budget law. EMC renewed work on the first case after it was held inadmissible and will submit the case with a modified claim and on behalf of a broader circle of religious organizations. The proceedings on the case concerning the financing of the Patriarchate is still pending.

Analysis of the cases in the report shows that construction of places of worship remains an important challenge for religious minorities. Owing to open loyalty to religious groups, local Gov't often denies construction permits to religious organizations in a discriminatory manner. In concrete cases, rejection of construction permits have more comprehensive political basis and is related to general state discriminatory policy. In this regard, the report discusses in detail the cases related to construction of Rustavi Catholic Church and New Mosque in Batumi, as well as relevant political and social context.

The report still refers to religious conflicts in Mokhe and Kobuleti revealed in 2014, which EMC is monitoring systematically, as well as is making efforts to restore violated rights of the Muslim community using legal mechanisms. To this point, because of the state ineffective and discriminatory policy, conflicts are conserved and rights of the Muslim community is being continuously restricted. It has to be noted, that after exhausting domestic remedies, EMC addressed the European Court of Human Rights on facts of arbitrary detention and police violence against the Muslim community in Mokhe. The application on discriminatory and unlawful prevention of the Kobuleti Muslim boarding school's operation is being prepared and shortly will be



submitted to the European Court as well. Attention has to be drawn to the fact that the Supreme Court upheld the decision of a lower court that had confirmed discriminatory treatment by private persons. However, two lower instance courts could not identify the responsibility of the Ministry of Internal Affairs. At this stage, a cassation appeal is filed with the Supreme Court.

The report provides detailed overview of the alleged harassment against Muslim students of a Mokhe public school. The Ministry of Education and Science internal audit department did not study the case thoroughly and adopted approaches hostile to human rights with regard to use of religious items by students in public schools. The Ministry justified the headmaster's instruction directed to a Muslim girl to take off the scarf by reference to interests of creating secular environment and preventing hostility in schools, which is a serious interference into individual expression of belief. In view of the indoctrination, proselytism and discrimination practices in public schools, intervention of the state in individual expressions of belief is unfair and has islamophobic connotation. It has to be noted that the application was submitted to the Public Defender as an antidiscrimination mechanism. Apart from the claim relating to establishment of discriminatory harassment in the case, EMC presents a request that special positive measures are taken at the school for creating tolerant, secular and equal environment and eliminating the consequences of the conflict in Mokhe at school.

The documents also summarizes the case relating to unlawful transfer of Imam Al Mosque to the administration of all Muslims of Georgia. Local self-governing body – Shura - is autonomously heading the said historic mosque. Among others, the leader of the Mosque and other religious servants are not appointed by the Administration. Despite this, the state transferred the building to the administration, without proper examination of the case and the issue of historic ownership of the Mosque. After exhausting the available administrative remedies, EMC filed the appeal on the said decision with the court. The case illustrates the unsystematic, arbitrary policy initiated by the Agency on Religious Affairs, which is aimed at strengthening the administration subordinated to its control, on the return of historic places of worship to religious organizations.

In the recent period, violation of rights of journalists who have fled Azerbaijan and are carrying out their activities in Georgia have become the issue of controversy. The issue was identified in cases relating to rejections of refugee status and residence permit, to surveillance, threats and persecution carried out by private persons allegedly

affiliated with Azerbaijani Gov't and to forced disappearance of Afgan Mukhtarli. In the said period, journalist of Maidan.TV Jamal Ali was denied entry to Georgia without substantiation, which as EMC claims, was related to critical news report on Azerbaijani Gov't businesses. The case of Jamal Ali and Afgan Mukhtarli raise concerns about loyalty and possible unlawful and informal cooperation between Georgian and Azerbaijani Gov'ts. After finalizing administrative proceedings before the Ministry of Internal Affairs, EMC presented an appeal to the Court.

The report also refers to several cases on crimes motivated by homo/bi/transphobia. Despite the recent positive tendency of the Prosecutor's office, as well as the Court identifying and reflecting bias motive in procedural documents, effective, timely and independent investigation of such cases remains a serious challenge. Analysis of the cases show that granting victim status, identification of the motive, proper qualification of the act and timely investigation are still problematic.

In addition, in 2016, EMC submitted a case to the European Court regarding arbitrary detention of LGBT activists while making a stencil near the Patriarchate administration building marking IDAHO on May 17. Along with violation of different rights, EMC claims restriction of freedom of assembly, because of insufficient security guarantees and ineffectiveness of the negotiations on selection of the venue for the assembly.

Within the framework of the legal aid program, EMC very actively applies the anti-discrimination mechanism in Public Defender's office in accordance with the law on elimination of all forms of discrimination. The report presents several important cases on discriminatory treatment, in majority of which the Public Defender established facts of discrimination. Among them were the cases on arbitrary delays, checks of and confiscation of religious literature from the Muslim persons on the Georgian border; discriminatory failure to connect the Muslim boarding school to the sewage system by the Kobuleti municipality, termination of the rental contract with the café kiwi administration; discriminatory and violent ousting of a gay couple from a club.

It has to be mentioned that starting from 2014 EMC carries out the strategic litigation and legal aid program for religious groups in a comprehensive manner. The program has a proactive strategy and covers all regions, where religious minorities reside.

In 2016-2017, the work of the program on equality rights protection was made possible in the framework of the project – "Increasing Access to Justice for Discriminated



Religious Communities“. EMC is carrying out the project with the support of the United States Agency for International Development (USAID) under the program “Promoting Rule of Law in Georgia (PROLoG) implemented by the East-West Management Institute (EWMI).

**In 2016-2017, on the issues of equality EMC litigated:**

**2** cases before the Constitutional Court of Georgia;

**3** cases before the European Court of Human Rights;

**13** cases before the common courts of Georgia;

**9** cases before the Public Defender as an antidiscrimination mechanism;

**11** criminal cases relating to bias-motivated crimes;

**4** administrative and disciplinary cases before various administrative bodies;

In total, the organization had litigated 42 cases; consultation was provided in relation to 60 factual circumstances of rights violations, which encompassed a much broader circle of beneficiaries. In addition to that, in the said period 9 cases were finalized with success in favor of applicants.

# Disputes brought before the Constitutional Court

## 1. E.A., L.G., S.V., N.S., T.N., T.K. vs. the Parliament of Georgia

**Overview of factual circumstances related to the case:** in the present case the plaintiffs dispute the constitutionality<sup>1</sup> of the norms of the Law on Budget that envisage subsidizing the Patriarchate of Georgia and the use of public and budgetary resources for confessional purposes.

From 2002 until now, the government annually issues subsidies to the Patriarchate of Georgia based on the Law on Budget. In 2002-2016, the direct funding allocated by the Ministry of Finance for the Patriarchate of Georgia amounted to GEL 235 672 200. The existing practice of financing does not correspond to the terms of the constitutional agreement between the State and Georgian Apostolic Autocephalous Orthodox Church. According to the Constitutional Agreement, the form, quantity, terms of reimbursement of financial loss inflicted to the Church, the issues of property or land transfer were to be resolved up by the Commission established on the parity basis among the parties. However, as such commissions have never actually functioned, the state transfers unlimited amounts of subsidies to the Patriarchate without any calculations, which is not based on an anticipated, objective, fair criteria related to the loss and it only depends on the political will of the government. The relevant norms of the budget explicitly point to the goal of promoting theological education: “For the purpose of bringing up young generation on the basis of Christian values, more than 70 educational and cultural and charitable organizations [...] of the Patriarchate will be financed in different regions [...] of Georgia”<sup>2</sup>. Obviously, the support of a particular religious institution by the State and financing its purely confessional goals cannot be considered legitimate and public, aimed at restriction of the rights of others and it creates an unjustified interference into the relevant rights, including the right to freedom of religion, unjust treatment and property rights.

**The essence and substantiation of the dispute:** The plaintiffs in the present case are members of the Atheist, Agnostic, Secularist Orthodox and Non-Dominant Religious Organization. They assert that by being subject to taxation they forcedly participate in the funding of the Patriarchate, which constitutes interference with the right to freedom of religion and the right to ownership of property with non-secular, non-legitimate public

---

1 Code 45 00; 45 01; 45 02; 45 03; 45 06; 45 08; 45 09; 45 11; 45 12; 45 13 of Article 15 (State Budget Allocations) of the Law of Georgia on State Budget of 2016.

2 Definition of program code 4501 of part 8.5 of Article 14

purpose and is discriminatory at the same time. Consequently, the plaintiffs insist that the state funding of the Patriarchate defined by the Law of Georgia on Budget in 2017 is inconsistent with Article 19 of the Constitution of Georgia (Freedom of Religion), Article 21 (Property Rights) and Article 14 (Non-Discrimination). The direct funding of the Church by the state, besides being inconsistent with particular rights, contradicts the constitutional principles of secularism and the legal and democratic state.

**Case proceedings:** It is worth noting that EMC filed a suit with regard to the mentioned dispute related to the budget of 2016, but on January 27, 2017, the Constitutional Court of Georgia suspended the proceedings. In particular, the Court applied Article 13 of the Law of Constitutional Proceedings, which in case of invalidation of the norm envisages automatic termination of the case of its constitutionality. In the given case, the basis for termination of the proceedings was declaration of invalidation of the Law on current budget at the end of the year. Based on the fact that the Law on Budget of 2017 provides for identical norms, EMC has filed a complaint<sup>3</sup> with the Constitutional Court of the similar content on behalf of the relevant applicants with relation to direct funding of the Patriarchate of Georgia. By this time, the preliminary session was held; however, the court did not make a decision on the admissibility of the claim.

**Significance:** The aim of the mentioned constitutional claim is not termination of the transfer of material resources for the reimbursement of damage inflicted to the Patriarchate of Georgia during the Soviet period, but also determining a legal framework defined by the Constitutional agreement to such transaction and establishment of a secular, legal state. Satisfaction of this claim will have significant political and legal consequences. If the existing practice of financing is recognized as unconstitutional, the state will have to fund the church according to the model of damages provided for by the constitutional agreement and thus act based on the existing legal principles and rules. In turn, this decision will facilitate the transformation of the relationship between the state and the Church into a secular framework that restricts the Church's instrumentalism for political purposes and the unjustifiable political domination of the Church. It should be noted that the democratic and secular model of financing is also essential for the protection of legitimacy and the development of social consciousness in the conditions of politicizing the Church.

---

<sup>3</sup> On the basis of the Law on Constitutional Proceedings, the Constitutional Court shall be entitled to continue considering the case on constitutionality of the norms of the Budget of 2017, if the case overcomes the first stage of the hearing and will be declared as admissible until January 1, 2018, regardless of invalidation of the Law of 2017.

# Disputes brought before the European Court of Human Rights

## 1. Mikeladze and others vs Georgia

**Overview of factual circumstances of the case:** The present case is related to the facts of illegal detention and ill-treatment of Muslim community members during a large-scale police event in the village of Mokhe (Adigeni municipality) on 22 October 2014<sup>4</sup>. The police arbitrarily detained 14 Muslims for peaceful and spontaneous assemblies held by the local Muslim community against the demolition of the historic-cultural building and used disproportionate police force against them. Among 14 detained persons there were 4 applicants nominated by the organization on the given case, each of whom suffered physical and psychological violence during the detention. It should be noted that the psychological violence against the applicants in the police department continued and one of them was subjected to physical violence in the police department. The applicants point out to the facts of using hate speech by the employees of the Ministry of Internal Affairs at all stages of the police action. According to them, police officers described their faith and identity using insulting and humiliating words.

Investigation into the criminal case has been going on for more than two years, however, it has no particular results. The beaten detainees have not yet been granted the status of victims, which complicates monitoring of the progress of the case. It should be noted that at the initial stage of the investigation, when most of the evidence was already obtained, the investigation was headed by an employee of the MIA who was named as a violator of rights by the victims. The question of qualification of the disputable action is also problematic because it only concerns the abuse of power by the police, and fully ignores the reasonable assumption of the existence of hate motives in the actions of the police. Despite the fact, that many witnesses identified the police officers who were involved in the violent actions, no criminal proceedings were initiated against any person.

The above facts are confirmed by the testimonies of witnesses and medical documents submitted by EMC and the materials of the investigation sent by the state to the European Court. It is noteworthy that the physical and psychological damage inflicted to the

---

<sup>4</sup> For the detailed information about the incident, please follow the link: <http://emc.org.ge/2014/10/23/gancxadeba-moxes-incidenttan-dakavshirebit/>

applicants is recorded on the basis of a complex medical and psychological expertise conducted to the applicants, which the government does not deny.

**The essence and substantiation of the dispute:** In the application, EMC on behalf of the plaintiffs demands from the European Court of Human Rights to examine the facts of ill-treatment, including the use of disproportionate force, hate speech and current ineffective investigation by police, in relation to Article 3 (inhuman and degrading treatment) Article 8 (right to private life), Article 14 (equality right) and Article 13 (right to an effective remedy) of the Convention.

Furthermore, on the basis of the submitted factual circumstances, the Court also initiated the alleged violation of Article 11 of the Convention.

**Case proceedings:** It should be noted that the court has assigned priority to the case, which implies its consideration within expedited timeframes. The Court sent the application submitted by EMC on September 10, 2016 to the state within one month. At this stage the state's submissions, as well as additional arguments of the applicants have been submitted. The court set the term for the submission of final comments to the government, May 11, 2017, which will be followed by the decision-making stage.

The case is handled by EMC along with the European Human Rights Centre (EHRAC).

**Significance:** In case of violation of the relevant Articles of the Convention by the European Court of Human Rights in the present case, the appropriate legal assessment shall be given to the State's repressive and discriminatory policy in the village of Mokhe. Considering the general context of the political and social significance of Mokhe case and restriction of the rights of the Muslim community, the decision will also have a positive effect on other religious conflicts identified in relation to the Muslim community that are conserved and cause continuous violating and neglecting the rights of religious minorities.

## 2. Dzerkhorashvili and others v. Georgia

**Overview of factual circumstances related to the case:** the case deals with restriction of the freedom of assembly to LGBT activists and community when celebrating the International Day Against Homophobia and Transphobia (Idaho) and facts of unjustified and illegal detention of LGBT activists by the police on May 17 during alternative, partisan forms of protest.

LGBT activists addressed one month in advance the relevant state agencies with regard to a public event scheduled in Rustaveli Avenue on May 17, 2016 and requested the Ministry of Internal Affairs to provide effective security guarantees<sup>5</sup>. However, due to high risks, at the meeting with the organizers held of 4 May 2016, the MIA completely excluded the possibility of holding a meeting in any of the segments of Rustaveli Avenue and the Pushkin Square in spite of the fact that other meetings were not planned in Pushkin Square. The organizers of the Idaho Assembly received their reply from Tbilisi City Hall to the request submitted on May 5, 2016 regarding their meeting in Pushkin Square, only on May 23, in which the City Hall asked the community to select an alternate place and request a new location.

Under these conditions, the LGBT activists decided to make a critical stencil on the Patriarchate building, which is a powerful institution that is trying to monopolize and corrupt public spaces. In the process of preparing the stencil activists were arrested by the police officers dressed in civilian forms. At the time of the persecution their status was not identifiable for activists (which was confirmed by the decisions of the national courts), their persecution was perceived as an attack on the organized homophobic group and they ran away. The pursuit of the police and the aggressive detention without warning caused the feeling of insecurity and stress in the activists. Only after their detention they became aware that these persons were police officers.

**The essence and substantiation of the dispute:** In this case, activists claimed violation of Article 3 (inhuman and degrading treatment), Article 8 (privacy), Article 11 (freedom of assembly) and Article 14 (prohibition of discrimination) of the Convention. Violation of the rights envisaged by Articles 11 and 14 of the Convention were expressed by offering by the state of inadequate spaces for the gatherings of LGBT activists and the community, delay of the process of negotiations related to selection of space for the gathering of activists and failure to promise sufficient guarantees of safety. The applicants allege that, like in previous years, the Government of Georgia also failed to ensure the safe use of freedom of assembly of LGBT persons in 2016, which was conditioned by state loyalty towards discourse opposing equality of anti-gender groups.

In the application, the plaintiffs state that the inadequate detention process has put them in a vulnerable and stressful condition. In addition, 12-hour administrative detention has actually acquired the form of informal punishment. Although the applicants' action was distorting of the municipality's image (Article 150 of the Code of Administrative Of-

---

5 Note: It is noteworthy, that by May 17, 2016 anti-gender groups already in February had submitted a warning about conduct of meetings from Philharmonic to the building of Parliament at all segments of Rustaveli avenue and Round Garden.



fenses) and envisaged a fine in the amount of GEL 50, the police had the opportunity to identify their status at the site, fill in protocols and not arrest activists. The rights of the detainees were not explained to them at any stage and they did not have access to a lawyer and relatives. During the incident, an unlawful detention of one of the activists was carried out despite the fact that he did not participate in the stencil preparation process and was waiting for his wife in the car outside the Patriarchate. The use of openly homophobic language against the applicants by the police during the transit to the Police Department and to the court indicated to the motive of treatment of victims, which was expressed in humiliating addresses and threats.

The MIA General Inspection and Prosecutor's Office did not respond effectively to the facts of illegal detention and subsequent treatment.

Besides the substantive demand of freedom and inviolability and procedural obligations, the application disputes the institutional shortcoming of non-existence of lawful mechanism of 12-hour detention by the court authorities in the Administrative Code, which under Article 5, paragraph 3 of the Convention is in contradiction with the guarantee of automatic court supervision of lawfulness of detention.

**Case proceedings:** The case was filed on November 17, 2016. At this stage, the court did not communicate with the government of Georgia.

EMC handles the case along with the European Human Rights Centre (EHRAC).

**Significance:** in case of successful completion of the case before the European Court of Human Rights, the decision will have a preventive role in the process of protection of principles of LGBT community rights and equality by the state agencies, at the same time it will oblige the state to take positive measures to ensure the freedom of assembly and eliminate institutionalized homophobia.

# Disputes brought before the common courts

## 1. Discriminatory refusal on construction of a Catholic Church in Rustavi

**Overview of the factual circumstances of the case:** “The Apostolic Administration of the Latin Catholics” (hereinafter the Catholic Church) has been trying unsuccessfully to obtain a permit and permit certificate for the construction of the Catholic Church on the land registered in its own ownership in Rustavi Municipality since April 16, 2013, which is conditioned by the alleged discriminatory treatment of the City Hall.

At the initial stage, the process of issuing the construction permit was unrestrained and the Catholic Church was able to obtain conditions for the use of the plot of land of the 1st stage of the construction of the Catholic Church on the basis of order of May 21, 2013 of the Chairman of the City Council of Rustavi. Problems related to issuing permits began to emerge after local clerical groups and members of the parish publicly expressed their protest over the construction of the Catholic Church on the territory of Rustavi. After 2014 the Catholic Church has repeatedly requested Rustavi City Hall and Sakrebulo to issue a construction permit and a relevant certificate, but local authorities have not received any written responses to several statements for several years, and the Catholic Church was artificially prevented from receiving the required building permits. Due to the inaction of the local government, the Catholic Church appealed to Rustavi city court. By the decision of July 7, 2014, the Court rejected the lawsuit due to the procedural issues, however, explained that for the issuance of the construction permit there is a principle of “tacit consent”, which means that if within the term prescribed by the law, the permitting authorities have not issued a permit for the construction and/or a justified refuse, construction permits are deemed to be issued and the permit applicant may request a construction permit certificate. Accordingly, failure to issue a reply by the City Council and City Hall of Rustavi to the Catholic Church was considered by the court as a permit for the construction of the religious building. Based on this decision, the Catholic Church appealed to Rustavi local self-government several times and requested to issue a construction permit certificate in accordance with the court decision, but Rustavi City Hall left the statements unanswered. Throughout this time the process of reviewing the construction of the Catholic Church in Rustavi was actively protested by a part of the local Orthodox parish. In addition, in some cases the facts of revealing open loyalty towards the violation of religious neutrality and dominant religious groups by public officials were noted. For example, on December 12, 2014, in the City Hall of Rustavi Municipality, the oral administrative session was held in the framework of the current case of issuing a permit for the

construction of the Catholic Church, which was attended by about 50 representatives of the parish of the Orthodox Church, MPs from Rustavi Municipality Sakrebulo and employees of City Hall. Persons attending the meeting (including the clergy and council members of the Orthodox Church) said they would not allow the construction of the Catholic Church in the territory of Rustavi. At the meeting, they presented information materials, indicating the statements directed against the discretion of the Catholic Church.

As the legal process came to a dead end, the central state apparatus started negotiations with the Catholic Church. In July 2015, the Governor of Kvemo Kartli met the Catholic Church representatives, and promised to help the church in solving the problem. The meeting was attended by the mayor of Rustavi municipality, who offered the Catholic Church alternative plots of land owned by the municipality. The proposed plots of land were located in the city's extreme periphery, and therefore the church refused to exchange its own plot of land. It should be noted that LEPL "State Agency for Religious Issues" was also actively involved in the process of political negotiations. Prior to that it issued several recommendations on the necessity of building of a Catholic Church, although the agency failed to ensure fulfilment of any recommendations.

**The essence and substantiation of the dispute:** After the failure of political negotiations, the Catholic Church submitted an administrative complaint to Rustavi City Court against City Hall of Rustavi Municipality on November 13, 2015 through the representation of EMC for obtaining a construction permit certificate. The applicant submitted a binding complainant according to which he demanded to bind the defendant-Rustavi municipality City Hall to issue a permit certificate for the construction of a religious building (Catholic Church) on a plot of land registered in its ownership, in addition to the above, the plaintiff requested determination of direct discrimination on religious grounds on the basis of the Law of Georgia "On elimination of all forms of discrimination".

**Case proceedings:** In the course of consideration of the case, Rustavi Municipality City Hall rejected the discriminatory motivation and reasoned non-issuance of the I stage construction permit for the Catholic Church as the legal problem and the reason for the delay in issuing a written reply to the last application was failure to respond to the issue by the State Agency for Religious Affairs, on the basis of which City Hall repeatedly requested the agency to register its position about the construction of the Catholic Church on the territory of Rustavi, taking into account city planning and legal circumstances submitted to them by the City Hall. During the court proceedings within the information requested by the court, the State Agency for Religious Affairs explained that the agency issuing the recommendation for the religious construction sets only religious expediency

and does not discuss the merits of building regulations, which falls within the competence of the relevant agencies of the municipality.

Rustavi City Court did not share any arguments with the defendant and, by the decision of June 6, 2016, fully upheld the suit filed by the Catholic Church. To determine discrimination on religious grounds the court considered as sufficient circumstance the invitation of clergy to Rustavi City Hall, due to the negative attitude of the local population towards the construction of the Catholic Church, as well as failure to review the application of the plaintiff for months. Besides, the explanations received by the Office of Public Defender of Georgia in Kvemo Kartli from the State Trustee, the mayor of Rustavi and the State Agency for Religious Issues, according to which, in December 2014 the Mayor gave the reason for the meeting held in Rustavi Municipality City Hall as hearing the opinion of Orthodox population and identification of reasons of their opposition. According to the explanation from the Mayor of Rustavi, "In December 2014, administrative proceedings were held in the City Hall, which were conducted on the basis of the demands of the local population not to build the Catholic Church. The meeting was attended by the clergymen..." "today, protest in the Orthodox population is slow." According to the same protocol, the Mayor of Rustavi municipality estimates the number of Catholic parish on the territory of Rustavi and indicates that "the parish of the church is not large."

In addition to Rustavi City Court, the Public Defender of Georgia also examined the case, and imposed interference in the freedom of religion by Rustavi Municipality City Hall and issued a relevant recommendation.<sup>6</sup>

The decision of Rustavi City Court was appealed by Rustavi Municipality City Hall at Tbilisi Court of Appeals, where no meeting has been held so far.

It is noteworthy that after the visit of the Pope to Georgia in 2016, the State has begun negotiations with the Catholic Church and offered to exchange the plots of land for timely construction of the church.

Nowadays negotiations on the exchange of the plots of land between the Catholic Church and the state and the construction of the church are still underway and will be over in the future.

**Significance of the case:** Under the circumstances in which the construction of new reli-

---

<sup>6</sup> Public Defender, Recommendation (2016, on issuance of a construction permit certificate for LEPL Catholics Apostolic Administration, available: <https://emcrights.files.wordpress.com/2016/06/e183a0e18394e18399e1839de1839be18394e1839ce18393e18390e183aae18398e18390.pdf>)

gious buildings and their operation is a challenge for religious minorities, due to protest of clerical groups and loyalty towards them on behalf of agencies issuing construction permits, the present case is of particular importance for identification of indicated discriminatory practice and formation of the relevant court practice with regard to the existing vicious practices. Taking into account this context, the European Commission against Racism and Intolerance (ECRI), in the report for the year 2015 on Georgia, issues a direct recommendation to the State not to refuse the construction of religious buildings due to religious prejudice or local protest, but to issue permits on the basis of the legislation.<sup>7</sup>

## **2. Arbitrary and discriminatory denial of entry into Georgia to Azerbaijani journalist**

**Overview of the factual circumstances related to the case:** On April 19, 2017, Azerbaijani journalist Jamal Ali, who arrived in Tbilisi International Airport, was not allowed to enter Georgia to attend official meetings in Tbilisi. The official basis for denying entry into Georgia to Jamal Ali is “other cases provided for by the Georgian legislation” and the grounds are not explained in the decision of the Ministry of Internal Affairs of Georgia, due to which fact it is in fact impossible to verify the factual and legal basis of the decision.

Meydan.Tv is Azerbaijan-based online media platform, founded in Germany. Meydan.Tv criticizes Aliyev government and is actively covering corruption issues in Azerbaijan, due to which fact the most part of the media platform staff, including Jamal Ali, are being persecuted for political and diverse opinions by the Azerbaijani authorities and because of this, they have to live in other countries. Meydan TV covers events ongoing both in Azerbaijan and in the region in three languages- in Azeri, English and Russian languages.

Jamal Ali frequently went to Georgia on official and personal visits, so he has visited Georgia many times and did not have any problems with the crossing of Georgia's border until April 19, 2017.

There is a substantiated assumption that denial of entry into Georgia to Jamal Ali was related to the journalistic activities in Meydan TV, to be more precise, with a serious news story made by him about Azerbaijan State Oil Company SOCAR in January 2017. In particular, Meydan TV broadcast on January 16, 2017, a story<sup>8</sup> prepared by Jamal Ali,

---

<sup>7</sup> ECRI REPORT ON GEORGIA (fifth monitoring cycle), Adopted on 8 December 2015, Published on 1 March 2016 #96

<sup>8</sup> The video is available at: <https://www.youtube.com/watch?v=7AHetMZRMtY0>

which aimed to show SOCAR's different policies in Azerbaijan and Georgia.

In the villages of Azerbaijan and neighbouring villages near Baku, the problem is the supply of natural gas to the population, which is causing problems for heating in winter. The aim of the story was to show that the Azerbaijani State Oil Company SOCAR instead of providing resources to address the problems in Azerbaijan, is supplying gas to most of Georgian houses of worship free of charge. After this news, on March 29, 2017, some people held a protest demonstration<sup>9</sup> in Tbilisi, whose main requirement was the prohibition of Meydan TV and Jamal Ali activities in the territory of Georgia. Immediately upon the first visit after the mentioned demonstration, Jamal Ali was denied entry into Georgia in Tbilisi International Airport.

**The essence and substantiation of the dispute:** In May 2017, the decision to deny entry into Georgia to Jamal Ali was challenged by EMC through an administrative complaint in the Ministry of Internal Affairs of Georgia. The main requirement of the administrative complaint was to annul the decision of denial of entry into Georgia to the journalist, as the decision was not substantiated, there was no denying of entry to the journalist in accordance with the Law of Georgia on Legal Status of Aliens and stateless persons<sup>10</sup>. The factual circumstances of the case created the substantiated assumption of the discriminatory treatment by the State, which resulted in a disputed decision by the Government under Article 8 (privacy), Article 10 (Freedom of Expression) and Article 14 (Discrimination Prohibition) of the European Convention on Human Rights.

**Case proceedings:** On May 10, 2017, based on the decision of the Director of Patrol Police Department of the Ministry of Internal Affairs, Jamal Ali was denied satisfaction of the submitted administrative complaint. The decision on refusal to satisfy the administrative complaint, like an appealed decision, does not contain any justification of the circumstance or fact why the state denied to issue a decision of entry into Georgia to Jamal Ali. The decision does not specify only the blanket concrete evidence that Jamal Ali did not comply with the requirements of the Georgian legislation, which had sufficient grounds for denial of entry into Georgia, accordingly the decision appealed is lawful and there is no grounds for its invalidation.

EMC will appeal these decisions in the nearest future in Tbilisi City Court.

**Significance of the case:** Recently, Georgian authorities exercised presumably arbitrary and discriminatory practices that restrict living and activities in Georgia to the activists,

---

<sup>9</sup> The video is available at: <https://www.youtube.com/watch?v=K5Dy9eunlkg>



journalists and political opposition from the non-democratic government of Azerbaijan. The government of Georgia often denies the right to live in Georgia and enter Georgia[1] to the citizens of Azerbaijan, who are distinguished for critical and oppositional attitude towards Azerbaijan's political system (political opposition leaders, activists and independent journalists), which is justified by various abstract and arbitrary justifications (mainly, the security interests). This practice creates a substantiated assumption that the Georgian authorities, due to political loyalty to neighbouring non-democratic authorities, are arbitrarily and discriminately restricting the citizens of Azerbaijan from living, development and activities in Georgia. Taking into account the above, this case provides an opportunity for the detailed study of the mentioned practice, at the same time the indicated case is important in the establishment of a court practice on the legality of the decisions made by the State with abstract instructions on refusal to enter Georgia.

### **3. Discriminatory interference with the activities of the Muslim boarding school**

**Overview of factual circumstances related to the case:** From September 10, 2014, Orthodox population living in Kobuleti protests and hinders the opening and activities of the boarding school for Muslim students. On September 10, 2014, local residents hung a pig head at the entrance of the boarding school with the purpose of insulting the Muslim community, and on September 15, the administration of the boarding school was not allowed to commence the educational process and was forced to leave the building. After September 15, 2014, local residents control the Muslim community's entry into the boarding school and do not allow opening the establishment. Witnesses interpretation and other evidence established the continuous violent actions and facts of threats from the dominant group, the police permanently mobilized on site was limited by the role of a passive observer and did nothing to eradicate the offense, to ensure the property rights and freedom of movement of the Muslim community.

**The essence and substantiation of the dispute:** At the end of 2014, under the Law of Georgia on "Elimination of All Forms of Discrimination", EMC filed a lawsuit with Batumi City Court within the framework of the Special Procedure of Civil Procedure Code. EMC conducts proceedings on behalf of the parent's administration, the staff and the pupils' parents, where the defendant is represented by the Ministry of Internal Affairs and three physical persons who according to the claim of the plaintiffs say that they are organizing the peaceful meetings of the local population and hindering the activities of the boarding school regularly. The main claim was to eradicate persistent discriminatory

treatment for the free use of the property in legitimate possession, including the opening and functioning of a boarding school for Muslim students in the said building. In addition to this, the demand was to pay solidarity compensation to defendants in the symbolic amount of GEL 1 for moral damage inflicted by religious discrimination on religious grounds.

According to the indication of the plaintiff party, as a result of hindering of the defendant physical persons and inaction of the Ministry of Internal Affairs, rights guaranteed by Article 3 (Prohibition of Inhuman or Degrading Treatment), Article one of Protocol No. 1 (Property right), Article 2 of Protocol No. 1 (Right to Education) and Article 14 (Prohibition of Discrimination) were violated.

**Case proceedings:** The case has been under review in Batumi City Court for almost two years. Within the framework of the review of the case, by the motion of the plaintiff approximately 40 witnesses have been interviewed, many of whom were police officers, who were on duty at the territory adjoining the boarding school during the critical episodes in accordance with the information provided by the Ministry of Internal Affairs. The Governor of Kobuleti Municipality, Public Defender and representatives of the local offices of the Georgian Young Lawyers' Association were interviewed as witnesses. Besides interrogation of witnesses, the court also visited the area of the boarding school.

On September 19, 2016 Batumi City Court declared its final decision, according to which the court of the first instance partly satisfied the claim only in relation of defendant physical persons, they were assigned elimination of continuous discrimination and reimbursement of moral loss in the amount of symbolic GEL1. Batumi City Court did not agree with the position of the plaintiff party in the part of discriminatory attitude on behalf of the Ministry of Internal Affairs, consequently, the court did not satisfy the claim in this part.

The decision of Batumi City Court was appealed in Kutaisi Court of Appeals by the applicant's physical persons, the submitted appeal claim was annulment of Batumi City Court in the part, by which the Court satisfied the claim against them.

The decision of the court of the first instance was appealed by the plaintiff, as the plaintiff considered that the decision of Batumi City Court, simultaneously to determination of continuous discrimination by private individuals, due to discriminatory inaction on behalf of the Ministry of Internal Affairs in the part of omission, is contradictory and

problematic. The Muslim community can not use its rights because of the discriminatory omission policy of the Ministry of Internal Affairs. It is obvious that discriminatory actions carried out by private persons in case the state duly fulfils its obligations and the continued limitation of Muslim community's rights would be prevented.

On December 28, 2016, the Chamber of Appeals of Kutaisi Court of Appeals did not satisfy the appeals filed by neighbouring individuals and the decision of Batumi City Court, which requested the Muslim community to satisfy the request. On the other hand, the appeal filed by the applicant through Kutaisi Court of Appeals was sent to the Chamber of Administrative Cases of Kutaisi Court of Appeals in the part of refusal to satisfy the claim (against the MIA), as the Court's assessment of the dispute was answered by the Interior Ministry was essentially a topic for judging by the administrative chamber.

The judgement of the Court of Appeals was appealed in the Supreme Court of Georgia by the defendant physical persons, where the Supreme Court recognized the cassation claim inadmissible, the mentioned decision is final and binding. Consequently, the court decision is in force for the respondent physical persons.

As for the case, in the part of the defendant -the Ministry of Internal Affairs, on April 18, 2017 the Administrative Chamber of Kutaisi City Court did not satisfy the claim lodged by EMC and the disputable part of Batumi City Court, by which the court did not establish discrimination on the basis of omission by the MIA, was upheld. The mentioned judgement will be appealed by EMC in the nearest future in the Supreme Court of Georgia.

**Significance of the case:** Some recent cases of social violence against Muslims have been resolved by political negotiations, and some have been conserved. The proceeding of the case in Kobuleti court is an attempt to resolve the mentioned problem through legal mechanisms. In case of effective legal remedies, this precedent will strengthen the Muslim community's struggle for civil rights. The case will also reveal the main problems and perspectives of enforcement of the law on the elimination of all forms of discrimination.

#### 4. Discriminatory refusal of Batumi new mosque construction

**Overview of factual circumstances related to the case:** There is only one historic mosque Orta Jame at the territory of Batumi municipality, whose space is not sufficient for the prayers, so every Friday during Juma prayer, several hundreds of people (500-1000 prayers) have to pray in the streets in improper conditions. During the festive prayers, Bayram 3000-5000 people are gathered to pray in the mosque, and in these days a large part of the parish-thousands of Muslims are praying in the rain, snow and wind in the street. Such discomfort and environmental factors completely deprive large parts of Muslim women of the opportunity to pray. The Muslim community has been talking about the need for a new mosque in Batumi for several years already. The Muslim community has been actively demanding allocation of land from the state to build a new mosque since the 1990s.

Following 2012 parliamentary elections, political officials, including the chairman of the Government of the Autonomous Republic of Adjara, Archil Khabadze, gave several public promises to the Muslim community regarding the construction of the mosque. However, in 2014 a small number of clerics (total 23 members) of LEPL “All Georgian Muslim Organization” signed a memorandum in which they requested a building for a new mosque building in Batumi for the madrassa and the building of a new mosque as an alternative of construction of the mosque. This agreement coincided with the fact that the Government has initiated the funding of four religious groups (Muslim communities, the Jewish community, the Catholic Community, Armenian Apostolic Church), the largest part of which is received by the Muslim communities, and a substantial portion of the funds 75% is used for salaries of clerks. On the basis of the memorandum, the government officially refused to fulfil its promise and stated that construction of a new mosque would not be held in Batumi. Despite the agreement between the organization and the government, the necessity and desire of the Muslim community to build a new mosque in Batumi has not changed, which was demonstrated by collecting 12,000 signatures requesting construction of a new mosque in Batumi.

In February 2016 the initiative group of Batumi mosque construction independently sent signatures (among signatories there were clerks of LEPL “All Georgian Muslim Organization”) to the state authorities, including the government of Adjara, Batumi City Hall and the government of Georgia and requested allocation of a plot of land in the centre of the city with good location, though Muslim community received a denial regarding allocation of a plot of land for the construction of a mosque.

As a result of the self-organization of the Muslim congregation, by the representation of the Muslim congregation the organization “Fund for the construction of a new mosque in Batumi” was registered on 16/06/2016 under the conditions when the state did not transfer to the Muslim community the plot of land required for the construction of a mosque, on September 7, 2016 the Muslim community based on the donations of the parish purchased on instalment basis a plot of land in Batumi for the construction of a mosque.

On February 8, 2017 “Fund for the construction of a new mosque in Batumi” applied to Batumi municipality City Hall and requested issuance of the I stage permit for the construction at the plot of land of a religious building-mosque with determination of the conditions for the use of the plot of land for the construction purposes;

After several months of administrative proceedings on May 4, 2017, Batumi City Hall issued a decree on refusal of a special (zonal) agreement on construction on the plot of land. On the basis of the indicated act, based on the order of May 5, 2017 of Batumi municipality mayor the plaintiff was denied approval of the usage of the plot of land for the construction purposes.

**The essence and substantiation of the dispute:** On June 10, 2017, “Batumi new mosque construction fund” with the aim of obtaining of a permit for the construction of a mosque, Batumi City Court has filed a lawsuit against Batumi Municipality. Tolerance and Diversity Institute (TDI) and Human Rights Education and Monitoring Centre (EMC) protect the interests of the Muslim community. The main requirement of the claim is to recognize as void the refusal of issuance of a construction permit on the plot of land acquired by the Muslim community, instructing Batumi municipality to issue the construction permit for the construction of a mosque and determination of a fact of discrimination on religious basis.

Mainly two arguments have been used in the disputed decision of the City Hall regarding the issuance of the first stage of the construction permit: 1. The plot of land intended for the construction is located in residential zone 6 (SZ-6), which is a high intensity housing zone and the dominant type of development are residential houses. According to the City Hall, the well established development of the quarter adjoining the design plot of land should not be changed and its future development must continue by existing main type of that zone-by the construction of the residential houses; 2. The religious building requires special infrastructure for movement, traffic movement, stopping and in other terms, arrangement of which is difficult on the indicated plot of land.

According to the assessment of the plaintiff, the arguments used by Batumi City Hall on the refusal to issue a construction permit are clearly undocumented and illegal. In particular, local authorities applied discretionary power on the issue of issuance of construction permit for the religious building in violation of the requirements of the law and pressing social need for the construction of Mosque in the city was opposed only by urban abstract interest, by which in the given case, the public interest of the protection of the freedom of religion was fully neglected.

Although the residential zone 6 (SZ-6) is a high intensity housing zone where dominant types of development are residential houses, in the specified zone objects of public<sup>10</sup> interest may also exist. It is noteworthy that, according to the provision indicated in the legislation, construction of “ecclesiastic facilities” is allowed in the residential area 6 of the territory of Batumi. The “ecclesiastical object” should be interpreted as non-discriminatory and neutral, which, apart from the Church, is regarded as other religious structure. In turn, it is necessary to make a special zonal agreement for the construction of such a facility.<sup>11</sup> The decision on issuing special zonal agreements is made by the mayor of Batumi municipality based on the submission of the Commission on Regulation of the Settlement of Territories and Development Regulation Issues.<sup>12</sup> It is noteworthy that the Commission is a consultative body whose decision is not an administrative-legal act and has a recommendation nature for the final decision-maker<sup>13</sup>. Consequently, a special (zonal) agreement, which allows for the construction of a religious building in the residential zone 6, shall be made only on the basis of the decision made by the mayor of Batumi municipality.

In addition, the plaintiff party points out the discriminatory nature of the disputed decision and requires the court to determine and eliminate discrimination on the grounds of religion. In this regard, the plaintiff calls on the court to take into account the general political context related to the construction of a new mosque in Batumi. The problem of religious intolerance, persecution of the Muslim community recently, regarding opening and construction of religious buildings and the problem of non-secular and discriminatory policy of the state.

---

10 Subparagraph “a” of paragraph 12 of resolution N59 of the government of Georgia of January 15, 2014 „Technical regulation – On the approval of the main regulation of the use and development of the territories of settlements”

11 Subparagraph “d” of paragraph 3 of Article 6 of resolution N50 of September 14, 2012 “On the rule of regulation of the use and development of the territories of settlements”

12 Paragraph 4 of Article 9 of the resolution of Batumi Sakrebulo of September 14, 2012 “On the rule of regulation of the use and development of the territories of settlements”

13 Resolution of Batumi Sakrebulo of September 14, 2012 “On the rules regulating the use and development of the territories of settlements of self-governing city-Batumi” Article 10 paragraph 7



At the same time, taking into account that in Batumi, including in the vicinity of residential houses, there are many churches and in some cases, the plots of land required for the construction were transferred to the local municipality to the Orthodox Church, restricting for the Muslim community the possibility to build a mosque on the plot of land purchased by means of their own funds, is the alleged discrimination on religious grounds.

**Case proceedings:** The suit filed on behalf of the Muslim Community was received by Batumi City Court. No session related to the case has been held as yet.

**Significance of the case:** In the existing resistant conditions of acute social need for the construction of a new mosque and in terms of construction of a new religious building by religious minorities the specified case has a strategic significance, in terms of protection of the rights of the Muslim community and also for implementation of the relevant legal standards in the sphere of freedom of religion. This case will be an indicator as to how the system of common courts is ready to implement the real control of the executive power in the direction of prohibiting discrimination in accordance with the Law of Georgia on the Elimination of All Forms of Discrimination.

## 5. Detention of LGBT activists on May 17 2016

**Overview of the factual circumstances related to the case:** On 17 May 2016, the LGBT activists, in relation to international day against homophobia transphobia and biphobia ((IDAHO), wanted to enjoy the rights to freedom of peaceful assembly and in such way express their position regarding the present challenges in the country connected to the legal status of the LGBTI community. It should be noted that active communication had been held with the State before the specified date in order to determine the place of assembly but all the important public areas in Tbilisi had been occupied by various organisations acting on behalf of the dominant religious group, and the State did not provide the adequate security guarantees for persons willing to participate in assembly, consequently, the activists were unable to enjoy their right to peaceful assembly on 17 May, and on that day the only possibility on their part for expression was to carry out partisan activities.

Due to the indicated circumstances, six of the LGBT activists made inscription on the wall of the Patriarchate of Georgia, located in 1 Erekle II st., Tbilisi, against the homophobic policy at the night on 17 May 2017. Several minutes after starting to make in-

scriptions, men wearing civilian clothes appeared and started moving hurriedly towards the activists without giving any explanations. As the most of the claimants had personally experienced threats related to their health and life from persons with homophobic attitude, in that episode they recalled the perceptions of their past experience, and decided that the approaching persons were representatives of an extremist group, and as a result they escaped in order to save their lives. In the course of men's approaching and their subsequent pursuit, there were no explanations to the activists that those persons were police officers.

Police detained the activists using coercive measures. The most of the activists learnt about the fact that they were detained by the police under the administrative procedure only when they were brought to the police station, before that moment they had had perception that they were detained by the extremist group.

After they had been brought to the police station, the police drafted report on administrative Offences for committing the offences laid down in Articles 150(1) (defacing the appearance of a self-governing unit) and 173 (non-compliance with a demand of the police) of the Administrative Offences Code of Georgia.

Within the period of claimants' presence in the police, they were denied the right to implement important procedural rights, including the right to communicate with the defence counsel. Within the period of being in the police station and subsequent appearance before the court, the police used the hate speech against activists that aggravated the stress, which they encountered due to the police activities and their detention.

**The essence and substantiation of the dispute:** On the part of the Tbilisi City Court, in the course of reviewing administrative offences, the EMC was referring that in the conditions, when religious groups had occupied all the public areas of political importance on 17 May in order to celebrate IDAHO by LGBT activists, they have no other choice for expression, consequently, imposing fines for defacing the self-governing unit was interference in the right of expression on the part of the State, thus, the court should assess proportionality of such sanction, especially in the conditions, when various types of inscriptions, drawings, etc. is considered as the administrative offence in accordance with the Article 150 of Administrative Offences Code of Georgia are made only at places not allocated for this purpose, and there is no such special territory allocated for this purpose in Tbilisi, accordingly, any similar public expression is considered as the 1st class construction offence and is potentially subject to the state censorship.

As to the non-compliance with the demands of the police, in the referred part, the EMC referred to the circumstances that as the police officers were wearing the civilian clothes and they did not urged or made any explanation that they were police officers, correspondingly, non-compliance with their demands should not be assessed as the administrative offence laid down in Article 173 of Administrative Offences Code of Georgia.

In parallel with reviewing the administrative offences case, the EMC applied to the General Inspectorate of the Ministry of Internal Affairs of Georgia with the request to impose appropriate disciplinary sanction to the representatives of the Ministry of Internal Affairs of Georgia because of the use of hate speech by those police officers.

**Case proceedings:** Tbilisi City Court have separated and examined the case of 6 LGBT activists and one more person as independent administrative offences cases. In the case of 6 activists the Court have not established the offence of Article 173 of Administrative offences Code of Georgia (non-compliance with demands of the police) and discontinued administrative offences proceeding with this respect, and all the 6 activists have been recognised as offenders and were imposed fines with the respect of committed act laid down in Article 150, - defacing the appearance of a self-governing unit (making stencils on the fence of the Patriarchate of Georgia). The court discontinued the administrative offences proceeding with the respect of acts laid down in both Articles against the person who was not a LGBT activist him/herself, did not participate in making inscriptions and was just waiting for his/her spouse in the car.

The EMC submitted its appeal to the Court of Appeal against the judgements with the respect of recognising LGBT activists as offenders as provided for in Article 150. The Court of Appeal upheld the first instance court's judgement for all six persons and did not agree with the position of the author of the appeal regarding the disproportionate interference in freedom of expression on the basis of imposition of fines on LGBT activists.

In November 2016 EMC lodged an administrative claim against the respondent Ministry of Internal Affairs of Georgia to the Tbilisi City Court. The requirement of the statement of claim was to declare the reports on administrative arrest void and compensate for moral damage for each person in the amount of GEL 3000.

The Tbilisi City court partially refused the claimants to admit a claim with respect of declaring the reports on administrative arrest void with the reasoning that the mentioned issue did not fall in its jurisdiction, in particular, it is specified in the decision that pursuant to Article 251 or the Administrative Offences Code of Georgia, interested persons

may appeal an administrative arrest, personal inspection, and inspection of belongings, seizure of items and documents to a superior agency (official) or a prosecutor. Due to the above mentioned, the statement of claim with respect of declaring the reports of 17 May 2016 on administrative arrest void does not fall in the Court's jurisdiction, as pursuant to imperative provision of Article 251 of the Administrative Offences Code of Georgia, interested persons may appeal an administrative arrest to a superior agency (official) or a prosecutor.

The EMC appealed the mentioned court's decision to Tbilisi Court of Appeals by the complaint of time limit, where, along with the other arguments, the author of appeal indicated that the right to fair trial was restricted by such a narrow definition of the regulation. Blanket indication of the mechanism and exclusion of the ordinary jurisdiction laid down in Article 251 of the Administrative offences Code of Georgia makes possibility of court control lawfulness of administrative arrest, personal inspection, and inspection of belongings, seizure of items and documents is entirely limited within the scope of the Administrative Offences Code of Georgia. On the other hand, it makes courts, as the mechanism of protection of rights, entirely illusory and relies only on the fairness of the higher administrative bodies of executive authorities when protecting the rights of the interested parties. Tbilisi Court of Appeals have not made decision as to the complaint subject to time limit.

**Significance of the case:** Apart from illustrating the challenges related to enjoining the rights to assembly and manifestation by the LGBT activists on 17 May, the referred cases clearly demonstrate deficiencies in legislative and court practices in the course of proceedings of the administrative offences cases containing the risks of arbitrary interference in human rights in the form of administrative arrest by the State agencies.

## 6. Dismissal of Jehovah's Witnesses from work

**Overview of the factual circumstances related to the case:** S.R. was employed in one of the chain stores at various positions since 2012. Since the moment of his/her employment, the most of the employees were aware of his/her religious identity (Jehovah's Witness) and he/she never encountered problems due to the above mentioned, and within this period, various types of incentives (promotion, etc.) were applied for him/her for performance of his/her duties in good faith.

S.R. started to encounter problems since the replacement of the branch manager where he/she was employed. After appointment of the manager, he/she started to express un-

reasoned criticism against S.R., what essentially was caused by inadmissibility of the religious identity of the employee. The manager, using various mechanisms, was trying to force S.R. to resign from work on his/her own will or to enable the employer to terminate the labour agreement on another basis.

Under conditions where none of the disciplinary measures had been applied to S.R. during several years of his/her employment, S.R. was imposed four disciplinary measures within the period of one month, in August 2016 causing unilateral termination of the labour agreement on the basis of Article 37(1)(h) of the Labour Code of Georgia, under which grounds for terminating labour agreements shall be violation by an employee of his/her obligations under an individual labour agreement or a collective agreement and/or of internal labour regulations, if any of the disciplinary liabilities under the above mentioned individual labour agreement or collective agreement and/or internal labour regulations has already been administered to the employee during the previous year. disciplinary liabilities under the above individual labour agreement or collective agreement and/or internal labour regulations has already been administered to the employee during the previous year.

**The essence and substantiation of the dispute:** On 29 October 2016, S.R., with representation of EMC, lodged the application to the Tbilisi City Court claiming to declare termination of the labour agreement void, restitution of his/her position and compensation of compulsorily lost salary. In addition to protection of labour rights, the it was stipulated in the statement of claim to establish discrimination of religious characteristics on the basis of the Law of Georgia on Elimination of All Forms of Discrimination and compensate moral damage incurred by discriminatory treatment in the amount of GEL 1.

**Case proceedings:** After admission of the claim by the court, the employ offered S.R. to settle the dispute amicably, according to which the employ would pay the salary of six months in the case of withdrawal of the claim. Due to the interests of the beneficiary, as well as due to the insufficiency of evidence in the case (important factual circumstances of the case could be confirmed on the basis of witness testimonies who did not agree to give testimonies against their employ), S.R. Agreed on those terms and withdrew the claim.

**Significance of the case:** The referred case essentially demonstrates the importance of application of the Law of Georgia on Elimination of All Forms of Discrimination to the activities of legal entities under private law for the purposes of fully protection of citizens' rights that, together with the Labour Code of Georgia, may enable protection of employ-

ees equality. On the other hand, this case emphasises the problematic nature of proceedings of the cases related to the discrimination in respect of obtaining evidence, especially, in labour relations, where the only evidence in the case is mainly testimonies of the case where the witnesses are other employees, who refuse to give testimonies due to loyalty to the employer and the fear to lose their jobs.

## 7. The secrecy of the Prosecutor's hate crime guideline

**Overview of the factual circumstances related to the case:** At one of the session of the Human Rights Committee of the Parliament of Georgia, on the basis of the statement of the representative of the Chief Prosecutor's Office of Georgia, EMC became aware that at the beginning of 2016, the Chief Prosecutor adopted a guidebook for prosecutors and investigators regarding the investigation of hate-motivated crimes.

Taking into consideration the fact that EMC is actively involved in working on hate-motivated crimes, on 13 May 2016, the organisation applied to the person responsible for issuing public information of the Chief Prosecutor's Office of Georgia on requesting the public information and requested to issue public information regarding the copy of current guideline, recommendations, guidebook or any type of act for the purpose of investigation of hate-motivated crimes currently used in the Prosecutor's Office of Georgia.

The EMC was refused to issue the public information by the letter of 20 May 2016 of the Chief Prosecutor of Georgia and was explained that the document requested by the application was of recommendatory nature and the document is only for internal official use by investigators and prosecutors.

**The essence and substantiation of the dispute:** In June 2016, EMC lodged an application to Administration Cases Panel of Tbilisi City Court and requested to declare the decision void on refusal of issuance of the public information requested from the Chief Prosecutor's Office and to be assigned it to issue the requested information.

Accessibility to the guideline on Investigation of hate-motivated cases, regardless of its legal nature, is essential due to the fact that effective investigation of hate-motivated crimes requires additional specialised education for prosecutors, it was confirmed by the fact that in accordance with the Resolution №445 of 9 July 2014 of the Government of Georgia on "Approval of the Governmental Action Plan on Human Rights (2014-2015)



and Establishment of Coordination Inter-Agency Council of the Governmental Action Plan on Human Rights (2014-2015) and Approval of its Statute”, the Prosecutor’s Office was obliged to train the prosecutors in order to upgrade their qualification in respect of investigating crimes committed on the grounds of hate motivation. ( 12.2.3 point; 14.4.2.2. point)

Therefore, it is important that the document, enabling to assess the basic view of Prosecutor’s Office that ensures the effective investigation of hate-motivated crimes, to be publicly accessible. Especially under conditions, when due to the legal nature of the document, regardless the existing subordinative structure of the Prosecutor’s Office, the guideline will be the main document and persons who conduct the hate-motivated crime, will be guided by it, therefore it is important that the document will be accessible to the public like other public information and be subject to appropriate public discussions.

**Case proceedings:** By the Decision of 7 November of 2017, Tbilisi City Court did not allow the application submitted by EMC. According to the Court’s reasoning, the requested information was within the limits of Article 3(4) of the General Administrative Code of Georgia and therefore, the Chief Prosecutor’s Office of Georgia was not obliged to issue it. In particular, pursuant to the specified regulation, the obligation on issuance the information shall not apply to the activities of the bodies of the executive authority related to: a) criminal prosecution and criminal proceedings against a person having committed a crime; b) a criminal investigation.

EMC appealed the first-instance decision to the Tbilisi City Court. EMC, in its appellate claim, indicated that the first-instance court had misinterpreted the Article 3(4) of General Administrative Code of Georgia and closing access to the guidebook on the basis of this norm was incorrect.

Following the interpretation of the indicated regulation, it is evident that the body carrying out the above mentioned activity is exempted not from the obligation to issue any type of information, but only the information regarding the cases of individual nature, due to existing legitimate goal, from disclosure of information in particular cases.

it should be noted that in the given case, demonstrating the purpose of abstract protection substantially misrepresents the grounds for restriction of freedom of expression, as disclosure of the multi-use document of the Prosecutor’s Office (guideline regarding the hate-motivated crimes) has the same connection to the investigation interests and creates

the same “potential threat” for criminal proceedings, as the public access to the Criminal Procedure Code of Georgia.

Tbilisi Appellate Court disallowed the EMC’s appeal by the decision of 25 July 2017. The reasoning of the Appellate Court is not known so far, although EMC will submit the appeal by a cassation procedure after delivering the reasoned decision.

**Significance of the case:** Regardless the fact that hate-motivated crimes against various vulnerable groups are becoming more frequent, identification of hate motivation in the course of investigation and transforming this motivation as an aggravating circumstances by the court is related to certain difficulties, causing loss of hate motivation and cases are reviewed in the context of ordinary criminal cases. Public access to the guidebook regarding investigations of hate-motivated crimes developed by the Chief Prosecutor’s Office of Georgia will enable the public to get acquainted with the opinion of the Prosecutor’s Office regarding investigation of similar cases and allows to arise public discussion on this topic.

# Current disputes brought before the Public Defender, as the Mechanism of Equality

## 1. Discriminatory harassment against Muslim students at Mokhe public school

**Overview of the factual circumstances related to the case:** The case concerns the alleged discriminatory oppression against Muslim pupils on religious grounds by the principal of the public school of the village of Mokhi. On 22 December 2016, class tutor took Teona Beridze, 12th grade pupil of Mokhi public school out of the classroom and told her that Natia Rekhviashvili, the school principal would not approve her admission to school unless she removed a headgear. Although it was not determined by the internal regulations of the school, the school principal, like the class tutor, directly demanded from Teona Beridze to remove the headgear and explained that everybody should obey the rules of the school. On 26 and 27 December, other Muslim schoolchildren expressed their solidarity towards Teona Beridze and refused to attend the lessons in protest. School principal, instead of solving the problem at school, became a party of the conflict and decided to threaten/punish the pupils (including the very first lesson with the 12th grade, where she emphasised the need of appointing a special exam for Teona Beridze; she warned the pupils that they would be liable before court for dissemination of incorrect information; the teachers, who were preparing the pupils for unified national exams, were prohibited to carry out such activity; several pupils, who were the gold medal candidates, were told that receiving gold medals appeared to be doubtful; the pupils (including the pupils living in another village) were not allowed to wait in the classroom before arrival of the bus)). At the same period, the principal prohibited and gave them reprimand for their participation in the prayer organised by Muslims in the open air near the old iconic building in the village of Mokhi.

Generally, it should be noted that the problem of active anti-Muslim public positioning of the principal in the conflict regarding the historic building, called her religious neutrality into question.<sup>14</sup>

EMS represents the interests of pupils of Mokhi public school (Adigeni Municipality) before the internal Audit Department of the Ministry of Education and Science of Georgia, as well as before the Public Defender, on the basis of the Law of Georgia on Elimination

---

<sup>14</sup> <https://www.youtube.com/watch?v=JGYmKqJIT-s&feature=youtu.be>

of All Forms of Discrimination. EMC, apart from establishing the fact of discriminatory oppression, demands from the Ministry to take special positive measures regarding the religious neutrality at public school for the purpose to create the environment based on equality and diversity.

**The essence and the reasoning of the case:** EMC claims that contrary to ensuring the adherence to equality, the school officials created humiliating, degrading, insulting, hostile, terrifying environment for Muslim pupils, what, in the course of enjoyment the right of education, was oppression/discrimination against the Muslim pupils on the religious grounds. Oppression expressed in verbal form has turned into a form of restriction of the rights and made Muslim students to suffer from handicap due to their religious affiliation. The treatment of school principal at the first stage was related to wearing a headgear by one of the pupils, it was equally applied

On 7 March 2017, the Internal Audit Department adopted a decision and **did not establish the liability of the principal in the episode of alleged oppression due to the demand to remove the headscarf and submission to school on these grounds**. Moreover, the Department, in the individual case, beyond the breach of law, assessed the restriction of use of religious attributes by pupils in public schools and pointed out that public schools have a legitimate basis for the imposition of such prohibitions based on the interests of religious neutrality.

EMC appealed the decision before higher administrative body with the following essential arguments:

– Department’s decision, in order to confirm the non-existence of the discrimination, refers to the neutral nature of the restriction and declares that such prohibition applies to all pupils of the school, including Christian ones excluding its discriminatory nature. In this respect, it should be noted that prohibition of clearly expressed religious clothes and symbols by the principal, where there are only the Muslim and Christian pupils, regardless of her **formal neutrality**, it makes disproportional impact on enjoyment of the right to freedom of religion by the Muslim Pupils. Contrary to the case of orthodox pupils, for Muslim pupils, wearing the **clearly expressed** religious clothes (headscarf) is in doctrinal relation with their religion. The Department neglected the legal framework of the indirect discrimination and excluded the alleged discriminatory motivation by unimportant and formal arguments. At the same time, isolated examination of prohibition of wearing the headscarf did not allow the Department to review the circumstances in relation to other facts of oppression of Muslim pupils and generally reflect the issue of alleged discriminatory oppression. The Department in its opinion do not take into consideration

the evidence submitted by EMC demonstrating public and open anti-Islamic attitude of Natia Rekhviashvili, the present principal of Mokhi public school, which become evident during the religious conflict in Mokhi in 2014;

– It is indicated in the opinion that restrictions or regulations regarding the religious attributes are not laid down in the internal regulation of Mokhi public school. Despite the fact that the Department did not exclude the fact of demanding the removal of the headscarf by the principal, it had not discussed its lawfulness and illegal restriction of the freedom of religion by doing so. Even in the case of existence of legitimate reason for restricting freedom of religion, in order to justify the restriction, it was necessary to confirm that the restriction was imposed “on the basis of the law”, however the Department failed to do so.

– The Department’s opinion, regardless the non-existence of the direct prohibition in the internal regulation of the school, draws its attention to the nature of such prohibition that may fall within the scope of regulation of the school (a Board of Trustees) in the **future**. According to the opinion, in accordance with this Article 8(3) of Law of Georgia on General Education, Schools may determine the rules of non-discriminatory and neutral restriction for the rights and obligations of pupils, parents and teachers and their associations during school hours and on school grounds in order to observe this Law. As well as if there is a reasonable and inevitable danger of spreading ethnic or religious **discords**, incitement to crime or violence. The Internal Audit Department substantiates the relevance of this regulation by providing the argument that ‘the part of persons at school (and not only them) relate wearing the headscarf to the ongoing processes outside the school, in particular, to the issue of historical object of religious importance in the village of Mokhi in Adigeni Municipality’. It is important to be noted that the reason that caused interruption of the educational process and conflict was the fact of restriction of religious freedom for the Muslim pupil and not vice versa. Moreover, in the course of discussing the interests of avoiding any type of conflict, first of all, the Ministry had to take into consideration open anti-Islamic statement and public activities of the school principal that she made during the conflict which took place in Mokhi in 2014.

– At the same time, it should be emphasised that if in the future the Board of Trustees are able and make decision on prohibition of use of the religious attributes, this provision will not comply with the requirements of the Constitution of Georgia and the Law of Georgia on General Education. Furthermore, EMC, in its application, was indicating that the relevance and validity of reception of international practice used by the agency was problematic. In this respect, it is very important comprehensive interpretation of the

judgement of the Constitutional Court of Germany referred in the opinion itself. Constitutional Court of Germany considered inadmissible prohibition of wearing a headscarf by a teacher and explained that wearing hijab is an individual expression and not a state religious act. At the same time, according to the Court, wearing the headscarf did not contradict the neutrality of the State. According to the Court's explanation, religious and ideological neutrality of the State did not have to be perceived as the isolated attitude in the sense of strict separation of the State and religion, but as an open and comprehensive service ensuring the equality of freedom of faith for every person. The obligation of neutrality is especially important in the school conditions, where the society do not freely organising their social existence and for which the State has taken the responsibility.

In addition, the ruling of the European court of the case *Lautsi v. Italy* (II) shall be taken into consideration. In this case, the Grand Chamber of the European Court, in admissibility of presence of crucifix on the classroom, took into consideration the admissibility of wearing a headscarf at the same school. [3]the European Court indicated the obligation of the cultural and historical diversity of the Member States and emphasised the States' obligation to respect religious communities established by the Convention. According to the European Court, visibility of crucifixes at schools did not mean compulsory study of religion, moreover, the public schools observed the religious neutrality from the point, that the Muslim pupils were not prohibited to wear headscarves and there were no description of facts of discriminatory treatment of applicants by the school representatives.

Thus, according to the European Court, the visibility of hijab does not imply imposition of a viewpoint of Muslim religion while at the same time, wearing a hijab, as the German Constitutional Court emphasises, is an individual act of religious expression and cannot be equal to indoctrination. Wearing hijab, as the individual religious expression cannot be unequivocally assessed by the Georgian legislation as "placement of religious symbols in the territory of a public school".

At the end of the opinion of the Department there is pointed out that there is a restriction to wear headscarves even in such **States, where the majority of population are Muslims**. In this case, the Department misinterpret the internationally accepted approaches. The European Court agrees with the opinion that in democratic states, the need of restriction of wearing a headscarf may be caused by wearing headscarves by the majority of the dominant Muslim identity and not vice versa. In addition, the Department, on the examples of restriction of wearing the headscarves, do not take into account the political importance given to the Muslim headscarves in these countries (e.g. Turkey, France). It is noteworthy that the European Court of Human Rights emphasises the political significance of the

prohibition of headscarves in these countries in the reviewed cases of both countries. The Department referred to the case *Leyla Sahin v. Turkey*, where the Grand Chamber devotes extensive discussion to the strict regime of secularism established by the Constitution of Turkey and in particular, the significance of this principle for maintaining democratic system by the Turkish State. The Grand Chamber directly indicates the political meaning of the religious symbol and extremist groups that were talking about granting normative force to the sharia laws within the pre-election campaign. It is also noteworthy that in the *Sahin* case the Court verifies the proportionality of the restriction only after listing these factors and once again indicates that verification is conducted to justify restriction of wearing the headscarf in these particular circumstances.

The Law of Georgia on General Education ensures the religious neutrality and equality at public schools, in particular, it prohibits the placement of religious symbols and indoctrination in the territory of public schools. At the same time, it widely supports the individual religious expression.

Under the circumstances where the religious neutrality is a wide-scale problem at public schools (it is proved by surveys, including Public Defender's reports) and the Ministry fail to provide effective measures for years, imposing the restriction on pupils to wear headscarves, which is explicitly linked with the Muslim community, carries the discriminatory connotation.

It should be also emphasised that the issue related to the use of religious attributes shall be assessed in specific social, political and historical context and it is inadmissible to accept the experience of other countries automatically. In our reality, in the conditions of discrimination of Muslim community and marginalisation, wearing headscarves by young Muslim women emphasises their own religious identity and a type of antagonism to the ideology of religious nationalism and liberation. Therefore, interpretations given in the opinion of the Department and applied legal framework are socially non-adequate and may be vulnerably perceived by the Muslim communities living in Georgia.

**Case proceedings:** The case was submitted to the Public Defender and the Ministry on 29 December 2016 for the first time. Since then EMC applied to these bodies two more times with additional evidence in the case, as well as with other facts of discriminatory oppression identified at school. On 7 March 2017, it disallowed the application from the Ministry of Education and Science of Georgia<sup>15</sup> that was appealed

---

15 The Department of Internal Audit explains that 'as a result of the conducted procedure, on the basis of established circumstances and compared submissions of the participants of the case, the fact of discriminatory treatment is not confirmed' and even in the case of such confirmation, such prohibition complies with the legislation of Georgia. <https://emc.org.ge/2017/03/23/emc-mokhe/>



to the Minister of Education and Science of Georgia, however, the Minister did not provide the appropriate examination of the case and EMC received the ambiguous response of the Internal Audit Department. The Public Defender has not adopted the decision in the case.

**Importance:** in the given case, establishment of discriminatory oppression and restitution of violated rights, as well as imposition of positive measures for establishing secular, equal and tolerable environment at school by the Public Defender, as the equality mechanism, will serve as the preventive mechanism for the Ministry of Education and Science to ensure the peaceful living at school and even broader, in the village. Recognition of the violation of the right and taking appropriate measures is especially important to ensure the fidelity to the State's principles when protecting the rights of Muslim pupils at public schools.

## **2. Discriminatory refusal of the Government to transfer land under state ownership for the Construction of a second Mosque in Batumi**

**Overview of the factual circumstances related to the case:** The case concerns the refusal regarding the transfer of plot of land by respective agencies (the Government of Georgia, the Government of Autonomous Republic of Ajara, Batumi City Hall, State Agency for Religion Issues) for constructing a new mosque and agreement with the Administration of All Muslims of Georgia on totally non-relevant alternative to the new mosque (transferring Madrasa and residency to the Administration and initiative of reconstruction and expansion of the Orta Mosque) that does not replace the need of construction of the new mosque.

**The essence and the reasoning of the case:** In the conditions of the non-secular practice to transfer a large-scale immovable property to the Orthodox Church of Georgia<sup>16</sup> beyond the restitution policy, factual refusal to Muslim community to transfer the plot of land for constructing a new mosque demonstrates different treatment of the Government to Muslim community compared to persons in similar situation.

The initiative group of the new mosque construction in Batumi unites 12,000 Muslims, including the individual religious leaders of the Administration of Muslims of All Georgia, and tries to administer the mosque construction process independently. The Government, regardless of its public promise regarding the transfer of the plot of land for

---

<sup>16</sup> Survey of the state funding policy for religious organisations (2014-2015) is available at: <https://emc.org.ge/2016/07/16/emc-101/>

constructing a new mosque in Batumi, have not provided substantiation that is justified and reasoned by the insurmountable interest of the State. It should be noted that in accordance with the relevant judgements of the European Court of Human Rights, in the course of exercising discretionary powers to transfer the immovable property, the State shall be strictly adhere to the principles.

Public Defender of Georgia and prominent international organisations (Including European Commission against Racism and Intolerance<sup>17</sup> and Advisory Committee on the Framework Convention for the Protection of National Minorities<sup>18</sup>), as well as the State Department of the United States<sup>19</sup> point out the need of constructing a new mosque in Batumi, as well as delay to solve the issue by the State.

**Case proceedings:** The case was submitted to the Public Defender of Georgia on 26 October 2016. On 24 January 2017, EMC submitted additional evidence to the Public Defender regarding the plots of land transferred to orthodox church and other religious organisations for the purposes of construction iconic buildings in the territory of the Autonomous Republic of Ajara within the period of 2006-2016. The Department of Equality have not adopted the decision yet.

**Importance:** The establishment of discriminatory fact by the Department of Equality will carry the function of recognising discriminatory environment and unequal policy by the State against the Muslim community, at the same time, for the purposes of elimination of discrimination, the indicated measures will serve as preventive functions for representing religious minorities in the public area.

### 3. Discriminatory use of police powers against the Muslim community on the border and customs check

**Case description:** The case concerns the alleged discriminatory practices of the border crossing, in particular, creating arbitrary barriers by the police to the applicants, representatives of the Muslim community (J.A., N.D. And M.N.), unjustified and long-term delays, interrogation on issues of religious affiliation and repetitive confiscation of religious literature. Patrol police delayed the applicants at Sarpi border checkpoint for two

---

17 The report is available at: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-ENG.pdf>

18 The opinion is available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680590fb5>

19 <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dclid=256191#wrapper>

hours, interrogated on issues of religious affiliation and details of visiting Turkey and threatened to confiscate the religious literature brought for personal use. The subject of patrol checks was the religious affiliation and activity only after they identified that the applicants were Muslims. On the other hand, in the course of their delay and interrogation, the other persons were crossing the board without any difficulty or delay.

In the process of examining the case, The Public Defender's Department of Equality, apart from the applicants, identified other persons as well who were subject to similar practice when crossing the state border.

**The essence and the reasoning of the case:** The Public Defender's Department of Equality agreed with the applicants and established the fact of direct discrimination. By establishing such fact, it was proved that certain measures had been taken (delay, interrogation, confiscation of religious literature) against the Muslim community when crossing the border because of their religious affiliation and it had no objective/reasoned justification. According to assessment of the Public Defender, 'delaying when border crossing, created obstacles when bringing religious attributes and items, serves to repress the religious activity in them [Muslim community]', thus, it carries self-destructive character and is inadmissible in the State oriented on improvement of legal status.

**Case proceedings:** The case was submitted to the Public Defender of Georgia on 23 February 2016. On 25 April 2017 the Public Defender of Georgia established the fact of direct discrimination and applied to the Ministry of Internal Affairs of Georgia and to the LEPL Revenue Service operating within the governance of the Ministry of Finance of Georgia with the recommendation to ensure the observance of religious neutrality when performing their official duties at customs checkpoints and pass persons who enter or leave the country without any discrimination. In response to the identified systemic problem, in addition to other recommendations, the Public Defender considered necessary the phased training of employees of respective agencies on the issues of religious neutrality and equality.

**Importance:** In the process of examination of the case, Public Defender's Department of Equality identified systemic discriminatory practices behind the individual disciplinary misconduct taken place in the course of visa/customs control, as a result, apart from the applicants, other victims also were interrogated. It was identified by this case, that there was a systemic problem of exclusion from the public space of the Muslim community. Therefore, the Public Defender, in order to ensure the religious equality of religious minorities, issued a recommendation on taking positive measures for raising the public awareness.

## 4. Discriminatory refusal of the local Government to connect Kobuleti Boarding school to the sewage system

**Overview of the factual circumstances related to the case:** The case (see the Case of Kobuleti)<sup>20</sup> concerns the refusal on works necessary for opening a Muslim boarding house, in particular, attaching the house to the wastewater system, on the background of the violent resistant organised by the local orthodox population (that continues for months) and omission of act of L.T.D. Kobuleti's Tskali and the local government.<sup>21</sup>

**The essence and substantiation of the dispute:** Tolerance of the State towards persons practising discrimination indicates that the State agree with the motivation of the local population and fails to comply with obligations to prohibit the discrimination.

The Public Defender agrees with the position of the applicants, reviews the essence of the state's positive obligations and considers that 'only representatives of the Muslim community suffer from the way the local authorities chose to maintain peace among the population, as on the basis of the will of the dominant religious group, the community is entirely deprived the possibility to exercise the freedom of religion through teaching in the building that is in their ownership'. The Public Defender further notes that 'within 2 years, the authorities have not had the attempt to take positive measures in order to resolve the conflict' and demonstrates the example of failure to inform the population correctly and obligation to address to the law enforcement authorities.

**Case proceedings:** The case was submitted to the Public Defender of Georgia on 27 July 2016. On 19 September 2016 the Public Defender addressed to L.T.D. Kobuleti's Tskali with the recommendation so that to conduct works necessary to attach Kobuleti boarding house to the wastewater system, as well as to the local government of Kobuleti municipality so that to inform the law enforcement authorities and support the implementation of these works. In addition, the Public Defender gave the general recommendation to the municipality so that to ensure the protection of equality rights of religious groups residing in the municipality, including through raising awareness among the local residents. Regardless the recommendation of 19 September 2016 of the Public Defender, the board-

---

20 In September 2014, Batumi City Court established the fact of discrimination on the facts of resistance against opening the Muslim boarding house committed by natural persons. The court did not accept the EMC's arguments with respect the liability of the Ministry of Internal Affairs and allowed the claim in part.

21 In accordance with Article 9(1) of the Law of Georgia on Elimination of All Forms of Discrimination, actions of the Ministry of Internal Affairs were outside the Public Defender's competence, as due to the same fact of alleged discrimination, the claimants were requesting to assess the omission of acts of the Ministry of the Internal Affairs within framework of the current dispute in the Batumi City Court with respect of the given episode.

ing house has not been yet attached to the wastewater system due to the subordination of state agencies, in this case, L.T.D. Kobuleti Tskali and local government, to de-facto control established by the population.

**Importance:** Delay of attaching the boarding house to the wastewater system (for more than three years) is one more hindering factor for opening/functioning the Muslim boarding house and for ensuring the enjoyment of equal rights by the Muslim community. Decision adopted in this case also outlines the systemic problems of excluding the Muslim community from the public area and interpretations of the Public Defender plays an important role in forcing the state agencies not to subordinate to the stereotype views of the society and take special positive measures instead.

## 5. Discriminatory termination of the contract with the Kiwi Vegan Cafe

**Overview of the factual circumstances related to the case:** On 29 May 2016, the personnel and the guests of a vegan cafe were offended by members of neo-Nazi group, so called 'Bergman', they brought meat products in the cafe in order to humiliate them and tried to throw them into their meal that caused conflict, firstly, between members of 'Bergman' group and personnel of the cafe, and then between local residents and the personnel of the cafe. The neighbours verbally and physically abused the personnel of the cafe. After this fact, the owner of the premises of the cafe requested the tenant to terminate the agreement and determined one month's period for that. Before elapsing the term of the agreement he/she prohibited the personnel and guests of the cafe to sit on the pavement in the vicinity of the cafe.

**The essence and substantiation of the dispute:** In the given case, EMC have requested to establish the fact of discriminatory treatment by the owner of the premises of the cafe that was manifested by continuous limitation of ownership rights during the use of premises and eventually, by the illegal termination of the tenancy agreement. The factual circumstances of the case confirmed that there were no legal grounds for terminating the agreement, as there were no circumstances laid down in Article 562 of Civil Code of Georgia for unilateral termination of the tenancy agreement and it was established that the main motivation for the owner to terminate the tenancy agreement was position of local residents dissatisfied with the distinctive and non-conventional appearance of cafe personnel and guests, and the the owner of the premises and their family member agreed with this opinion as well. In addition to above mentioned, the owner of the premises, their family members and the neighbours affiliated the personnel of the cafe and their

guests with LGBT community and considered them as inadmissible for the society. In particular, the owner of premises and their family members often reminded the administration of the cafe that different appearance - coloured hair and piercing - was inadmissible for Georgian society and caused dissatisfaction of the local residents and therefore, they had no desire to extend the contractual relationship.

Based on the above mentioned, EMS noted that requesting to terminate the tenancy agreement by the owner was the direct discrimination for dissenting opinion and associative discrimination of sexual orientation. As there was the interference in the enjoyment of right determined by the legislation of Georgia by the owner and such treatment had no legitimate intention.

**Case proceedings:** EMC addressed to the Public Defender of Georgia on behalf of Kiwi Cafe administration. It claimed establishment of discriminatory treatment and imposition of adequate measures in order to re-establish the equality.

The Public Defender of Georgia examined the factual circumstances of the case and under the Resolution of 26 April 2017 established that the owner of the premises directly discriminated against the administration of Kiwi Cafe for differential opinion and sexual orientation. The owner was recommended to refrain from discriminatory treatment of any characteristics in contractual of other type of relations.

**Significance of the case:** In order to develop society free from discrimination, xenophobia and homophobia, it is important to respond adequately to the facts of intolerance and hate and give adequate legal assessment that will be the way to prevent such facts in the future.

## **6. Discriminatory ousting of gay persons from a nightclub in Batumi**

**Overview of the factual circumstances related to the case:** On 19 August 2016, in the 'Sector 26' night club, K.S. and D.E. were verbally and physically abused by security officers of the night club on the grounds of the inadmissibility of their sexual orientation. In particular, K.S. and D.E. were in the night club with a friend when K.S. kissed D.E., his boyfriend. In approximately 15-20 minutes after the fact took place, two security officers, who twisted his arms behind his back and forced him to leave the club. In parallel with physical abuse, the security officers used hate speech against K.S. and D.E. and they were referred to as 'gays' and pointed out that the club was not their place.

**The essence and substantiation of the dispute:** In the given case, EMC applied to the Public Defender of Georgia and, on the basis of the Law of Georgia on Elimination of All Forms of Discrimination, requested that the administration of the club to establish the fact of discriminatory treatment against K.S. and D.E. and imposition of adequate measures for restitution of equality.

The applicants indicated that they saw how heterosexual couple were kissing each other, although the security officers, unlike their case, did not respond to the mentioned fact. Based on these circumstances and homophobic speech used by security officers against K.S. and D.E., the discriminatory treatment was evident. The applicants, due to their sexual orientation, were not able to use the service that was the interference in the right to peaceful enjoyment determined by the legislation, at the same time, unlike the heterosexual couples, they were unequally treated, as regardless the similar action, only they were demanded to leave the club. In addition, the treatment by the security officers was disproportionate and had no legitimate aim - taking into consideration the factual circumstances of the case, there were no factors that could force the security officers to act in such manner, therefore the action was caused by the motivation of inadmissibility of sexual orientation and had no objective and reasonable justification.

**Case proceedings:** EMC applied to the Department of Equality of Public Defender's Office of Georgia and requested to establish discriminatory treatment against K.S. and D.E. Under Decision of 2 February 2017 it was established that discriminatory treatment of sexual orientation characteristic and the night club was given the recommendation.

## **7. Case of T.A., K.A. and M.A. related to denial of entry into Turkey**

**Overview of the factual circumstances related to the case:** EMC studies the problem related to the unreasoned delay of Muslim citizens on the State border who are in kinship relationship with a person from Georgia fighting in Syria and alleged informal transfer of information to the relevant services of the Republic of Turkey about citizens of Georgia that causes indirect restriction of freedom of movement. In 2016, three Muslim citizens of Georgia T.A., K.A. and M.A., who are in kinship relationship with Ma.A., gone from Georgia to Syria to fight, were refused to enter the country by the Republic of Turkey. According to explanations of the citizens of Georgia, the grounds for refusal was the fact that they were in the kinship relationship with Ma.A., as well as providing with the information of relevant services of Turkey by the State Structures of Georgia. Such conclusion



is based on several circumstances. Namely, Ma.A., after he has gone to Syria, entered the Republic of Turkey for several times and was refused to enter the country only during the next visit, after he was unreasonably delayed at the State border of Georgia for about 40 minutes, and M.A. and M.A. were crossing the state border of Georgia for the first time. In addition, all of them noted that unlike the other citizens of Georgia, only they were delayed when they approached the border of Republic of Turkey and there was an indication regarding the relationship with M.A. and interrogated in connection to this fact. It should be taken into consideration that according to the information of M.A., they were entered in the so called 'red list' for a certain period of time by the Anti-Terrorism Service of Georgia.

**The essence and substantiation of the dispute:** In the given case, EMC considers that there may be the informal practice of exchanging information between relevant bodies of Georgia and the Republic of Turkey causing indirect restriction of free movement of T.A., of K.A., in turn contradicts the Constitution of Georgia and legislation regulating the state border.

Under Article 22(2) of Constitution of Georgia persons lawfully being within the territory of Georgia shall be free to leave the country, whose restriction is considered to be not only prohibiting to leave the territory, but the use of indirect measures by relevant bodies as well, which may affect the decisions of the other state. At the same time, under the regulatory document of crossing the border, citizens' documents shall be checked through the databases of public registry and International Organisation of Criminal Police (Interpol), and there is no provision regarding providing other authorised bodies by information related to persons crossing the border. In addition, detention of citizens and delaying them for certain period of time is only possible in the case of the doubts arisen as a result of check the database of International Organisation of Criminal Police (Interpol) or in the case of taking police measures, although, at the same time, it is envisaged to inform citizens regarding reasons of delays. In this case, T.A., K.A. and M.A., unlike the other citizens crossing the border, were delayed without any explanation and were not later explained of the reason of delay.

EMC considers that unreasoned delay at the state border of Georgia and alleged practice of informing the relevant bodies of the other state contradicts national or international legal requirements that establishes that the restrictive police measures shall be based on the individual liability of the person<sup>22</sup> and not on his/her affiliation or perceived affiliation with a certain group. Similar shall be applied to their relatives, where there is a reasonable

---

22 Decision of the Constitutional Court of Georgia of 11 July 2011 No 3/2/416, II .p. 40, 41

doubt regarding their involvement in the terrorism. Restriction of right to public safety is admissible only on the basis of the law which shall not cause ambiguous and arbitrary restriction. In connection with terrorism, the resolutions adopted by the United Nations responds to the threat of disproportional restriction of human rights and emphasises that the State shall protect the human dignity, fundamental rights, democratic processes and rule of law.<sup>23</sup> In addition, in the Opinion of the independent expert submitted to the Commission on Human Rights by the the Office of the United Nations High Commissioner for Human Rights there was expressed the point of view that exchanging information between states will cause the threat that sensitive information collected for the purposes of combating the terrorism, may be misused for other purposes.

**Case proceedings:** In order to find out the reason of restricting the beneficiaries' rights, EMC addressed to the Ministry of Foreign Affairs of Georgia on one hand, and requested the communication with the Consulate of the Republic of Turkey to investigate the circumstances of the case and to identify the reasons for prohibiting the entry into the country (no response to the requested information yet), and on the other hand, by the communication with the Ministry of Internal affairs of Georgia it was established that T.A. Had no restriction of crossing the state border of Georgia and the Ministry of Internal Affairs did not provide the border agencies with the information on particular persons. Regardless of this response, EMC applied to the Public Defender of Georgia regarding the issues of delay of T.A., K.A. and M.A. at the border of Georgia, requesting examination of formal and informal practices of exchanging information between the states of Georgia and Turkey that would allow to establish the fact of indirect restriction of the applicants' free movement. In the process of examining the factual circumstances of the case by EMC, the Public Defender applied to the Ministry of Internal Affairs of Georgia on the basis of the received information that included the reference to legislative acts, some of which were not related to the factual circumstances (e.g. MIA was referring to the Law of Georgia on Legal Status of Aliens and Stateless Persons, when the case was related to Georgian citizens, as well as to the Resolution N386 of 30 December 2013 of the Government of Georgia, although period of delay and grounds during the passport control is not laid down in the Resolution).

Despite of this error, the Public Defender considered that delaying a person crossing the border for 40-60 minutes by the State due to the kinship relationship with the person who was fighting in Syria, might be justified due to the state security interests.

---

23 Resolution of General Assembly No60158: Protection of human rights and fundamental freedoms in fighting against terrorism

**Significance of the case:** In the application addressed to the Public Defender, EMC required to study unreasoned delay of Muslim citizens at the state border, as well as the informal practice of exchanging personal information with relevant services of the other State. Satisfaction of this request and detailed examination of factual circumstances of the case referred to in the application and conducting appropriate testing would arise the obligation of acting within the limits of legislation with respect of citizens in State authorities, mostly in relevant agencies of the Ministry of Internal Affairs that, in its turn, would become the basis of eliminating such informal practices and mean of protecting the citizens.

# Disputes brought before administrative bodies

## 1. Unauthorized wood construction for praying in the Batumi new mosque area

**Overview of the factual circumstances related to the case:** Regardless the need of constructing a new mosque in Batumi, Batumi City Hall, under the Resolution of 4 May 2017, refused the Muslim community to issue a permit for constructing the mosque on their purchased plot of land, due to that fact the Muslim parish were forced to continue praying in the open air. The Muslim community first conducted their prayer on 26 May 2017 on the plot of the land in their ownership, in order to protect the religious doctrines necessary for prayer, they designed temporary construction - floor made of woodplanks and later on, for protection their service from natural phenomena (rain, etc.), they covered the floor by the wooden construction. Upon completing this construction, on the same day, 29 May 2017, Department of Supervision of the City Hall issued a reference to the NNLE Fund for Constructing a New Mosque in Batumi for constructing an object without permission and was ordered to suspend the construction works immediately and to bring the object to the original condition within 7 days. In addition, on 31 May 2017, the Department of Supervision issued the resolution to impose a fine in amount of GEL 3000 on fund for committing a constructing offence and at the same time was ordered to suspend constructing process that was carried out without permission and to bring the object to the original condition (demolition of the shrine).

**The essence and substantiation of the dispute:** taking into consideration the condition that the Muslim community was not permitted to construct the mosque on discriminatory grounds, constructing the temporary building was the only way to enjoy the right to freedom of religion and therefore, demolition of the shrine by Batumi City Hall would be the gross interference in the freedom of religion of the Muslim community.

**Case proceedings:** On 13 June 2017, EMC and TDI appealed that resolution under the administrative procedure to a superior administrative authority, where it was requested that the resolution to be declared void and the demolition of the shrine to be suspended. Batumi Municipality has not adopt any decision so far.

## 2. Arbitrary transfer of Imam Ali Mosque of Marneuli to the administration of all Muslims of Georgia

**Overview of the factual circumstances related to the case:** Imam Ali Mosque, built in 1739 is located in Marneuli, which was used for various purposes in Soviet ruling, and it was eventually amortised until the initiative and funding of local population the mentioned iconic building was restored in 1998. After completion of repair works, religious activities in Imam Ali Mosque were renewed in 2000.

For this period, religious issues of Muslim community living in Georgia were resolved by representatives of Administration of the Muslims of All Caucasus whose residence was in Baku.

Therefore, Ali Aliev, the representative of “Administration of Muslims of All Caucasus” was actively involved in the renovation process, although financial support and all the other decisions regarding the restoration works and decisions on issues about the mosque, including selection of religious leaders, were made independently, by the local residents (parish of the mosque).

Since 2004 the independent government body -mosque shura (council) - has been established in Imam Ali Mosque which administrates the mosque and conducts religious activities in a democratic manner independently from other religious organisations and political institutions on the basis of expression of the will by parish. Mosque shura consists of young, religious Muslims who, on the basis of requirements and provisions of Koran, Holy Prophet and 12 imams and the same principles, make decisions related to Imam Ali Mosque located in Marneuli, including selection of religious leaders and ensure flawless financial and administrative operation of the mosque. Since 2004 to present, all the decisions related to the mosque have been made by Shura, independently and by the mechanisms of democratic decision making. As the applicable law of 2004 did not stipulate registration of religious organisations, the council carried out its activities in the format of the non-registered union, as there were no factual need for doing so, the council has not registered in the public registry even since 2011.

On the basis of the Motion of 19 August 2011 of the Ministry of Economy and Sustainable Development of Georgia, Imam Ali Mosque has been registered in the State ownership. Later on, on 31 December 2014, on the basis of the letter of the LEPL National Agency of State Property, which, in its part relied on the letter of 23 December 2014 of the State Agency, 22 mosques, including Imam Ali Mosque, was transferred to the Administration of Muslims of All Georgia, with the right of use for the term of its existence.

This process was not known for the unregistered union, which has made decisions on issues related to the mosque to present. Subsequently, Imam Ali Mosque was transferred without examination of the important factual circumstances of the case by LEPL State Agency for Religious Issues and LEPL National Agency of State Property to the religious organisation that have no factual or legal connection with respect the administration of the given mosque. As to the State, transferring the iconic building, operating within the governance of one organisation, to another organisation without appropriate legal procedures, it was the interference in the freedom of religion recognised by the constitution of Georgia and international acts.

**The essence and substantiation of the dispute:** By the representation of EMC, in order to settle the dispute, the complaint was submitted to the Ministry of Economy and Sustainable Development of Georgia in March 2017, requesting the act, by which the mosque was transferred to the Administration of Muslims of All Georgia, to be declared void.

Apart from the administrative complaint, appropriate applications were forwarded to LEPL State Agency for Religious Issues and LEPL National Agency of State Property with the request to identify the confessional owner of the iconic building and to transfer Imam Ali Mosque in the ownership of the non-registered union.

That practice had applied to the Imam Ali Mosque, which was used with non-confessional purposes in the period of Soviet Union. After the collapse of the Soviet Union, taking into consideration the circumstances, that in majority of cases, none of the religious organisations owned the document confirming the right to confiscated iconic buildings (such documents did not initially exist or they were destroyed later, etc.), the most of the iconic buildings were declared as the state property. In order to ensure the freedom of religion of citizens and religious organisations, post socialist states with similar historical context as Georgian adopted the Law on Restitution, which envisages transfer of iconic buildings to religious organisations that have historic and/or confessional connection with the respective religious establishment. In Georgia, systematic regulation of this problem was not implemented and the restoration of property rights (restitution) was carried out only for the Georgian Orthodox Church on the basis of a constitutional agreement signed between the Georgian State and the Apostolic Autocephalous Orthodox Church of Georgia. But restoration of iconic buildings to other religious organisations only with the right to use, was carried out based on political will.<sup>24</sup>

---

<sup>24</sup> see Report of LEPL State Agency for Religious Issues of 2015, p. 14 <http://religion.geo.gov.ge/images/8706%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98-2015.pdf>

The Governmental Action Plan on Protection of Human Rights <sup>25</sup> (2016-2017) is the recognition of mentioned context according to which LEPL State Agency for Religious Issues and the Ministry of Economy and Sustainable Development of Georgia shall be obliged to “identify the historical (confessional) owner of iconic and religious buildings and transferring the buildings to them. Quick, transparent and fair resolution of the disputes related to the iconic and religious buildings”<sup>26</sup>.

Due to the above mentioned, the respective State agencies shall consider the issue of ownership on the basis of the legal criteria established not for the other type of buildings (only by checking the documents identifying the ownership), but in the context of the human rights, in accordance with the standards indicated above, by examining the historical (confessional) connection of the religious organisation to the iconic building, what, in the case of Imam Ali Mosque, had not been performed by respective agencies and the iconic building was transferred to the Administration of Muslims of All Georgia with the right of use.

**Case proceedings:** Under Decision of 7 July 2017, the Ministry of Economy and Sustainable Development of Georgia upheld the administrative complaint submitted in the name of the non-registered union. Regardless a number of references, the Ministry did not consider the non-registered union as the interested person with respect of disposal of the mosque, as it have not had directly determined legal document, confirming the right of ownership regarding the mosque. Despite of explanation of the author of the complaint, the Ministry of Economy and Sustainable Development did not assess the dispute taking into consideration specific regime related to restitution and the above mentioned complaint was considered in the context of the general dispute on the immovable property. EMC will appeal the mentioned decision in the Tbilisi City Court in the nearest future.

LEPL State Agency for Religious Issue and LEPL National Agency of State Property have not issued the decision in response to the submitted applications.

**Significance of the case:** This case has the strategic importance in order to demonstrate irrelevant and discriminatory policy of restitution of iconic buildings confiscated in the Soviet period in the country that substantially deprives the freedom or religion for religious organisations.

---

<sup>25</sup> The Governmental Action Plan on Protection of Human Rights approved by the Resolution N1138 of 13 June 2016 of the Government of Georgia (2016-2017); available at: <https://matsne.gov.ge/ka/document/view/3315211>

<sup>26</sup> The Governmental Action Plan on Protection of Human Rights approved by the Resolution N1138 of 13 June 2016 of the Government of Georgia (2016-2017); 11.1.3.4 point. Available at: <https://matsne.gov.ge/ka/document/view/3315211>



For the purposes of clearly identifying this problem, EMC, in parallel with the Ministry of Economy and Sustainable development, applied to the LEPL State Agency for Religious issues which, pursuant to the Governmental Action Plan on Protection of Human Rights<sup>27</sup> (2016-2017) Shall be obliged to ‘identify the historical (confessional) owner of the iconic and religious building and its transfer, as well as quick, transparent and fair resolution of the disputes related to the iconic and religious buildings’<sup>28</sup>.

Consequently, based on this case, it will be examined whether the agency and the State in general will be able to deal with similar disputes and to develop a uniform and consistent policy for resolving the disputes of these categories.

### 3. Refusal of alternative military service

**Overview of the factual circumstances related to the case:** EMC rendered a legal assistance to the confessor and Church servant of Evangelical-Baptist religion, I.B. regarding the use of non-military alternative labour service. Due to the religious confession, I.B. was requesting the alternative labour service instead of the mandatory military service, although the military commissariat have explained that he had not applied to the commission within the terms established by the legislation, which was the hindering condition and made the use of alternative labour service impossible. The employee of the commissariat, in the presence of the representative of EMC addressed to I.B. with the humiliating words that, according to I.B., was the characteristic of the commissar’s relationship with him every time he visited the commissariat.

**The essence and substantiation of the dispute:** In the given case, EMC into the fact that commissariat was obliged to give notice in advance the citizens about the existence of time frames set by the law for applying to the Commission on the use of alternative non-military mandatory service, at the same time, deadlines for recruiting non-military alternative labour service established by the Law on non military alternative labour Service could not be considered as elapsed as I.B. had not received any type of warning.

In addition, the commissioner was instructed that his negative attitude towards I.B. was the violation principle of equality laid down in Article 9 of the Law of Georgia on Public Service, assigning the public servant the obligation of equal treatment re-

---

27 The Governmental Action Plan on Protection of Human Rights approved by the Resolution N1138 of 13 June 2016 of the Government of Georgia (2016-2017); available at: <https://matsne.gov.ge/ka/document/view/3315211>

28 The Governmental Action Plan on Protection of Human Rights approved by the Resolution N1138 of 13 June 2016 of the Government of Georgia (2016-2017); 11.1.3.4 point; available at: <https://matsne.gov.ge/ka/document/view/3315211>

garding any citizen of Georgia involved in official legal relations irrespective of their religion or faith.

**Case proceedings:** After leaving the substantiated statement and interviewed by the EMC, the Commissioner contacted I.B. and informed that the commission had made a decision and he was able to use alternative non military service.

**Significance of the case:** In the given case, it is important to establish the practice of use the alternative labour service instead of mandatory military service on one hand, and on the other hand, the fact that the public servants, when performing their official duties, shall observe the principles established by Law of Georgia on Public Service and act in accordance with those principles.

# Ongoing cases brought before the investigation

## 1. Violence against Muslim community in the village of Adigeni

**Review of factual circumstances related to the case:** EMC examined the fact of conflict of religious nature between local Muslim and Orthodox communities taken place on 29 February 2016. In particular, local Muslim residents, who were gathered in order to discuss the issue on allocation of the cemetery for were physically and verbally abused by the part of population of orthodox affiliation. One of the representatives of the Muslim community survived with the help of other members of the community, but due to heart attack he was hospitalised, and two Muslims received serious physical injuries. According to the witnesses, a group of men who came to the meeting were verbally insulted by Muslims, called ‘Tatars’ and ‘dummies’ and threatened them that they would not allow to arrange the cemetery and mosque in the village

**The essence and substantiation of the dispute:** Muslim community was settled in Adigeni 30 years ago. Within this period, Muslim community have not had their own cemetery and as it is inadmissible for persons of Islamic religion to be buried next to the person of non-Muslim religion, the population had to bury their deceased persons in different villages. The need for allocation of the separate cemetery for Muslim community was clear even when R.M.’s family members decided to bury him/her in the free space of the village. This decision was protested by local population who consider themselves as orthodox Christians and they forced the family to bury in Zanavi village.

After that incident, Muslim population of Adigeni village applied to Adigeni local self-government with the request on allocation the plot of land for the cemetery and the State Agency for Religious Issues responded to the request with adoption a positive recommendation. In order to settle this issue, the Muslim community assembled together with the governor and deputy governors on 29 February 2016. However, they were unable to settle the issue as they were subject to verbal and physical abuse from the men belonging to the orthodox Christian parish who arrived there. The police coped with the situation and arrested several participants of the incident. It should be noted that Muslim community of this village indicates the negative role of the Governor in the episode of the attack, as he did not take into consideration the request of Muslim community to postpone the date of assembly and did not stop group attacks during the violent incidents.

Due to the factual circumstances of the case, crime committed by orthodox population against Muslim community on the grounds of religious intolerance was evident. In particular, orthodox population of the village referred to the Muslim community as ‘dummies’ and ‘Tatars’ indicating that they would not let them to arrange the cemetery and construct a mosque and they manifested intolerance against the Muslim community and intention of violation of their rights on this basis. Negligence of public servants should also be taken into consideration, which indicates loyalty to the dominant religious group and non-observance of the religious neutrality.

**Case proceedings:** On 29 February 2016, in connection with the incident that took place in the village of Adigeni, the Ministry of Internal affairs of Georgia commenced the investigation under the Article 156 of the Criminal Code of Georgia (persecution), however, as a result of investigative activities the fact of persecution of religious nature has not been identified and the investigation has been discontinued. Although the administrative offence has been identified in the case and under the judgement of Akhaltsikhe District Court, six persons were imposed fines in the amount of GEL 100 under Article 166 of Administrative Code of Georgia (disorderly conduct).

After a two-day conflict, the dispute over the cemetery was resolved through negotiations between the parties and the cemetery in the village was segregated so that it could be possible to arrange independent Muslim and Christian cemeteries.

**Significance of the case:** At the time of the Adigeni conflict, the fact of physical violence over the non-dominant religious group by private individuals was identified for the first time, that, on one hand, is the result of ineffective state policy in the cases of religious intolerance, and on the other hand, it arises the need of adequate and strict response by the State.

However, as the dynamics of the study show, the Prosecutor’s Office carried out the loyal policy and instead of application the criminal liability; it applied the minimal forms of administrative liability envisaged for administrative offences, which is the hindering condition for preventive measures for such actions.

## 2. Persecution related to boarding school's operation in Kobuleti

**Overview of the factual circumstances related to the case:** Since 10 September 2014 to present, the local Orthodox residents have protested and hindered opening and activity of a boarding school for Muslim pupils in Kobuleti. On 10 September 2014, local residents, in order to humiliate the Muslim community, attached a pig head at the entrance of the boarding school, and on 15 September they did not allow the boarding school administration to commence the academic process and forced to leave the territory of the building through threatening. After 15 September 2014, local residents have strict control over the entry of Muslim community in the boarding school and do not allow them to open the facility. In parallel with hindering, they often use the verbal abuse and threat against the personnel of the boarding school. And in June 2015, unidentified persons damaged the door and the window of the building with the firearms. It should be noted, that the police officers do not ensure elimination of violation of rights of the Muslim Community on one hand, and on the other hand, the investigation is conducted under Article 151 of the Criminal Code of Georgia (threatening).

**The essence and substantiation of the dispute:** In the given case, EMC requires conducting effective and impartial investigation, and in order to do so, it is important that the factual circumstances of the case to be given correct legal qualification, the victims to be granted the status of victims and on the other hand, the investigation to be commenced on the fact of the failure to carry out their official duties by the police officers. In order to confirm the request, EMC, in addition to previously submitted evidence, have submitted the testimonies of the witnesses (residents of Orthodox affiliation, representative of the Public Defender of Georgia, representative of the Georgian Young Lawyers' Association, police officers mobilised at the scene of the incident) given in the course of reviewing the complaint submitted on the basis of the Law of Georgia on Elimination of All Forms of Discrimination, proving deprivation of the rights of Muslim community and violation of equality caused by the failure of the police to act.

At the trial, the Orthodox residents confirmed the fact of restriction the rights of the employees and beneficiaries of the boarding school and talked about the motivation of the performed actions, which manifests the intolerance of religious character. In particular, local residents confirmed the facts of restriction of free movement of community members and referred to the facts that they would not allow the opening the Madrasa in the Christian neighbourhood. Due to the above mentioned, it becomes evident, that the members of the Muslim Community are persecuted and the investigation shall be conducted not on the fact of threatening, but under Article 156 of the Criminal Code of

Georgia envisaging the persecution on the grounds of religious activities. Objective corpus delicti of this case means persecution of person on different grounds for enjoyment of fundamental constitutional rights and freedoms, that in turn, may be carried out in different ways, including to hinder certain types of activities, coercion, threat, prohibiting to carry out activity and disable to use various services. The persecution characteristic is the systematicity and continuity of actions carried out, which is ultimately directed towards the implementation of the corpus delicti. The facts of restricting free movement, violation of ownership, hindering to carry out activity and use of service to Muslim community identified since 10 September 2014 and confirmation of these facts by the local residents at the trial creates corpus delicti of persecution.

It should be noted that the Prosecutor's Office still has not grant the boarding school administration the status of victim. In order to grant the status, they use two-phased and unreasoned standards based on the allegation of existence of directly incurred damage and carried out criminal actions. Although, even in such conditions, new evidences submitted to the investigation by EMC confirm, in accordance of Article 3(22) of Criminal Procedure Code of Georgia, crimes committed against Muslim community and incurring physical, property or material damage resulting from committing those crimes. This created the legal basis for granting the status of victim.

it refers to violation of obligations established by Articles 3 and 11 of Police Law of Georgia and to the signs of crime resulting from that violation. Article 3 of the Police Law of Georgia establishes the obligation of immediate or preventive respond to offences by police officers, and Article 11 refers to inadmissibility of discrimination within the scope of the response. The police officers did not follow those instructions.

Evidences submitted by EMC once again demonstrate that police officers were aware of the facts of restriction of free movement and interference in the activities by local residents, however, they did not perform their official duties and regardless the request, they did not provide restoration of the functioning of the building located in 13 Lermontov street and to allow the Muslim community to perform their activities flawlessly. Taking into consideration the factual circumstances of the case, the police officers were able to prevent the facts of blocking the entrance of the building and restriction of movement for boarding school personnel by the local residents. Although Article 3 of Police Law of Georgia states the obligation of immediate or preventive response by police officers and Article 11 refers to the inadmissibility of discrimination within the scope of the response, the police officers demonstrated the absolute negligence that may cause implementation of content laid down in Article 142 of the Criminal Code of Georgia.

Article 142 of the Criminal Code of Georgia states the liability according to the human equality. Pursuant to Article 142, 'violation of human equality on the grounds of language, sex, age, nationality, origin, birthplace, place of residence, material or rank status, religion or belief, social belonging, profession, marital status, health status, sexual orientation, gender identity and expression, political or other views or of any other signs that have substantially breached human rights'. According to the above mentioned, violation of human equality considers the cases where a citizen different by any characteristics is not given the opportunity to use various services and failure to provide such possibility results in substantial violation of rights.

**Case proceedings:** Since the moment of restricting the rights of boarding school personnel and beneficiaries, EMC have applied to the Ministry of Internal affairs of Georgia a number of times, Chief Prosecutor's Office and the Prosecutor's Office of the Autonomous Republic of Ajara. EMC, in each application referred to the problem of ineffectiveness of the investigation and requested exact qualification of the action committed against the Muslim community, in particular, conducting the investigation on the fact of the persecution of boarding school personnel and beneficiaries carried out by the local residents and awarding the boarding school administration, employees and beneficiaries the status of victim. In addition, EMC arose the question of liability for the police officers. In connection with the above mentioned, the General Inspection of the Ministry of Internal Affairs of Georgia was requested to respond appropriately and inform the Prosecutor's Office on identified unlawful acts in the police officers' action.

Irrespective of the submitted evidences, the Ministry of Internal affairs of Georgia and the Prosecutor's Office of the Autonomous Republic of Ajara have not made any response yet and EMC was informed only with a few letters that in Kobuleti District Court of Main Division of Autonomous Republic of Ajara of the Ministry of Internal Affairs of Georgia the investigation is conducted on the fact of threatening carried out by M.M. under Article 151 of Criminal Code of Georgia, criminal prosecution has not been commenced yet in the case there are no grounds to recognise particular persons as victims and the unlawful acts are not identified in the action of the police officers, thus, Autonomous Republic of Ajara considers that there is no institutional problem to investigate the case and requesting the Prosecutor's office to investigate the case is irrelevant.

**Significance of the case:** On the background of the systemic and continuous restriction of rights of boarding school personnel and the Muslim community, appropriate legal response is very important, which is related to the restitution of legal status of the Muslim community and prevention of violation carried out on the grounds of intolerance.



### 3. Case of homophobic violence against L.K.

**Overview of the factual circumstances related to the case:** On 9 August 2016, at night-time hours, the minor L.K. was in Tbilisi with their two friends in the Tsereteli Avenue, where two men, on the basis of their gender identity verbally and physically abused him/her. In particular, he was kicked and injured in the head and facial areas, at the moment of escaping from the attackers he/she fell over and distorted his/her arm. According to the minor, before the act of abuse against him/her and in the process of violation, both men referred to his/her alleged sexual orientation/gender identity in a humiliating manner.

**The essence and the reasoning of the case:** In the given case, taking into consideration the factual circumstances of the case, EMC considered that action of beating, Laid down in Article 126(1) of the Criminal Code of Georgia took place against L.K., which was motivated by homo/transphobic attitude of the attackers. The fact of beating was confirmed by a forensic medical examination, and the homo / transphobic speech used by the attackers proved the motivation of intolerance. According to the above mentioned, EMC requires to identify the motivation laid down in Article 531 of Criminal Code of Georgia, to reflect it in respective legal documents and to impose adequate criminal liability.

**Case proceedings:** Investigation Service for Combating Crime of Tbilisi Main Division of Department of Patrol Police of MIA have commenced the investigation on the fact. The investigation authority have interrogated L.K., his/her accompanying persons and both attackers. In the course of investigation of the case of L.K., EMC submitted the reasoning of presence of homo/transphobic motivation and requested to grant L.K. the status of victim on one hand, and on the other hand, prefer charges to the persons identified by the investigation on the basis of the present evidences.

After several requests by EMC, L.K. was granted the status of victim, although the attackers have not been preferred the charge yet.

### 4. Case of homophobic violence against N.kh.

**Overview of the factual circumstances related to the case:** On 29 April 2017, when standing in the queue of the night club toilet, a young man N.J. physically abused N.Kh. that was caused by his gender identity, In particular, the attacker first told N.Kh. that the toilet was intended for men and there was no place for women there, then he tried to take him out with the use of physical force which resulted the physical abuse. According to the

explanation of eyewitnesses N.J. and the man accompanying him might be the employees of the Ministry of internal affairs, as the man accompanying N.J. allegedly showed the official card of MIA to the Officers of the criminal police. As a result, the officers of the criminal police freely released N.J. From the crime scene, they failed to interrogate N.Kh. and provide the appropriate legal response.

**The essence and the reasoning of the case:** In the given case, EMC conducts proceedings in two directions, in particular, with respect of N.J.'s action, the investigation is conducted by the Investigative Department of Tbilisi Prosecutor's Office, and the omission of act of the officers of the criminal police was examined by the General Inspectorate of MIA in the context of disciplinary misconduct.

Taking into consideration the fact that N.J. might be the employ of the Ministry of Internal Affairs of Georgia, in compliance with the investigative jurisdiction, the request was submitted to Tbilisi Prosecutor's Office. In addition, it shall be taken into consideration that N.J.'s action was motivated by intolerance (of gender characteristic) that is provided for in Article 53<sup>1</sup> of the Criminal Code of Georgia as the aggravating circumstance of the criminal liability.

With respect of omission of act by the officers of the criminal police, EMC indicates that conduct of the officers of Central Criminal Police Department of the Ministry of Internal Affairs should be in compliance with the Article 16(c) of Police Law of Georgia and Article 3(a) and (c) of the Order of 11 February 2015 of the Minister of the Internal Affairs of Georgia on Approval of the Statute of the Central Criminal Police Department of the Ministry of Internal Affairs of Georgia, which unequivocally indicate the obligation of the police to identify the crime and protect citizens from unlawful violation within the limits of powers granted. However, police officers arrived at the crime scene, regardless the fact that they received notice of alleged criminal action, did not provide adequate legal response, including commencement of the investigation.

**Case proceedings:** Investigation has been commenced in the 5th Division of Old Tbilisi Main Division of MIA on the fact of N.J.'s beating, under Article 126(1) of the Criminal Code of Georgia, however, taking into consideration the factual circumstances and investigative jurisdiction, the investigation is currently conducted by Investigation Unit of Tbilisi Prosecutor's Office and investigative actions are ongoing.

The action of the criminal police officers have been examined by the General Inspectorate of the Ministry of Internal Affairs of Georgia and formal response was given to the EMC

that the fact of disciplinary misconduct has not been identified. The General Inspectorate have not submitted any reasoning.

## 5. Case of homophobic violence against N.G.

**Overview of the factual circumstances related to the case:** EMC was rendering legal assistance to the member of LGBT community, N.G. Who, on 5 March 2017, was Verbally and physically abused with homophobic motivation by A.B. in one of the bars of Kutaisi. In particular, N.G. was hit in facial area, was called 'gay' and 'ladylike' and was sworn. As a result, N.G.'s lobule was injured and it began to have heavy bleeding.

**The essence and substantiation of the dispute:** In the given case, similar to the other cases against LGBT community members, EMC considers that violation of Article 126(1) of the Criminal Code of Georgia against N.G. - beating committed on the homophobic motivation, - took place. The motivation of the attacker could be identified by using the homophobic speech and consequent perception of the victim. Due to the above mentioned EMC applied to the Prosecutor's Office with description of factual circumstances of the case and requested identification of homophobic motivation and its reflection in the legal documents. The special emphasis in the prosecution decision was made on referring the homophobic motivation as provided for in Article 53<sup>1</sup> of the Criminal Code of Georgia<sup>29</sup>, since referring the motivation in the prosecution decision is the mean for court to discuss the motivation of the action and determine the criminal liability taking it into account.

**Case proceedings:** Kutaisi City Court reviewed this case and established that A.B. committed the crime on the grounds of sexual orientation, with the motivation of intolerance, which was considered as an aggravating circumstance of his/her liability pursuant to Article 53(3)(1) of the Criminal Code of Georgia. Kutaisi District Prosecutor's Office established the homophobic motivation before the court, by reflecting it in the resolution of the charges against A.B. of appropriate motivation and in its the introductory and the sum-up speech.

**Significance of the case:** In the given case, it is of particular importance that the Prosecutor's Office provided the motivation of intolerance in legal documents and before the court. In other cases, position of the Prosecutor's Office was negative regarding provision of motivation; therefore, this case is an important precedent.

---

<sup>29</sup> Article 53(3<sup>1</sup>) in previous version.

## 6. Raid on a bar in Agmashenebeli Avenue motivated by xenophobia

**Overview of the factual circumstances related to the case:** EMC was rendering the legal assistance to V. P., a person the restaurant of whose ownership was damaged. In particular, on 27 September 2016, the march with nationalistic exclamations and offensive statements against Turkey and Turkish People<sup>30</sup>. During this march, the participants of the action damaged the part of the restaurants located on Agmashenebeli Avenue, threw off the banners and walked on them. The same persons damaged the iron banner of V.P.'s restaurant where there were the names of dishes in Turkish and English languages and threw a smoking torch into the restaurant what made staying there impossible, the guests were frightened and it caused general chaos.

**The essence and substantiation of the dispute:** The factual circumstances of this case, in particular, the fact that the aggression of members of nationalistic group was addressed to the banners Turkish restaurant and Arabic inscriptions, as well as using of turkophobic language, was the sign of the crime motivated by intolerance. Taking into consideration the above mentioned and the fact, that material damage has been incurred to V.P.'s restaurant, EMC applied to Tbilisi Prosecutor's Office claiming to grant the restaurant the status of a victim pursuant to Article 56 of Criminal Procedure Code of Georgia, and to conduct an investigation thoroughly, fully and impartially pursuant to Article 37 of the same Code.

**Case proceedings:** In connection with the fact the investigation has commenced on the committed act laid down in Article 239(2) and (3) of Criminal Code of Georgia<sup>31</sup>, V.F. was granted the status of the victim and the case was transferred to Tbilisi City Court for examination of the case on the merits. According to the information of EMC, the motive of intolerance has not been identified.

**Significance of the case:** In the process of formation the society free from all types of discrimination, it is important to combat against the crime motivated by intolerance and the State's adequate respond. In the given case, Turkophobic and Islamophobic attitude of nationalistic group was evident, although the fact has remained outside the State's attention.

---

30 <http://netgazeti.ge/news/143740/>

31 <http://police.ge/ge/shss-m-khulignobis-braldebit-11-piri-daakava/10030>



