

RESTITUTION POLICY IN GEORGIA



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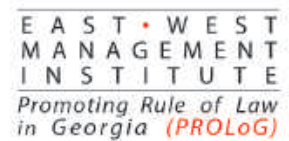
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Author: Giorgi Noniashvili

Project Director: Mariam Gvartadze

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1. INTRODUCTION

In the 20th century, under the conditions of the Soviet totalitarian regime, religious groups in Georgia lost their communal property. The Soviet authorities deprived them of both their religious and non-religious property. Religious groups were persecuted, resettled, and intentionally exterminated.

After the fall of the Soviet Union, religious communities were weakened. Several religious groups had disappeared.¹ Those that survived the Soviet repressions lost their religious property: religious buildings, cemeteries, schools, lands etc.

Those communities that had tight cultural and historical ties with Georgia lost the most significant amount of property: Georgian Orthodox Church, Armenian Apostolic Church, Roman-Catholic Church, Muslim Community, Lutheran Church, and Jewish Community.

After the restoration of independence, the conditions of religious unions' properties varied:

- ▶ Demolished and destroyed
- ▶ Used for other purposes
- ▶ Fully or partially preserved

Religious communities have been trying to retrieve the lost religious property. In 1991, the state returned the property taken from it during the Soviet rule only to the Georgian Orthodox Church (GOC).² The state recognized all active and inactive GOC churches, their remnants, and plots of land on the territory of Georgia as the property of the Church and handed it over to the latter.³ The Constitutional Agreement signed between Georgia and the Autocephalous Apostolic Orthodox Church of Georgia envisaged compensating the material and moral damage inflicted to the Church in the 19th and 20th centuries.⁴

Since 2002, the state has been annually funding the Patriarchate of Georgia from the central budget. Official justification for this funding is compensation against the loss incurred during the Soviet regime. However, the extent of the material damage inflicted to the Orthodox Church in the 19th-20th centuries has never been calculated. Therefore, the existing practice constitutes a state subsidy rather than compensation against the damages.⁵ From 2014 other religious organizations also get state funds meant for restitution.

Unlike the Orthodox Church, other religious organizations did not get back the biggest part of the property they were deprived of during the Soviet rule. Part of their historical property is owned by the state. The other

1 Library of the Public Defender of Georgia, Religions in Georgia, Tbilisi, 2008

2 On April 12, 1990, the Council of Ministers of the Georgian Soviet Socialist Republic adopted a decision #183, according to which "all religious buildings, as well as real estate and movable property of the Patriarchate of Georgia became a property of the Orthodox Church of Georgia".

3 Resolution of the Parliament of Georgia "On Approving the Constitutional Agreement between Georgia and the Autocephalous Apostolic Orthodox Church of Georgia", Article 7, 2002.

4 *Ibid.* Article 11

5 TDI, EMC. State Policy for Funding Religious Organizations. Analysis of the practice in 2014-2015; TDI, EMC. Practice of Funding Religious Organizations by Central and Local Governments (Overview of the State of Affairs in 2013 and in the Beginning of 2014 and of the State Policy after the Change of Government).

part ended up in the ownership of the Patriarchate of Georgia, which refuses to return the historical property of other religious communities.

Non-dominant religious organizations still have not retrieved their active or inactive historical religious buildings, cemeteries, religious education facilities, remnants of religious buildings and plots of land.

The issue of retrieving property in Georgia is especially essential for the religious organizations that fell victim to the harshest repressions and lost a major part of their property.

The given policy document overviews the challenges related to the property retrieval by religious communities, as well as the practice of European countries regarding restitution. The policy document reviews the possible ways of carrying out restitution policy in Georgia and offers respective recommendations to the State.

2. STATE'S INEFFICIENT POLICY WITH REGARDS TO RESTITUTION

In 1990 the Council of Ministers of the Georgian Soviet Socialist Republic adopted a Resolution #183 that «declared all religious buildings, together with all the real estate and movable property of the Patriarchate of Georgia as the property of the Georgian Orthodox Church».⁶

Pursuant to the Constitutional Agreement of 2002 signed between the Autocephalous Apostolic Orthodox Church of Georgia and the State, “the State recognizes Orthodox churches and cathedrals, monasteries (functional and non-functional), their ruins and land on which such buildings are located as the property of the Church”. The Government of Georgia has never made similar steps towards any other religious organization; neither has adopted a legislation on restitution. Moreover, it is especially troublesome for minority religious communities to retrieve those buildings that at the same time are claimed by the GOC Patriarchate or in cases when the State has particular interest in those buildings.

After the restoration of independence of Georgia, the issue of reimbursement of religious property appeared in the Government’s agenda on several occasions. First, in 2003, after signing the Constitutional Agreement between the Orthodox Church and the State, a *Commission providing for the Measures Envisaged by the Constitutional Agreement* was set up.⁷ It should have studied the damage inflicted only to the Orthodox Church. In fact, the creation of the Commission was not followed by any outcomes. The damage done to the Orthodox Church was not calculated in the framework of the Commission. Since 2002 the state has been subsidizing the Orthodox Church with budgetary funds. The Commission did not function and was subsequently dissolved in 2012.

In 2012, a new governmental commission was created with the purpose of discussing the issues envisaged by the Constitutional Agreement.⁸ Several work groups were created in its framework, including those aimed at determining the origin of religious buildings and those specialized in property issues. The Governmental Commission still exists, however without any work and outcome.

In 2013, the Government created the *Inter-Agency Commission for Studying Specific Issues Related to Religious Communities*.⁹ The Commission aimed to study the issues of funding and property of religious organizations, prepare recommendations and legislative amendments.

The Commission drafted a *Resolution on the Partial Reimbursement of the Damages inflicted to Religious Communities in Georgia during the Soviet Totalitarian Regime*.¹⁰ According to the document, the State expresses readiness to partially reimburse the material and moral damage inflicted to the religious communities

6 The Chamber of Administrative and Other Cases of the Supreme Court of Georgia, Decision N-470-408- -04, November 10, 2004.

7 Decree of the President of Georgia, on the Creation of the Commission providing for the Measures Envisaged by the Constitutional Agreement between the Autocephalous Apostolic Orthodox Church and the State, January 7, 2003.

8 Resolution of the Government of Georgia on Creating the Governmental Commission to Study Issues Envisaged by the Constitutional Agreement between Georgia and the Autocephalous Apostolic Orthodox Church of Georgia, February 21, 2012.

9 Resolution of the Government of Georgia on Creating the Inter-Agency Commission for Studying Specific Issues Related to Religious Unions and Approving its Statute, November 29, 2013

10 Resolution of the Government of Georgia “On Approving the Rule of Implementation of Certain Measures related to the Partial Reimbursement of the Damage done to the Religious Unions in Georgia during the Totalitarian Regime”, January 27, 2014.

during the Soviet regime. The Resolution also underlines the fact that the reimbursement is symbolic, as the exact extent of the damage is unknown. In addition, the state believes that the existing religious organizations do not have legal ties with the religious unions affected during the Soviet rule. Therefore, it considers only those religious unions as subjects to reimbursement that have the same doctrine and denominational heritage with the religious communities affected during the Soviet regime.¹¹

The Resolution applied the reimbursement rule to four religious groups, registered as Legal Entities under Public Law (LEPL): Islamic, Jewish, Roman-Catholic and Armenian Apostolic religious communities.

According to the Resolution, if there are several religious organizations of a single denomination registered separately, and if they wanted to be eligible for reimbursement, they were expected to reorganize into a single legal entity of public law or set up a representative board no later than 10 November 2014. Otherwise, they would have lost the opportunity to get the compensation.

Since 2014, these religious unions have been receiving the funds on an annual basis. The gross annual funding is determined by the Government of Georgia, whereas the LEPL State Agency for Religious Issues, under the Prime Minister of Georgia, divides the given funds between the Armenian Apostolic Christian, the Muslim, the Jewish and the Roman Catholic communities.¹²

The principle, which the state used while selecting the organizations (communities) that receive the reimbursement, is unclear. Other religious unions were also affected on a quite large scale during the Soviet totalitarian regime (Yazidi community, Lutheran Church, Pentecostal Church, Evangelical-Baptist Church, other Protestant denominations etc.).¹³ However they are not considered by the State eligible for the reimbursement.

In addition, the funding of the four non-dominant religious groups resembles the budgetary funding rule of the Patriarchate of Georgia. The extent of the damage done during the Soviet totalitarian rule is not calculated in this case either. The practice of funding the religious communities is, in its essence, a subsidy, rather than a reimbursement.

On March 14, 2014, the Government of Georgia issued an order to allocate funds from the Government's reserve funds to the above mentioned religious organizations.¹⁴ As the Law of Georgia on the 2014 State Budget had already been adopted, the funds for the reimbursement were allocated from the reserve funds of the Government. In the subsequent years, funds were allocated from the state budget:¹⁵

11 Ibid. Article 2.2.

12 Resolution (#117) of the Government of Georgia "On Approving the Rule of Implementation of Certain Measures related to the Partial Reimbursement of the Damage done to the Religious Unions in Georgia during the Totalitarian Regime", January 27, 2014.

13 State Funding Policy for Religious Organizations, 2014-2015.

14 Order of the Government of Georgia „On Certain Measures related to Partially Reimbursing the Damage Done to the Religious Unions in Georgia during the Soviet Totalitarian Rule“, N437, March 13, 2014.

15 TDI, EMC. State Policy for Funding Religious Organizations. Analysis of the practice in 2014-2015.

2014 – GEL 1,750,000¹⁶
2015 – GEL 4,200,000¹⁷
2016 – GEL 4,500,000¹⁸
2017 – GEL 4,500,000
2018 – GEL 4,500,000
2019 – GEL 4,500,000¹⁹

The gross allocated funds are divided among the four religious communities by the State Agency for Religious Issues. Organizations within the same community, divide the funds themselves.

The criteria that the Agency uses for allocating the funds, remains unclear, as the share and the extent of damage inflicted to the different religious organizations has not been studied.

The funding of the given four religious communities covers six religious organizations:

- ▶ Roman-Catholic (LEPL Caucasian Apostolic Administration of Latin Catholics; LEPL Georgia's Assyrian-Chaldean Catholic Community; LEPL Ordinariate of Eastern European Catholic Armenians);
- ▶ Islamic (LEPL Administration of Muslims of All Georgia);
- ▶ Jewish (LEPL Union of Georgian Jews);
- ▶ Armenian Apostolic Confession (LEPL Georgian Eparchy of Armenian Apostolic Orthodox Church).²⁰

Despite the fact that other religious organizations also belong to these religious communities, the rule of issuing the state reimbursement does not cover them.

On 4 November 2014, a Shia religious community *Supreme Spiritual Administration of All Muslims of Georgia* informed the Agency that they were ready to become a member of the representative board. However, the funding was allocated to the representative board without the Administration's participation.

The Supreme Spiritual Administration of All Muslims of Georgia applied to the common court. The Supreme Court of Georgia partially upheld the claim. The Court ruled that the claimant had met the eligibility criteria set forth in the Government resolution²¹. The organization had the right to be a beneficiary receiving compensation and this eligibility criteria should not have been the basis for creating the board of representatives or registering as one legal entity (LEPL).

In 2016, the Supreme Spiritual Administration of All Muslims of Georgia submitted the claim to the Constitutional Court of Georgia against the norms of the resolution which establish the rules for allocating funding.²² The claimant argued that in forcing Shia and Sunni Muslims to unite under one legal entity or representative

16 Approx. 612,959 USD and 559,754 Euros.

17 Approx. 1,471,103 USD and 1,343,485 Euros.

18 Approx. 1,576,182 USD and 1,439,464 Euros.

19 State Agency for Religious Issues, 2016-2017 Report of the State Agency for Religious Issues. Tbilisi 2018.

20 *Ibid.*

21 Complaint №6-597-556-2017, 3 November 2017.

22 Constitutional Court of Georgia, case of LEPL Administration of All Muslims of Georgia v. Government of Georgia. Constitutional claim 750.

board, as well as imposing this requirement only on religious organizations registered as legal entities of public law prior to the adoption of the resolution was against the freedom of religion or belief, freedom of assembly and equality enshrined in the Constitution of Georgia.

On 15 March 2017,²³ the Constitutional Court partially admitted the claim for consideration on merits concerning the requirement of religious organizations to be registered as legal entities of public law in order to receive state funding prior to the adoption of the government resolution²⁴.

Even though the Court considered the case on merits, as of January 2020, the judgment has not yet been published.²⁵

In 2014, in the framework of the State Agency for Religious Issues, *Recommendatory Commission Studying Property and Financial Issues of Religious Unions* was created.²⁶ In 2015-2019, the Recommendatory Commission held 27 meetings in total and discussed 1,202 issues.²⁷ Generally, it discusses the issuance of permits to religious unions for handing over and constructing religious buildings. The State Agency for Religious Issues and its commission does not have the authority to dispose state property and/or the legal ground for engaging in the administrative proceedings for issuing the construction permit. The acts adopted by them are recommendatory and it is up to the respective administrative body, whether it considers the recommendations. Moreover, it is not clear, based on which criteria does the Commission provide positive or negative recommendation on the construction of religious buildings.

The State Agency for Religious Issues assesses the issue of handing over the religious buildings to the religious unions as a compensation for damages and as a process of returning the property taken by the Soviet totalitarian regime from the confessions.²⁸ However, in reality, all the transactions, with regard to non-dominant religious communities, referred to by the administrative body as an act of “return”, imply giving the right to use. Many are misled when the state uses this term. For instance, the Agency indicates in its report that 150 mosques were returned to the Muslim community in 2014-2017²⁹, which is unequivocally incorrect, as they did not receive ownership to any of the property.

To conclude, after the dissolution of the Soviet Union, four different commissions were created on the issues related to restitution and property, all four of them in different periods. However, none of them achieved any actual and fair results.

The restitution policy has not been carried out in Georgia, either with regards to religious unions, or to other groups and/or individuals. The state ignores the actual problems. It is manifested by the activity of the State Agency for Religious Issues which still has not discussed the return of any of the so-called “disputed build-

23 Recording notice of the Constitutional Court of Georgia of 15 March 2017.

24 Constitutional Court will consider the constitutionality of the Article 1(3) of the resolution in relation to the Article 14 of the Constitution (equality).

25 Constitutional Court of Georgia, N750. LEPL Supreme Spiritual Administration of All Muslims of Georgia v. Government of Georgia.

26 Order #6/1 of the Director of the State Agency for Religious Issues, 2014.

27 Reports of the State Agency for Religious Issues: 2015, 2016-2017, 2018-2019 .

28 *Ibid.*

29 2016-2017 Report of the State Agency for Religious Issues.

ings". The Agency, generally, reviews only the issue of return of non-problematic buildings (claimed by only one religious union) to the non-dominant religious communities for the purpose of use.

With regards to the restitution, the inactivity and inconsistent policy of the state has other negative effects, too. They include increased tensions between religious communities and/or the possibility of it. Conflicts, emerged during the recent years, serve as examples. It includes the case of historically Armenian Tandoyants Church in Tbilisi, Mokhe Mosque etc. *(for further details see chapter 3)*.

It is noteworthy that the major part of religious buildings are cultural heritage sites, however, as far as the property is not returned to the historical and confessional owners, it faces destruction, despite the fact that the state bears the legal responsibility to maintain them. Those buildings previously owned by other religious communities that were handed over to the Patriarchate of Georgia face the threat of losing the initial look, as the destruction of the proofs of historical and confessional origin became wide-scale.

The reviewed processes demonstrate that the state has not tried to develop a proper restitution policy that would actually aim to compensate the damage inflicted by the Soviet Union. Therefore, funding specific religious organizations with the existing form does not have anything in common with compensating the damage. In addition, it creates risks of unjustified State interference into the internal matters and control of religious organizations by the state.

Due to the absence of the restitution policy, until today:

- ▶ The State has not conducted an inventory/calculation of damages sustained by religious organizations under the Soviet regime;
- ▶ Nor has the State developed any policy with respect to compensation of damages or return of community property;
- ▶ There are no legal regulations which would allow religious groups to demand that religious property be returned to them and/or compensated against;
- ▶ Ownership of numerous religious buildings contested by more than one religious organization remain unresolved;
- ▶ The state funds, directed towards the religious organizations, are spent as a subsidy;
- ▶ The absence of a restitution policy puts religious organizations under unequal conditions vis-à-vis the dominant religious group. As of today, the Georgian Patriarchate continues to receive religious property that had been historically owned by the latter as well as new State-owned property and assets belonging to other religious groups.

Unlike Georgia, in the countries of Eastern Europe, the restitution policy was launched right after the dissolution of the Soviet Union. In most of the countries, this process has been finalized more than a decade ago.

3. UNRETURNED PROPERTY OF THE MINORITY RELIGIOUS COMMUNITIES

The current conditions of the property confiscated from religious communities during the Soviet regime can be grouped as follows:

- ▶ Property is state-owned and cannot be used by a religious group / the property is non-functional;
- ▶ Property is state-owned and is administered by a religious group;
- ▶ Property belongs to another religious organization – GOC Patriarchate;
- ▶ Property's purpose has been changed and is in private/state ownership.

The confiscated religious property can be further divided into two types:

- ▶ Religious property that has not been demolished/destroyed;
- ▶ Religious property that has been demolished/destroyed.

Below is an overview of the common property taken from religious communities during the Soviet totalitarian rule. The given information aims to visualize the property lost by religious communities. The purpose of this policy document is not an in-depth research of this property. The information about the part of the confiscated and unreturned property of non-dominant religious communities can be found in the **Appendix 1**.

Evangelical-Lutheran Church

Germans appeared in Georgia in 1817-1818. Soon, they founded German settlements and Evangelical-Lutheran religious buildings.³⁰ By the end of 1819, they founded several settlements in Georgia: Marienfeld³¹, Neu-Tiflis³², Alexandersdorf³³, Petersdorf³⁴, Elisabeththal³⁵, Katharinenfeld³⁶. In the next years, other German settlements were also founded in Georgia.

Germans began to build churches and primary schools very soon after the settlement. For instance, a small Lutheran church was already functioning in Neu-Tiflis from 1834. In 1894, the construction of a large Lutheran church began nearby and was completed in 1897.

During the Soviet rule, the Lutheran parishes were dispersed. The churches built by the German colonists were either destroyed or their purpose was changed. In 1941, Germans were resettled from Georgia to Kazakhstan. By that time, there were 22 German settlements in Georgia. After the repressions, in the 50s, a

30 Evangelical-Lutheran religious buildings in Georgia, Nestan Tatarashvili, 200-year anniversary of the Evangelical-Lutheran Church of Georgia and South Caucasus, p. 82.

31 Sartichala village, Gardabani Municipality.

32 Aghmashenebeli Avenue and nearby streets, Tbilisi.

33 Tsereteli Avenue, Samtredia Street and other nearby streets, Tbilisi.

34 Close to Sartichala village, Gardabani Municipality.

35 Asureti village, Tetrtskaro Municipality.

36 Bolnisi city, Bolnisi Municipality.

small group of those Germans that returned, founded another settlement close to Gardabani – Neu Botanica colony³⁷, however, at the end of the 1970s, most of them returned to their historical homeland. Currently, according to the Evangelical-Lutheran Reconciliation Church, their parish counts approximately 500 people, with most of them residing in Tbilisi and Bolnisi municipalities.

As of today, there are several buildings or remains in Georgia that have Evangelical-Lutheran confessional origin and represented the property of the Germans living in Georgia prior to the Soviet occupation.

The Evangelical-Lutheran Church has been demanding the historical property to be returned since the restoration of independence of Georgia. According to the Church, in 2015 they submitted a list of their historical monuments to the State Agency for Religious Issues and requested that those monuments be returned or compensated for, however, they have not received any response. Currently, the Evangelical-Lutheran Church demands from the state that the confiscated property be returned and/or compensated for.

Diocese of the Armenian Apostolic Orthodox Holy Church in Georgia

Armenian Apostolic Church lost a considerable number of religious buildings in the Soviet period, with part of them demolished, while the other part ended up in the hands of other owners, including the state. Among them, the issue of up to ten religious buildings has been actively present on the agenda for many years. Majority of the religious buildings have the status of cultural heritage monuments. Currently, they are owned by the state. They are often labelled as “disputed buildings”, as in the recent years, the Patriarchate of Georgia has claimed their ownership, too. In 2017, the latter managed to receive the ownership right on one of the historically Armenian churches.³⁸

Despite the fact that the Patriarchate of Georgia has no formal mechanism to interfere in the legal relations between the Armenian Apostolic Church and the state, as the representatives of the Armenian Apostolic Sacred Orthodox Church mentioned, the Patriarchate of Georgia represents the main obstacle in the process of gaining the ownership rights on the Armenian churches.³⁹

With regards to the Armenian religious buildings, an inter-agency commission was created⁴⁰ in 2013 that, supposedly, had to bring some clarity to the existing situation. With the Order of the Government of Georgia from November 25, 2013, certain amendments were made in the June 28, 2013 Order and the commission was granted the right to define necessity for examination on the property adjacent to the churches, also to determine the institution that would order such examination. On June 25, 2015, the Order from June 28, 2013 on creating the commission was declared void, with the commission not having reached any tangible results.

It is noteworthy that the current conditions of certain historical Armenian religious buildings are critical. For instance, Shamkhoretsots Surb Astvatstatsin, a church, located in Avlabari, has nearly turned into ruins.

37 Georgian-German Archive, Architecture of the German Colonists in Georgia, <http://german-georgian.archive.ge/ka/blog/15>

38 Tolerance and Diversity Institute, The Government Handed Tandoyants Church to the Patriarchate of Georgia, December 22, 2017.

39 Tolerance and Diversity Institute (TDI), Study on the Needs of Religious Unions in Georgia, 2014.

40 Order of the Government of Georgia #671 “On Creating the Inter-Agency Commission for Studying the Issues Related to the Privately Owned Real Estate adjacent to Mughnisi, Surb Minas and Surb Nishan Churches”, 28 June 2013.

Mughnetsots Surb Gevorg, located on Akhospireli str. in Tbilisi, collapsed in 2009. In addition, Surb Nshan Church caught fire and got damaged in 2002, whereas in 2012, a fire which broke out again under uncertain circumstances, made the remaining part of the dome collapse.

In addition, there have been visible efforts to clear the Armenian cultural signs in the churches with Armenian origin. In 2008, GOC priest relocated tombstones of Armenians buried in the yard of the so-called disputed church of "Norashen", Tbilisi, while unknown individuals brought a tombstone with Georgian scriptures and placed them in the church's yard. The altar of the church has been destroyed.

In the second report on the Framework Convention for the Protection of National Minorities, the Georgian Government stated that in 2011, the paperwork for the reconstruction of the Armenian churches of Mughnisi (also known as Mughnetsots Surb Gevorg), Surb Nshan and Norashen was finalized.⁴¹ According to a representative of the Armenian Apostolic Church, State authorities carried out reinforcement work on Norashen church in Tbilisi. According to the third report on the Framework Convention for the Protection of National Minorities, rehabilitation works on Norashen Virgin Mary Church were completed. The works had been funded by the Foundation for the Rescue and Preservation of Historical Monuments of Georgia.⁴²

Tandoyants church, located at Aghmashenebeli Ave. #38, Tbilisi, deserves a special mention. In 1924, the Soviet regime closed down the Armenian church. Since then, the building has been used for different purposes. Recently, it was accounted as significantly damaged. In July 2017, the Government of Georgia handed over the church and its nearby territory to the Patriarchate of the Georgian Orthodox Church without studying the historical origin of the church. After that, the Orthodox Church carried out excavations on the territory, subsequently damaging the historical and cultural features of the building.⁴³ Tandoyants church has not received the status of cultural heritage monument independently. However, real estate located at Aghmashenebeli Avenue #38 (the cadastral unit of the church) does have the status of monument. Therefore, the legal regime set for the monument covers the church, too. The transfer of Tandoyants church from the state property to the ownership of the Patriarchate once again points to the state's inconsistent, discriminatory, and indifferent position towards the restitution issue, the property rights of non-dominant religious groups and the historical past.

Catholic Church

Catholic Church lost significant religious property during the Soviet totalitarian regime. After the restoration of independence, a major part of the confiscated property has still not been returned. Catholic Church requests the return of seven churches in Gori, in the village Ivli of Akhaltsikhe Municipality, in the village Ude and Buzmareti of Adigeni Municipality, Kutaisi, Batumi. These religious buildings as of today, belong to the Georgian Orthodox Church. All seven buildings have the status of cultural heritage site.

41 Second report submitted by Georgia pursuant to Article 25, paragraph 2 of the framework convention for the protection of national minorities. Council of Europe, 2012. Available at: <https://bit.ly/38YQRA6>.

42 Third report submitted by Georgia pursuant to Article 25, paragraph 2 of the framework convention for the protection of national minorities. Council of Europe, 2017. Available at: <https://bit.ly/2SXJUtC>.

43 Tolerance and Diversity Institute, The Government Handed Over Tandoyants Church to the Patriarchate of Georgia, December 22, 2017.

It is noteworthy that in 2001, the Latin Catholics Church, represented as a Legal Entity of Private Law – Savardi union – tried to apply legal mechanisms and retrieve the Catholic Church of Kutaisi that was handed over to the Georgia Orthodox Church. However, the Supreme Court of Georgia considered the given building to be an Orthodox church, as by the time of the dispute, the building was used by the Orthodox Church. The court neglected the fact that Catholic Church of Kutaisi was owned by the Catholic community until 1939.

Importantly, the direct and exclusive connection of Savardi with the Catholic community existing in Georgia in the past was recognized by the Holy See and with a letter of the Apostolic Administrator of the Catholic Church of South Caucasus. Nevertheless, the Supreme Court did not consider the plaintiff as the legal successor of the Catholic community.

It should also be noted that based on this ruling of the Supreme Court, the unlawfully confiscated property was handed over to the third party, making the perspective of finding the solution to the problem more unclear.

The Orthodox Church changes the appearance of the Catholic churches and this is not controlled by the state, despite the fact that the religious buildings are recognized as cultural heritage sites. For instance, in 2012, local Orthodox priests in the Ude village carried out the repair works of the Catholic church's dome without any prior consent of the appropriate state agencies. In addition, the state does not carry out any measures to preserve the historical appearance of the aforementioned religious buildings. For instance, some frescoes in Batumi Virgin Mary Nativity Cathedral are damaged, whereas the paintings on the walls and columns are distorted. The Catholic Church has been demanding the conservation and preservation of the historical appearance of the church, but to no avail.

Jewish Community

Like other religious organizations, the Jewish community too, has lost religious property under Soviet rule. To this day, the State has not yet transferred any property to them and synagogues, which survived destruction under the Soviet regime, remain state property.

The Great Synagogue of Tbilisi remains under State ownership while LEPL, Georgian Jews Union has the legal privilege to use the building. The same arrangement applies to synagogues located in Gori, Akhaltsikhe, Oni, Sachkhere, Batumi (Vazha-Pshavela street 33), Martvili, and Senaki. Another of Batumi's synagogues (Nine Marti street 6), the building which has sustained serious damage over the years, also remains State property. In 2015, part of the building collapsed. In the same year, the building was handed over to the Jews Union with the right to use. The second synagogue in Akhaltsikhe (Guramishvili street) was shut down in 1953 by the Soviet authorities and converted to first, a library and then, a gym. As of today, the building is damaged and not fit for function.

In addition, the religious property of the Jewish community is owned by private individuals, too. For instance, the purpose of Tbilisi Synagogue has been changed and today, it functions as the Royal District Theatre. From 1988, the building was handed over to the State Drama Theatre with the right of ownership and usage. In 1995, its ownership was given to the Jewish Religious Society. In 2001, based on the ruling of the Supreme Court of Georgia, the Jewish Religious Society received a partial right to ownership of the building. The Soci-

ety decided to relinquish the building in favor of the theater.⁴⁴ However, a big part of the Jewish community representatives do not agree with this decision and claim the property back.

The Jewish community also has not received ownership rights on the building of the Jewish Museum (Tbilisi, Anton Katalikosi str. 3), which used to be a synagogue in the past. It houses the Museum of Jewish History and is owned by the State.

Muslim Community

The Muslim community lost numerous mosques during the Soviet regime. Part of these buildings are now destroyed while some of them have had their functions changed. For instance, the Shah Ismail Blue Mosque was destroyed in 1951 together with the Metekhi bridge. Most of the surviving mosques are currently State-owned.

Before Soviet Occupation, there were seven mosques functioning in Tbilisi together with a Shia mosque. As of today, only a Sunni mosque known as Juma Mosque (at Botanikuri street), remains, which is a place of worship for both Sunni and Shia Muslim communities.

According to the 2014-2017 reports of the LEPL State Agency for Religious Issues, in 2014-2015, the state returned 170 mosques all over Georgia to the Muslim community.⁴⁵

However, this information is misleading: what the Agency labels as “transfer/return” is in fact the transfer of property without the right to ownership. Under these circumstances, a religious organization is restricted in their disposition of property (e.g. they cannot sell or carry out rehabilitation work on the property). In addition, the State retains the right to take back the transferred property. The mosques handed over to the Muslim organization for the right to use since 2014 do not include those religious buildings that belong to the list of the so-called disputed buildings, which were confiscated during the Soviet period.

The Muslim community is also worried about those religious buildings that they do not have with the right to usage. Due to the neglect, those buildings are in a critical condition. The number of such non-functioning buildings is up to 20. Muslim community cannot restore the sites and maintain these buildings.

The developments around Mokhe Mosque in Adigeni Municipality since 2014 have been especially noteworthy. Mokhe Mosque was built by Meskhetian Muslims in the first half of the 20th century. Despite the fact that the religious building has sustained the attributes that characterize Muslim mosques, the Patriarchate of the Georgian Orthodox Church claims the ownership of the building, as well. GOC states that until the 18th century, there had been a Christian church where the mosque now stands. They also stressed that the mosque is built with stones from the original Christian church. Importantly, the Patriarchate had not produced any historical evidence or expert opinion to support their claim. Nevertheless, the mosque was not handed over to the historical owner exactly due to the GOC claims. Currently, the mosque is on the balance sheet of the National Agency of State Property and is included in the list of the cultural heritage objects as a “disputed building”.

44 Tolerance and Diversity Institute (TDI), Study on the Needs of Religious Unions in Georgia, 2014.

45 State Agency for Religious Issues, 2016-2017 Report of the LEPL State Agency for Religious Issues, Tbilisi, 2018.

4. THE IDEA OF RESTITUTION AND THE EXPERIENCE OF OTHER COUNTRIES

Restitution, as a legal institute, is an act of reparation. However, it has certain specific characteristics. One of those important characteristics is to carry out restitution in a way that the implementer of the restitution is not considered to be the same as the offender, one who inflicted the damage. Therefore, in the case of Georgia, the restitution mechanism allows for compensating the damage in such a manner that Georgia does not take the burden of the successor of the Soviet Union.

During the Soviet regime, the Government was massively violating property rights of many individuals and groups. In some post-Soviet countries, the process of restitution and the transfer to a market economy began soon after the dissolution of the Soviet Union. Naturally, the process came with problems that emerged while discussing political and legal issues.

In the countries of Europe the restitution policy mostly concerned the compensation of those damages that Soviet, Nazi and Fascist regimes inflicted to people and their unions in different periods. However, the approaches formulated with regards to the restitution itself have not been homogenous. In some cases, the restitution policy covered only targeted communities/groups (religious unions). In other cases, it covered all physical and legal persons that lost property during the Totalitarian Regime. In addition, the rules of compensating the damages varied.

The countries, where the restitution policy was carried out, differentiated between the rules of returning/compensating for private property and communal property. Restitution of communal property covered the properties of communities and mostly concerned the religious communities.

Terezin Guiding Principles explain the notion of communal property as follows:

"[Property] owned by religious or communal organizations and includes buildings and land used for religious purposes, e.g. synagogues, churches, cemeteries, and other immovable religious sites which should be restituted in proper order and protected from desecration or misuse, as well as buildings and land used for communal purposes, e.g. schools, hospitals, social institutions and youth camps, or for income generating purposes."⁴⁶

Below, the experience of European countries regarding the restitution of property is presented. We have selected those European countries that experienced Nazi or/and Soviet occupation. Moreover, the summary emphasizes the practice of restituting communal property:

Hungary

From 1990, the citizens of Hungary or those owning a primary Hungarian residence could have addressed the state to request compensation for the property that they were deprived of in the Second World War or during the Communist regime.

⁴⁶ Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II, Terezin Declaration, 2010

In 1991, the Act XXXII on Settlement of Ownership of Former Real Properties of the Churches was adopted, based on which the religious organizations could have requested to regain the ownership rights on the religious property that had been taken from them since 1946.

In total, twelve religious organizations addressed the State with 8,873 applications regarding the restitution. From them, 1,897 applications were accepted and the religious property was returned, whereas 1.953 applications were accepted and restituted with funds.⁴⁷

After the 1997 amendments in legislation, the religious organizations were allowed to apply for compensation to the State. Annuity – a voucher-based payment system – was set as a means of compensation. The affected organization (the former owner) would receive a state voucher with the same worth as the confiscated property. They were able to purchase movable and immovable state property that was up for privatization.

For instance, a Jewish community and the umbrella organization representing it (Federation of Hungarian Jewish Communities – MAZSIHISZ) gave up the right to the property, owned by it in the past, in exchange for the state bond – annuity. MAZSIHISZ believes that the process of restitution of communal property is over.

In 2005-2006, the Government of Hungary adopted an additional resolution that provided for a fast resolution of the remaining discussions in the process of restitution. The main issue to decide upon was the fate of up to 430 religious buildings of the Catholic Church. The process of restitution of religious property was finalized in 2006.

The process of restitution carried out in Hungary was less problematic with regards to the compensation of the confiscated communal property. The obstacles were mostly created in the process of restituting private property (the amount of compensation was miniscule and was less than the market value; the incomplete access to the archives was complicating the query for the confiscated property).⁴⁸

Bulgaria

In 2006, Bulgaria created a commission in order to study the issue of status and restitution of religious property. According to the Bulgarian legislation, all communal property confiscated in 1944-1989 was subject to restitution. Return of the property or issuing compensation were the possible types of restitution. Only the organizations representing the communities could be considered as the affected. For instance, the property of the Jewish community was handed over to Shalom, which represented the Bulgarian Jewish community.

It can be said that the process of returning the communal property in Bulgaria has been finalized. In the process of restitution, one of the most important issues was the burden to prove that the applicant organization truly represented the religious organization that lost its property due to Nazi and Communist regimes.⁴⁹

47 U.S. Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

48 World Jewish Restitution Organisation, WJRO Hungary Operations, <https://wjro.org.il/our-work/restitution-by-country/hungary/>

49 U.S. Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

The process of restitution also envisaged the return of the private property confiscated by the Nazi and Communist regimes. If the return of the property was impossible and/or the property did not exist anymore, the compensation was issued in the form of state bonds. The deadline for applying for the restitution of private property was 2007. The applicants did not necessarily need to have been the citizens of Bulgaria. However, the non-citizens were obliged to sell the returned property afterwards. The Bulgarian legislation did not envisage the process of restitution of the property that did not have an inheritor.⁵⁰

Estonia

Estonia began the process of restitution in the beginning of the 90s. At that stage, the major part of the Orthodox churches were controlled by the Estonian Apostolic Orthodox Church. It included those religious buildings that were owned by the Patriarchate of Moscow in the past. The Government of Estonia returned up to ten religious buildings to the latter in 2005-2007.⁵¹ Property was returned to the Jewish community, too. Examples include the Jewish School of Tallinn which is the central community center and synagogue of the Jewish community.

In Estonia, the subject of restitution was community property that was confiscated between 1940-1981⁵². The issue of restitution of property had to be decided by a judicial authority. The return of community property in Estonia has not been an issue, since most buildings were owned and operated by religious organizations even after 1940. If returning of the community property was impossible, compensation was provided instead⁵³.

In 1991, the law for the restitution of private property, the Principles of Ownership Reform Act was adopted. The law concerned the restitution of private property. The law includes the restitution of the private property damaged during the Nazi and Communist regimes. It does not concern the requests for citizenship and/or residence.

Currently, the process of restitution in Estonia can be considered finalized.⁵⁴

Latvia

In 1992, the Parliament of Latvia adopted the Law on the Restitution of Property to Religious Organizations. According to the Law, the religious property, confiscated in 1940-1992, should have been returned to the religious groups. Compensation was one of the types of reimbursement. According to the law, the applicant had to prove their right to community inheritance (property) in court. In Latvia this was particularly difficult for the Jewish community. They never had a central community organization. In addition, during the war, af-

50 World Jewish Restitution Organisation, WJRO Bulgaria Operations, <https://wjro.org.il/our-work/restitution-by-country/Bulgaria/>

51 U.S Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

52 See Republic of Estonia Principles of Ownership Act <https://www.riigiteataja.ee/en/eli/520122018006/consolide>.

53 Institute for Jewish Policy Research, OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – ESTONIA (AS OF 13 DECEMBER 2016) <https://archive.jpr.org.uk/download?id=3260>

54 World Jewish Restitution Organisation, WJRO Estonia Operations, <https://wjro.org.il/our-work/restitution-by-country/Estonia/>

ter almost complete annihilation of the Jewish population of Latvia, it was difficult for the Jewish community to claim to be heir to the pre-war Jewish community.

The deadline set for the religious organizations to apply for restitution of community property was 1994. The Jewish community reclaimed around 30 buildings and received compensation for other properties. In addition, the state identified up to 200 real estate properties as pre-war Jewish community property⁵⁵.

In 2016, the Parliament of Latvia adopted legislative amendments on restitution, based on which five more buildings were returned to the Jewish Community. Until now, up to 270 Jewish community properties have not been returned. The process of restitution of community property of other religious organizations can be considered complete.

The Latvian legislation also envisages the restitution of private property that was confiscated from 1940. In the framework of restitution, if the return of the property to the individuals was impossible, they received alternative property or state vouchers.

Lithuania

In 1995, the Law on the Procedure for the Restoration of the Rights of Ownership of Religious Associations to Existing Real Property was adopted in Lithuania. According to the Law, only registered religious groups were authorized to apply to the State for restitution. Religious groups were allowed to request compensation for their property which they had lost since 1940, within one year (religious buildings, mostly).⁵⁶ According to the regulations, it was impossible to return the property, where no building was located.⁵⁷ Only religious buildings were considered as subjects for restitution. Up to 30 buildings were returned to the Jewish community in the process of restitution. Religious organizations could choose the form of restitution: receiving compensation, returning a building, receiving land or alternative property of the same kind. In 2001 the process of receiving applications was finished.

In 2002, the Government of Lithuania amended the Law on Restitution. It broadened the notion of “religious property” in order to include the community property which did not have religious purposes.

Moreover, the Parliament of Lithuania adopted a separate law (2011) which directly concerned the compensations for the Jewish religious community. In 2011, it was decided to pay up to USD 53 million to the community within ten years, starting from 2013. The amount of compensation is equivalent to 30% of common property. In addition, the Law envisaged paying LTL 3 million (USD 1.25 million) as a one-off compensation for the individuals in 2012. The right to disburse the compensation was given to a joint foundation of the Lithuanian Jewish community and World Jewish Restitution Organization (WJRO) – The Good Will Foundation.

55 Institute for Jewish Policy Research, OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIMES – LATVIA (AS OF 13 DECEMBER 2016) <https://archive.jpr.org.uk/download?id=3274>

56 U.S. Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

57 U.S. Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

The Parliament of Lithuania has also adopted laws⁵⁸ on private property compensation in different periods. The restitution of private property involves the successors of the affected. Unlike Estonia and Latvia, only Lithuanian citizens were allowed to apply for the restitution.⁵⁹

North Macedonia

In 2000, FYROM adopted the Law on Denationalization which envisaged return of the communal property confiscated since 1944, whenever possible.

The Government of the FYROM returned the major share of the lost property to the religious organizations. However, several religious organizations believe that they have not received the lost property to the fullest (for instance, the Muslim community). In the process of restitution, the religious organizations faced the biggest challenges with regards to the return of the property that had significant commercial location and that were owned by business organizations.⁶⁰ For example, the Jewish community had presented a list of 40 buildings. In the end, the Jewish community recalled all their demands in exchange for the following conditions: transfer of three buildings and one plot of land; payment of state bonds in the next ten years (2004-2013) for the basic needs of the community. The state complied with these terms.

The Law on Denationalization also envisaged the restitution of private property, confiscated after 1944. The applicants were required to be the citizens of the FYROM at the moment of adopting the law. Return of the property or issuing state bonds, when the return was impossible, were the means of compensation. The deadline for applying was set to 2004.

State approaches were formulated also with regards to heirless property. In 2002 Holocaust Fund was created that is responsible to dispose heirless property owned by Jews in the past. In the framework of the Fund, Holocaust Museum and an educational center were created in 2011. The Foundation maintains the Jewish heritage, including Jewish cemeteries.⁶¹

Poland

The discussion on restitution in Poland began in 1989. In 1997, a law, regulating the restitution issues of communal property – the Law on the Relationship between the State and Jewish Communities – was adopted. The Law covered the return of those religious buildings, cemeteries, as well as formerly educational, social and cultural facilities to the Jewish community, which had been confiscated since 1939. The restitution policy does not include the return/compensation of private property.

58 Law on the Procedure and Conditions of Restoration of the Rights of Ownership to Existing Real Property (1991) and the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (1997)

59 World Jewish Restitution Organisation, WJRO Lithuania Operations, <https://wjro.org.il/our-work/restitution-by-country/lithuania/>

60 U.S Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

61 World Jewish Restitution Organisation, WJRO Macedonia Operations, <https://wjro.org.il/our-work/restitution-by-country/macedonia/>

In addition, five commissions, composed of equally affected religious communities and the representatives of the state, were created and discussed the applications regarding restitution. In the framework of this process, up to 3,100 applications requesting return of the property were presented by the Catholic Church until 2006. The Lutheran Church presented up to 1,200 applications.

It can be said that the process of restitution was the most efficient for the Jewish community. The responsible Commission was actively reviewing its applications.⁶² In 2000, the Union of Religious Jewish Communities (JRCP) together with the World Jewish Restitution Organization (WJRO), created the foundation for the protection of Jewish heritage. They divided Poland in several jurisdictions, where Jewish communal properties were confiscated in the past. In each jurisdiction, the responsibility on the return of the communal property and the heritage was shared between various Jewish organizations. They were to present to the state applications on restitution in 1997-2000.

The process of restitution in Poland is going slowly. It has been 15 years since the deadline of submitting the complaints expired in Poland. However, a large portion of complaints is yet to be decided upon, or the decisions made with regards to restitution or compensation have not been executed yet. For example, the Foundation for the Preservation of Jewish Heritage has presented up to 3,500 applications (from them, 600 concerned cemeteries). Other Jewish organizations have presented another 2,000 applications (from them, several hundred concerned cemeteries). In total, by 2015, the Jewish community and its organizations had presented 5,504 applications to the state. From them, 2,645 were reviewed (as of 2015) fully or partially. Half of the reviewed cases were accepted and the state institutions were entrusted to either return the property or provide compensation.

The State also assigned the communities strong responsibilities after the return of the properties. A large share of the returned properties (synagogues and cemeteries) was damaged or destroyed at the moment of handing over. Polish legislation requires that they are restored and maintained/preserved/conserved, which is associated with significant expenses.⁶³

Slovakia

The restitution process began in the 1990s. In 1993, the Government of Slovakia adopted several laws on restitution. They included the Law on Reconciliation of Certain Abuses and Damages Caused to Church Property and the Property of Other Religious Institutions. The Law regulated the restitution of communal religious property, confiscated during the Communist regime.⁶⁴

Based on the given Law, religious organizations addressed the state, requesting the return of the confiscated property. For instance, the Orthodox Church returned six out of the seven requested religious buildings. The Catholic Church returned 90% of the requested religious property.

62 U.S. Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

63 World Jewish Restitution Organisation, WJRO Poland Operations, <https://wjro.org.il/our-work/restitution-by-country/poland/>

64 World Jewish Restitution Organisation, WJRO Slovakia Operations, <https://wjro.org.il/our-work/restitution-by-country/slovakia/>

The Jewish community applied on 500 community property to the Slovakian government. 300 applications were granted. It is noteworthy that in 1998, the Jewish community retrieved a deposit worth USD 600,000, made in the National Bank of Slovakia in 1940.⁶⁵

In 2002, a foundation was created to reimburse the damages to the victims of Holocaust. The State allocated USD 18.5 million (approximately 10% of the total damage). In 2003-2012, these funds were mostly used to restore synagogues and cemeteries.

As of 2005, some religious organizations believed that the process of restitution was not over yet. In 2005, the Government of Slovakia adopted a law that allowed religious organizations to request the agricultural lands, forests and administrative buildings that they used to own in the past. By 2006, the restitution process was considered over.⁶⁶ In Slovakia, the main challenge of restitution was the lack of financial resources in the State, due to which the payment of compensations is complicated.

Moreover, the laws on restitution also included the restitution of private property, confiscated by the Communist regime in 1948-1990. The restitution involved the return of the confiscated property or the payment of compensation to the affected⁶⁷.

Germany

After the Second World War, the laws of the **Federal Republic of Germany (FRG)** concerned both private and communal property restitution. Under this regime, the communal property was declared ownerless and was handed over to the so-called "successor organizations":

- ▶ In the American sector – Jewish Restitution Successor Organization (JRSO);
- ▶ In the British sector – the Jewish Trust Corporation;
- ▶ In the French sector – Branche Française de la Jewish Trust Corporation.

After that, a legal dispute emerged between the JRSO and the Jewish leaders in Germany. The latter believed that they were the lawful successors of the communal property.

The Supreme Restitution Court ruled in favor of the JRSO. It recognized the JRSO as the lawful successor to the Jewish property. However, the JRSO signed an agreement with the local Jewish community that allocated 60% of the communal property to the JRSO, whereas the remaining 40% were given to the Jewish community.

German Democratic Republic (GDR) has also carried out regulations regarding religious and communal property.

65 U.S. Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

66 U.S. Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

67 Institute for Jewish Policy Research, OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – SLOVAKIA (AS OF 13 DECEMBER 2016), <https://archive.jpr.org.uk/download?id=3291>

On April 29, 1948, a decree on the Return of the Property Confiscated by the Nazi Government to the Democratic Organizations was issued. The decree envisaged to return the property to the Communist groups. However, the decree also covered church or humanitarian groups.

The Jewish community had to rely upon a newly established umbrella organization – the State Association of Jewish Communities in the Soviet Zone (Jewish Communities). They had to address the state on the matter of returning the property using this organization and they had two months to do so.

Jewish Communities did not have the resources necessary to account for all the property confiscated by the Nazis in two months. In the end, they presented applications with regards to 122 objects.

However, in the case of Eastern Berlin, the state did not return the property to the Jewish community and subjected the community property to state control, based on an Order from June 24, 1948.

Overall, under GDR, the Jewish community tried to return up to 70 religious objects to no avail.

After the **reunification of Germany**, in 1990, the Government of Germany adopted an Act on the Settlement of Open Property – Vermögensgesetz – VermG), which said to satisfy those claims of the citizens and organizations regarding restitution that were subject to persecution between January 30, 1933 and May 8, 1945 on racial, political, religious or ideological grounds. This Act allowed religious organizations to once again demand the property, confiscated by the Nazi regime. These demands mostly concerned the religious property in the former GDR. The deadline for submitting the applications was December 31, 1992.

Based on the precedent of FRG with regards to the successor organizations, the Conference on Material Claims Against Germany (“Claims Conference”) was granted the legal successor status on the Jewish communal and organizational property.

Receiving the status of successor allowed the Claims Conference to restore all the property in the GDR where the Jewish origin was identified.⁶⁸

The state set only two pre-conditions with regards to the possibility of restitution: the land, demanded by the owner, should not have been in a public use and the ownership right on the returned property should have been lawful.

Romania

In 2001, Romania adopted the laws on restitution of communal, as well as the religious property. The law intended to return the property confiscated between 1945 and 1989. It did not cover the period between 1940 and 1945. Jewish community lost a significant share of its common property in the given period. In addition, restitution concerned only the buildings that still existed by that time. The Law did not include compensation for the property that had already been destroyed. In addition, religious buildings were not considered as subject to restitution.

⁶⁸ OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – GERMANY (AS OF 15 MARCH 2017), Institute for Jewish Policy Research, 2017 <http://archive.jpr.org.uk/download?id=3266>

Despite the narrowness of the restitution policy, religious organizations presented up to 14,800 applications to the Government of Romania. From them, a major part was submitted by the Greek Catholic Church. The applications were reviewed by a special commission. The set deadline for applications was 2003.

In 2004, the Parliament of Romania adopted a law that expanded the process of restitution. The law included the restitution of private property. Also, it established the restitution of ethnic groups' common properties that were confiscated in 1940-1989. The law also covered the restitution of the property of the Jewish community.⁶⁹

In 2013 several regulations were added to the restitution process. It is noteworthy that only real estate that was expropriated legally and had documentary proof was subject to restitution. This regulation raised issues with the restitution of the property, that were confiscated by force and was not expropriated with documentary proof.

The issue of legal inheritance was also problematic. Religious organizations had to prove to the court their connection to real estate one by one. In 2016 new regulations on restitution simplified the process of proving the legal succession. A clear framework was also set up for receiving applications and the timeframes for its proceedings.

It is important to review Romania's restitution process with regards to the Greek Catholic Church. Since the 90s, the commission responsible for making rulings on the return of the property existed only formally. Meanwhile, the Romanian Orthodox Church kept damaging and demolishing religious buildings on various grounds. The Orthodox Church also hindered the process of returning religious buildings to the lawful owners. In the end, the Greek Catholic Church got part of its property back and/or received compensation.⁷⁰

The Romanian laws on restitution of communal properties did not concern several important issues: damaged or changed/modified buildings were not compensated for and the property was not evaluated based on market values.

The restitution process was complicated by frequent postponements of the application reviews, the difficulties in receiving or obtaining the documents proving the property ownership, restricted and limited access to the archive, etc.

In 1997, the Federation of Jewish Communities in Romania (FEDROM) and World Jewish Restitution Organization (WJRO) jointly founded Caritatea Foundation. The Foundation took the responsibility to present to the state applications of the Jewish community regarding property restitution and to manage the returned property and compensation afterwards. In total, the Foundation submitted 1,980 applications to the National Authority for Property Restitution (ANRP) – a body responsible for reviewing restitution applications.

69 OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – ROMANIA (AS OF 13 DECEMBER 2016), Institute for Jewish Policy Research, 2016 <http://archive.jpr.org.uk/download?id=3287>

70 U.S Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

In 2016, the state recognized the property rights of the Caritea Foundation on 55 objects/properties, including schools and cemeteries. In addition, discussions about the 40 properties that the Jewish community forcedly “donated” to the Communist regime were postponed. The process of restituting communal property in Romania has been going quite slowly. In addition, most of the demands of the religious organizations were not met or remain unresolved until now.

As for the restitution of private property, it covered the property confiscated after 1954 and the deadline for applications was in 2003. The state received up to 250,000 applications. The restitution concerned the return of either the property itself, or, if impossible, paying a compensation. To this end, a foundation was created. The European Court of Human Rights criticized the Government of Romania for its inefficient payment mechanisms.⁷¹

Ukraine

After the dissolution of the Soviet Union, in certain cases, the Government of Ukraine was adopting decisions via state acts on the return of religious property to the religious organizations. Through the 1992 Act, registered religious organizations are authorized to return religious buildings, confiscated from them during the Soviet regime. In addition, there is a legislative record that allows religious organizations to use cultural values for religious purposes (Article 17 of the Law of Freedom of Conscience and Religious Organizations, Article 17 law)). Through the given Law, religious organizations possess a large part of their property, but they are not the owners.

Since 2007, discussions regarding the restitution policy have become more active. In 2007, the State Commission on Restitution was addressing the Ministry of Justice to present a Law on Restitution of Religious Property. In 2009, the state prepared a bill that concerned the restitution of the confiscated religious property. However, this law has not been adopted. After that, the state signed the Terezin Declaration which obliges it to reimburse the damage done to the communal and religious property of the Jewish community during the Holocaust. It also makes it necessary that adequate state mechanisms exist in the process of application.⁷²

As of today, based on the State’s position, a major part of the religious property has been returned to its lawful owners. The criticism towards the state approach towards the restitution of religious property is quite frequent, namely due to non-transparency and/or obscureness. The Restitution Commission has existed since 2002, however, it has mostly not functioned in practice. According to the State’s position, up to 3,600 religious buildings were returned to the religious organizations. In addition, the State allocated funds for the reconstruction of religious buildings in 1992-2004. However, the religious organizations appealed that these funds were only directed to the Orthodox religious buildings.

71 World Jewish Restitution Organisation, WJRO Romania Operations, <https://wjro.org.il/our-work/restitution-by-country/romania/>

72 World Jewish Restitution Organisation, WJRO Ukraine Operations, <https://wjro.org.il/our-work/restitution-by-country/ukraine/>

Intra-confessional opposition and the claims of several religious organizations on religious buildings also complicated the return of the religious property. It should be noted that there are several examples in the Ukrainian practice, when two religious organizations were given a single religious building on a rotational basis. Until today, the major part of the representatives of religious organizations believes that the process of restitution has not been fully conducted and that the process is going very slowly.⁷³

⁷³ U.S Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

5. RESTITUTION POLICY ANALYSIS

As the analysis of international practice reveals, the restitution process in Eastern Europe is mostly over. Moreover, it is noteworthy that, as time passes, the creation and functioning of the restitution mechanism becomes increasingly difficult, as due to the privatization of the state property, the amount of real estate owned by the state decreases.

Working on the restitution policy in the European countries began mostly after the dissolution of the Soviet Union. It can be said that certain factors encouraged this process. One of the most important factors was the introduction of the issue of damage compensation to the Jewish community on the international agenda. The World Jewish Restitution Organization (WJRO) received wide support in the form of international declarations and resolutions. The given organization managed the restitution process of the Jewish communities in European countries. WJRO facilitated the general process of restitution of religious property. States mostly created legislation granting equal rights to religious and ethnic communities. However, there were certain issues that concerned only the Jewish community. For instance, the damage inflicted during the Holocaust was often mentioned separately. Nevertheless, this part concerned the restitution of private property more, rather than the common/religious property.

The role of the United States of America that unwaveringly supported the conduction of the restitution policy in Europe is important, too.

“The United States has strongly supported efforts to return to rightful owners property confiscated by the Nazis 1933-45 and by the subsequent communist governments of Central and Eastern Europe. Positive action on property issues was one of the criteria used to judge the progress of countries that aspired to North Atlantic Treaty Organization (NATO) membership. The European Union (EU) also recognizes the relevance of property issues in applicant countries” – reads the 2007 Special Report of the US State Department.⁷⁴ The issue of property restitution is an indicator of the rule of law and democracy for the US State Department. Carrying out an equal restitution policy is also important for a healthy market economy.

We can emphasize the following issues from the European countries' practice regarding the restitution policy:

- ▶ In most countries, after the adoption of legal regulations on property restitution, the affected individuals had start and end dates for applying for the restitution of the property.
- ▶ Obvious and clear procedures were set for the property restitution.
- ▶ The burden of proof on the right to return the property was borne by the applicant.
- ▶ In most countries, both the return of the confiscated property and the financial compensation were determined as the forms of restitution.
- ▶ In most countries, the issue of the property return was discussed by a special state commission.
- ▶ In some countries, there were separate commissions for each confession to discuss the issue of the property return.

⁷⁴ U.S. Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe, Washington, DC, October 3, 2007, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>

- ▶ In most countries, the restitution of the religious and communal property meant the transfer of this property with the right to ownership.
- ▶ Due to the fact that a single confessional movement can be represented by several organizations, it was one of the most important issues in the process of property restitution for the religious organization to prove that it had the right to the property, confiscated in the past.
- ▶ Often, organizations following the same confession were uniting and/or creating common representative organizations, in order to facilitate the relationship with the State in the process of property restitution. The Jewish community used the given tactic in all the countries reviewed above.

Based on the examples of the European countries, there is no common vision towards the property restitution issue. However, it is possible to point out common principles. It is important that the State treat the affected groups equally. Clearly, if in the process of restitution of communal property the dominant religious group returns its own property, whereas the other religious organizations do not, it will create short and long-term challenges. Restitution policy should not be discriminatory.

As the European practice shows, the different treatment was only present in the case of Jewish community, due to the historical past and the scale of damage. In other cases, the restitution policy provided equal possibilities to the religious and community groups.

Property restitution can prove to be a difficult challenge for the state. Change of owners or the purpose/type of buildings may render the return of the property to the affected impossible. An attempt to purchase the property from private owners may become a heavy economic burden for the state.

Clearly, there may be cases when the return of the property is impossible. Mainly, such a problem is created, when the building has a private owner/owners that are, in turn, conscientious buyers. In such a case, compensation should be determined to be the form of restitution. There can be various approaches towards the latter. In the European countries' restitution policies, one can find cases when the compensation has a form of: state vouchers/securities that can be used to purchase any property on the state balance sheet; direct payment in accordance with the market price; direct payment with symbolic price; payment made in installments with terms set in advance.

In addition, it is noteworthy that under the restitution policy, the notion of communal property did not cover only religious buildings and also included cemeteries of religious and communal groups, schools, hospitals, communal houses etc.

It should also be noted that the return of the property that has a public value can become subject to restriction under the restitution policy – i.e. forests, protected territories, recreational zones, museums, large agricultural lands, pastures, irrigation canals, wells etc.

Restitution laws should provide full access to the archive records to the religious and community organizations. In this regard, problems emerged in European countries, too, while conducting the restitution policy. Moreover, it is important that the state provides access to alternative sources and possibility for reviewing alternative evidence – even more so, when archives are destroyed.

Legal proceedings regarding restitution should be obvious and clear. They should be answering the following questions:

- ▶ Who can address the state?
- ▶ Who is the reviewing body?
- ▶ What kind of documents need to be presented to the reviewing body?
- ▶ What are the review terms for restitution, when it comes to one-off applications?
- ▶ What kind of mechanisms of dispute are provided, if the applicant disagrees with the reviewing body's decision?

Restitution laws should cover the entire country. Actions should be conducted on uncontrolled and occupied territories, too, whenever it becomes possible. Lack of an effective control of a certain territory should not mean shirking responsibility in terms of restitution.

The burden of proof in case of property return should always be borne by the applicant. In addition, the interests of those third parties that claim right to the property too, should be protected in the process of restitution. If two parties claim the same property, both should prove their cases. The state should decide based on the principle of competitiveness – considering the presented evidence and arguments.

6. POSSIBLE WAYS AND RECOMMENDATIONS FOR CONDUCTING THE RESTITUTION POLICY IN GEORGIA

In order to conduct the restitution policy in Georgia, first, the practice of the European countries should be shared – specifically, the practice of those post-Soviet countries that successfully conducted the restitution policy.

Moreover, it is important to pay special attention to the restitution mechanisms and procedural issues – especially the issues of heritage and the burden of proof. The practice of the European countries prove that proper regulation of the issue can be the most important prerequisite for a successful restitution policy.

The process of planning and implementing restitution policy should be transparent. The state should ensure maximum involvement and participation of religious communities and experts of the field.

Based on the analysis of the presented information, TDI gives the following recommendations:

To the Government of Georgia:

1. Study the extent of the damage inflicted by the Soviet totalitarian regime experienced by religious communities and record the confiscated property;
2. Restitution policy /compensation should rely solely on the data obtained through detailed study, including the rules of compensation for the existing damages to the Patriarchate of Georgia and other religious communities;
3. Examine the lawfulness of transferring seven Catholic churches (in Gori, Ivli village of Akhaltsikhe Municipality, villages of Ude and Buzmareti of Adigeni municipality, Kutaisi, and two churches in Batumi) to the Georgian Patriarchate and ensure the restoration of the right to the Catholic Church;
4. Grant the ownership rights to religious minority organizations on the property that is utilized solely with the terms of usage;
5. With participation of respective religious communities and experts, define state institution(s) responsible for the restitution process;
6. Ensure conservation of those religious buildings that are cultural heritage sites and/or are currently owned by the State.
7. Prohibit all forms of reconstruction and renovation of historical religious buildings historically owned by other religious organizations currently under the ownership of the Georgian Orthodox Church;

8. Ensure full access to archived materials to religious organizations and researchers in order to collect data and relevant documents concerning historical property.

To the Government and Parliament of Georgia:

9. Develop a draft law on restitution of communal property. Establish the definition of communal property in Georgian law that would allow religious organizations to assert their ownership of lost, seized, confiscated property.

10. Develop legislative approaches to restitution of historic, movable property of religious organizations that exist today and have not been destroyed; owned by the State or individuals.

11. Abolish the Article 4 (“m”) subsection, according to which the state property shall not be privatized: religious and cult buildings (active and inactive), their ruins, as well as the land on which they are located;

12. Amend the legislation in accordance with the restitution principles and return the religious buildings confiscated during the Soviet period, currently owned by the State, to the historical owners: Armenian Apostolic Church, Evangelical-Lutheran Church, Muslim and Jewish communities;

To Local Self Government Bodies:

13. Be guided by the principle of equality, neutrality and protect the freedom of religion or belief concerning the issues related to religious buildings.

14. Maintain the communal religious property that is in their ownership, safeguard the sites and conserve them when necessary;

To religious organizations:

15. Account the religious property they lost under the totalitarian regime. Collect various documental materials that describe their historical properties.

APPENDIX:

Part of the religious buildings confiscated and not returned to non-dominant religious communities

Evangelical Lutheran Church

Neu Tiflis Peter and Paul Church (Aghmashenebeli Avenue, Tbilisi)

Neu Tiflis Peter and Paul Church used to function in Tbilisi, next to the Marjanishvili Square, since 1897. In the 1930-1940s, the Soviet Government closed down the church. Pastor and his family were shot. In 1946, German captives were forced to dismantle the church and a residential building was built on the site which survived until today.

A German school – Two-Grade School of Peter and Paul – was also located in Neu Tiflis. Apparently, it was launched soon after the arrival of the Germans. In 1906, Lutherans decided to reform the school into a middle school. They raised funds and made it possible in 1912. The address of the school back then was Kirochny Street 25-27.⁷⁵ Later, this school became the basis for the foundation of German Gymnasium in Tbilisi in 1918. The school was shut down in 1925, after the establishment of the Soviet regime.

St. Paul Lutheran Church of Alexandersdorf (Agladze, str., Didube, Tbilisi)

Another Lutheran church was located in Alexandersdorf and was built in the mid-19th century. Besides, it is known that the settlement also had a cemetery and a school. The former school building is currently located on Samtredia str. and is used as a residential building. The Evangelical Lutheran Church was first transformed into a warehouse and then, in 1950-60-ies was destroyed because of the construction of the tramway. The 1934 map also includes the Alexandersdorf cemetery which does not exist today.

Marienfild German Church (Gardabani, Sartichala village)

A German church and cemetery were located in the first German settlement in the South Caucasus – Marienfild. The parish of the church united the parishes of Petersdorf and Freudenthal, as well. Marienfild Church was functioning from the mid-19th century. It stopped functioning after the Soviet occupation. Initially, during the Soviet period, it was transformed into a club. Later, it became a cultural house and a cinema. Its appearance has been changed. Additional parts of the building were constructed and its facade has been changed. The building exists even today, although it has lost its authenticity. It is hard to identify the church today, as the site is abandoned and without maintenance. The German cemetery still has dozens of grave-stones with German inscriptions and unique decor. The area is enclosed.

Elisabeththal Lutheran Church (Tetrtskaro, Asureti village)

Another Lutheran church was built in Elisabeththal in 1871, by architect Salzman. Prior to that, there was a smaller church on the site. Elisabeththal had a German cemetery as well. In the 1930s, the Lutheran Church was transformed to a club. In the 1950s, its façade was significantly changed. The Soviet Government demolished the bell tower and the eight-faceted dome. The arch of the dome was also removed.

⁷⁵ Marjanishvili Square, Tbilisi

As of today, Elisabeththal Lutheran Church and the German cemetery still remain. The church has a status of cultural heritage monument, as "Asureti Savior's Church". The church is being used by the Orthodox Church of Georgia.

According to the Evangelical Lutheran Church of Georgia, in 2009, they offered the Orthodox Church of Georgia to work on a joint project for rehabilitating the Church which involved a praying corner for the representatives of both denominations. However, the Patriarchate of Georgia rejected the offer.

With the Government decision, rehabilitation works of Asureti historical zone have been conducted since 2016, In the framework of these works, full restoration of the cemetery was completed, restoration of the church was also completed in 2020. In May 2019 Tetrtskaro Municipality Council made a decision to transfer part⁷⁶ of the church to the Georgian Orthodox Church with the right of use. As a result, the Orthodox Church has registered the property for the period of 99 years. The historic owner of the property, the Evangelical-Lutheran Church, is still unable to register the property or use the church.

Alexandershilf Lutheran Church (Trialeti village, Tsalka)

A Lutheran church and a cemetery existed in Alexandershilf, too. The colony was established in 1866. Next to the praying home, in the same building, there was a school. In 1906, a new church was built in Alexandershilf. The school moved to another building. The praying home was transformed to a community meeting place. In the Soviet period, in the 1930s, the pastor's home was given to shepherds. The church, like other Lutheran churches, was transformed to a club and cinema. As of today, the church is listed as a cultural heritage site. In 2017, with the financial aid from the Ministry of Foreign Affairs of Germany, the roof of the church was rebuilt by the Union for the Protection of German Cultural Heritage in the South Caucasus. Only a few gravestones remain today at the German cemetery of Alexandershilf.

Katharinenfeld Lutheran Church (Bolnisi)

In 1854, a Lutheran church was built in Katharinenfeld, too. After the establishment of the Soviet regime, in 1940-ies the bell tower of the church was demolished and the movie theatre was opened. In later years additional storages were built and the building was handed over to the sports school and is still functional as such. The altar and the stone relief carving of a cross still remains in the building. In addition, several fasades with the contreforts and windows still exist with almost initial appearance. Katharinenfeld Church is in municipal ownership and is not listed as a cultural heritage site.

Traubenberg Lutheran Church (Tamarisi village, Marneuli)

Traubenberg settlement was founded in 1908. There was a community house with a chapel, which still exists and nowadays, it has turned into a cultural house . A German cemetery also exists there until today. The Lutheran community lost this property after the Soviet occupation.

⁷⁶ 24 sq.m on the first floor of the building, 24 sq.m on the second floor and partially attached land plot – Agreement No. 4 of June 10, 2019 on the Transfer of the Right to Use Real Estate, Reg. No. 1035.

Armenian Apostolic Church

Surb Nshan (Surb Nikoghaios) (Sultanishani Street #6, Tbilisi)

The date of construction of Surb Nshan is considered to be 1701 (in some sources 1624 and 1673). It is also referred to as St. Nicholas Church. The church is labeled as “the foreman’s house” in Vakhushti Batonishvili’s map. In 1802 Tbilisi City Plan, it is labeled as St. Nicholas Church. In the subsequent periods, it is mostly referred to as Surb-Nshan. The church underwent the last restoration in 1861. In 1928, in the Soviet period, the church was locked and closed. In the subsequent period, it was used as a warehouse and as a book depository for the National Library. Mostly Armenian periodic editions were stored there. It was significantly damaged by several fires: first, in 2002, and then twice in 2012. The Georgian Orthodox Church Patriarchate has been claiming the ownership of the building.

Surb Nshan Church is a cultural heritage site. It is not registered and is not on anyone’s balance sheet.

Mughni Churches (Akhospireli Street #6, Tbilisi)

Mughnetsots Surb Gevorg church was constructed in 1356 (1537 according to another version). A larger Virgin Mary Church was built next to the smaller Saint George of Mughni Church. The latter was built in 1751, based on the Etchmiadzin model.

In 1795, the church was raided by the Persians. Under the Soviet regime, the smaller Mughni Church was transformed to a transformer building, whereas the larger Virgin Mary Church was used as a part of the Ethnographic Museum.

The church complex is in a critical condition. The first cracks appeared on the building in 1980. It has been considered to be in an emergency state since 1990. Due to lack of maintenance, the dome of the church collapsed in 2009. The building represents a cultural heritage site. It is an unregistered property and the Patriarchate of Georgia has expressed claims on it.

Norashen Surb Astvatsatsin (Kote Apkhazi Street #41, Tbilisi)

The church was built in 1467 (1507 according to another version). In 1925, during the Soviet regime, the church was transformed to a library of the Academy of Science. Norashen Church is a cultural heritage site and is on the state balance sheet. As of today, it is not functioning. Patriarchate of Georgia has made claims on it.

Shamkhoretsots Surb Astvatsatsin – Karmir Avetaran (Peristsvaleba Street #21, Tbilisi)

The register of Armenian churches, compiled based on an order by the Catholicos of Armenia, Nerses Ashtarakets, mentions that the church was built in 1809. Prior to that, there used to be a domeless wooden church, constructed in 1735 on the same site. In the 1840s, the church underwent restoration works. After the Soviet occupation, various organizations were based in the church. In 1989, as a result of an earthquake, the dome of the church collapsed. As of today, the church is in a critical condition. The church is a cultural heritage site and is an unregistered property. It is claimed by the Patriarchate of Georgia.

Surb Ejmiatsin (Armazi Street #18, Tbilisi)

Surb Ejmiatsin was constructed as a small, hall-style church. Afterwards, it was transformed to a dome-style church, in 1846. Its paintings date back to the second half of the 19th century. The church is a cultural heritage site. It is unregistered and is not on anyone’s balance.

Armenian Vank Church (Harants Vank, Pashavank) (Atoneli Street #3, Tbilisi)

Vank Church, located in Garetabani district, right bank of Tbilisi, was built in 931. The three-dome church of Vank Monastery went through restoration works in 1430, 1480, 1715, and in 1884-1901.

During the Soviet period, in the 1930s, Vank Virgin Mary Monastery was destroyed. The restoration works on the street was said to have been the reason. As of today, only the bell tower remains, which has the status of cultural heritage site. It is in private ownership.

Surb Nshan (Surb Vardanants) (Akhaltzikhe)

Plan of the church was created in 1861. The construction was launched in 1863 and finalized in 1868. In 1887, a famous Akhaltzikhe resident, Vardan Vardaniants was buried in the yard of the church.

Under the Soviet rule, in 1938, the liturgy was stopped. In 1941-1949, it was used as a warehouse for military and other objects. In 1949-1970, it was used as a salt warehouse. The Ethnographic Museum was also functioning in the church. Patriarchate of Georgia claims the church. As of today, the church is used both by the Armenian Christian and by the Orthodox communities.

Ereventsots Surb Minas (Tbilisi)

Ereventsots Surb Minas was built in Tbilisi in 1790. It was reconstructed in 1811. By 1870 the church could not accommodate the parish. Therefore, construction of a new church began in its place. The construction works were finalized in 1883.

In 1924, based on the decision by the Tbilisi Executive Committee, the church was closed and transformed into a club. In the subsequent periods, it also functioned as a sewing house. The church has been unattended since 1990. It is claimed by the Patriarchate of Georgia.

Tandoyants Surb Astvatsatsin – Virgin Mary Armenian Church (D.Agmashenebeli Avenue #38, Tbilisi)

The church was built in the first half of the 19th century in Kukia village. In this period, the number of Armenian citizens grew in Kukia village. It is considered that the church was built by an Armenian resident, Hasak Tandoyants, in 1860. Metric recordings of the Tandoyants Church (in Armenian), are reserved in the National Archive of Georgia. In the Soviet period, the church was closed. It was used as a cinema and as a club of janitors. Tandoyants Church does not have the status of cultural heritage site on its own, although, the real estate property, located at Agmashenebeli Avenue #38, has the given status, and the church is located in the given cadastral unit. Therefore, the legal regime established for the heritage site covers the church, too. Until 2017, the church was enlisted under the State's ownership. However, in 2017, the State transferred the church to the Patriarchate. The decision-making body on the ownership of the property had not even looked into the confessional origin of the building.

Catholic Church

Catholic Church in Kutaisi

In 1800, the King of Imereti, Solomon II gifted a plot of land to Catholic missionaries, where they started to build a church. The construction works began in 1826. The construction of the Immaculate Conception Cath-

olic Church ended in 1862. It was closed in 1939. In 1989, the church was handed over to the Patriarchate of Georgia and today it is referred to as Annunciation (Khareba) Church. The building has the status of cultural heritage monument.

It is noteworthy that in 2001, the Union of Latin Catholics, represented by a Legal Entity of Private Law – Savardi union⁷⁷ – tried to retrieve the Catholic Church through legal proceedings. However, the Supreme Court of Georgia considered the given church, which belonged to Catholics until 1939, to be Orthodox at the moment of dispute⁷⁸, as by then, the Orthodox Church was using the building. Importantly, the direct and exclusive connection of Savardi with the Catholic unions acting in Georgia in the past was recognized by the Roman Holy See and with a letter of the Apostolic Administrator of the Catholic Church of South Caucasus. Nevertheless, the Supreme Court did not consider the plaintiff as the legal successor of the Catholic unions.

Based on the Supreme Court's ruling, the unlawfully confiscated property was handed over to the third party, which makes the perspectives of finding a solution to the problem even more obscure.

Catholic Church in Ude Village (Adigeni Municipality)

The construction works of the church, headed by a local resident Simon Chilashvili, began in 1904-1906. The costs for the construction materials necessary for the construction works were borne by the villagers. In the beginning of the construction works, Simon Chilashvili only had 1,500 Rubles, so he loaned additional 11,000. There is a record that proves that the construction works were paid off by the locals: "There are 2,120 Catholics in Ude, who built this church, as well as 520 Muslim Georgians. Virgin Mary, we sacrifice our work to you (translated from old Georgian)."

Like other churches, the given church has also been handed over to the Patriarchate, which significantly altered its appearance. According to Catholics, members of the Orthodox parish first removed the religious attributes of Latin Catholics, located in the praying corner of Ude Church and later, barred the Catholic community from praying in the church. Bell towers and residences of Orthodox hierarchs have been built on the territory near the church. In 2012, local Orthodox priests started arbitrarily the reconstruction works on the church dome, despite the fact that the church has the status of cultural heritage site.⁷⁹

Batumi Virgin Mary Nativity Cathedral

Batumi Virgin Mary Nativity Cathedral was built in 1897-1902. The church was built in pseudo gothic style. A priest, Anselm Mghebrishvili, was the initiator of the construction. In 1898, he was writing to Mikheil Tamashvili, a Georgian scientist and an abbot of the Roman Catholic Church, that 80,000 rubles were necessary for the construction of the church. An entrepreneur and a parish member, Stepane Zubalashvili funded the construction works. The eastern façade of the church reads: "I, Stepane Zubalashvili, son of Constantine, built this Virgin Mary Church and its curtain wall for salvation of my soul, the souls of my parents and sisters (translated from old Georgian)."

77 According to the legislation and practice in Georgia in 2001, unions were not authorized to register as religious organizations.

78 Decision N, 86-275-416-03 of the Supreme Court of Georgia from April 27, 2004.

79 Order N 3/133 of the Ministry of Culture, Monument Protection and Sports of Georgia from March 30, 2006. <http://www.culture.gov.ge/getattachment/ContentMenu/CulturalHeritage/Orders/2006-cels-gamocemuli-brdzanebebi/brzaneba-3-133,-30-03-06,-saqarTvelo,-mTliani.pdf.aspx>

During the Soviet period, the church was shut down. A high voltage laboratory was placed there. By the end of the 1980s, the church was reconstructed and its initial appearance was restored. Since 1989, the church has been owned by the Patriarchate of Georgia. As of today, part of the frescoes in the church are damaged, whereas paintings on the walls and columns are partially deleted. In front of the church, there used to be a signboard with the information about the building, however, the Orthodox removed it. Catholics are not allowed to conduct a liturgy in the church. The church has the status of cultural heritage site and the Catholic Church asks for the conservation of its original appearance.

Catholic Church in Gori

The church was built in 1806-1810. It was painted in the second half of the 19th century. During the Soviet period, it housed Gori Musical School. In 1950, the walls of the church were whitewashed and the paintings were damaged. Like other Catholic churches, today, Gori Catholic Church belongs to the Patriarchate of Georgia, too. Currently, it is known as Gori Virgin Mary Nativity Cathedral. The building has the status of cultural heritage site.

Armenian-Catholic Church in Batumi

The church was built in 1877. After the Soviet occupation, it was shut down. It was not returned to the religious community after the restoration of independence. Since 2012, it has been owned by the Patriarchate of Georgia. The dome of the church collapsed in 2017. The church is significantly damaged. It has the status of cultural heritage site.

Catholic Church in Ivlița Village

Virgin Mary Nativity Catholic Church of Ivlița Village (Akhaltsekh Municipality) is believed to have been constructed in 8th-20th centuries. In 1991, it was given to the Orthodox Church. In 1999, the Catholic altar and a Catholic missionary's tomb under it were both demolished. Catholic priests are not allowed to conduct liturgy. The church is a cultural heritage site.

Catholic Church in Buzmareti

Ascension Church that dates to the medieval age is located in Buzmareti, Adigeni Municipality, on the border between Georgia and Turkey. Due to being located in the border zone, Catholics were only allowed to visit the church on religious holidays. In 2006-2007, it was reconstructed. In 2008, an Orthodox monastery was built on the site. Catholics are not allowed in the church anymore. They visit the territory near the church once a year during the Ascension holiday and pray outside, in the forest. The church is a cultural heritage site.

Jewish Community

Synagogue on Abesadze Street, Tbilisi. Currently, Royal District Theatre

Ashkenazi Jews started arriving in Georgia from the beginning of the 19th century. Ashkenazi "soldiers" synagogue had been functioning already in Tbilisi since 1850. However, the synagogue was not present on the architectural plans of Tbilisi until 1898.

According to *Caucasus* newspaper, in 1887, Jews in Tbilisi started to raise funds for building a new synagogue instead of the old one on the Catholic Street in Tbilisi. The construction works began in 1903, which is con-

firmed by the newspapers *Tsnobis Purtseli* and *Iveria*. The synagogue is not found on any of the maps during the construction period (1903-1915). The Ashkenazi synagogue was solemnly opened in 1918.

During the Soviet regime, in 1923, the synagogue was shut down. In 1928, the Committee for Aiding Poor Jews was placed in the synagogue in 1928. In 1932, it was transformed to Jewish Cultural House. In the 1940s, it was given to the Housing Division of Kirov District of Tbilisi. In the 1950s, Housing Division #219 was located in the synagogue. Since 1997, it has had the cultural heritage site status, as Royal District Theatre. In 2001, based on a court ruling, the building was given for co-ownership to the Jewish Religious Society, although the decision has not been implemented yet.

Museum of Jewish History of Georgia (Dome Synagogue)

A “domed synagogue” was built in Anton Catholicos N3 in Tbilisi in the middle of 1910. In 1940, the Soviet authorities moved the Jewish Historical and Ethnographic Museum to this building. The museum was closed in 1951 as anti-Semitic sentiments were strengthened in the Soviet union.

The movable monuments that were represented there, property of the Jews, were temporarily distributed between several museums in Georgia.

The museum was restored in 1992 by a decree of the Georgian government and was given the name of a Jewish public figure and rabbi – David Baazov. During the restoration of Georgia’s independence, the building was heavily damaged and reconstruction works were carried out. Also, by the decree of the President, the movable monuments of historical and ethnographic significance that were distributed to several museums in the past were to return to the museum. However, most of the exhibits have not been returned so far. The Museum of Jewish History (the “Dome Synagogue”) is on the state’s balance and has not been returned to the Jewish community.

Batumi Synagogue

A residential house was built at the end of the 19th century, on March 9 Street in Batumi. It belonged to three Jews. In 1920, they handed over the house to the Jewish community for usage. Subsequently, the house received a praying function. During the Soviet regime, the synagogue stopped functioning and was included in the housing foundation.

Nowadays, due to construction works at the nearby territory, the building faces the threat of destruction. It is on the balance sheet of the Ministry of Economy and Sustainable Development. The building does not have the status of a cultural heritage site.

Akhaltzikhe Synagogue

The synagogue was founded in 1902, in Rabati district (Guramishvili Street) of Akhaltzikhe, by Jews who moved from Atskuri. In 1953, during the Soviet period, the synagogue was abolished and it was transformed into a library. Later, it became a sports center. The building has the status of cultural heritage site. Currently, the building is functionless.

Muslim Community

Shah-Ismail Mosque, Tbilisi

Shah-Ismail Shia Mosque was built in 1522 by Shah Ismail. The dome of the mosque was surfaced with colored bricks (*shorenkets*). Due to this fact, it is often referred to as “the blue mosque”. It was located opposite to Metekhi Church in Tbilisi. During the Soviet regime, “the blue mosque” was demolished together with the old bridge. The new bridge was built in their place.

Nowadays, only the blue *shorenkets* bricks remain from the historical buildings, which are preserved in the Art Museum.

Batumi Shia Mosque

Batumi Shia Mosque, located on Lado Asatiani Street is another example. The building has survived until today. It was used as a religious building between 1910 and 1938. The mosque was under the patronage of the Consulate of Iran. It was functionless during the Soviet regime.

Nowadays, the building is on the state balance sheet. It does not have the status of a cultural heritage site.

Mokhe Village Mosque

The Mokhe mosque was built in the first half of the 20th century by the Meskh Muslim community. The architectural details, typical for mosques are still discernible on the building. During Soviet times, the building was used as a warehouse, a library and a village club. In 2007, the mosque became the property of the Adigeni municipality council.

In the 1990s, the local Muslim community started actively campaigning for the conservation and restoration of the building and repeatedly appealed to State authorities, but the efforts have not yielded any results. The Muslim community were primarily concerned with the dire need for conservation, fencing and protection of the mosque. However, in 2014, the local authorities decided to renovate the building and open a musical, choreographic and ethnographic center on its grounds.

On 18 October 2014, a company who won the tender announced by local authorities, started dismantling the building. However, as a result of a protest of the local Muslim community, the works were temporarily interrupted – the works resumed on 22 October 2014. Amidst the protest, law enforcement officers physically and verbally insulted the Muslims and detained 14 participants of the protest.⁸⁰

In the aftermath of the developments of October 2014, the Georgian Patriarchate advanced towards claiming the building stating that until the 18th century, there had been a Christian church where the mosque now stands. They also stressed that the mosque is built with stones from the original Christian church. Importantly, the Patriarchate had not produced any historical evidence or expert opinion to support their claim.

80 For more information see Chapter IV – Crimes motivated by religious intolerance and State policy.

In 2014, in an alleged attempt to establish the origin of the contested building, the State Agency set up a “commission to look into matters related to the building enlisted as a club and located in village Mokhe, Adigeni municipality” with representatives of local Christian and Muslim communities, local authorities, the Ministry of Culture and Monuments Protection and the State Agency for Religious Issues itself as members of the commission. Despite the demand of the Muslim community, the State Agency for Religious Issues refused to invite the independent experts and the Public Defender to participate in the work of the commission. Throughout the two years, the commission failed to attain any of the set goals nor had it taken any tangible measures. On 11 May 2017, the commission made the final decision⁸¹ against transferring and returning the building to its historical owner. Instead, the mosque was transferred to the National Agency of State Property and enlisted as a monument of culture heritage with the status of the “contested building”. The decision also set a condition under which LEPL, the Administration of All Muslims of Georgia would receive a plot of land in Mokhe to construct a new mosque.

Mukhaestate Village Mosque

Mukhaestate village mosque was built in the 18th century. In the Soviet period, it was used as a police building. In 2010, the state, despite the Muslims’ requests not to, destroyed the historical mosque building in Mukhaestate village, Kobuleti Municipality, and constructed an entirely new police building.

Kobuleti Mosque (Aghmashenebeli Street #100)

The mosque located at Aghmashenebeli Street in Kobuleti was confiscated from the Muslim community. A cultural house was functioning in the mosque. As of today, the museum is located in the mosque and it is on the state balance sheet. The building does not have the status of cultural heritage site.

Chakhati Village Mosque

Chakhati Village Mosque is Located in Kobuleti Municipality. The Soviet Government used the mosque in Chakhati village as a cultural house. As of today, the city administration is located in the building and it is on the state balance sheet.

Phlate Village Mosque

Phlate Village Mosque is located in Adigeni Municipalite. The mosque was constructed in 1927. During the Soviet times, it served various purposes (club, library, market). After the restoration of independence, the building was turned into livestock housing. Several years ago, the local Christians significantly damaged the mosque. The gate was destroyed and the upper two rows of the carved stones were removed. In 2014, an investigation was ongoing concerning the given issue. As of today, the building is nearly destroyed. However, it has been recognized as a cultural heritage site since 2016.

Abastumani Mosque

Abastumani Mosque was constructed at the end of the 19th century. During the Soviet totalitarian regime, it stopped functioning. In the recent period, the building was significantly damaged and, subsequently, got destroyed. It is currently empty and abandoned.

81 A statement of the State Agency for Religious Issues. Available in Georgian at: <https://bit.ly/32n6W00>.



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