

STUDY OF RELIGIOUS DISCRIMINATION AND CONSTITUTIONAL SECULARISM IN GEORGIA

TOLERANCE AND DIVERSITY INSTITUTE



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TBILISI, 2014



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Policy, Advocacy, and Civil Society Development in Georgia (G-PAC)

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RESEARCH TEAM: Legal analysis – Ekaterine Lomtadze

Media monitoring – Maia Tsiklauri

EXPERT: Beka Mindiashvili

TRANSLATORS: Ekaterine Lomtadze

Sophio Tkemaladze

PROJECT MANAGER: Ekaterine Chitanava

DESIGN: Natalia Glonti

COVER: Paul Klee, *Fire at Full Moon 1933*

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ABOUT SECULARISM AND DISCRIMINATION

Intolerance is a fundamental problem of the Georgian society. It indicates, whether the Georgian citizens are able to form a modern society. Modern society is based on the principle of individual liberty – everyone shall be entitled to right of self-expression and rights to personal development. Modern society is the unity of such free individuals.

Intolerance is nurtured by the archaic, pre-modern consciousness, which perceives any different person as other and enemy on one hand, and totalitarian legacy, which saw society as uniform, homogeneous, on the other hand. The majority, which was always right just because it was majority, declared any direct or indirect deviation from the established rules to be crime. Up to date, intolerance in Georgia is amalgam of otherness, sickness, inversion, sin and crime. Intolerance is the direct source of violence, exploitation and hence, conflicts. Religious intolerance has been the cause of many wars, while ethnic intolerance, which formed the core of the Georgian ethnic nationalism, led Georgia to the tragic conflicts, loss of people and territories and extreme weakening of the State in the 1990s.

The principle of tolerance is human equality. It does not negate the differences between people, but recognizes these differences as legitimate. The Constitution of Georgia is more advanced than the consciousness of the public. It recognizes universal principle of human equality, which is violated in legislation, in everyday life and in public discourse, in Georgia.

The present research inquired into several important issues. The Part One inquired the extent, to which the Georgian Orthodox Church enjoys the preferential treatment *vis-a-vis* other confessions and offers recommendations on how to eradicate the violation of rights of non-Orthodox citizens of Georgia entailed by the preferential treatment. This issue is important not only for public, but for the State as well. The modern society is based, *inter alia*, on the principle of freedom of religion and belief and thus, on strict separation between church and state. Lately, we see, that against the background of

the increasing influence of the Orthodox Church, secular foundations of the Georgian State is endangered by clerical influences entering such important areas, as education, defense, public administration are.

The second part of the research deals with the surface of the public discourse and inquires into the rhetoric of politicians and public persons. In spite of recognition of the constitutional principle of equality without distinction on ethnic, religious or sexual grounds, they make reservations, which at the end of the day make this principle meaningless and directly or indirectly legitimize violence.

Zaal Andronikashvili

RESEARCH GOALS

The 1995 Constitution of Georgia¹, as well as the other legislation² unequivocally recognizes freedom of belief and religion and equality before law without distinction on the ground of religion.

Despite the fact, that the legislative framework shall ensure equal treatment of different religions and secular sphere for public decision-making, the surveys conducted lately and events taking place show the drastic increase of influence of the Georgian Autocephalous Apostolic Orthodox Church on the population, which leads to its explicit preferential treatment in all aspects of the functioning of the religious associations.

On the other hand, acts of intolerance of the orthodox majority against religious minorities are not rare and they are mostly left without effective redress.³

1 The Constitution of Georgia, 24 August, 1995, Article 9.1, Article 14, Article 19.1

2 See, for example, Criminal Code of Georgia, 22 July, 1999, Article 53.3³; Labour Code of Georgia, 12 December, 2010, Articles 2.3 and 2.4; Law of Georgia on Eradication of All Forms of Discrimination, 2 May, 2014.

3 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2013, (in Georgia), at 293-317

The present research of religious discrimination and constitutional secularism aims at: critical analysis of the legislative framework, state response to religiously-motivated offences, attitudes of various branches of government and establishments toward religious majority and minorities, stances taken by the state and public officials and politicians in respect of religions; identification of flaws and shortcomings in this respect and elaboration of recommendations, which will help to eradicate discrimination on religious grounds and will place the secular development of Georgia on the stronger foundations.

RESEARCH METHODOLOGY

In order to identify the patterns of behavior that lead to discrimination and to elaborate the remedies to duly address them, interviews with the representatives of the religious minorities were conducted and analyzed. The authors of this research analyzed the legislative acts, applied for public information to the courts, the Ministry of Internal Affairs and the Chief Prosecutor's Office, the Government of Georgia and other relevant authorities. The statements of the politicians, public and state officials, published in the media, were also analyzed.

For the *Part One* of the research, the interviews were conducted with the representatives of religious minorities: Mr. Shmagi Chankvetadze (Evangelical-Protestant Church), Ms. Lela Khonelidze (Georgian Pentecostal Church), Mr. Tariel Nakaidze (Georgian Muslims Union), Priest Akaki Chelidze, (South Caucasus Apostolic Administration of Latin Rite Catholics), Mr. Boris Charaia and Mr. Alexander Schwartz (The Seventh Day Adventist Christian Church), Mr. Manuchar Tsimintia (Christian Organization of Jehovah's Witnesses in Georgia) and Priest of the Assyrian Chaldean Catholic Church, Benjamin Betiadegar.

Based on these interviews and materials provided by the communities of the religious minorities (judgments, files of administrative proceedings, communication with public officials, etc.), it was possible to identify the

areas of legislation which presumably allow for arbitrary and discriminatory decision-making by the public officials and do not ensure due protection of religious minorities from violence or discriminatory treatment.

For in-depth analysis of the relevant legislation, applications for public information were filed with all the general courts of Georgia, the Ministry of Internal Affairs, the Chief Prosecutor's Office, the Government of Georgia and LEPL National Agency of State Property, about 70 public secondary schools in Georgia, State Agency of Religious Affairs and other authorities.

The acquired information allows us to identify those spheres of Georgian legislation and administrative practices, where religious minorities mostly encounter obstacles, which are not reasoned and which are perceived by them as differential and discriminatory treatment. These include:

- The rule of compensation of the damages inflicted by the Soviet Union;
- Discriminatory treatment of religious organizations in the sphere of privatization of the state property;
- Establishment of the ownership on the disputed churches that were taken in the Soviet era;
- The low rate of initiation of criminal proceedings against religious intolerance crimes and lack of effective measures against them;
- Proceedings related to permission of construction;
- Indoctrination of the Orthodox Christianity in public schools;
- Interference in autonomy of religious institutions;
- Privileges in the sphere of tax and customs law.

Therefore, this research presents analysis of the legislation and the related practices on the abovementioned issues, which gives possibility of elaboration of effective recommendations for eradication of the identified

legislative flaws from the perspective of fighting discrimination on religious grounds and strengthening of the principle of secularism.

Part Two of the research, which is related to media, reviews cases of violation of religious neutrality, demonstration of bias and employing the discriminatory and intolerant rhetoric by the politicians and representatives of the government from 2013 to the first half of 2014.

Object of the research were representatives of the government – the President, the Prime Minister, ministers, deputy ministers, heads of departments, representatives of local Government and self-government, members of the Parliament, decision-making officials of representatives of the other public institutions and representatives of parliamentary and non-parliamentary opposition.

Within the scope of the research, the public statements of politicians have been reviewed, that were published in the media outlets focusing on the issues of religion, hate speech and problematic aspects of discrimination. These are web publications, *Netgazeti* and *Tabula*. The monitoring also covered the statements made in the talk shows *Archevani* and *Pozitsia* of Rustavi 2, a channel of general national coverage. The researchers also studied the materials published in the newspaper *Asaval-Dasavali*, as this publication has a manifestly discriminatory editorial policy towards minorities. Moreover, randomly selected media outlets, where resonant statements of public officials had been published, have also been included in the monitoring.

During the monitoring period 160 articles published on the websites of *Tabula* and *Netgazeti*, 10 articles published in the newspaper *Asaval-Dasavali* and 7 editions of shows aired by *Rustavi 2* channel have been reviewed in total.

PART ONE

1. SECULARISM AND FREEDOM OF BELIEF AND RELIGION IN GEORGIA

The idea of secularism implies the certain type and intensity of institutional separation between the state and religion and guarantees secular public sphere through privatization of religion.⁴ The case law of the European Court of Human Rights sets forth explicit requirements that the states shall be neutral in respect of religions:

*"[I]n exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain **neutral and impartial** ..., which is incompatible with any power on the State's part to assess the legitimacy of religious beliefs... [T]he role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other ... This State role is conducive to public order, religious harmony and tolerance in a democratic society ... and can hardly be conceived as being likely to diminish the role of a faith or a Church with which the population of a specific country has historically and culturally been associated."⁵*

The provisions of the Constitution of Georgia will be analyzed below, which determine the model of state-church relationship in Georgia and provide the guarantees of the freedom of belief. The domination of the Georgian Orthodox Church and its privileges *vis-à-vis* other religious associations, as well as establishment of the state agency of religious affairs and its prospects in the present situation will also be discussed.

⁴ R. Palomino, Legal Dimensions of Secularism: Challenges and Problems, 4 *Contemp. Readings L. & Soc. Just* 208, 2012, at. 208, 2011

⁵ Case of Members of the Gldani Congregation of Jehovah's Witnesses and Other v. Georgia, appl. 71156/01, 3 May, 2007, paras. 131-132

1.1. CONSTITUTIONAL PROVISIONS AND THE DOMINATION OF THE ORTHODOX CHURCH

Article 9 of the Constitution of Georgia states:

“1. The State declares absolute freedom of belief and religion. At the same time, the State recognizes the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the State.

2. Relations between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia shall be governed by the Constitutional Agreement. Constitutional Agreement shall be in full compliance with the universally recognized principles and norms of international law, specifically in the sphere of human rights and fundamental freedoms.”⁶

Thus, the Constitution of Georgia recognizes full freedom of religion and belief on one hand and after giving primacy to the human rights, underscores “the outstanding role in the history of Georgia” of the Apostolic Autocephalous Orthodox Church of Georgia [hereinafter, “Orthodox Church of Georgia”]. Due to this, Georgia falls in the state-church relationship model entitled “endorsed church model”.⁷

However, in addition to recognition of the special role of the Orthodox Church, Article 9 of the Constitution of Georgia makes two important qualifying statements: on one hand, it starts by declaration of full freedom of belief and religion and thus defines the background, against which the special role of the Orthodox Church is recognized. Freedom of religion and belief is also enshrined in Article 19 of the Constitution. On the other hand, Article 9 brings forward the idea of independence of the Church from the state and guarantees separation of church and state, declares them to be independent agents and separates their respective spheres, which is the very essence of secularism.

⁶ The Constitution of Georgia, 24 August, 1995, Article 9

⁷ Cole Durham states: “The endorsed church is specially acknowledged, but the country’s constitution asserts that other groups are entitled to equal protection. Sometimes the endorsement is relatively innocuous, and remains strictly limited to recognition that a particular religious tradition has played an important role in a country’s history and culture. In other cases, endorsement operates in fact as a thinly disguised method of preserving the prerogatives of establishment, while maintaining the formal appearance of a more liberal regime.” W. Cole Durham, *Perspective on Religious Liberty: A Comparative Framework*, in *Religious Human Rights in Global Perspective*, J.D. van der Vyver and J. Witte (eds), 1996 Kluwer Law International, at 1-44

Focus on the independence of church from the state takes on a particular importance in view of the history of close entanglement of the Orthodox Church with the state. In the case of *Kedroff et al. v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, the US Supreme Court declared that the development of the Russian Orthodox Church was historically commensurate to the broadening of the Czar's power, as the Church "increasingly became a part of the Civil Government"⁸. This observation, which points out the identification of the orthodox clergymen with the public service, holds for the Georgian Orthodox Church too, particularly in view of the fact, that the latter was part of the Russian Orthodox Church since 1811. The Georgian Orthodox Church managed to return the autocephaly only in 1917.

The present research discusses the cases, where public officials treat preferentially the Orthodox Church or disparately treat other religious organizations.

These cases demonstrate the tight links between the clergyman of the Orthodox Church and public officials, which frequently presents the significant source of violation of equality before the law.

The surveys taken in Georgia show the high rate of support and trust of population towards the Orthodox Church.⁹ On one hand, this leads to the manifest, favorable treatment and privileging of the dominant religion by the government, from the perspective of inclusion into the public life and provision with public resources. On the other hand, the Orthodox majority commits acts of extreme intolerance against other religions or minorities, which are frequently left without effective response from the law enforcement authorities.¹⁰

The most important evidence and basis of the privileges bestowed upon the Georgian Orthodox Church is the Constitutional Agreement between the State and the Patriarchate of the Orthodox Church. As a result of the Constitutional Agreement, the Patriarchate obtained the guarantees of its autonomy and solution of the legal and property problems, which will be discussed in detail below.

8 KEDROFF v. ST. NICHOLAS CATHEDRAL, 344 U.S. 94 (1952) 344 U.S. 94

9 See, for example, Caucasus Barometer 2013: 72% of respondents completely trust the Orthodox Church (at: <http://caucasusbarometer.org/en/cb2013ge/TRUGOCH/>), while 81% of those interviewed considers themselves belong to the Orthodox Church (<http://caucasusbarometer.org/en/cb2013ge/RELIGION/>)

10 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2013, at 293-317

Determination of legal status, tax exemptions, compensation of damages suffered in the Soviet Union era, ownership on the religious buildings were vital for other religious organizations as well, though measures to deal with the problems of other religious organizations were taken after 10 years from conclusion of the Constitutional Agreement in certain cases (i.e. regulation of status of religious organizations) and certain problems has not yet been solved (i.e. religions buildings taken during the Soviet era).

1.2. STATE AGENCY OF RELIGIOUS AFFAIRS

In order to elaborate the legislative framework for religious organizations and to deal with other problems relevant for them, the Government of Georgia established by its Resolution N305 of 29 November, 2013 the Interagency Study Commission for Certain Issues related to the Religious Organizations.¹¹ The State Minister for Reintegration, Mr. Paata Zakareishvili was appointed as chairman of the Commission. Solely the public officials composed the Commission and no representative of religious organizations was its member. According to the Statute of the Commission, its main task was to analyze and to elaborate the legislation on the construction of religious buildings and religious organizations, study of property issues of these organizations, etc.

The Tolerance and Diversity Institute (TDI) applied for information on the activities of the Commission to the Administration of the Ministry of Georgia on Reconciliation and Civic Equality.¹² The provided information¹³ shows that there were 5 sessions of the Commission held between 29 November, 2013 and 10 February, 2014. It drafted the text of the Resolution of the Government on Approval of the Procedure for Implementation of Certain Measures related to the Partial Compensation of Damages Inflicted during the Soviet Totalitarian Regime to the Religious Organizations present in Georgia. It also drafted the text of the Resolution of Government on the Establishment of the Legal Entity under Public Law – State Agency of Religious Affairs and on Approval of its Statute.

¹¹ The Resolution of the Government of Georgia N 305, On Establishment of the Interagency Study Commission for Certain Issues related to Religious Organizations and on Approval of Its Statute (in Georgian), 29 November, 2013

¹² Id, Article 2 of the Statute

¹³ The Letter N 153-გ of the Administration of the State Ministry of Georgia on Reconciliation and Civic Equality, 20.02. 2014

The first of these draft resolutions was adopted on 27 January, 2014¹⁴, while the second was adopted on 19 February, 2014¹⁵. After establishment of the State Agency of Religious Affairs, the Commission was cancelled on 30 June, 2014.¹⁶

According to the Statute, the State Agency of Religious Affairs (hereinafter “the Agency”) presents the consultative body of the Government and the Prime Minister in respect of religion. Its competences include analysis of the situation in the sphere of religions, elaboration of draft legal acts and recommendations, drafting recommendations for implementation of the goals set forth in the Constitutional Agreement, as well as adoption of recommendations on construction of religions buildings, education in the sphere of religion, mediation in case of conflict between the religious organizations, fostering the tolerance, etc. It is noteworthy, that there is another governmental commission for enforcement of the Constitutional Agreement with the Orthodox Church, which was established in 2012. Functions and composition of this commission will be discussed in the next chapter. The later commission has not been invalidated yet and thus there is duplication of competences of the Agency and the commission.

It is mentioned in the Letter¹⁷ of the Agency dated 24 June, 2014, that the Agency is preparing the strategic action plan and specific projects at present. The Agency has not issued any recommendation on the issues falling within its competences so far.

In the interviews conducted in February, 2014, the representatives of the religious organizations pointed out, that establishment of the agency for religious affairs evoked the historical memory of the Council of Religious Affairs functioning in the Soviet Union. The Council of Religious Affairs was created in 1965, after unification of the Council of Affairs of the Russian Orthodox Church and Council of Affairs of Religious Cults: “The establishment of the Council was considered.... as shift of the official policy towards religions from “oversight” of situation of religions and religious organizations to their “control”.”¹⁸

¹⁴ The Resolution N 117 of the Government of Georgia of, On Approval of the Procedure for Implementation of Certain Measures related to the Partial Compensation of Damages Inflicted during the Soviet Totalitarian Regime to the Religious Organizations Present in Georgia, (in Georgian), 27 January, 2014

¹⁵ The Resolution N 177 of the Government of Georgia, On the Establishment of the Legal Entity of Public Law – State Agency of Religious Affairs and on Approval of its Statute, (in Georgian), 19 February, 2014

¹⁶ The Resolution N 423 of the Government of Georgia, On Invalidation of The Resolution of the Government of Georgia N 305 on Establishment of the Interagency Study Commission for Certain Issues related to Religious Organizations and on Approval of Its Statute, (in Georgian), 30 June, 2014

¹⁷ The Letter N1/129 of the LepI State Agency of Religious Affairs, 24.06.2014

¹⁸ И.М. Советов: Совет по делам религий при СМ СССР: структура, функции и основные направления деятельности

Besides the grim historical memories associated with the authority of religious affairs, the distrust towards this body is also triggered by the lack of consultation of the Government with the Council of Religions under the auspices of the Public Defender of Georgia or relevant non-governmental organizations.¹⁹ Most importantly, it is not a representative body, which leads to the “danger of arbitrary interference in the autonomy of religious organizations” – as it is stated in the Joint Statement of the Council of Religions under the auspices of the Public Defender and Non-governmental Organizations.²⁰

It is noteworthy, that the European Commission against Racism and Intolerance (ECRI) recommends to states, to create a specialized body on the issues of racism and intolerance. However, according to the ECRI Report on Georgia of 2010, ECRI’s recommendation was only to establish the specialized body to combat racism and it explicitly underscored the achievements of the Council of Religions and Tolerance Center under the auspices of the Public Defender of Georgia in promoting the religious tolerance: “The Council of Ethnic Minorities and the Council of Religions which were established in 2005 ... under the auspices of the Public Defender play a significant consultative role... The Office of the Public Defender also runs a Tolerance Center, which monitors the situation and addresses problems of intolerant acts against members of ethnic, religious and other minorities... Given the key role played by the Public Defender in combating racism and racial discrimination, ECRI recommends that the Georgian authorities continue to support this institution... ECRI recommends that the Georgian authorities pursue their dialogue with representatives of religious minorities, in particular in the framework of cooperation with the Council of Religions under the auspices of the Public Defender...”²¹

The problem with respect to the Agency is that its mandate is not transparent. The political and legal significance of its recommendations is not clear, particularly in the case, when the recommendations will be addressed not to the Government, which established this body, but to the local governmental entities or other authorities. The procedure for elaboration of

¹⁹ The Joint Statement of the Council of Religions under the auspices of the Public Defender and Non-governmental Organizations on the State Agency of Religious Affairs, at: http://www.tolerantoba.ge/index.php?news_id=600

²⁰ Id.

²¹ European Commission Against Racism and Intolerance, Report on Georgia (fourth monitoring cycle), 28 April, 2010, at. 14, 15, 26, available at: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/Georgia_CBC_en.asp

the recommendations is also not clear and there are no safeguards that the process will be fair and inclusive and will provide fair hearing and consider the arguments of all the concerned parties. Furthermore, it is not clear, when the Agency will play the role of mediator in the conflicts between the religions – when the parties will invite it as such or when it decides to get involved at its own motion and whether its instructions and requirements will be binding and compulsory for the religious organizations.

At present, when there are no recommendations available, issued by the Agency, it is impossible to make inferences on how the Chairman of the Agency, Mr. Zaza Vashakmadze will use the granted powers. However, the fact that the scope of the mandate of this body is vague and non-transparent and this is the country with the history of persecution of religious minorities is concerning.

2. PREFERENTIAL TREATMENT OF THE GEORGIAN APOSTOLIC AUTOCEPHALOUS ORTHODOX CHURCH

The important implication of the dominant position of the Orthodox Church is not only establishment of the separate institution for settlement of its problems by the state, but also whole range of other privileges, which are available exclusively to the Orthodox Church of Georgia: specific tax exemptions, recognition of the ownership on all the orthodox churches and monasteries, their ruins and land plots on the territory of Georgia, as well as on the church treasure, declaration of major orthodox festivals as state holidays. Under the Constitutional Agreement, the State assumed obligation to compensate the material damages inflicted in XIX-XX centuries, particularly in years 1921-1990, to introduce position of chaplain in the military units and places of deprivation of liberty and to implement the joint educational programs with the Orthodox Church. The substance of the preferential treatment in these areas will be discusses in details below.

2.1. ANALYSIS OF THE CONSTITUTIONAL AGREEMENT AND INSTITUTIONS FOR ITS ENFORCEMENT

The Constitutional Agreement referred to in Article 9 of the Constitution was concluded between the State of Georgia and the Patriarchate of the Georgian Orthodox Church on 14 October, 2002.

The Constitutional Agreement determined the legal status of the Georgian Orthodox Church – it was declared historically formed legal entity under public law. Determination of legal status of religious organization, including the dominant religious organization is one of the important guarantees of the autonomy of religious organizations enshrined by the freedom of religion and belief. However, at the time of conclusion of the Constitutional Agreement, it was the vivid example of the preferential treatment of the Georgian Orthodox Church and hugely advantageous to it *vis-a-vis* other religious organizations. If other religious organizations would declare their religious objectives, they would not be entitled to register as legal persons at all, not to mention registration as legal entities under public law.

Before 2005, Article 1509.1 of the Civil Code of Georgia stated that non-state organizations founded to pursue the public goals (political parties, religious organizations, etc.) shall be considered as legal entities under public law. Due to this norm, the religious organizations were not entitled to register as private law legal persons (as associations or foundations according to the effective legislation at that time). However, the gist of the problem was that, they were not entitled to register as legal entities under public law either, as the State did not adopt the relevant legislation that would determine the status and procedure of registration of religious organizations.

The following interpretation of the relevant articles of the Civil Code was provided by the Supreme Court of Georgia: “Prior to determination of the procedure of establishment of religious organizations as legal entities under public law and prior to regulation of rules on their organization and activities by law, it is prohibited to use the organizational-legal form of private law legal persons pursuant to Article 1509.1(e).”²² This argument served as basis to revoke the registration of the organization of Jehovah’s Witnesses, as private law legal person in 2001. This interpretation of the Civil Code constituted

²² The Ruling of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia N33/599, 22 February, 2001

deprivation of right to obtain status of legal person for religious minorities until adoption of the relevant legislation.

The legislation was amended in 2005, when the religious organizations were granted entitlement to register as private law legal persons (associations and foundations, and later, non-profit legal persons). Finally, the privilege emanated by the Constitutional Agreement was eradicated through the amendment of the Civil Code on 5 July, 2011, when new article 1509¹ was incorporated in the Code. Clause 1 of this Article states: “Religious organizations may register as legal entities of public law.” Thus, other religious organizations were granted opportunity to stand on the equal footing with the Georgian Orthodox Church from the perspective of legal status.

The Constitutional Agreement, Article 11 also provided for the establishment of the parity committee on partial compensation of damages inflicted during the Soviet era. Indeed, Ordinance N1²³ of the President of Georgia dated 7 January, 2003 set forth the compositions of the Commissions for Enforcement of the Measures, stated in the Constitutional Agreement between the State of Georgia and the Orthodox Church of Georgia. The Ordinance provided for establishment of the five commissions: 1. on official recognition of the religious marriage; 2. on incorporation of the chaplain institution in military units and places of deprivation of liberty; 3. on teaching of the Orthodox Christianity in educational establishments; 4. on settlements of legal and property-related relationships in the sphere of cultural heritage; 5. on the partial compensation of the material damages inflicted to the Church in the period of deprivation of state independence.

Pursuant to the Ordinance, each Commission should submit the statute of the respective Commission to the President within 2 months. However, these statutes were not submitted. The Tolerance and Diversity Institute (TDI) applied to the Administration of the President of Georgia and Government of Georgia to obtain the information on activities of these commissions. According to the response of the Administration of the President, the minutes of the meetings of these commissions are not available in the Administration of the President.²⁴ The Government of Georgia sent the application of the

23 The Ordinance of the President of Georgia N1 On Establishment of the Commissions for Enforcement of Measures Stated in the Constitutional Agreement between the State of Georgia and The Georgian Apostolic Autocephalous Orthodox Church, 7 January, 2003

24 Letter of the Administration of the President of Georgia no. 1493 addressed to the Tolerance and Diversity Institute, 28.04.2014

TDI to the Leppl National Agency of State Property without any explanation thereto. The official response of the latter Agency was that they did not dispose any information on the activities of the commissions.²⁵ It can be inferred from these responses, that it is highly probable, that commissions never started to function, which is the reason of absence of information on them in the state institutions.

The Ordinance N 1 of the President was cancelled by the Ordinance N 125 of the President of Georgia dated 21 February, 2012. The regulation was substituted by the Resolution of the Government of Georgia N63, dated 21 February, 2012, which created “Governmental Commission on Issues Provided by the Constitutional Agreement between the State of Georgia and the Georgian Apostolic Autocephalous Orthodox Church”. The Resolution determined the composition of the working groups of the Commission and its statute. The Resolution was last amended on 21 May, 2013. According to this Resolution effective by July 5, 2014, Article 3, there are 8 working groups to perform the following duties: 1. to consider the property issues and elaborate the legislative framework for economic activities of the Church; 2. to determine the damages inflicted to the Church in XIX-XX centuries (in the period of deprivation of state independence); 3. to establish the regime of storage and protection of the church treasure kept in state museums and the temples of historical importance; 4. to work on the issue of recognizing religious marriage; 5. to incorporate the institute of chaplain in the military units, prisons and places of deprivation of liberty; 6. to cooperate in the sphere of education; 7. to work on the issues of maintenance of the Georgian churches and monasteries, determination of ownership and the legal status of the Georgian Patriarchate abroad; 8. to identify the origins of the religious buildings.

It is noteworthy, that the issue of origins of the religious buildings directly touches upon the interests of the other religious organizations present in Georgia, particularly Diocese of Armenian Apostolic Orthodox Holy Church in Georgia and South Caucasus Apostolic Administration of Latin Rite Catholics. However, this working group, as well as the other working groups is composed exclusively of the representatives of the government of Georgia and the Georgian Orthodox Church, despite the fact that their decisions may affect the property rights of other religions without their participation in the process.

²⁵ Letter of the LEPL National Agency of State Property N14.10899, 26 March, 2014

As we can see, these working groups have also nominal existence and actual working process for researching the issues and elaboration of the respective proposals is not undertaken. In response to the application for information on the Commission and its working groups, the National Agency of State Property provided the Tolerance and Diversity Institute (TDI) with minutes of one meeting of the Governmental Commission on Issues provided by the Constitutional Agreement, dated 29 March, 2012.²⁶ It is clear from the minutes of the meeting that the Commission decided to undertake intensive work within the working groups; namely, the working group on property issues should meet for orientation once in 2 weeks, while the other groups should meet once per month. However, the Agency did not provide any other information, which again serves as ground to infer, that there are no other information available in the respect of the functioning of the Commission in state bodies.

As it was noted in the previous chapter, when discussing the State Agency on Religious Affairs, it is one of the competences of the Agency to prepare recommendations for implementation of the goals and objections set forth in the Constitutional Agreement. In view of this, there is overlap between the competences of the Governmental Commission and the Agency.

2.2. EXEMPTION FROM MILITARY SERVICE

Pursuant to Article 4 of the Constitutional Agreement “clergyman”, who is defined as a person ordained under Orthodox, canonical procedure is exempted from the military service.

It is noteworthy, that the exemption of the clergymen is not related to the conscientious objection, as the Orthodox Church has no teaching against the military service; religion, per se, does not require from the followers or clergy to decline from military service.

Pursuant to Article 30 of the Law on Military Obligation and Military Service, military service shall be postponed for ministers and students of the theological school. Under Article 8.1(m) of the Law of Georgia on Military Reserve

²⁶ Letter of the LEPL National Agency of State Property N14/15481, 1 May, 2014

Service, “clergyman” are exempted from military reserve service. One can see in the case law of the Supreme Court, that the clergymen comprise not only clergy of the Georgian Orthodox Church, but also of other religions, for example Jehovah’s witnesses. If we turn again to the case law of the Supreme Court, it is clear, that due to various formal reasons (i.e.; due reporting to the conscription commission), even clergyman could be imposed liability under Article 197³ of the Code of Administrative Offences for non-reporting to the reserve service.²⁷

The believers, who have conscientious objection against military service, are not exempted from mandatory military service; moreover, they could not even ask for alternative service in respect with reserve military service until 2011. The Law of Georgia on Military Reserve Service provided for obligation of every citizen of Georgia to serve in reserve service and did not provide for exception for those people, who had conscientious objection against the reserve service.²⁸ Failure to serve in military reserve even on the ground of conscientious objection presented an offence under article 197³ of the Code of Administrative Offences (Failure to report to military reserve service in order to evade military reserve service) and may be punished with imposition of fine of 500 GEL or administrative arrest. The rule was declared incompatible with freedom of religion and belief by the Constitutional Court and thus unconstitutional on 22 December 2011.²⁹ The rulings adopted by the Supreme Court, after the Constitutional Court judgment was delivered, confirm that the case law of the lower instance courts did not recognize conscientious objection as legal ground for exemption from reserve service.³⁰

2.3. TAX EXEMPTIONS

Pursuant to Article 6 of the Constitutional Agreement, “The objects determined for worship – its production, import, supply and donation, as well as property and land used for non-economical purposes are exempted from taxation.”

²⁷ The Ruling of the Chamber of Administrative Cases ბს-1599-1575(კ-11), 9 თებერვალი 2012

²⁸ The Law of Georgia on Military Reserve Service, 27 December, 2006, Article 2.2.

²⁹ Judgement of the Constitutional Court of Georgia in the case of Public Defender of Georgia v. The Parliament of Georgia, 1/1/477, 22 December, 2011

³⁰ See, for example, the Ruling of the Chamber of Administrative Cases of the Supreme Court of Georgia N ბს-1599-1575(კ-11), 9 February, 2012; the Ruling of the Chamber of Administrative Cases of the Supreme Court of Georgia N ბს-477-471(2კ-12), 20 September, 2012

Thus, property and land of the Orthodox Church used for non-economical purposes, production of objects for worship and their supply shall not be taxed. Exemption of religious organization, including dominant religious organization from taxation, does not present a problem for secularity, *per se*. The question is whether the same tax exemptions are also available to other religious organizations, which function in Georgia.

The relevant articles of the Tax Code of Georgia³¹ shall be considered to answer the question. Article 9 of the Tax Code states, that religious activity is not an economic activity. Moreover, activity of the companies of religious organizations, which is related to production and sale of religious literature or objects, is also religious activity.³² This term applies to all the religious organizations and not only to Orthodox Church. As religious organizations do not carry out economic activity, they are not considered as “companies” for the purpose of the Tax Code.³³

The above distinction between religious and economic activities results in exemption of registered religious organizations from profit tax. Under Article 96 of the Tax Code, the profit tax is paid only by companies, not organizations. Therefore, religious organizations shall not pay profit tax, for that part of their economic activities which is related to production of objects of worship and religious literature and usage of the income thus acquired. As it was noted above, under Article 11, it is considered as religious and therefore non-commercial activity for the purposes of the Tax Code.

Despite the fact, that it is clear from both textual and purposive interpretation of this rule, that religious organization is not a company and shall not pay profit tax, content of Article 99 is somewhat vague. Article 99 lists the exemptions from profit tax and among them mentions, “the profit acquired from realization of the crosses, candles, icons, books and calendars used for religious purposes”. In view of the fact, that the profit acquired through realization of the production used for religious purposes benefits from exemption on the basis of Article 11 (religious activity) and Article 96, it is not clear, why the same rule was repeated in respect of the Patriarchate specifically. This may lead to questions and ambiguity, however as there is clear dichotomy of organizations and companies, it is unequivocal that the Code does not leave room to tax authorities to tax religious activities.

³¹ Tax Code of Georgia, N 3591-III, 17 September, 2010

³² Id. Article 11.2

³³ Id. Article 21

The situation is different with the value-added tax (VAT). Article 168 of the Tax Code explicitly states, that the Patriarchate of Georgia is exempted for the VAT without the input VAT rights for the supply of crosses, candles, icons, books, calendar and other religious items that are exclusively used for religious purposes (paragraph 1(f)). Moreover, Article 168.2(b) states that construction, restoration and painting of cathedrals and churches at the order of the Patriarchate of Georgia are also exempted from VAT without the input VAT right. Thus in part of VAT taxation, there is clear preferential treatment of the Patriarchate or Georgian Orthodox Church, as even the services provided by other agents, that are undertaken at the order of the Patriarchate are exempted from VAT. This exemption provides significant financial advantage to the Patriarchate *vis-a-vis* all the other religious organizations.

In respect with the property tax, Article 206 of the Tax Code lists exemptions and states that property of organizations, including the property transferred to organization through leasing, except for land and property used for economic activities, are exempt from property tax. As Article 30.1(a) defines the term “organization” to include religious organizations, it can be presumed, that all the religious organizations are exempt from the property tax, except for land and property, transferred by the organization to lessee through leasing.

As for the land tax, the Tax Code of Georgia does not provide for differential regime of taxation and does not exempt religious organizations from it. In contrast to the case of VAT, the Tax Code contains no exception for the Orthodox Church of Georgia. However, the Constitutional Agreement makes difference here, as it states explicitly: “The Land... of Church is exempt from taxes.” Therefore, despite the lack of tax exemptions for the Orthodox Church in the Tax Code, exemption is guaranteed by the superior normative act – Constitutional Agreement and in respect of the land tax, the Orthodox Church benefits from significant financial advantage in contrast to other religious organizations, which pay the land tax.

Article 6 of the Constitutional Agreement mentions also exemption of the Orthodox Church from taxation of donations. In respect of donations, there is equal treatment of the Georgian Orthodox Church and other religious organizations, as Article 99. 1(b) of the Tax Code states that donation (or goods, services and money received without reciprocal compensation) is exempt from profit tax.

Thus, based on the analysis of the Tax Code and Constitutional Agreement, it can be concluded that the Constitutional Agreement exempts the Orthodox Church from taxes in four areas (donations, land, property, production used for religious purposes). All the religious organizations are on equal footing with respect to the profit tax and donations according to the relevant provision of the Tax Code of Georgia. The Georgian Orthodox Church is fully exempted from the property tax, while other religious organizations will have to pay property tax only with respect to specific type of property (i.e. property, that the organization transferred to lessee though leasing). As to the land tax and VAT taxation of supply or order of production used for religious purposes, here the Orthodox Church is privileged and benefits from financial exemption, which is not available to the other religious organizations. This is example of disparate treatment.

The Georgian Orthodox Church also benefits from disparate treatment in the sphere of customs control. Under Article 90 of the Order of the Minister of Finances of Georgia n Approval of Instruction for Movement and Registration of Goods on the Customs Territory of Georgia, the Patriarchate of Georgia is also member of the “Gold List” without meeting general conditions of its membership, along with the high-ranking authorities (Article 90.2(g)).³⁴ Under the Tax Code of Georgia, member of the “Gold List” is entitled to the summary procedures at the time of entry or removal of goods on the customs territory of Georgia and they have different time-limits to pay the fees.

On the other hand, the religious organizations provided the Tolerance and Diversity Institute (TDI) with the information about the bureaucratic complications, which they encounter when religious literature and religious goods enter Georgia. The pastor of Evangelical–Protestant Church, Mr. Shmagi Chankvetadze noted, that they could not store the books sent to them from abroad for a long period, due to the reason, that the Custom Control authorities could not identify who had sent the books. Armenian Catholic Church in Georgia also regularly encounters problems in the same sphere. As Archbishop, Rafael Minasian states in his letter to the State Minister for Reintegration: “Armenian Catholic Church encounters the same problem each year. The problem is that, our church calendars are printed in Armenia and we have problems to enter these calendars in Georgia. No literature is allowed to cross the border – nor calendars, neither books, obviously due to the fear,

³⁴ The Order of the Minister of Finances of Georgia N 290, On Approval of Instruction on Movement and Registration of Goods on the Customs Territory of Georgia, 26 July, 2012

that this is separatist literature...”³⁵ The Orthodox Church is saved from these bureaucratic complications, not only due to disposition of the public officials towards this Church, but also due to its normative status – it is a member of the “Gold List” and is legally entitled to summary procedures.

2.4. COMPENSATION OF DAMAGES INFLICTED BY THE SOVIET UNION AND RESTITUTION OF OWNERSHIP ON RELIGIOUS BUILDINGS

Under Article 11 of the Constitutional Agreement, Georgia recognized the material and moral damages inflicted to the Church in XIX-XX centuries and assumed responsibility for partial compensation of material damages after the conclusion of the Constitutional Agreement. After conclusion of the Constitutional Agreement, the State finances the Patriarchate of Georgia each year. According to the research of the non-governmental organization “Transparency International - Georgia”, “In 2002-2013 the direct funding allocated by the Ministry of Finances of Georgia to the Patriarchate of Georgia amounted to 160 672 200 GEL.”³⁶ Moreover, the amount of funding allocated to the Patriarchate in the state budget shows the trend of increase (with the exception of 2011-2012 years). Moreover, the research of the Tolerance and Diversity Institute (TDI) demonstrates, that the Orthodox churches present in Georgia receive annually significant amount of funds from the municipal budgets, as well.³⁷ There is no legal act regulating the purpose of the funding. Nothing clarifies whether these funds are transferred to the Georgian Orthodox Church as performance of the obligation of compensation of damages incurred under the Constitutional Agreement or whether implementation of this obligation was postponed and all these years the significant funds from the state budget are spent for unknown reasons.

As to the second part of the damages inflicted by the Soviet Union through taking of churches, lands and movable property, there is important guarantee enshrined in the Constitutional Agreement in this respect too: “The State recognizes the ownership of the Church on the Orthodox churches,

35 Letter of the Ordinariate of the Armenian Catholics of Eastern Europe, Archbishop Rafael Minasian to the State Minister for Reintegration of Georgia, Paata Zakareishvili, Pr.03.13, 24.12.2013

36 Transparency International – Georgia, An Overview of the Public Funding Provided to the Georgian Patriarchate, 4 July, 2013

37 Tolerance and Diversity Institute (TDI), State Funding to Strengthen the Orthodox Faith, 18 February, 2014

monasteries (functioning and not-functioning), their ruins, as well as land plots on which they are located, that are on the territory of Georgia.”

However, prior to the conclusion of the Constitutional Agreement, more than a decade earlier, the Council of Ministers of the Soviet Socialist Republic of Georgia adopted the Resolution N183 on 12 April, 1990. Article 3 of this Resolution declared, “The Georgian Orthodox Church shall be owner of all the religious buildings of the Patriarchate of Georgia, with its movable and immovable property.”³⁸

The Orthodox Church of Georgia actively relies on the both legal acts, in order to restore its ownership on the taken religious buildings and related property, and in order to register as owner of the religious buildings of other religious organizations, which will be discussed in the next section.

Case of the building present in the yard of Anchiskhati Church will be discussed here for illustration. The worship was restored in Anchiskhati Church of Tbilisi in 1988, but the yard of the Church and the house in the yard was transferred to the Society of Protection of Historical and Cultural Monuments by the decision of Executive Committee of City Council of People’s Representatives of Tbilisi in 1981. In 1990, under the Resolution N183 of the Council of Ministers of the Soviet Socialist Republic, all the Orthodox Churches and their movable and immovable property were transferred to the ownership of the Patriarchate. In 2001, the Foundation, which was the successor of the above society, registered the building as its property. The Patriarchate claimed that registration of ownership of the Foundation on the land plot and building should be invalidated, as its ownership was devoid of any legal grounds. Namely, the Foundation had no document certifying the right to usage of the land, which was required for registration of ownership title. On the other hand, the Foundation claimed that the disputed building was not a religious building and should not be considered as property of the Patriarchate under the Resolution N183.

Despite the fact, that the building was at the disposal of the Society of Protection of Historical and Cultural Monuments since 1981, both the Appellate and the Cassation Courts³⁹ based their reasoning on the Resolution of the SSR Council

³⁸ The Ruling of Chamber of Administrative and Other Categories of Cases of the Supreme Court of Georgia N 86-470-408-3-04, 10 November, 2004

³⁹ Id.

of Ministers of 14 November, 1986, which stated that the disputed building – the Bishop’s house was indispensable part of the Anchiskhati Church. The argument, that under the effective legislation in 1981, transfer of the building at the disposal of the organization did not constitute the ground of ownership rights was also given weight. As a result, the registration of ownership by the Foundation was invalidated and the claim of the Patriarchate was upheld.

This case demonstrates, how successful the Patriarchate is in restoration of ownership on its property, which includes not only religious buildings, but also adjacent buildings, if there is any link of that building to the religious building. The fact, that the other building may already be registered as the property of different organization does not matter. As it will be clear from the next section, it is not enough for other religious organizations to prove the historical origin of the religious buildings in order to restore their ownership on them. The situation gets particularly complicated, if the disputed building had been registered as the property of the Patriarchate, as we can see in the case of the Catholic Church.

2.5. THE PRIVILEGES OF THE ORTHODOX CHURCH IN THE SPHERE OF PUBLIC EDUCATION

Under Article 5 of the Constitutional Agreement, the Orthodox Church was granted significant privileges in the sphere of public education: voluntary teaching of Orthodox Christianity in the educational establishments, recognition of diplomas, degrees and titles bestowed by the educational institutions of the Church, implementation of the joint programs and support of the educational institutions of the Church.

These guarantees are incorporated in the Law of Georgia on Basic Education⁴⁰ and Law of Georgia on High Education⁴¹. The Law of Georgia on Basic Education recognizes freedom of belief, but Article 18.4 also allows the pupils of the public schools to study voluntarily religion or carry out religious rites in the free time. Article 18 clearly assumes, that the religious ritual or study of religion will take place on the school territory, otherwise the above provision

40 Law of Georgia on Basic Education, N 1330-Il, 8 April, 2005

41 Law of Georgia on High Education, N688-ᄁᄁ, 21 December, 2004

would be absurd, as school pupils have right to participate in worship of their interest out of school without reiterating it here. This provision provides room for implementation of the obligation assumed under the Constitutional Agreement, as it allows for teaching of Orthodox Christianity in public schools. It is true, that there is no mentioning of the Orthodox Christianity but in view of religious belonging of the majority of teachers and pupils, it is clear in itself, that this will be only religion that may be taught voluntarily.

The representatives of the Seventh-Day Christian Adventist Church stated in the interview, that officially, teaching of Orthodox Christianity is voluntary, but in the schedule of lessons, this lesson is appointed between other non-religious classes and so the pupils of other denominations are also compelled to attend these classes. Attendance of the pupils of other religion on the class of teaching of Orthodox Christianity makes this teaching involuntary on hand. On the other hand, these other pupils cannot participate in religious activities through the class, which leads to their segregation from the rest of the class.

The Tolerance and Diversity Institute (TDI) applied to 74 public schools in Georgia to find out, whether the teaching of religion was undertaken in schools; the schools were also asked to submit the schedule to see the allocation of classes of religion. The majority of response letters received denied that voluntary teaching of religion was undertaken in their School. Therefore, the schedules were not submitted, which would confirm or negate the above information on the teaching of religion. However, the majority of the public schools, that were sent the question, admitted that religious symbols are displayed or chapels are present in schools, despite the fact, that the Law on Basic Education, article 18.3 prohibits display of religious symbols in schools for non-academic purposes. The principals of these schools asserted, that the pupils wanted to have them. In any case, the religious symbols displayed are religions symbols, icons and chapels of the Orthodox Church only, which means that the law is violated to promote exclusively one religion and the Ministry of Education and Science does not address this problem.

The Georgian Orthodox Church is manifestly under preferential treatment in the sphere of high education too. Article 9.3 of the Law on High Education states that the orthodox theological high educational establishment may take form of the structural unit of the Patriarchate of Georgia or of separate private law legal person. Furthermore, Article 31¹ of the Law states that the

Orthodox Theological High Educational Institution is founded, its charter is approved and its structure (which can be different from what is set forth in the Law) and governing bodies are determined by the Catholicos-Patriarch of All Georgia, who also determines the rule of bestowing degrees. To provide further advantage to the orthodox theological educational institutions, Article 89⁴ states, that these institutions are considered as having authorization until 1 January, 2014 and only after this date, they will have to follow the authorization procedure, as it is prescribed by the legislation of Georgia. It is noteworthy that authorization is a complicated procedure and it is compulsory for every other private and public educational institution in the country.

The privileges and disparate treatment incorporated in the law are strengthened further by the attitudes of teachers of public schools⁴², who are involved in proselytism of Orthodox Christianity, despite the fact, that it is prohibited under Article 18 of the Law of Georgia on Basic Education. Religious minorities – representatives of the Christian Organization of Jehovah's Witnesses, the Seventh Day Christian Adventist Church, South Caucasus Apostolic Administration of Latin Rite Catholics (Roman Catholic Church), Georgian Muslims Union pointed out in the interviews, that the teachers aggressively proselytize on the lessons, condemn the pupils, who belong to other denominations and subject them to pressure.

In this respect, the particularly grave violation took place in the Simon Skhirtladze Public School of Oni. The teacher of biology baptized 13 years old N. G. as Orthodox, after indoctrinating her for a long time and without consent of her parent. It was known, that the family of the pupil were Jehovah's witnesses and they would be against the orthodox baptism. This fact led to the grave psychological stress of the minor; however, the teacher was only sanctioned for violation of the internal rules of the school – for arbitrary taking the pupil from the lessons. The principal of the school decided not to impose any liability on the teacher for discrimination on the ground of religion or for indoctrination.⁴³

According to the statute of the Ministry of the Education and Science of Georgia, it is direct responsibility of the Internal Audit Department to evaluate and monitor the legality of actions of the structural units of the Ministry and

⁴² See Human Rights Education and Monitoring Center, Religion in Public Schools, 2014, at 11

⁴³ Letter of the Head of the Internal Audit Department of the Ministry of Education and Science to the Head of the Justice Department of the Public Defender's Office of Georgia, N 07-2-19/26267, 14/07/2012

the public schools as well.⁴⁴ When there is such a clear violation of the Law of Georgia on Basic Education, it is manifest failure to comply with its mandate on the part of the Internal Audit Department, which limited itself with the request of formal explanation and agreed to qualify the case as violation of internal rules only. This case demonstrates, that the Internal Audit Department does not carry out the competences provided by its mandate and does not ensure that the legal rights of pupils to be secure from indoctrination and proselytism are protected.

2.6. PRIVATIZATION OF THE STATE PROPERTY

Another sphere of the Georgian legislation, which grants the manifest advantages to the Georgian Orthodox Church *vis-a-vis* other religious organizations registered as legal entities under public law, is privatization of state property. Pursuant to the Law of Georgia on State Property, the state property may be acquired by natural or private law legal persons and “in case of direct sale based on the decision of the Government – Georgian Apostolic Autocephalous Orthodox Church, as well”.⁴⁵ In practice, this means that no other religious organization, registered as legal entity under public law can acquire the state property through the procedure of direct sale, except for the Georgian Orthodox Church, which benefits from the specific exception, made exclusively for it. As an additional security, it is underscored in that same Article, that the Orthodox Church is entitled to privatize for free the agricultural land owned by the State.⁴⁶ The same guarantee is provided in Article 11 of that law, which again declares the Georgian Orthodox Church as the owner of all the agricultural land under its usage.

The Tolerance and Diversity Institute (TDI) applied for information to the National Agency for State Property and the provided information demonstrates, how intensely the above-mentioned legislative privileges are employed to transfer the state property for 1 GEL - practically for free, to the ownership of the Orthodox Church.

⁴⁴ The Resolution of the Government of Georgia N37 On Approval of the Statute of the Ministry of Education and Science of Georgia, 21 May, 2014, Article 41.3(c)

⁴⁵ The Law of Georgia on State Property, N3512-6b, 21 July, 2010, Article 2.1

⁴⁶ *Id.*, Article 2.2

The provided information confirms, that in 2011, the President adopted 6 Directives on transfer of the property to the Orthodox Church through the direct sale procedure and total area of land transferred to the Church was approximately 12 ha (12 511, 5 sq. m), not including the area of the buildings located on it. In 2012, there were adopted 12 similar Directives and the Patriarchate acquired ownership on approximately 29 ha of land (299553, 8 sq. m), again not including the area of the buildings and constructions. In 2013, there were adopted only 3 such Directives and the Patriarchate acquired ownership on approximately 0.6 ha (6207 sq.m) land in various parts of Georgia. In 2014, the number of Directives went up again – 8 Directives were adopted and in addition to cars, busses, buildings and constructions and other appliances, the Patriarchate acquired ownership of about 12 ha (120 633 sq. m) of land.

While, the Patriarchate acquires state property of great value in every region of Georgia without any reasons, determination of terms of privatization and payment of price, other religious organizations do not manage to acquire from the State small plots of land and the buildings located on them, even though these buildings have been under the usage of the respective religious organizations for years and serve as their religious buildings.

For example, Evangelical-Protestant Church applied to the Ministry of Economy and Development with the request for privatization of the state owned land plot and building, which had been used by them. They received denial of their request from the National Agency of State Property in January 2014. The legal basis of the denial was above-mentioned Article 3.1 of the Law of Georgia on State Property, which does not allow transfer of state property to the legal entity under public law through the procedure of direct sale. The National Agency for State Property did not consider it relevant, that Law of Georgia on Legal Entities under Public Law does not apply to religious organizations, which are registered as legal entities under public law. In view of their essence and regulatory legal regime applicable to them, these religious organizations are analogous to the private law legal persons.

Georgian Pentecostal Church also strives to privatize the state-owned 576 sq. m. of land plot in Kutaisi, as it uses this land plot for worship since 1998. They have also applied with privatization request to the Ministry of Economy and Development. However, there is high likelihood, that due to their legal status, they will not be allowed to register the title on this property, as well.

3. LEGACY OF THE SOVIET UNION IN RESPECT OF RELIGIOUS ORGANIZATIONS

3.1. COMPENSATION OF THE DAMAGES INFLICTED IN THE SOVIET UNION

According to the Government Resolution of 27 January, 2014, the Government of Georgia decided to compensate material and moral damages inflicted in the Soviet times not only to the Patriarchate of the Orthodox Church of Georgia, but also to 4 other religious organizations. The partial compensation of damages will be received by the “Religious Organizations of Islamic, Jewish, Roman-Catholic and Armenian Apostolic Confessions, which are registered as legal entities under public law” prior to 27 January, 2014. However, it is not clear, what criteria or historical data was used to select only these four confessions, while there were also other religious groups persecuted in the Soviet Union (The Yazidi, Lutherans, Krishnaites, etc). To pick only four confessions out of group of victims is another example of discriminatory treatment.

In general, compensation of damages, as legal concept serves to redress the violated legal interest of a specific person. For this purpose, it is necessary to identify a person or group of persons damaged by a specific historical event or events, acts which inflicted the damages and finally the amount of damages. The above-mentioned Resolution of the Government does not contain any of these elements. The Government did not ascertain which specific religious organizations were actually harmed by the Soviet regime and arbitrarily picked four religious confessions – hence, the group of victims was determined averting the historical criteria. Furthermore, the Government also declined the idea to calculate the amount of damages: “The exact amount of damages is unknown and thus this is symbolic compensation of damages... through the transfer of sum from the State Budget annually.” Moreover, if there are several legal entities under public law, which represent the same confession, they are required to unite into one legal person, or create coordination council or to waive their right of compensation in favor of other organizations, in order receive the money.

In view of all the above-mentioned, it may be inferred, that this is not the compensation of damages inflicted during the Soviet times, but plan of funding

of religious organizations which were selected through ambiguous and non-transparent process. This could be inspired by the motive of funding of these religious organizations specifically on one hand. On the other hand, it may aim to further legitimize the funding of the Georgian Orthodox Church from the State Budget for past years through demonstration that other religious organizations also benefit from public resources besides the Orthodox Church. Thus, we may conclude, that there is high probability, that the Resolution on compensation of damages does not aim on eradication of disparate treatment, but aims on maintaining the present differential treatment and at the same time gives rise to new wave of inequality between the listed four confessions and other religious organizations which were also damaged in the Soviet times and which are not entitled to receive the allowance in spite of this.

On 13 March, 2014, the Government of Georgia adopted Directive N437 On Certain Measures for Partial Compensation of Damages Inflicted by the Soviet Totalitarian Regime to the Religious Organization Present in Georgia. Under this Directive, the sum of 3 500 000 (Three Million Five Hundred Thousand) GEL was allocated from the Government Reserve Fund of 2014 for compensation purposes. It was assigned to the State Agency of Religious Affairs to determine the terms of allocation of this sum and implementation of compensation of damages. No other measures were taken yet in this respect.

3.2. RESTITUTION OF THE PROPERTY TAKEN BY THE SOVIET UNION

For 20 years, religious minorities - Diocese of Armenian Apostolic Church in Georgia, Catholic Church, Evangelical-Lutheran Church, Muslim and Jewish Communities - have been for various reasons unable to regain their places of worship and other properties seized by the Soviet government.

In the wake of the collapse of the Soviet Union, the Georgian Patriarchate regained its ownership on religious buildings. However, among the buildings handed over to the Patriarchate were those that were historically owned by other religious organizations existing in Georgia. Also, those religious buildings of various purposes that were confiscated during the Soviet period but did not serve Orthodox Christian purposes and were owned by the state or private parties (such as theaters, gyms, dance halls, library, etc) remain unreturned as well.

Diocese of Armenian Apostolic Church is currently requesting from the Georgian government the return of six churches. Five of them are located in Tbilisi, and one – in Akhaltsikhe municipality. Because of the delay in restitution process, churches of Armenian origin, which are a part of the Georgian cultural heritage – have become significantly damaged and/or fell apart. In the cases where the buildings have entered into the dominion of the Georgian Patriarchate, their historical appearance has been purposefully altered.

Caucasus Apostolic Administration of Latin Rite Catholics is unable to regain dominion over five churches, which used to be in its ownership before Georgia joined the Soviet Union. These churches are located in Batumi, Kutaisi, Gori and in the villages, Ivli (Akhaltsikhe) and Ude (Adigeni). Evangelical-Lutheran Church requests the return of the church in Asureti village and a former temple, currently used as a sport hall, in Bolnisi.

It should be noted, that the main source of resistance in the process of restitution is the Georgian Patriarchate which claims its rights on the “disputed” houses of worship or already have attained the ownership over them.

The problem of restitution of religious buildings pertains to Jewish and Muslim communities as well.

With the aim of restoring historical justice and returning the confiscated property to its legal owners, religious organizations referred to the Court in two cases. The following chapters provide the analysis of relevant rulings.

3.2.1. Case of Synagogue

From the perspective of restitution of property by religious organizations taken in the Soviet times the ruling of the Supreme Court of Georgia in the dispute related to synagogue is insightful. The Ruling was made on 10 April, 2001.⁴⁷

The subject of the dispute was a building in Tbilisi, which the Jewish Religious Society alleged to be the house of worship of the Jewish community, taken from them in the Thirties of 20th Century. Under the Directive adopted by

⁴⁷ Ruling of the Chamber of Administrative and Other Categories of Cases of the Supreme Court of Georgia N 3b/სგ 132, 10 April, 2001

the Prime-Minister of Georgia in 1994, the local authorities were instructed to ensure the restitution of cultural and historical places, as well as Jewish religious buildings to the legal owners. Therefore, the Cabinet of Tbilisi Municipality adopted Resolution dated 22 June, 1995 and transferred the title on the building located on Atoneli Street 10, in Tbilisi to the Jewish Religious Organization. However, this building used to be under possession and usage of the State Youth Dramatic Theatrical Studio “M.T.” since 1988, which in its turn, leased the building to the “J.B. Tbilisi ...Institute”. The Theater Studio and the Institute applied first to the arbitration and after its abolition to the general courts to dispute the legal validity of the Resolution on transfer of the title to the building to the Jewish religious society. The Jewish religious society claimed that they should be evicted from the building, as a response. One of the arguments of invalidity of the Resolution of Cabinet of Tbilisi Municipality, dated 22 June, 1995, articulated by the Theatrical Studio and J.B. Tbilisi Institute, was assertion that the disputed building never used to be Jewish religious building. Moreover, Jewish Religious Society was not a person under the law and therefore, transfer of building to it was devoid of any legal basis.

The Supreme Court of Georgia considered that the issue of the case was not whether the disputed building was religious or not. However, it was important to ascertain this issue in order to find out, whether there was factual basis for the claim of Jewish Religious Society of restitution of the disputed building. The Court evaluated the historical evidence on origin of the building and decided that the claim for restitution of the disputed building was based on factual grounds. Thus, the Court recognized the validity of the part of the Resolution of the Cabinet of Municipality, which dealt with the transfer of worship hall to the Jewish Religious Society, while the other part of the Resolution was declared invalid.

In view of the ruling in the case of the Catholic Church, discussed below, the reasoning of the Supreme Court on whether the Georgian Jewish Society had standing in the proceedings, despite not being a legal person, takes on particular importance: “It is true, that there is no law yet, that would determine the legal status of religious organizations , but it does not mean, that these organizations are outlawed and that these organizations (unions of believers) have no guarantees for their constitutional rights and freedoms... The disputed Resolution.. provided the Religious Georgian Jewish Society of Tbilisi with rights and obligations, which gives it standing. [Their] participation

was the result of the interest of protection of their constitutional rights, not of their independent claim."⁴⁸ The claim of the Jewish Religious Society was partially upheld and their ownership on the part of the disputed building, which the Court found to be used in the past as religious building was restored.

Thus in this case, the religious organization managed to reconstitute its property, despite the fact that legally it was not a religious organization. Historical evidence on the origin of the building and decision of the Cabinet of the Municipality on restitution of the ownership of the building to the Jewish Religious Society appeared to be decisive. As we will see in the next case, the Court chose much more formalistic approach when adjudicating the claim of restitution of ownership of Catholic organization on the Catholic church.

3.2.2. Case of Roman Catholic Church

The South Caucasus Apostolic Administration of Latin Rite Catholics (Roman Catholic Church) is one of the denominations in Georgia, which failed to return the churches taken away in Soviet times. The litigation that relates to the Catholic church in Kutaisi and restitution of ownership on it, illustrates the whole range of problems encountered by the religious minority on the way to restitution of its property, particularly if the Orthodox Church manages to occupy the disputed property and claims its ownership.

In order to return the church located in Kutaisi and taken during Soviet times, the Catholic congregation of the western Georgia founded the association Savardi in 2000.

On 21 December, 2001, the association Savardi filed the complaint in Tbilisi Regional Court against the President of Georgia, claiming that the latter should adopt an administrative act on restitution of ownership on the Catholic Church. The Court denied the claim and reasoned that the disputed building had been transferred to the Orthodox Church since 1990 and it presented the property of the Patriarchate under the Constitutional Agreement of 2002, article 7.1. Furthermore, the Court declared, that the association Savardi should not be considered as the successor of the Latin Catholic Church.

⁴⁸ *Id.*

The Association Savardi challenged the ruling of the Regional Court in the cassation court. The Supreme Court of Georgia dealt with the following issues:

- Whether the private law legal person - Association Savardi, which was founded in 2000 was a legal successor of the Roman Catholic Church present in Georgia in XIX-XX Centuries;
- Whether the property taken from the Society of Georgian Catholic Believers in 1939 presented the property of the Georgian Apostolic Autocephalous Church at the moment of litigation;
- Whether there was any legal basis for the President to issue a legal act to transfer the disputed church to the association Savardi, in view of the fact that since 6 March, 2003, the church was registered in the Public Registry as property of the Georgian Apostolic Autocephalous Orthodox Church.

The Court had negative answer for all of these three issues. The Supreme Court decided that the Association Savardi was not a legal successor of the Religious Societies of the Roman Catholic Church present in Georgia in XIX-XX centuries, as that could not be proved from the founding documents of Savardi. The bishop of South Caucasus Apostolic Administration of Latin Rite Catholics, Monsignor Giuseppe Pasoto submitted a letter, to certify that Savardi was the only successor organization of the Catholic religious organizations active in the previous centuries, which was recognized by the Holy See as such. The Court declined this evidence as of uncertain legal status, because the Diplomatic Mission of Vatican in Georgia did not legitimize this institution. On one hand, it is not clear, why the Court did not request this evidence from Vatican Representatives in Georgia or from the party itself, when the central distinguishing feature of administrative proceedings is its inquisitorial nature – it can acquire the evidence at its own motion. Instead of this, that Court limited itself to rebuttal of the evidence presented by the claimant and never tried to structure more sophisticated criteria for ascertaining whether Association Savardi could be considered as legal successor of the historically existing Catholic religious organizations. This approach contrasts with the above synagogue ruling, where legal successor – Jewish Religions Society was not even a legal person, not to mention religious organization. Despite it, the Court considered in that case, that the absence of legislative regulations

should not hinder the protection of constitutional rights of that organization. In the case of Roman Catholic Church, the constitutional rights on the disputed church of the Catholic community, advocated and represented by Savardi never become an issue for discussion and the reasoning was limited to formal examination of its legal status.

Moreover, the Supreme Court decided, that the disputed Church, which presented the place of religious worship for Catholics up to 1939, was an Orthodox Church at the moment of litigation. It was ascertained that in 1988-1989 the Catholic Society of Kutaisi applied to the authorities in Kutaisi several times with the request of restitution of the church building taken in 1939. Instead of fulfilling their request, the Council of Religious Affairs of the Council of Ministers of the Soviet Socialist Republic of Georgia transferred the Church to the usage of the Society of Orthodox Believers. Moreover, under the Resolution of the Council of Ministers of the Soviet Socialist Republic of Georgia adopted on 12 April, 1990, all the religious buildings at the disposal of the Patriarchate of Georgia were declared to be their property. The Supreme Court of Georgia declared, "The above-mentioned administrative acts have not been invalidated, they are still valid and thus the Church of Annunciation of the Virgin Mary in Kutaisi is a Georgian Orthodox Church." Moreover, the Court referred to the Constitutional Agreement concluded between the State and the Patriarchate in October, 2002, particularly its Article 7.2: "The State recognizes ownership of the Church on all the orthodox churches, monasteries... present on the territory of Georgia." This led the Court to conclude, that the disputed church was registered as the property of the Kutaisi Gaenati Eparchy in the Public Registry, and therefore the disputed church was the property of the Patriarchate.

Here, comparison with the ruling in Anchiskhati Case would be appropriate (See II.4 section). In that case the disputed building was officially registered as property of the Foundation of Protection of Culture and Monuments, but the Court considered the historical evidence, the fact that the building used to be part of the religious building Anchiskhati, that it used to be a Bishop's house and cancelled the property registration of the Foundation. Now, in the present case, the fact that the church was registered as property of the Patriarchate led to the automatic denial of the claim of the Catholics and the Court did not even try to check the legality and grounds of registration of property rights on the disputed church by the Orthodox Church.

As for the argument based on Article 7 of the Constitutional Agreement, its contents are quite explicit: a church or monastery shall be Orthodox in the first place and this is the precondition for recognition of ownership of the Patriarchate on it. The ruling of the court offers the opposite reasoning: because a specific church is registered as the property of the Georgian Apostolic Autocephalous Orthodox Church, it shall be considered to be Orthodox church. This is the vivid example of the discriminatory interpretation of Article 7 of the Constitutional Agreement. Based on the historical evidence presented by the Association Savardi, the Court should decide exactly the issue whether the church was historically Orthodox or not, which at the next stage of analysis would allow the examination of legality of its present owner – the Patriarchate. Instead of this, registration of the property was used as proof of orthodox origin of the church and exhausted the possibility to further dispute the ownership of the church, which was based on total neglect of the interests of the Catholic community.

Moreover, this ruling can be distinguished from the cases of synagogue and Anchiskhati church by the weight that was given to the historical evidence on the origins of the church. In the previous cases historical evidence appeared to be decisive for the ownership issue, whereas in the present case, the Court did not even look at the origin of the church. However, it is noteworthy in this respect, that no one even disputed the fact that the Kutaisi church was truly taken from the Catholics in 1939.

The Cassation Court deemed, that the claim for adoption of Presidential legal act, that would transfer the church at the disposal of the claimant was devoid of legal grounds, as the disputed property was not state-owned any more. The disputed property was owned by the Patriarchate and therefore the President had no authority to interfere in the dispute on the church.

In view of the fact, that ownership of the Patriarchate on the disputed church was based on the number of administrative acts taken in violation of principle of equal treatment, the solution would be to invalidate these acts and to order the adoption of the new administrative act, to decide the issue of ownership anew. Therefore, the response of the Court on the last issue, ignored the essence of the dispute and presented an attempt to relieve the State from responsibility for violation of the property and religious rights of the Catholic community and to shift the claims against the new owner – the Patriarchate.

This ruling made a very bad precedent from the perspective of restitution of ownership on religious buildings, which are incorrectly registered by the Orthodox Church. The Roman Catholics did not try to apply to the court for restitution of their other churches after this case. This means, that the court did not manage to restore historical justice and to provide the remedy and safeguard constitutional rights of the catholic community, which further aggravated the situation of protection of rights of religious minority.

4. RELIGIOUS INTOLERANCE OFFENCES AND ENFORCEMENT OF JUSTICE

In 2007, the European Court of Human Rights adopted the Judgment in Case of 97 Members of Gldani Congregation of Jehovah’s Witnesses and 4 Others v. Georgia.⁴⁹ This case dealt with the attack and violence committed by the priest Basil and his supporters against the Jehovah’s Witnesses in 1999. The European Court of Human Rights found violation of Article 3 of the Convention due to the failure of the authorities to take measures on the well-documented facts of violence and lack of adequate and impartial investigation of them. The Court also found violation of Article 9 of the Convention, as the State could not ensure the tolerant environment, where the applicants would enjoy their freedom of belief. In respect of violation of Article 14 in conjunction with Article 9 and Article 3, the Court noted, that refusal of the authorities to intervene promptly allowed Father Basil and its supporters to continue to advocate hatred and to pursue the acts of religiously motivated violence, which made the State accomplice of their violence. This was considered as manifest violation of the principle of equality of everyone before the law.

Thus in case of religiously-motivated offences, taking of effective measures by the authorities to identify and punish the perpetrators is inherent in the human right to be protected from ill-treatment and right to prohibition of discrimination.

The criminal legislation of Georgia, as legislation of administrative offences provides whole range of provisions to prevent the crimes that are motivated by religious intolerance, as well as to impose the administrative liability

⁴⁹ Case of 97 Members of the Gldani Congregation of Jehovah’s Witnesses and 4 Others v Georgia, appl. 71156/01, 3 May, 2007

for verbal abuse (insult, humiliating stalking). To check how effective is the administration of justice in respect of the religious intolerance offences, the Tolerance and Diversity Institute (TDI) applied for statistical data to the Chief prosecutor's Office of Georgia and the Supreme Court of Georgia. It also applied to every general court of Georgia to acquire the texts of relevant judgments. Comparison of the information obtained from the State authorities with the statistics of committed offences accumulated by the Organization of Jehovah's Witnesses allows conclusion on how effective the investigation and prosecution is. The last chapter provides analysis of the relevant rulings and problems related to the interpretation of law.

4.1. OFFENCES REGISTERED BY THE CHRISTIAN ORGANIZATION OF THE JEHOVAH'S WITNESSES AND THEIR LEGAL CONSEQUENCES

In the interview, the Jehovah's Witnesses referred to the multiple acts of verbal and physical abuse of Jehovah's Witnesses in the process of peaceful observation of their religious rites or on the ground of their religion and damage of their religious buildings – Kingdom Halls, breaking the windows and signboards, which occurred in the previous years. The representative of the Jehovah's Witnesses stated in the interview, that the number of such offences was 10 in 2012 and 40 - in 2013. This rise in number of offences may be explained by the fact that criminal prosecution or administrative liability is imposed relatively rarely for this type of offences, even if the perpetrator is identified and continues his or her criminal behavior.

The impressive example of it is clergyman, I. K., who verbally and physically abused the follower of Jehovah's Witnesses, O. K. and I. T. on 6 October, 2013 in the village of Akhalkalaki, Kaspi District. Several years before, on 9 December, 2008 the same person physically assaulted other followers of Jehovah's Witnesses, B. O. and P. M.. On 23 December of the same year, he verbally abused these persons and threatened, he would beat them. He repeated the same act against B. O. and P. M. on 3 July, 2009. Even earlier, on 20 March, 2007, I. K. tried to force I. G. and I. Z. – both followers of Jehovah's Witnesses into the Church.

In response to the humiliating and violent acts, the Kaspi District Division of the Ministry of Internal Affairs initiated investigation of the crime provided in Article 155 of the Criminal Code of Georgia (Illegal Obstruction of Observation of Religious Rite). However, the letter of the Deputy Prosecutor of Gori District, dated 12 April, 2009, states that the preliminary investigation was terminated on 30 January, 2009 and no prosecution was initiated against I. K.

The letter gives the following reasons for termination of investigation:

“It was found through the undertaken investigation, that... the priest, I. K. grabbed by tie B. O., who was present in the street of the village and pushed him several times, then hit him in the back, after which Jehovah’s Witnesses escaped, running away. On 23 December, 2008 .. I. K. publicly exposed P. M. and B. O. in false teaching... B. O. responded and at that moment, the priest I. K. slapped him in the face and verbally insulted him referring to his mother...

The interrogation of witnesses shows that I. K. used to meet Jehovah’s Witnesses in streets only. He did not inflict them health injury and did not commit violence or threat of violence. He never appeared at the specific place designated for the followers of Jehovah’s Witnesses and never obstructed observation of their religious rites.

On 30 January, 2009, the preliminary investigation was terminated on the Criminal Case no 028090017 due to the absence of elements of the act provided by the criminal law.”⁵⁰

This reasoning seems bizarre in view of the text of Article 155 of the Criminal Code of Georgia, which punishes “illegal obstruction of worship or observation of other religions rite or custom through violence or threats of violence, or if in addition it was accompanied by the insult of feelings of believers.” It is not clear, why the Gori Prosecutor’s Office decided, that observation of religious rites may not be obstructed in streets, or which part of Article 155 requires to appear in specially designated place for commission of this crime. After description of all acts of physical violence (hitting in the back, pushing several times, slapping in the face), it is not clear how could the prosecutor conclude, that there was not violence committed against the victims. Furthermore, even

50 Letter of the Deputy Prosecutor of Gori District to the Senior Prosecutor of the Division of the Chief Prosecutor’s Office of Georgia for the Procedural Guidance of the Investigation in the Regional Territorial Organs of the Ministry of Internal Affairs, 310.04.200 9/16, 10.04.2009

if there were no elements of crime provided in Article 155, it is hard to explain, why the prosecutor did not change the legal qualification of the committed crime to Article 125 of the Criminal Code, which is battery.

This unreasoned decision of 2009 may explain the fact, that I. K. repeated acts of physical and verbal abuse against the Jehovah's Witnesses in 2013 and set example for others. This is proved by the letter N12-028 of the Organization "Legality and Justice in Caucasus", dated 24 October, 2013 to the District Division of the Kaspi District Police. It is stated in the response letter of the Ministry of Internal Affairs, that there is ongoing investigation on this case under Article 156 of the Criminal Code (persecution).⁵¹

On 25 March, 2014, the Christian Organization of Jehovah's Witnesses applied to the Minister of Justice of Georgia, Minister of Internal Affairs, Public Defender of Georgia, Tolerance Center under the aegis of Public Defender and the Georgian Young Lawyers' Association in respect of the incidents occurred in 2013. The purpose of the letter was to pay the attention to the fact, that the majority of the facts of physical and verbal abuse of Jehovah's witnesses, as well as damage of their buildings are left without effective investigation or the outcome of investigation is not known to the victims despite their efforts.⁵² It is clear from the letter, that mostly, investigation ends without initiation of criminal prosecution, with apology of the perpetrator and signing the declaration, that they would not repeat the same act. Grouping the facts of offences listed in the Letter after their substance, we can summarize, that there were 21 cases of damaging buildings and street stands of the Christian Organization of Jehovah's Witnesses and destroying their literature, 19 cases of verbal abuse, 21 cases of physical abuse, a case of threatening by a policeman, 2 cases of burglary in the houses of followers.

The response letter of the Ministry of Internal Affairs⁵³ clarifies, that it is the practice to require the offender to write a declaration on non-recurrence of the conduct or giving written notice, if the verbal abuse or destruction of literature is committed (unless they lead to material damage and obstruction of observation of religious rites). There appears to be one case, when the person was fined

⁵¹ The response letter of the Ministry of Internal Affairs of Georgia MIA81400949196 to the Christian Organization of Jehovah's Witnesses, 20/05/2014

⁵² Christian Organization of Jehovah's Witnesses in Georgia, Letter N15/14 addressed to the Minister of Justice of Georgia, Minister of Internal Affairs of Georgia, Public Defender of Georgia, Georgian Young Lawyers Association, Tolerance Center of the Public Defender's Office, 25 March, 2014

⁵³ The response letter of the Ministry of Internal Affairs of Georgia MIA81400949196 to the Christian Organization of Jehovah's Witnesses, 20/05/2014

with 100 GEL for petty hooliganism. In the majority of cases of material damage, due to the small amount of the value of damage (it did not reach 150 GEL⁵⁴) or due to the minor age of offenders, liability takes form of signing the declaration or warning. However, there was one case, when damage of property was given the qualification of crime of persecution and plea agreement was formed with the offender. There is one more case, where investigation is carried in respect of the crime of theft. As for the incidents of physical abuse, according to the data provided by the Ministry of Internal Affairs, there is one case of investigation of crime of battery (Criminal Code, Article 125), one case of minor intentional damage of health (Article 118), 4 cases of ongoing investigation on the crime of persecution (Article 156) and one case of the crime of illegal obstruction of observation of religious rite (Article 155). In the significant part of claims of physical abuse, which are enlisted in the letter of the Organization of the Jehovah's Witnesses, the Ministry of Internal Affairs could not prove that the physical violence truly took place.

In order to be effective from the perspective of prevention of religiously motivated offences, there is no need that the authorities initiated criminal prosecution or applied the strictest sanctions in every case.

- However, against the background of abundance of this type of offences, as indicated by the religious minorities, it would be appropriate if the criminal policy were more stringent. In case of crimes of persecution and obstruction of observation of religious rites, no plea agreement or diversion shall be offered to the offenders, save for exceptional cases. It is necessary that their behavior be evaluated and condemned in the open public trial.
- Despite the fact, the Criminal Code does not allow for criminal prosecution when the value of material damage does not exceed 150 GEL, the focus shall shift to the motivation of the offender. When the material damage is solely inspired by religious intolerance and property is damaged in order to carry out persecution of a specific group, it would be appropriate, to impose liability for crime of persecution. When the damage of property has regular nature, in its entirety it creates the atmosphere of persecution for the followers of the specific religion.

⁵⁴ Under Article 187 of the Criminal Code of Georgia, infliction of damage to property is crime, if it results in the significant damage. Under Article 177 of the Code, damage is significant if its value exceeds 150 GEL

- In each individual case, the measure of liability shall be selected in the way to deter commission of similar acts by the same or other offenders. The offences committed against the Jehovah's witnesses, in view of the rise of their number and their regular character, does not allow conclusion that the taken measures were effective for the deterrence of religiously motivated offences.

At the presentation of the preliminary findings of the report in the Chief Prosecutor's Office of Georgia, they pointed out that diversion of offenders in one case was decided after consultation with the victims on diversion of the offenders. Moreover, the diverted persons apologized in the presence of the victims for their behavior and served unpaid community service. Most importantly, the victims were allowed to make impact-statements and to participate in the proceedings led by the prosecutor's office.

The position of the Prosecutor's Office is that, plea agreement with the defendant does not automatically mean treating him favorably. According to the offered explanation, it is significant that crimes provided in Articles 155, 156 of the Criminal Code of Georgia are less serious crimes, and even court may apply fine or conditional sentence for these crimes. Therefore, it is not accurate to perceive the plea agreement with the perpetrator of the religiously motivated crime as indicator of the lenient criminal policy implemented by the Prosecutor's Office.

However, the focus of the present research is not the harsh punishment, but public trial of the perpetrators of offences and public legal evaluation of their behavior, which is valuable from the perspective of prevention of identical crimes by the same person and by other people. For the above purpose, the public trial, where evidence is examined and behavior of the offender is evaluated in open court is more promising, than the summary procedure of the approval of the plea agreement in the court.

4.2. OFFENCES COMMITTED AGAINST THE MUSLIM COMMUNITY IN 2012-2013

In 2012-2013, several facts of flagrant violations of rights of the Muslim Community took place. They occurred in various regions of Georgia and had similar scenario of aggressive obstruction of worship of local Muslims by

the Orthodox majority, which were tolerated or even fostered by the local government, and government in general.

Wide-scale violation of rights of Muslims took place by the end of 2012 in the village of Nigvziani, in Lanchkhuti Municipality and later in the village of Tsintsikaro, in Tetrtsikaro Municipality.⁵⁵ In 2013, similar events developed in the village Samtatskaro, in Dedoplistskaro Municipality.⁵⁶ The Orthodox majority living in these villages protested against functioning of the mosques of Georgian Muslims and did not allow them to conduct traditional worship through verbal abuse, threats and restriction of freedom of movement.

The following is stated in the Report of 2013 of the Public Defender: “The problems related with praying were settled in Nigvziani and Tsintsikaro through interference of the representatives of the government and through negotiations and agreement between leaders of religious majority and minority... and in 2013 there were no impediments for praying in these villages.”⁵⁷ However, the fact, that no one was punished for violence and obstruction of the worship of religious minority and that no measures were taken for the general deterrence of this type of offences, once again may be linked to the similar but even more acute cases of violation of rights occurred in the villages of Samtatskaro and Chela in 2013.

Since 2013, there were several episodes when the population of Samtatskaro and neighboring villages obstructed the Muslim community to conduct the worship through verbal abuse, blockade of the road and threats. In a number of cases, the governor of the village of Samtatskaro, G.N. was together with the Orthodox population and did not try to prevent their violent activities. The representatives of the Ministry of Internal Affairs of Georgia, namely patrol police could not free the road leading to the worshipping place for Muslim clergymen and in general, could not ensure protection of the right of worship of Muslims, which presents the violation of the positive obligations of the State.

⁵⁵ The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2012, at 520-523; See, also, Human Rights Education and Monitoring Center, *Crisis of Secularism and Loyalty Towards the Dominant Group*, 2013

⁵⁶ The case of persecution of Muslims on the ground of religious intolerance took place also in the village Tsikhisdziri in Kobuleti. However, this case was different in substance and in scale from other cases discussed in the chapter. Detailed analysis of it is provided below, in the chapter of the case law analysis (4.4.)

⁵⁷ The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2013, at 297-304

According to the information provided to the Public Defender of Georgia, the investigation was initiated on the fact of illegal obstruction of observation of religious rites (the crime, envisaged by Article 155.1. of the Criminal Code of Georgia) in the village of Samtatskaro, Dedoplistskaro District and on the fact of treats against the family of Muslim clergyman (Article 151 of the Code) by the Orthodox population of the village of Samtatskaro, in Dedoplistskaro district. In 2013-2014 (First quarter of 2014) the Public Defender's Office could not obtain any additional information from the Ministry of Internal Affairs on the measures undertaken within the scope of investigation. In response to the recommendation of the Public Defender of Georgia, it was notified that acting governor of Dedoflistskaro, G.N. was given warning for disciplinary violation.⁵⁸

Compared with the above cases, the facts occurred in the village of Chela in Adigeni Municipality was even more flagrant, as the direct perpetrators of violations were the public officials. On 26 August, 2013, the Revenue Service of Georgia dismantled the Minaret without legal basis for that, as it will be demonstrated below. At the same time, employees of the Ministry of Internal Affairs brutally treated those Muslims, who tried to protest against the dismantling of Minaret.

Here again, it is crucial, that dismantling of Minaret, was preceded by the media coverage of the discontent of the Orthodox population due to the construction of Minaret in the village of Chela. The discontent of the Orthodox population was also described in the application of the Chairman of Adigeni Municipality Council to the Public Defender.⁵⁹

Situation, where protests of Orthodox majority against the religious buildings of the minority, that are built or are in the process of construction is followed by the manipulation with legal procedures by the public officials in order to cause the situation favored by the Orthodox majority, clearly links case of Chela to the case of construction in Terjola, that is discussed below. In Terjola, the local government suspended the construction permission without legal basis after the Orthodox population protested against the construction of the building by Jehovah's Witnesses. This demonstrates the pattern of behavior of public officials in Georgia, where public power is used to the disadvantage of the religious minorities, which is a way of meeting

⁵⁸ Id., at 300

⁵⁹ Id., at 302

the demand of the religious majority, on one hand and leads to the material restriction of rights of religious minority, on the other hand. This type of behavior contains elements of crime provided in article 142 of the Criminal Code of Georgia (Violation of Human Equality).

The ground of allegation, that the public officials committed a crime, is provided by the illegal use of public power by them, which is manifest in case of Chela. The Revenue Service alleged, that the Minaret, which was imported from Turkey, was dismantled due to incorrect categorization of the imported goods at the customs service, which might lead to reduction of the amount of fee on import and it was impossible to ascertain the correct amount of fee without field examination and “visual inspection and appropriate expert opinion” on the metal construction.⁶⁰

The crucial fact is that, during customs procedure “the competent official of the Revenue Service himself classified the goods under the code, which determined its exemption from the import fee”⁶¹, as the goods were produced in Turkey. Therefore, physical properties of the construction and the outcomes of the expertise, which were conducted with gross violation of applicable procedures,⁶² could not change the only relevant fact for determination of the amount of import fee: because the Minaret was produced in Turkey, the goods were exempted from payment of import fee. Therefore, the excuse of identification correct amount of import fee is definitely false argument of the Revenue Service and once again, it points to the illegality of the implemented measure and probable crime of the respective public officials.

Instead of assuming responsibility for the violated rights of Muslim Community and carrying out the impartial and effective investigation of the behavior of public officials in case of Chela, the State informally delegated the power to settle the problem to the Patriarchate of Georgia. On 28 August, 2013, the leadership of the Orthodox Church and Administration of Muslims of All Georgia held meeting in the Patriarchate on the issue of removed Minaret. According to the decision taken at the meeting, the Minaret should not be constructed again, until the legislative basis would

⁶⁰ Joint Statement of Non-Governmental Organizations on the Events Occurred in the Village of Chela, 29 August, 2013

⁶¹ Report of 2013 of the Public Defender, *supra* note 58, at. 303

⁶² For details, see Joint Statement of Non-governmental organizations, *supra* note 62

be formed and negotiations would be carried out between the Patriarchate and Administration of Muslims.

To respond to the State violations of the legal rights of religious minorities under the influence of manifest demands of the religious majority, through fostering negotiations between the religious minority and the majority presents the defiance of the Constitution and legislation. It is refusal to evaluate violation of law and to undertake respective measures on the ground that is fully irrelevant for law – due to negotiations between the religious organizations. Negotiations and even agreement, cannot change the fact, that the public officials have violated law, presumably on the ground of religious discrimination, which is dangerous precedent for a secular and rule of law state, and calls for prompt and effective investigation. However, the Chief Prosecutor's Office of Georgia did not start investigation of this case.

4.3. ANALYSIS OF THE STATISTICAL DATA ON PROSECUTION AND CONVICTION BASED ON THE INFORMATION PROVIDED BY THE SUPREME COURT OF GEORGIA AND THE CHIEF PROSECUTOR'S OFFICE OF GEORGIA

To find out how adequate is the Criminal Code to the task of protection of persons from persecution on religious grounds, the Tolerance and Diversity Institute (TDI) applied for public information to the Ministry of Internal Affairs, Chief Prosecutor's Office, the Supreme and the Appellate Courts of Georgia, as well as 26 first instance courts of Georgia.

According to the information provided by the Chief Prosecutor's Office, the statistical data on initiation and termination of criminal prosecution is processed since 2012, therefore the TDI was provided with the statistical data for the years 2012 and 2013 and the first quarter of 2014.

Article of the Criminal Code	Termination of Investigation of Crimes (Grounds)			Initiation of Prosecution			Termination of Prosecution (per person)			Refusal to Initiate Prosecution (indicating grounds)		
	2012	2013	2014 (3 months)	2012	2013	2014 (3 months)	2012	2013	2014(First Quarter)	2012	2013	2014(3 months)
109.2(d)	0	0	0	0	0	0	0	0	0	0	0	0
117.5(d)	0	0	0	0	0	0	0	0	0	0	0	0
126.2(g)	0	0	0	0	0	0	0	0	0	0	0	0
142	1(105.1(a))	0	0	0	0	0	0	0	0	0	0	0
144 ¹ .2(f)	0	0	0	0	8	0	0	0	0	0	0	0
144 ² .2(f)	0	0	0	0	9	0	0	0	0	0	0	0
258.3(b)	0	0	0	0	0	0	0	0	0	0	0	0
155	1(105.1(a))	1(105.1(f))	1(105.1(a))	0	0	0	0	0	0	0	0	0
156	2(105.1(a))	3(2 cases were terminated under 105.1(a); 1 case was terminated under 105.1(j))	2(105.1(j))	10	4	5	0	2(105.1(a))	0	0	3 (105.3 and 168)	2(105.3 and 168)
166	0	0	0	0	0	0	0	0	0	0	0	0

As we can see from the above table, the investigation was terminated in one case under article 155 in 2012 and one case – in 2014, in both cases due to the absence of the elements of crime. In 2012, the investigation was terminated under the same Article, due to the Amnesty of that crime, as a less serious crime. In 2012 -2014 years (First quarter of 2014), there were 7 cases of termination of investigation under article 156, while prosecution was terminated or not initiated in 5 cases. Overall, there were 19 cases of initiation

of prosecution under Article 156, whereas there were two cases where the prosecution was terminated. These statistical data leads us to conclusion that in cases of religiously motivated crimes, most frequently employed article is not the obstruction of observation of religious rite (Article 155), but persecution (Article 156). However, it is noteworthy, that the crime of persecution may be committed not only on the ground of religious intolerance, but also on other grounds of intolerance and there is no separate statistics for cases of persecution on religious grounds. Therefore, it is impossible to find out the exact number of cases of persecution on religious grounds.

The Tolerance and Diversity Institute (TDI) applied to the Supreme Court of Georgia for the following statistical information:

- On judgments of the general courts of Georgia based on Article 53.3¹ of the Criminal Code of Georgia, which were delivered since 27 March, 2012 (the date of adoption of Article 53.3¹) to 25 March, 2014;
- On judgments delivered by the general courts of Georgia from 1 January, 2009 to 25 March, 2014 in the cases of defendants charged on the basis of Article 109.2(d) [Murder on the ground of racial, religious, national or ethnic intolerance]; Article 117.5(d) [Causing of intentional grievous bodily harm on the ground of racial, religious, national or ethnic intolerance], Article 126.2(g) [violence on the ground of racial, religious, national or ethnic intolerance], Article 142 [violation of human equality], Article 144¹.2(f) [torture with violation of human equality], Article 144³.2 (f) [Degrading or inhuman treatment with violation of human equality], Article 155 [illegal obstruction of observation of the religious rite], Article 156 [persecution], article 166[obstruction of foundation or activities of a political, public or religious organization], Article 258.3(b)[grave desecration] of the Criminal Code of Georgia, including the judgments approving plea bargaining in these cases;
- On judgments delivered in cases of religiously motivated crimes.

According to the information provided by the Supreme Court of Georgia on 7 April, 2014, in 2009-2013 the first instance courts have delivered the judgments based on Article 156 (persecution) against 11 defendants, whereas the Prosecutor's Office diverted three persons charged on the basis of this

Article in 2013. One judgment was delivered in the case of crime envisaged in Article 142 of the Criminal Code of Georgia (violation of human equality) in 2010. There were two judgments delivered in cases based on Article 144^{1.2(f)} of the Criminal Code of Georgia [torture with violation of human equality, including on the religious grounds] in 2013. According to the information provided by the Supreme Court, no other cases of crimes enlisted in the application of the Tolerance and Diversity Institute (TDI) were adjudicated in 2009-2014.

Data on the Number of Cases Adjudicated by the General Courts of Georgia in 2009-2014 (Per Certain Articles of the Criminal Code of Georgia)

First Instance Courts

Years	Article 156 of CCG				Article 142 of CCG		Article 144 ^{1.2(f)} of CCG	
	Judgment was delivered		Returned to the Prosecutor's Office due to diversion		Terminated		Judgment was delivered	
	Case	Person	Case	Person	Case	Person	Case	Person
2009	1	1	X	X	X	X	X	X
2010	X	X	X	X	1	2	X	X
2011	1	1	X	X	X	X	X	X
2013	4	9	1	2	X	X	2	3

It is particularly important, that the Supreme Court of Georgia notes in its response letter, that “Information on the application of Article 53.3¹ of the Criminal Code of Georgia as the aggravating circumstance of liability of convicted persons is not processed in forms of accumulation of statistical data effective in courts.” The same information was confirmed by Tbilisi City Court.⁶³

Article 53.3¹ was added to the Criminal Code on 27 March, 2012 and commission of crime on the ground of intolerance, including religious intolerance was declared as aggravating circumstance for all the crimes, which do not contain the motive of intolerance as the crime element. Due to it, the court shall made the person accountable for the motive of intolerance, as an aggravating circumstance in each individual case, where this motive of commission of crime is present. In addition to the fact, that motive of intolerance is now relevant for meting out the punishment, presence of this rule in the Code has also analytical weight and allows to collect exact statistical information on the hate crimes. However, due to the fact, that courts do not collect the statistics in respect of this Article, this resource of Article 53.3¹ is left unemployed.

Considering the text of the judgment provided by Batumi City Court, which presents the typical case, when the court should use Article 53.3¹ in meting out the punishment, one can conclude, that even legal resources of this rule is left unemployed.

4.4. ANALYSIS OF THE CASE LAW

In response to the application of the Tolerance and Diversity Institute (TDI), which asked about the religiously motivated crimes, Batumi City Court provided the judgment adopted on 20 August, 2013. According to the requirements of personal data protection laws, the names of convicts were not revealed, however, the judgment deals with the notorious incident discussed in the Parliamentary Report of 2013 of the Public Defender, which took place in Tsikhisdziri, Kobuleti District.⁶⁴ According to the facts of the

⁶³ Letter of the Supreme Court of Georgia N 47-3 to the Institute of Tolerance and Diversity Institute in response of the Letter N66 of 26 March, 2014, 07.04.2014; Letter of the Tbilisi City Court N1-04119/10620, 16.04.2014

⁶⁴ Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2013, (in Georgia), at 296-297

case, on 14 April 2013, the head of the 2nd Unit of the 2nd Regional Division of the Military Police Department of the General Staff of Armed Forces of the Ministry of Defense, O.K. together with the senior inspectors of the same Unit, P.G. and M.M., who were motivated by religious intolerance, physically and verbally abused the Muslim individuals, residents of Tsikhisdziri and fired their arms in the air several times to harass them. Batumi City Court found M.M. guilty of the crime provided in Article 160.2(a) and 160.3(a)(b) [Burglary in the residence or other private possession through violence or threats of violence, by group and using the official position] and the crime provided in Article 239.2(a) [hooliganism premeditated by the group]. P.G. and O.K. were found guilty of the crime provided in Article 160.2(a) and Article 160.3 (a)(b) [Burglary in the residence or other private possession through violence or threats of violence, by group and using the official position].

The fact that the crimes committed by the public officials were effectively investigated and the perpetrators were punished, by, *inter alia*, deprivation of right of employment in the public service for 1 year, is definitely positive outcome.

However, from the legal perspective, this judgment raises questions and is adopted in total neglect of Article 53.3¹, discussed above. As we noted above, Batumi City Court provided this judgment as one delivered in the case of religiously motivated crime. However, the descriptive part of the judgment does not mention the specific content of the hooliganism committed by the offenders. It would be impossible to identify the religious intolerance motive in this case, had not been the content of the underlying incident known from the Public Defender's report. What is crucial, , the court considered that there was not aggravating circumstances in case of any of the three defendants at the stage of meting out the sentence, despite the fact that Article 53.3¹ explicitly names the religious intolerance motive, as aggravating circumstance. Moreover, this Article shall be employed exactly in the cases, where the incriminated crime (hooliganism and burglary of residence or other private possession, in this case) does not contain religious intolerance, as the crime element. Of course the Court might reach the conclusion that these offenders were not motivated by religious intolerance as a result of examination of relevant facts, but it is clear from the case, that the offenders committed the degrading treatment against the followers of Islam and exactly due to the fact that they were followers of Islam. In view of this, the Court should at least

check whether the offenders were motivated by the religious intolerance and decide whether to use Article 53.3¹ as a result, instead of silent ignorance of this norm.

It is noteworthy the Batumi City Court, as well as all the general courts, except for Gori and Mtskheta City Courts responded to the question of the Tolerance and Diversity Institute (TDI), that they had not delivered any judgment, that employed Article 53.3¹. In view of the case analyzed above, it cannot be ascertained, whether the general courts do not employ this Article due to the objective absence of context for its application, or they do not utilize this norm in the process of meting out the sentence due to some unidentified reasons. There is additional problem of lack of statistical information on this Article. Failure to identify the cases, where this Article was used as legal ground of punishment, might also be caused due to this purely technical problem.

Zestaponi and Tetrtskaro Courts provided the judgments, where persons were convicted on the ground of Article 156, due to the persecution of persons on the ground of confession, belief or faith. In both cases, persecution was committed against the Jehovah's Witnesses. Tetrtskaro District Court approved the plea bargain through the judgment of 1 November, 2013 and imposed suspended sentence of imprisonment up to 1 year and additional punishment of fine in the amount of 1000 GEL. In the judgment of 25 February, 2011 Zestaponi District Court found the defendant guilty in persecution of person on the ground of faith, religion and religious activities, through violence or threat of violence - the crime provided in Article 156.2(a) and sentenced him to one year of imprisonment, which was suspended and probation for two years was appointed.

In the years 2009- 2014 (only the first quarter), the general courts of Georgia did not take any single judgment in respect of the crime provided in Article 155 (Illegal obstruction of the observation of religious rites) of the Criminal Code of Georgia. Thus it may be inferred, that there is higher probability that charges based on Article 156 will end up in the guilty judgment, than in the case of initiation of investigation or prosecution based on Article 155.

5. PERMISSION OF CONSTRUCTION FOR RELIGIOUS BUILDINGS

The Resolution of the Government N 57 of 24 March, 2009 on Procedure to Issue Construction Permit and Terms of Permission⁶⁵ regulates the process of granting the construction permit, fulfillment of terms of permission and submission and sanctioning for exploitation of the constructions on the territory of Georgia. Obtaining the construction permit is a complicated and time-consuming process, which vests the administrative body authorized to issue the permit (mostly the executive body of the local self-government authority) with the vast discretion at every stage of the process. The intense oversight and regulation of the process of construction by the state authorities is justified by the heightened risk the construction may pose to the human life and health. However, on the other hand, regulation by the administrative bodies gives rise to risks of arbitrary decision-making, which is tangible in the cases discussed below, where the representatives of religious minorities encountered bureaucratic hindrances of various difficulty on their way to obtaining the construction permits for the religious buildings.

5.1. CASE OF THE CHRISTIAN ORGANIZATION OF JEHOVAH'S WITNESSES IN TERJOLA

Representatives of the unregistered union of the Jehovah's Witnesses "Terjola" were building a residential house in Terjola based on the construction permission certificate issued by the Chairman of the Municipality Council of Terjola on 19 February, 2014. On 2 June, 2014 approximately 200 persons gathered at the site of the construction, who demanded termination of construction activities. In response to these meetings, the Chairman of the Municipality Council of Terjola issued an order and suspended the construction permit of the union of Jehovah's Witnesses. The officially cited ground for suspension of the construction permit was the administrative complaint of the neighbor, Kakhaber Makaridze, who asserted that the ongoing construction was carried out in the landslide zone, endangered, and damaged his house that was located adjacently. The decision on suspension of the construction

⁶⁵ Resolution N 57 of the Government of Georgia On Procedure to Issue Construction Permission and Terms of Construction, 24 March, 2009

permission was not based on any expert opinion, except for the protocol of visual inspection of the site of construction drafted by some employees of the Municipality, including the representative of Architectural Office. Based on the inspection of soil and damages detectable on the house of the neighbor, they indicated in the protocol that the site of construction might be in the landslide zone and might endanger the house of neighbor, as well as a nearby road for cars.

If the site of construction were located in the landslide zone, it is clear that the Council should not issue any construction permit in the first place. However, according to the geological report that was prepared at the request of the unregistered Union, the evaluation of the soil did not lead to detection of any negative physical or geological processes and the site was not in the landslide zone. Public proceedings on the administrative complaint of Makaridze, that took place on 3 July, 2014 in the Council of Terjola, also proved that the damage of the neighbor's house were older and were not caused by the construction on the adjacent land plot. There were no more formal grounds for keeping the construction permit suspended by the Municipal Authorities, however by 5 July, 2014, the decision was not made yet.

The suspension of the construction was preceded by the rally of the local residents, which was organized by the local Orthodox clergyman (deacon S.T.) and was motivated solely by religious intolerance; it had nothing to do with the terms of construction. Christian Organization of Jehovah's Witnesses asserted that they had video, where a person delivers to the participants of the rally the order on suspension of the construction permit and congratulates them with the outcome. Presumably, that person was a local public official, as they could have access to the text of the order.

Suspension of the construction, when there was no ground for it and against the background of the protests and treats of the local population, raises doubts that local government committed discrimination on the religious ground and as a result limited legal right, which is a crime of violation of human equality through abuse of official position (Article 142.2(a)). Therefore, it is necessary to carry out prompt investigation of this case. The lawyer of the construction permit-holders, Manuchar Tsimintia was notified, that the investigation is under way on the basis of persecution (Article 156 of Criminal Code) of one of the members of unregistered Union, T. T.. However, the heightened

public interest calls for investigation of the alleged crime committed by the public official on the ground of religious intolerance. Criterion to evaluate the effectiveness of the law-enforcement authorities is to investigate this category of offences, instead of ignoring them, or attempting to disguise them under qualification of the less serious crime.

It was explained in the Chief Prosecutor's Office, that there is practice to initiate criminal investigation under one Article of the Criminal Code, but all the facts of the complaint will be examined and checked in the process. They assert that if the investigation results in the evidence of the public official's crime, their acts will be given appropriate legal qualification.

5.2. CONSTRUCTION BY THE SEVENTH DAY CHRISTIAN-ADVENTISTS ORGANIZATION IN MANGLISI

The Adventists have religious, as well as non-religious social goals, such as participation in solution of the social problems without religious agenda. As part of their non-religious goals, they planned to build a sanatorium in the village Algeti, close to Manglisi, which would be available to all, without distinction on the ground of religion. They applied to the Municipality of Tetrtskaro for construction permit. In the spring, 2013, they submitted the required documents for the first stage of the process – determination of the terms of construction. When they submitted the documents for the second stage, they were informed in the Municipality that about 400 residents of Manglisi demanded that they were not given the construction permit for building of recreational and sport center. This was oral communication, without any written explanations.

At the second stage of the process, when the construction project should be agreed, the architect of the Municipality decided, that their project did not comply with the legal requirements. The architect, who authored the project pointed out, that the local authorities approved all the other similar projects and in this specific case, the denial was the result of prejudice against the Adventists, not some objective problems of the project. In spite of this, the project was changed. At the same time, it was found that four plots of land, which should serve as construction site were agricultural land plots and it was

necessary to change the status of land in order to receive construction permit. They applied to the Ministry of Health to change the land status, in order to substantiate the necessity of building the center and thus of changing the land status. At the time of preparation of the present report, the decision of the Public Registry on the land status was still pending.

It is noteworthy, that suspension of the construction permit or delays in the process were developing with the similar scenario in both Terjola and Manglisi: local clergyman, who was presumably informed about the religion of permission-seekers by the local public officials, mobilized the population to protest the construction, which followed at the next level by bureaucratic complications in the permission process. It shall be clarified here, that attitude of the local population, whether positive or negative, is not of any legal relevance for granting the permission or for delaying the process. Denial of construction permit on this ground presents unjustified interference in the property rights of a person, which violates the Constitution and the legislation.

5.3. ROMAN CATHOLIC CHURCH IN RUSTAVI

The Roman Catholics planned to build a church in Rustavi. They started the process of application for permit on 24 May, 2013. They went through the first two stages of permission procedure and were waiting for finalizing the third stage – receipt of the construction permit. The due time was October and November, 2013, but they were not provided any response. Most probably, they will have to apply to court to obtain the construction permit.

Such delays in the process of regulation of construction are type of arbitrariness of the authorized administrative body and the Government Resolution N 57 provides crucial safeguard against it: there are time limits set for each phase of construction permission process. If the administrative organ does not take the decision within the determined period and notify it to the concerned party, including the decision of denial, there is a presumption that decision was taken in favor of the permission-seeker.⁶⁶ This safeguard would be crucial for prevention of the cases of delay of the process that Roman Catholics encountered in Rustavi. However, as we will see in the next chapter,

⁶⁶ Id. Article 45.12., Article 52.5 and Article 54.7

the general courts decided, that the above rules of the Resolution conflict with the relevant rules of the General Administrative Code, which is a superior legal act and therefore this safeguard was deprived of any significance.

5.4. CONSTRUCTION OF THE KINGDOM HALLS IN KHASHURI AND SURAMI BY THE CHRISTIAN ORGANIZATION OF JEHOVAH'S WITNESSES

Jehovah's Witnesses applied to Municipality of Khashuri to launch the process of construction permission for building the kingdom halls in Khashuri and Surami. At the first stage, Executive Board of Khashuri Municipality should determine the terms of construction. The decision was not made in the due time, which under the presumption of Resolution N57 of the Government means favorable decision for the party. Therefore, the permission seeker applied to the local authorities for consent on the project and permission permit, which also were not addressed within the legal time-limits. The unregistered union of Jehovah's witnesses again presumed that their request was upheld and they applied for the construction permit. At that point, the Executive Board found the defect in the construction terms, which it was not authorized to find at that stage under the Government Resolution. Therefore, the Union of Jehovah's Witnesses applied to the court.

Khashuri District Court declared in its ruling⁶⁷, that under Articles 42, 52 and 57 of the Government Resolution, failure to take decision within the time-limits set in the Resolution, shall be considered as approval of the request. However, the court found it important, that under Article 177 of the General Administrative Code, that violation of the time-limit for adoption of the administrative-legal act is considered as denial of adoption and provides ground for filing a complaint. The Court decided, that the Government Resolution and the superior normative act – General Administrative Code prescribed distinct legal outcomes to violation of the decision-making time limits and therefore it decided, that the superior act should rule. Under this interpretation, violation of time limits shall not be considered as approval of the request, but will only serve as ground for complaint against the denial decision of the administrative organ.

⁶⁷ Khashuri District Court, Ruling in Case N3-11-2013, 30 April, 2013, The Reasoning Part, par. 6.11

The Chamber of Administrative Cases of Tbilisi Appellate Court upheld this interpretation.⁶⁸ To substantiate the above interpretation, the Appellate Court pointed out, that construction poses heightened risks for life and health and it cannot be undertaken on the ground of failure to act by the administrative organ:

“The Appellate Court considers it shall not be allowed, that construction permissions or permit documents are transformed into formal acts. In view of the nature, specificity, stability and heightened risk of construction, it excludes that the terms of permission be recognized as lawful due to the failure of the administrative organ to act.”⁶⁹

The above-articulated public interest in having the constructions meet certain preconditions in order to ensure maximum of safety is by all means compelling. However, it would be proper, if the Court also regarded the fact that this interpretation leaves citizens with only time-consuming remedy against the arbitrariness – they can only apply to court. This interpretation basically stimulates omissions and arbitrariness on the side of administrative authorities. Together with the public interest in safe constructions, public interest in prevention of arbitrariness is also a weighty consideration. This is particularly true, if we take into account the fact that in various parts of Georgia (Dedoplistskaro, Tetrtskaro, Khashuri, Surami, Terjola, Rustavi) the administrative authorities delay and hinder the construction of unpopular minorities on the ground of reasons which have nothing to do with the safety of the construction.

6. RESPECT OF AUTONOMY OF THE RELIGIOUS INSTITUTIONS

In the case of *Hasan and Chaush v Bulgaria*⁷⁰, The European Court of Human Rights found that non-interference in the autonomy and internal affairs of

⁶⁸ Ruling of the Chamber of Administrative Cases of Tbilisi Appellate Court in Case N3ð/1025-13, 29 November, 2013

⁶⁹ *Id.*

⁷⁰ Case of *Hasan and Chaush v Bulgaria*, appl. 30985/96, 26 October, 2000

religious organizations is the vital aspect of the freedom of religion guaranteed under Article 9:

“Where the organization of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the believers’ right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection, which Article 9 affords... Were the organizational life of the community not protected by Article 9 of the Convention, all other aspects of the individual’s freedom of religion would become vulnerable”⁷¹

In the above case, interference of the state of Bulgaria in the selection of the leader of the Muslim community and appointment of Chief Mufti against the background of conflict within the community was found to violate freedom of religion. As we can see, from the case discussed below, the interference of the state of Georgia in the organizational matters of the Muslim community is even more sweeping and comprehensive: it is not limited to appointment of Mufti, but also claims other authorities too.

6.1. ESTABLISHMENT OF ADMINISTRATION OF MUSLIMS OF ALL GEORGIA

On 15 July, 2011, the Administration of Muslims of All Georgia, as legal entity under public law was incorporated (Identification Code: 401960794) [hereinafter, “the Administration”]. Under 1.9 (a) of its Charter, “All the mosques, Muslim clergymen, their congregations and other Islamic religious establishments” come under the jurisdiction of the Administration.

According to the information of the representative of “Georgian Muslims Union”, Mr. Tariel Nakaidze, the community of Muslims in Georgia used to be governed by the Administration of Transcaucasia of all Muslims before. Since 2001, Muslims had been requesting the State, to create Administration of Georgian Muslims. However, in the opinion of Tariel Nakaidze, the founders

⁷¹ Id., par. 62

of the Administration of Muslims of all Georgia are not persons, who would be desirable and reliable for Muslim community, but persons selected by the State. It is only state who can reorganize the Administration through its founders. Due to the unilateral incorporation of the Administration by the State, it could not get recognition of the community.

After the change of Government in 2012, Muslim organizations offered to the new Government, to reorganize the Administration with their participation. Instead of this, on 9 January, 2014, the decision was made to divide the Administration into three organizations: Administration of Western Muslims, Administration of Eastern Muslims and Institute of Sheikh, which practically had the effect of separation of Muslims on the ground of ethnic belonging.

Moreover, at the instruction of State, the Shiite Sheikh, V. A. relinquished his position and Ramin Igidov was appointed instead. Sunni Muslims had no opportunity to elect themselves the Mufti. Furthermore, Tariel Nakaidze noted, that Mufti is not a true decision-maker. In fact, Resan Gogitidze runs the Administration in line with the instructions of the State. Officially, he is the executive director of the Administration.

Foundation of the organization, jurisdiction of which covers all the Muslim mosques and clergymen by the state and its unilateral management without participation of the Muslim community, through the founders and the executive director, who were selected in total negation of principles of representation equals to the destruction of the autonomy of the Muslim community. This is unjustified interference in the freedom of religion of the members of the Muslim community, on one hand and on the other hand, it poses a realistic danger of strife and conflicts within the community.

7. RECOMMENDATIONS FOR STATE AUTHORITIES

TO THE PARLIAMENT OF GEORGIA, GOVERNMENT OF GEORGIA:

1. To eradicate the preferential treatment of the Georgian Orthodox Church, to ensure the equal tax exemption for other religious organizations and to ensure the elaboration of the new policy of tax exemptions and funding,

which will be based on the equal treatment of all religious organizations and at the same time will spent the public resources reasonably and transparently, for the articulated public reasons.

2. To elaborate the unified policy of compensation of the damages inflicted in Soviet times, which will not take form of payment of the certain amount of money for the indefinite time to certain confessions, which were selected by the ambiguous criteria. Policy of compensation shall be based instead on the objective findings of the research of the historically inflicted damages;

3. To eradicate discrimination emanated by Article 3 of the Law of Georgia on State Property, which shall to grant the right to acquire property through the procedure of direct sale under the Directive of the Government to any religious organization, that is registered as legal person under public law. At present, this is the privilege of the Georgian Orthodox Church;

4. To initiate inclusive public discourse on the necessity and mandate of the State Agency of Religious Affairs with the participation of the concerned parties.

TO THE MINISTRY OF EDUCATION:

To ensure stringent control on observation of legal prohibition on indoctrination and proselytism in basic educational institutions and to take effective measures against the violation of these requirements by the employees in the system of Ministry through imposition of due liability.

TO THE MINISTRY OF INTERNAL AFFAIRS, MINISTRY OF JUSTICE AND PROSECUTOR'S OFFICE OF GEORGIA:

To implement more stringent criminal policy towards religiously motivated offences, that would ensure the deterrence of similar crimes by the perpetrators, particularly, when there is an issue of violation of human equality and religious discrimination committed by public officials.

TO GENERAL COURTS OF GEORGIA:

1. In the disputes related to restitution of ownership on religious buildings taken by the Soviet Union to employ the identical test towards the Orthodox Church of Georgia and other religious organizations, so that the historical origin of the buildings be researched at its best and religious buildings be returned to the appropriate religious communities, which is necessary to meet the strictures of the constitutional freedom of religion and belief;
2. In the cases of religiously-motivated crimes, to consider the motive of intolerance as aggravating circumstance in the process of meting out the sentence and to process statistical data for Article 53.3¹ of the Criminal Code of Georgia, so that courts as well as other decision makers have access to the full information on frequency of the religiously motivated crimes and the needs of fighting it.
3. To carry out strict scrutiny on the violation of law by administrative authorities in process of granting of construction permits, to duly evaluate the risk of arbitrariness of the authorities and to elaborate appropriate remedies, so that permission seeker is not the only one who pays for the illegal omission of the administrative organs.

PART TWO

1. STATEMENTS MADE BY PUBLIC OFFICIALS ON THE SUBJECT OF RELIGION

In the reporting period, statements of politicians have been reviewed with respect to 10 different occurrences during the last year (May 2013 – April 2014).

Subject of religion was directly or indirectly related to the following occurrences:

- May 17, 2013 protest, International Day Against Homophobia and Transphobia (May 16 – 31, 2013)
- Violation of rights of Muslims in the village of Samtatskharo, Dedoplistskharo region (May 31 – July 10, 2013)
- Dismantling of minaret in the village of Chela (August 26 – September 2, 2013) Bill on Local Self-government (November – December 2013)
- Incident at Hanukkah Holiday (December 4 – 11, 2013)
- 2014 Christmas Epistle of the Patriarch of Georgian Orthodox Apostolic Autocephalous Church (January 6 – 10, 2014)
- Initiative on financing four religious confessions, creation of State Agency of Religious Affairs (January 27 – February 10, 2014)
- Discussion/approval of the Bill on Eradication of All Forms of Discrimination (April 16 – May 5, 2014)

During the period of research 75 statements of 42 politicians have been reviewed. Out of 42 politicians 14 were representatives of government (Coalition Georgian Dream – 12, United National Movement – 2), 20 were representatives of parliamentary majority and minority, (Coalition Georgian Dream – 15, United National Movement – 5), 8 politicians represented non-parliamentary parties (National Movement – 2, Georgian Dream – 2, Georgian Troupe – 1, Nino Burjanadze – United Opposition – 1, Free Georgia – 1, Christian-Democratic Movement – 1).

The review of the public statements covered by media demonstrated that commenting on the important facts somehow related to religion or religious institutions, some politicians, state and public officials do not observe the principle of religious neutrality and provide biased evaluation of the situation, based on the personal religious convictions or influenced by the mainstream religious conjuncture.

1.1. 17 MAY OCCURENCES

Part of the politicians adequately assessed the acts of physical violence by Orthodox clergymen and their supporting parishes towards participants of the May 17, 2013 demonstration dedicated to the International Day Against Homophobia and Transphobia and the reaction of law enforcement officers to these facts. Another part condemned the acts of violence in their public statements, however they did not make sharp statements in relation to the responsibility of the Orthodox clergymen. There were also homophobic expressions and discrimination on the ground of sexual orientation on the side of the politicians. Some politicians related the activities of sexual minorities to the former ruling party, United National Movement, and thereby tried to discredit political opposition within the part of the society, which shares values of the Orthodox Church.

14 Political entities responded to the occurrences of May 17. Out of these statements, 3 statements did not correspond to the principles of a secular state (1 politician represents non-parliamentary opposition – Free Georgia party, 2 – Coalition Georgian Dream); Statements of 11 politicians were in line with the principles of secularism (5 of them represent the Government, 2 –

National Movement, 3 persons – parliamentary majority, Coalition Georgian Dream, 2 – parliamentary minority, United National Movement, 1 – non-parliamentary politician from Coalition Georgian Dream).

STATEMENTS OF THE FOLLOWING POLITICIANS CORRESPOND TO THE PRINCIPLES OF SECULARISM:

President of Georgia Mikhail Saakashvili:

“There are multiple ethnic groups and representatives of religious confessions, people of various orientations living in Georgia, and everything, what unites them are the laws in force before which all of them are equal, including when they break them, they are still equal... (May 21, 2013, Tabula, “Mikhail Saakashvili: There Will Never Be a Major Problem of Fundamentalism in Georgia”).

Government of Georgia

Prime-Minister Bidzina Ivanishvili responded to the occurrences of May 17 three times within 10 days. According to Ivanishvili, any citizen, including a cleric, in case of confirmation of guilt, will be responsible before the law (May 26, 2013; *Netgazeti*, “Ivanishvili: We should Reinforce the Independence of Church from State”).

Statements of a related content have been made by the Minister of Education, Giorgi Margvelashvili and Minister of Defence, Irakli Alasania; they condemned violence and indicated that everyone should be responsible before the law.

The sharpest and most critical statement from the government on the occurrences of May 17 has been made by the Secretary of the National Security Council, Giga Bokeria.

“Any cleric, who commits a violence or calls for violence in obviously dangerous situation, commits a crime under the Georgian law and everyone should bear responsibility. I hope in the Church, too, there will be people who will

say the same. However, regrettably, what we saw today, “moral” initiative in the clerics were demonstrated by them, who preach hatred and themselves commit violence. These people should be punished by law” (May 17, 2013; Tabula, „Giga Bokeria: Culprits Should be Punished“).

Parliamentary Majority

Statement of David Usupashvili, member of Coalition Georgian Dream was in compliance with principles of secularism. He put emphasis on the rule of law and noted, “representative of no opinion, organization or religious belief has immunity” (May 18, 2013; *Netgazeti*, “David Usupashvili: The Police Chose Absolutely Correct Way Out”).

According to Levan Berdzenishvili, the Government should observe principles of secularism and the responsible clerics should be held responsible. Berdzenishvili also criticized the call of the Patriarch related to banning of May 17 event.

“As soon as, be it a cleric or else, takes a stool and strokes it onto my head, Lord Father will not help him, he will be judged by the Laws of Georgia” (May 29, 2013; Netgazeti, “Levan Berdzenishvili: We Should Bring the Issues of Secularism to End“).

Tinat Khidasheli: *„...Response here should be unambiguous and each oppressor, who can be identified, must be held responsible”, (May 17, 2013; Rustavi 2, TV program Pozitsia).*

Parliamentary Minority

Members of United National Movement party, Zurab Japaridze and Giorgi Gabashvili made critical statements in television broadcasts towards offender clerics and requested punishment of culprits.

Non-Parliamentary Parties

Member of Coalition Georgian Dream, David Zurabishvili, emphasized “the raise of religious nationalism”, which is “one more challenge which will be difficult and painful to overcome” (May 13 - 19, 2013, *Asaval-Dasavali*, Issue 19, page 14-15).

STATEMENTS OF THE FOLLOWING POLITICIANS DO NOT CORRESPOND TO THE PRINCIPLES OF SECULARISM:

Government of Georgia

Minister of Energy, Kakha Kaladze positively assessed the work of the Ministry of Internal Affairs on the day of demonstration; in his statement Kaladze also emphasized his own religious belief, and noted that “any violence or call for violence is non-Christian” (May 17, 2013; *Tabula*, “Kaladze: Situation Has Been Controlled Without Violence and Violations of Law”).

Parliamentary Majority

Member of Coalition Georgian Dream, parliamentarian Zviad Dzidziguri stated in May 21, 2013 Rustavi-2 TV program *Archevani*, that everyone is equal before the law and oppressor should be punished. However, Dzidziguri also noted that he does not support “promotion” of sexual minorities within the society (May 21, 2013; *Rustavi 2*, TV program *Archevani*).

Non-Parliamentary Opposition

It is noteworthy, that one day prior to the event, Patriarch of Georgia Ilia II, called Georgian Government and the City Hall of Tbilisi to revoke a permit for holding a protest in front of the Parliament and to limit the rights of LGBT community.⁷² It is due to the disregard of this call that Kakha Kukava, leader of the party Free Georgia criticized the then Prime-Minister Bidzina Ivanishvili. Kukava justified violence towards representatives of LGBT community and accused parliamentary parties with liberal values of organization of “Gay Pride”. He also justified violence from the side of clerics due to “defiant” actions of the supporters of LGBT group.

„Didn't the Patriarch specifically state that to avoid the clash we should postpone and not hold this action in support of homosexuals? Why didn't Ivanishvili listen to Patriarch's request? Because he wanted to show to the United States, look, how I protect peoples' freedom of expression!”, Kakha Kukava (Asaval-Dasavali, May 13-19, 2013, Issue 19, page 14-15).

72 <http://www.netgazeti.ge/GE/105/News/19650/>

1.2. OCCURRENCES IN THE VILLAGE OF SAMTATSKHARO

During the religious conflict identified in May-June, 2013 in the village of Samtatskharo the local Muslims were not given possibility to perform traditional Friday prayer. Orthodox Christians attacked the chapel several times and threatened Khoja with taking away of the property and murder.

4 politicians responded to the occurrences of Samtatskharo. All of them represented government, compiled by Coalition Georgian Dream. Out of these, only the statement of State Minister for Reconciliation and Civic Equality Paata Zakareishvili contained a call to protect the Muslims. However, in his later statements Zakareishvili denied the abuse of Georgian Muslims' rights and violence perpetrated against them on religious grounds. He pointed out that instead of public space, Muslims could perform their religious rites in private.

Statements made by the Prime Minister Bidzina Ivanishvili, the governor of the village Samtatskharo Gulo Nadirashvili and Governor of Dedoplistskhara Municipality Irakli Shiolashvili did not correspond to principles of secularism. Statements of 2 persons, Gulo Nadirashvili and Irakli Shiolashvili expressed the interests of the Patriarchate.

As review of statements publicized in media shows, that despite evident facts of violation of Muslims' rights, public officials would not acknowledge severity of the problem, called the conflict to be artificially provoked, violated the principle of religious neutrality and referred to the necessity to protect rights of the majority. Even more so, village governor directly supported local Christians in limitation of rights of Muslims.

After two weeks following the persecution of Muslims, on June 14, 2013 the State Minister for Reconciliation and Civic Equality Paata Zakareishvili, visited the village. However, his visit did not calm the situation. On the day of the visit, due to the tensions in the village Samtatskharo Muslims did not attend their traditional pray. Two weeks afterwards on June 28, 2013 the local Christians broke into the house of Suliko Khorzevanidze and demanded abolition of chapel, otherwise they threatened the family to burn their house and expel them from the village. On June 3, 2013 the Prime-Minister Bidzina Ivanishvili responded to the fact of violence against Muslims at a press-conference. Based on the severity of the conflict he considered the harm caused to the Muslims to be

inadequate. Prime-Minister called the conflict “artificially inspired” and stated it was “leftover of the 9-year rule” of the previous government.

STATEMENTS EXPRESSING SUPPORT FOR THE RIGHTS OF MINORITIES:

Government of Georgia

The State Minister for Reconciliation and Civic Equality, Paata Zakareishvili met Muslims as well as Christian population of the village. He noted in his conversation with Orthodox Christian inhabitants that “even if one Muslim is to live in the village, he/she must have a right to pray” (*Netgazeti, “Paata Zakareishvili Attended Pray of Muslims in Samtatskhara”, June 14, 2013*).

STATEMENTS, WHICH REFLECT INTERESTS OF ONLY ONE CONFESSION:

Government of Georgia

The State Minister for Reconciliation and Civic Equality, Paata Zakareishvili:

“The goal of new Government is not punishing somebody on the ground of societal request. It is already a month I try to figure out the details of the case, and so far, I have found only one family who says that they are subjected to violence. And this is the family of a local Muslim leader...When I arrived in the village I could not find people who were not allowed to perform prayers... One person does not need a public space to perform a Friday prayer, he or she can do it at home” (*Tabula magazine, “We Could Not Find Anybody in Samtatskaro Who Wanted to Pray and Was Not Allowed”, August 1, 2013*).

Local Self-Government

It is obvious from the statement of the Samtatskhara village governor, Gulo Nadirashvili, that in the times of conflict local Government carried out discriminative practice, which was based on taking into consideration the will

of the majority. The governor wrongfully assessed her liability for ensuring freedom of religion to representatives of all confessions. According to her, the local Christian population was against holding of religious liturgies at Muslim house of worship and in the process of confrontation of population she had an insignificant role.

„...It is a Christian village; they are Ingilos from Hereti, who have preserved Christianity, saying they don't want this. Neither Acharian youth want a Muslim shrine, we don't want to be called "Muslim Acharians" as we go out of the village, otherwise confrontation has nothing to do with it. It is the population which shows resistance, what right do I have, I am a public official" (Netgazeti, "Village Attorney Denies That She Herself Obstructs Muslims From Pray", May 31, 2013).

Governor of Dedoplistskharo Municipality Irakli Shiolashvili considered unlawful obstruction of Muslims from observation of their religious rule and limitation of their freedom of assembly to be legitimate.

„The village expressed its will, the will of the village is supreme for local self-government and it will be as people want it, and people's will is not to have the shrine constructed. As for Constitutional right, who, where and how should pray, those three people who live in this village and want to have a house of worship, they have a shrine at their home and have been praying there for 37 years."

1.3. DISMANTLING OF MINARET IN THE VILLAGE OF CHELA

On August 26, by dismantling of the minaret of a mosque by the Customs Department of the Revenue Service of the Ministry of Finance and physical insult of the Muslim population by forces in the village of Chela of Adigeni Municipality, rights of Muslims have been severely violated. Irresponsible statements made by public officials and politicians had a negative impact on the developments. In this respect, most perturbing were statements made by the Prime-Minister of Georgia, Presidential candidate from Coalition Georgian Dream, Giorgi Margvelashvili, Minister of Justice, Tea Tsulukiani, the State

Minister for Reconciliation and Civic Equality, Paata Zakareishvili and Chair of the Committee on Protection of Human Rights and Civil Integration, Eka Beselia.

In total, 8 politicians responded to the dismantling of minaret in the village of Chela. Out of these only 2 contained a call towards protection of rights of Muslims (members of United National Movement – from Parliamentary minority Chiora Taktakishvili and non-Parliamentary election subject, Presidential candidate David Bakradze), statements of 6 politicians were discriminatory in their content (representatives of Coalition Georgian Dream: 3 of them from Government, 1 – parliamentary majority and 2 – non-parliamentarians, Presidential candidate from the party Georgian Dream and a leader of Georgian Troupe party).

Analysis of the statements show that representatives of the Government denied discrimination on the basis of religion and considered the facts of severe violation of Muslims' rights in the framework of confrontation of political powers. In expressing religious feelings members of the Government were not managing to mark off their personal viewpoints from their official responsibilities and were publicly putting under doubt the right on religious buildings of religious minorities, in this particular case – need for existence of the minaret. Representative of non-Parliamentary opposition, leader of Georgian Troupe, Jondi Bagkhaturia, tied the construction of minaret to expansion of Turkey and used this fact against his political opponent.

DECLARATIONS WITH DISCRIMINATIVE CONTENT OR CONTEXT TOWARDS RELIGIOUS MINORITIES:

Government of Georgia

On September 3 and 4 the Prime-Minister of Georgia, Bidzina Ivanishvili, responded to the dismantling of minaret. Prime-Minister stated, that construction of the minaret “took place with violations of law, therefore, the Government cannot turn a blind eye on willful acts and illegality.” Ivanishvili likewise denied religious lining of the “dismantling” of minaret. „*As Head of Government I shall*

put emphasis on the law. We cannot behave so that in one night, we wake up in the morning and there is minaret standing, which has not been agreed with anyone, there can not be any project local self-government is not aware of.”

Minister of Justice, Tea Tsulukiani: *“It is possible that similar cases (minaret) occur in other places as well, but this should not be a taboo topic and Georgian society should be able to decide whether there should be minarets, without hysteria and opposition. This issue has been decided differently in different countries. A number of countries have rejected minarets by way of referendum”*(Netgazeti, „Tsulukiani: The Society Should Decide Without Hysteria, Whether There Should Be Minarets”, August 27, 2013).

The State Minister for Reconciliation and Civic Equality, Paata Zakareishvili: *„This minaret has apparently been mounted two months ago. Accordingly, this happened already amid escalation, which generally is artificially created after elections and victory of the new government between Islam and the Government”* (August 26, 2013; Netgazeti, “Protesters in Adigeni Must Disperse” – Interview with Paata Zakareishvili).

Parliament of Georgia

The Chair of the Committee on Protection of Human Rights and Civil Integration, Eka Beselia likewise denied violation of Muslims’ constitutional rights and discussed the issue from the perspective of construction related legal problems.

„The occurrence in the village of Chela is not related to religious trend or obstruction of religion. These are legal problems, which relate to construction. Construction of a church, of a Mosque, has its own rule. In many European countries there are such precedents where public opinion is surveyed and decision made taking into consideration their will. Why should not we ask our people their opinion?”

Non-Parliamentary Parties

Religious discrimination motive has been denied by the Presidential candidate from Coalition Georgian Dream, Giorgi Margvelashvili - *“The topic of Chela*

village of Adigeni region, which exists and in reality does not exist, shall very soon be resolved...” (July 27, News Agency GHN)

„I am happy that clerics are inculcating the culture of tolerance and naturally, the parish will follow them. The State shall act in these processes only as a guarantor of religious tolerance and ... mainly also of legal processes” (August 30, Tabula, “Margvelashvili: I Am Happy that Highest Clerics Are Inculcating Tolerance”).

Leader of the Georgian Troupe, Jondi Baghaturia tied the fact of mounting of the minaret and the tensions in the region with interests of Turkey. His statement was insulting and discriminative towards Muslim citizens.

Turkish special agencies are working very actively. Their agents are recruited betrayer Georgians, who want to create tension on religious grounds. They are particularly devoted to this in Achara and Samtskhe-Javakheti”, Jondi Baghaturia (www.sazogadoeba.ge; “Turkish Espionage Network Almost Destroyed and Upended Georgia”, November 28, 2013).

Baghaturia criticized members of the Republican party, since representatives of his faction in Adigeni Assambly supported construction of the minaret in Chela. Baghaturia called their actions to be treason. Baghaturia’s negative stance on mounting of the minaret was obvious from the materials.

„The time of shameful politicians should come to an end in Georgia! Whoever is engaged in treason of homeland, the people should openly express their hatred toward them”, - Jondi Baghaturia (www.sazogadoeba.ge; Turkish Espionage Network Almost Destroyed and Upended Georgia”, November 2, 2013).

STATEMENTS CALLING FOR SUPPORT OF THE RIGHTS OF MUSLIMS:

Parliamentary minority

Representatives of United National Movement, Presidential candidate David Bakradze and representative of Parliamentary minority, Chiora Taktakishvili expressed their outrage with respect to the dismantling of Chela minaret.

David Bakradze put emphasis on the responsibility of enforcement officers: “Rash and foolish moves of Revenue Service have played direct provocative role in creation of a new tension source in the country” (August 30, 2013; *Tabula*, „Bakradze: Revenue Service Move Has Played a Provocative Role”).

Member of minority Chiora Taktakishvili: *“Its shameful! Patriarchate, “Orthodox” majority and the Government have agreed to limit the freedom of religion of Muslims in accord, not to get the minaret back to its place until they completely prohibit mounting of minarets by law. At the same time let’s have Muslim Mufti thank the Patriarchate for painless resolution of the problem. Do you remember a greater cynicism than this? Prime-Minister is again sleeping, of course!”* (August 29, 2013, *Tabula*, verbatim).

1.4. INCIDENT AT HANUKKAH HOLIDAY

In media outlets selected for the research no single public statement of politician has been made which would condemn the fact of pogrom of Jewish holiday Hanukkah on Freedom Square on December 4, 2013.

The festive celebration of Hanukkah holiday on Freedom Square has been protested by up to 20 citizens, including Orthodox Christian clerics. Two citizens tore down the posters and damaged the mounted platform. Pursuant to statements of the protesters, celebration of the holiday in public area was insulting to Orthodox parish. When President of Georgia Giorgi Margvelashvili in the role of an honorary guest was lighting the candles, part of the citizens called him not to light the candles. Despite the protest, President stated that it was a great honor for him to participate in the celebration of Hanukkah holiday.

1.5. APPROVAL OF THE CODE OF SELF-GOVERNMENT

Government’s partiality towards Patriarchate has become obvious in public statements with respect to approval of the Code of Self-Government. It is noteworthy that discussion of certain parts of the bill among the wide

political spectrum started after the Patriarch negatively assessed the law. Patriarch Ilia the Second stated during his sermon at Svetitskhoveli Cathedral on 4 December that if Georgian Parliament would approve the current standing of the bill on self-government, “this will lead the country to destruction”.

Following this address committee hearings of the Code at the Parliament have been postponed for several days. Part of the MPs noted, that Patriarch’s viewpoint is “always noteworthy and important” for them.

Following consultations with the Patriarchate, on December 10, 2013, the legislators have finally amended that article of the Code which Patriarchate considered problematic. Based on the decision of the MPs, regional unities of municipalities existing in the Code will transform into regional advisory councils.

After scrutiny of the Code, member of Christian-Democratic Party, Levan Vepkhvadze positively assessed the fact that the Government took into consideration opinion of the Patriarchate and that the specific article was amended based on their indication.

Overall, 11 politicians responded to the Code of Self-Government. Out of these, statements of only 4 politicians corresponded to the principles of a secular State, while 7 – did not.

Following statements were in compliance with the principles of a secular state – 2 representatives of Coalition Georgian Dream (Parliamentary majority), as well as statements of 2 representatives of National movement, (1 – Parliamentary minority, 1 – non-Parliamentary opposition). Statements not in compliance with the principles of secular state were made by 5 members of Coalition Georgian Dream from Parliamentary majority and 2 representatives of non-Parliamentary opposition (Christian Democrats, Georgian Trout).

STATEMENTS OF FOLLOWING POLITICIANS DID NOT CORRESPOND TO THE PRINCIPLES OF A SECULAR STATE:

Parliamentary Majority

The Chair of the Committee on Protection of Human Rights and Civil Integration, Eka Beselia noted, that, „Position of His Holiness is important“ (*Netgazeti, December 4, 2014*).

Member of Coalition Georgian Dream, Vice Speaker of the Parliament, Manana Kobakhidze also drew attention to the authority of the Patriarchate: “We Listen to the Position of the Patriarchate. It is noteworthy and important” (*December 4, 2013; Netgazeti*).

Chairman of the Committee on Industrial Economy and Economic Policy of the Parliament of Georgia, Zurab Tkemaladze conceded that the reason for adjournment of the committee discussion was the Patriarch’s position (*Tabula, „Tkemaladze: One of the Reasons for Adjournment of Committee Discussion Was the Patriarch“, December 5, 2013*).

Meeting with the Patriarch and reconsideration of the Self-Government Code was positively assessed by member of the majority Irakli Sesiashvili: “When Patriarchate made a statement regarding the reform of self-government, Government would naturally try to meet them“ (*Tabula, „Tkemaladze: One of the Reasons for Adjournment of Committee Discussion was the Patriarch“, December 5, 2013*).

Member of the Parliamentary majority, Victor Dolidze told the press that the Government will take into consideration opinion of any representative of the society, “all the more it will surely take into account opinions of the Catholicos Patriarch”.

„We listen to His Holiness and should do so, because he proposes many interesting and clever ideas“(*December 5, 2013, Information Agency Pirveli*).

Statements of MP, Soso Jachvliani, the member of Coalition Georgian Dream did not correspond to the principles of secular state:

„What mandate, Patriarch is above all mandates... We should reconcile all issues with Patriarch to save our spirituality...“(December 6, 2013, *Tabula*, citations).

Jachvliani criticized MP Tamar Kordzaia, who considered the Patriarch's statement as intrusion into the functions of the government. As Kordzaia noted, the Patriarch's statement has one sole purpose, "not to implement reform of self-government", Kordzaia put on social network Facebook: "Would it Be Better to Give one Parliamentary Mandate to the Patriarch?!"

Non-Parliamentary Opposition

Leader of the party Georgian Trout, Jondi Baghaturia noted in his interview to newspaper *Asaval-Dasavali*, that for criticizing the Patriarch Kordzaia should be "withdrawn from Parliament" by the people. Baghaturia called anti-Georgian those political forces who supported the Code on Self-Government (*Newspaper Asaval-Dasavali, December 9-15, 2013, page 7*).

Leader of Christian-Democratic Movement, Levan Vepkhvadze: "It is good that the Government made concessions and the councils, in the form as envisioned originally, will not be formed, there will be no entities of public law and there will be no threat of separation of the country - Levan Vepkhvadze (*December 10, 2013 for.ge; „Self-Government Code - How a Product Is Created“*).

STATEMENT OF A POLITICIAN CORRESPONDS TO THE PRINCIPLES OF A SECULAR STATE:

Parliamentary Majority

Representative of Coalition Georgian Dream Tamar Kordzaia evaluated the statement of the Patriarch as Church's intrusion into governmental functions (*December 4, 2013, Tabula: „Kordzaia: Would It Be Better to Give One Parliamentary Mandate to Patriarch?!“*).

It can be said that assessment of MP of the call of spiritual hierarchy is overstated. Secularism means separation of powers of Church and State. At

this time the Government protects religious neutrality, does not intervene in the activities of religious institutions, and neither does it give to spiritual leaders opportunity to carry out political power. A cleric, as any citizen, has a freedom of expression of opinion.

“The Patriarch may not state that the Self-Government Code has risks, which I am sure about, majority has not even read from beginning to end. Therefore, if the Patriarch calls the society for active discussions, he should not put forward his assessment as to what risks this Code has”, – Tamar Kordzaia (December 4, 2013, Netgazeti, “Tamar Kordzaia: The Patriarchate Overly Interferes into Governmental Activities”).

In this context, assessment of member of the Parliamentary majority, David Usupashvili is most adequate and corresponds with principles of a secular state.

„If we want to build a civilized country, then we should accommodate ourselves with the idea that Georgia belongs to everyone – including to a religious man. The patriarch goes to the elections and votes, therefore he has a full right and freedom to express his views. Interference will only take place if the Government lets anyone interfere with its own business”, - David Usupashvili (December 6, 2013, channel Rustavi 2, TV program Pozitsia).

Parliamentary Minority

One of the leaders of Parliamentary minority, Pavle Kublashvili in a TV program *Pozitsia* of Rustavi 2 channel emphasized the importance of separation of religion from State and protection of principles of secularism.

„I don’t understand, had Patriarch said nothing, should they not have read the bill at all, or was the reform which is carried out a negligible issue? Such statements are by definition not natural, that we shall read the bill because the Patriarch called us to do so... I think that the main problem is separation of politics and religion, of politics and church and it should take place” - Pavle Kublashvili (6 December, Rusatvi 2, TV program Pozitsia).

Like Kublashvili, Secretary of the United National Movement in Foreign Affairs, Giga Bokeria spoke about the Patriarch’s statement and emphasized the necessity of separation of religion from state.

“Talking about facilitation of separatism and the plan on dissolution of the country in the best case is total ignorance and is categorically unacceptable for me. We should understand that Church and State in Georgia are separate... - Giga Bokeria (December 7, 2013, Tabula, “Bokeria: We Should Understand that Church and State in Georgia Are Separate”).

1.6. THE PATRIARCH’S 2014 CHRISTMAS EPISTLE

10 politicians responded to Patriarch’s 2014 Christmas Epistle, which was directed against rights of children and women, and in general against minority groups and organizations that support their rights. Out of these, statements of 7 politicians (3 – Government Coalition Georgian Dream, 2 Parliamentary majority Coalition Georgian Dream, 2 – Parliamentary minority, United National Movement) was in compliance with principles of a secular state, and of 3 – was not. Among these were 1 politician, Government representative from the Coalition Georgian Dream, 1 member of Coalition Georgian Dream in Parliamentary majority, and 1 representative of non-Parliamentary opposition party Free Georgia. 1 member of the government used discriminative terminology on the ground of sexual orientation.

A number of representatives of the government expressed views contrary to the Patriarch’s, while some abstained from public statements. For example, the Prime Minister of Georgia, Irakli Garibashvili, in response to a question of journalists whether he agrees with viewpoints expressed in the Epistle, noted that he needs an advise of more competent people on this issue (*Netgazeti, January 16, 2014*).

STATEMENTS OF POLITICIANS THAT DO NOT CORRESPOND TO THE PRINCIPLES OF A SECULAR STATE:

Government of Georgia

Minister of Corrections, Sozar Subari in his statement expressed support for the sermon, identified himself with dominant religious group and emphasized the patriarch’s moral superiority.

„When we say that, on the one hand, this is a country, where almost 90% are children of this church and is parish of this Church, at this time we should accept these words, which come from its leader, since this is the foundation for the country’s solidity” (Netgazeti, January 7, 2014, „Sozar Subari: Such Emphasizes on Family Sacredness Are Not Occasional”).

Parliamentary Majority

The Chair of the Committee on Protection of Human Rights and Civil Integration, Eka Beselia noted, we should talk with great caution on topics like the Patriarch’s Christmas Epistle and that by criticism people often hurt Patriarch’s heart. Beselia positively assessed the views expressed in Patriarch’s Epistle; according to her, the Leader of the Church spoke of Christian education, family traditions and he did not call for humiliation of the rights of children born by surrogates.

„The Patriarch did not say that we should violate rights of these children, or that we should not love them, should not accept them or spurn “disobedient” wives... I wish we could live a day with the same forgiveness, love and kindness as the Patriarch has managed to live with” (January 9, 2014, Tabula, “Eka Beselia: Surrogation Has Become a Business and a Source of Trafficking Here”).

Non-Parliamentary Opposition

Leader of Free Georgia party, Kakha Kukava, talking with “Asaval-Dasavali”, called the protest in front of the Patriarchate, participants of which critically assessed viewpoints expressed in the Epistle with respect to children born through artificial insemination, to be “a step against state security”.

„Yes, a protest at the Patriarchate of Georgia and those posters, saturated with hatred which Ninia Kakabadze and her myrmidons held, is raising of a hand at Catholicos-Patriarch of Georgia...” – Kakha Kukava (January 13-19, 2014, Asaval-Dasavali, N 2,page 9, „Interview with Kakha Kukava”).

STATEMENTS OF POLITICIANS CORRESPOND TO THE PRINCIPLES OF A SECULAR STATE:

President of Georgia, Giorgi Margvelashvili responded to the fact of pogrom of the protest at the Patriarchate and noted, that “in a society of integral, free people violence on any ground is totally unjustified” (*January 9, 2014; Netgazeti, “President Responds to the Incident at the Patriarchate”*).

The patriarch’s Epistle has been critically assessed by the Minister of Justice Tea Tsulukiani and Assistant to the Prime-Minister, Tamar Chugoshvili, from Parliamentary minority United National Movement, David Darchiashvili and Zurab Japaridze and the representative of Coalition Georgian Dream, Tamar Kordzaia.

Member of the majority Zviad Kvachantiradze commented with criticism on the substantive part of the Epistle, though noted, that he does not believe “that all this has been voiced with the Patriarch’s will” (*January 7, 2014; Tabula, “Zviad Kvachantiradze: I Do not Believe that All This Has Been Said with Patriarch’s Will”*).

1.7. GOVERNMENT’S INITIATIVE RELATED TO FINANCING “FOUR CONFESSIONS”

Pursuant to the Resolution of Government of Georgia dated January 27, 2014, Government of Georgia apportioned direct subsidy financing the four religious associations apart from Georgian Patriarchate. Under this initiative, other religious associations had been left without financing, which in itself is a faulty practice of ranking of confessions.

Despite the flaws in the noted model of financing and discriminative policy towards other religious associations, a number of politicians expressed critical views with respect to financing of four religious organizations.

For example, representative of non-Parliamentary opposition, Dimitri Lortkipanidze called the initiative to be an action of Government “against the Orthodox Church”. According to him, Georgia undertook obligations *vis-*

a-vis international liberal society to protect all minorities (including sexual and religious), “even if this happens at a price of decay and insult of its own religion”.

„This is already about financing not confessions, but of other religious denominations, which, let alone, is an unlawful fact under the Concordate between the State and the Church. Has anyone asked a question whether Armenian Church will abandon the disputed churches if we finance Armenian-Gregorian Church? - Dimitri Lortkipanidze (Asaval-Dasavali, January 3-9, 2014, N5, page 35).

1.8. DISCUSSION OF ANTI-DISCRIMINATION BILL

Challenges in the country related to secularism have become once more evident during public discussions of the Bill on “Eradication of all Forms Discrimination”. Parliament adopted the law with first hearing on April 17, 2014, however it was amended at the request of the Patriarchate, which now suggests interpretation of the law in favor of a dominant religious group. For example, specific reference to the effect that no provision of the Law may be interpreted so as to contradict the Constitutional Agreement between the Government and Georgian Orthodox Apostolic Autocephalous Church is irrelevant.

Before approval of the Law, the Patriarchate negatively assessed specific references of the Bill to protection of the rights of minorities. Part of Orthodox clerics and non-Parliamentary opposition requested, that the legislator withdraws “sexual orientation” from the list of grounds of discrimination.

It is noteworthy, that in addition to non-parliamentary opposition and non-governmental organizations consideration of the Bill was attended by clerics and members of Orthodox Parents’ Unity. Archpriest David Isakadze threatened the MPs, who would support the Bill, with anathema.⁷³ Despite the fact that majority of politicians noted that they supported the law, their declarations often expressed standpoint of one confession and Patriarchate

⁷³ <http://cp.ge/ge/statiacci.php?ID=14905>

was mentioned in a preferential context compared to other minority groups. In addition, tendency to approximate national and religious identities has become obvious in political narrative.

20 politicians have made statements with respect to Antidiscrimination Bill, out of which statements of only 8 of them were in compliance with principles of a secular state, and of 13 – were not, rather expressed interests of the Patriarchate.

Politicians, whose statements were in compliance with principles of a secular state – Government (1), Parliamentary majority Georgian Dream (4), Parliamentary minority “National Movement” (2), non-Parliamentary political entity Georgian Dream (1).

Statements of following politicians did not correspond to the principles of a secular State - Government, Georgian Dream party (3), Parliamentary majority, Georgian Dream (8), non-Parliamentary opposition Georgian Trout (1).

At the same time, in 3 cases the politicians discriminated on the ground of sexual orientation: Parliamentary majority Georgian Dream (1), Government, Georgian Dream (1), non-Parliamentary opposition Georgian Trout (1).

STATEMENTS EXPRESSING INTERESTS OF THE PATRIARCHATE:

Government of Georgia

The Prime-Minister, Irakli Garibashvili responded to the Patriarch’s statement and noted, that “Ilia the Second is a wise man and he knows well what he is doing.” According to him, the Bill does not endanger traditions and values of the country (*April 30. 2014, Tabula, “Garibashvili: We Shall Not Adopt a Law Which Would Endanger Interests of the State”*).

Minister of Justice Tea Tsulukiani underlined unity of secular and clerical authorities and noted that “It is obligation of everyone, not to disturb the most prominent and respected person in our society, Catholicos-Patriarch

of Georgia” (April 30, 2014, *Tabula*, “*Tsulukiani- There Is Nothing to Disturb Anyone Either in Secular Society or in Clerical One.*”).

Minister of Culture and Education of Autonomous Republic of Abkhazia Dimitri Jaiani in an interview with Asaval-Dasavali talking about Antidiscrimination Bill noted that the rights of the majority are violated in Georgia and referred to the Orthodox parish in a preferential context.

Here you are, up to million people payed respect to the relics of Father Gabriel! What shall we tell to these people? Do these people not have a right to protect millennial religion and culture, traditions and family?! Pursuant to all surveys 98 percent supports and trusts our Holiness and Mother Church! It is unheard for the two percent to rule the country! The land allocated to Virgin Mary! And these people born on a wrong day and their followers are not even 2 percent?!” - Dimitri Jaiani (April 21-27, 2014, Asaval-Dasavali, N 16, page 16).

Parliamentary Majority

Vise-Speaker of the Parliament of Georgia, member of the majority, Manana Kobakhidze at a meeting of the Legal Committee of Parliament, where Antidiscrimination law was being discussed with clerics and non-governmental organizations, emphasized protection of rights of the majority.

*“Recently the father stated, if my right is violated who will protect it? We shall protect, father, for sure protect your right, if following adoption of this law, you will be threatened for preaching and saying that this [homosexuality] is a sin. Church should say that this [homosexuality] is a sin and God forbid if the Church does not say so” (April 29, 2014, *Tabula*, verbatim).*

The Chair of the Committee on Protection of Human Rights and Civil Integration, Eka Beselia noted, that she is having consultations with clerics in order to polish the content side of the Law (April 27, 2014, *Netgazeti*). According to her, it may be that the legislator will not reflect those provisions in the law, which the clerics consider dangerous.

“We are ready to continue dialogue with clerics and talk to those people, who see such dangers in the law, which shall not be included. Results will not be such as it is publicly stated. It is important to bring together and understand

each-other's positions" - Eka Beselia (April 30, 2014, Tabula, "Beselia: We Are Ready to Continue Dialogue with Clerics").

On April 16 in a TV program *Focus of Tabula* television, Deputy Chair of the Committee on Protection of Human Rights and Civil Integration, Gedevan Popkhadze stated, that for him his religious identity was more important than a mandate of an MP.

„I may be mistaken and this Law may be damaging something from a moral viewpoint. I think it is vise versa and with this Antidiscrimination legislation puts the standard of protection of human rights higher. However, if anyone says that by this, uniform moral standards are endangered, this also is a legal category and we should agree on this, we should listen to argumentation in full”(Tabula, “Popkhadze: For Me My Religious Identity Is More Important than a Mandate of an MP”, April 16, 2014).

Representative of Coalition Georgian Dream, Ivane Koghuradze noted, that “as any normal Georgian he also loves the Patriarch very much” and it is for this reason that he supported the law (*May 5-11, 2014, Asaval-Dasavali, Issue #18, page 10*).

According to explanation of a representative of Coalition Georgian Dream, Soso Jachvliani he supported the law after he got convinced that there was no provision unacceptable for Church in it. _

„Representatives of our Mother-Church speak as they should speak... Before adoption of the law I spoke to the lawyers as well and they convinced me that there is nothing unacceptable to Church and alarming in it“- Soso Jachvliani (May 5-11, 2014, Asaval-Dasavali, Issue 18, page 10).

Member of Coalition Georgian Dream, Gubaz Sanikidze during his speech on May 1 at a plenary session of the Parliament, spoke of the necessity of adoption of the Antidiscrimination law and also criticized non-governmental organizations who put the church “under attack”.

„Church is our conscience, occasionally it disturbs us and we should be disturbed, nothing will happen to us and let us not put this under attack. Church and Government are destined for cooperation, there is no other way,

because otherwise the country will tipple over us.” (Netgazeti, “Sanikidze: Sexual Minorities are noted in Ruis-Urbnisi order”, May 1, 2014).

Member of Coalition Georgian Dream and representative of Parliamentary majority Nukri Kantaria when talking to Asaval-Dasavali noted that the Government will not allow propaganda of those values which are opposed by the Church (*Asaval-Dasavali, Issue #18, page 10, May 5-11, 2014*).

Representative of Coalition Georgian Dream, Zviad Kvachantiradze clarified on his private Facebook page that at the request of Orthodox Church Article 5 was added to the law, pursuant to which “Independence of the Church is fully protected. The Law is adapted to Georgian reality to the extent possible and at most all nuances are taken into consideration” (*April 28, 2014*).

Non-Parliamentary Opposition:

Candidate for Mayorship of Tbilisi from Burjanadze – United Opposition, Dimitri Lortkipanidze during parliamentary deliberations criticized authors of the Bill for not having discussed the document with the Patriarchate prior to initiating it in Parliament. In his view, in adopting the Law it was important for the Government to take into account a viewpoint of the Patriarchate.

“This exactly is discrimination. The Bill was not discussed with such an important institute, as the Church” – Dimitri Lortkipanidze (Netgazeti, “Isakadze: Antidiscrimination Law Was Not Discussed with Ilia the Second and Archbishops”, April 16, 2014).

Leader of Free Georgia party, Kakha Kukava did not support the Antidiscrimination Law and stated that he shares position of the Patriarchate on this issue.

„I share Church’s position with 100 percent and declare that this Antidiscrimination law directly contradicts our national and state interests!.. No one supports discrimination in Georgia and no one justifies violence, neither Church nor opposition. The fact is that first time in the history of Georgia this Government has written in Georgian legislation terms – “sexual orientation”

and “gender identity” – Kakha Kukava (*Asaval-Dasavali, Issue # 18, page 15, May 5-11, 2014*).

STATEMENTS IN COMPLIANCE WITH PRINCIPLES OF SECULAR STATE:

Government of Georgia

State Minister of Georgia on Reconciliation and Civic Equality, Paata Zakareishvili praised the law and noted that final say should be with the legislator.

„The Bill which was approved by Government, is acceptable for me. I agree and think that it should be passed exactly as we consider, but the Parliament is a higher body, therefore, it has its own views. It is authorized to alter the Bill to some extent and make corrections. As regards varied positions in the society, it is natural. In the end, I think political decision will have to be made (May 1, 2014, Tabula, Zakareishvili: Antidiscrimination Law is Acceptable for Me).

Parliamentary Majority

Chairman of the Parliament, David Usupashvili, in reponse to opponents who blamed the legislators for “gay propaganda”, stated that Antidiscrimination Law does not serve the purpose of propaganda of different sexual orientation and the purpose of the Law is to protect the minority groups from violence. He also underlined that sexual orientation shall not be omitted from the list of the grounds of discrimination, since “this is a matter of principle and the State will not allow violence” (*Tabula, “Usupashvili: Do Not Be Trapped in Speculations Related to Antidiscrimination Law”*).

In a TV program *Pozitsia*, Tinatin Khidasheli denied the fact of confrontation of Government and Church with respect to Antidiscrimination Law.

„The fact that with the Law of this kind part of clerics are not happy. It is normal” ... Prohibition of discrimination is needed for Georgian State. We should accept people, as they are...” (May 2, 2014, Rustavi 2, TV program Pozitsia).

MP from Coalition Georgian Dream, Tamar Kordzaia conceded that the Government made certain compromises with the Patriarchate, however, the MP does not share the amendments which resulted from this compromise.

“In the Bill which we are considering, 2nd paragraph of Article 5, which states that no provision of this Law should contradict Constitutional Agreement, is totally unnecessary. But I do not protest this provision, as a member of the Parliament and majority, because this was the agreement and this was the result of deliberations with Patriarchate as with one of the institutions in a country... It was their request to put it like this and we have recorded it. However, I believe that it should not be in this Law” (April 28, 2014, Tabula, “Kordzaia: The Bill, with Respect to Mechanisms of Protection, Should Be Revived a Bit”).

Levan Berdzenishvili assessed the Patriarchate’s opposition to Antidiscrimination Law as “opposition of ignorance against education”.

„Institution, which itself was subject to discrimination in Soviet period, should not be fighting for discrimination. Contrary, it should stand with us and help us, so that no one is being discriminated – including on the ground of religion” (April 30, 2014, Tabula, “Berdzenishvili: Education Is Opposed by Ignorance”).

Parliamentary Minority

In a TV program *Pozitsia* representative of United National Movement Pavle Kublashvili noted, that politicians should not use their belonging to a dominant religious group as a source of legitimacy.

„Consensus, in the first place, should be within political powers, in order not to have problems related to human rights, to oppression of people with differences, with different beliefs, with discrimination of people on different reasons. These problems should be resolved by politicians. Certain politicians try to use some religious feelings to strengthen its position”-Pavle Kublashvili (May 2, 2014, Rustavi 2, TV program Pozitsia).

In a TV program *Pozitsia* representative of United National Movement in Parliament, Giorgi Gabashvili emphasized the importance of protection of minority groups.

„Georgia is composed of different ethnic, religious and sexual representatives, we should live together and should learn that no single group, all the more the biggest group, ethnically Georgians, Orthodox, does not have right to protect our rights at the expense of rights of others”. - Giorgi Gabashvili (May 2, 2014, Rustavi 2, TV program Pozitsia).

Non-Parliamentary Opposition

Statement of representative of non-Parliamentary opposition, David Zurabishvili was in compliance with principles of secularism, who emphasized the importance of separation of Church and State powers.

„Georgia is a secular country and naturally the Church may, express views on certain issues, however the prerogative lies with the Georgian Parliament, and it is a united position that this Law be rapidly adopted” - David Zurabishvili (April 29, 2014, Rustavi 2, TV program Archevani).

CONCLUSION

The analysis of the legal framework and administrative practices for protection of religious freedom demonstrated, that there are whole range of problems from the perspective of prevention of discrimination and reinforcing the secularity in the tax and customs legislation, basic and high education legislation, Law of Georgia on State Property, mandate of the State Agency of Religious Affairs and in the rule of compensation of damages inflicted by the Soviet Union. However, the most acute problems posing religious minorities are emanated not by normative acts, *per se*, but the behavior of the public officials in different areas, be it construction permission process, enforcement of criminal or administrative justice on the facts of religiously-motivated offences or restitution of ownership on the property taken by the Soviet Union, particularly on religious buildings.

The review of the public statements published in media also demonstrated, that commenting on the important facts somehow related to religion or religious institutions, some politicians, state and public officials do not observe the principle of religious neutrality and provide biased evaluation of the situation, based on personal religious convictions or influenced by the mainstream religious conjuncture.

We can see from the research that the public officials often undertake discriminatory policy towards the religious minorities at the demand of majority, which takes form of flagrant violation of religious organization and preferential treatment towards the Georgian Apostolic Autocephalous Orthodox Church. Thus, the religious organizations in Georgia have no possibility to enjoy the equal rights provided by the legislation of Georgia. The present situation poses a challenge to all the branches of government of Georgia, particularly the Prosecutor's Office and the Judiciary to focus on the possible motive of religious intolerance of public officials or any other person, when dealing with the cases affecting the interests of religious minorities, to scrutinize strictly and prevent effectively religiously motivated offences, particularly facts of abuse or misuse of public authority motivated by religious intolerance. This is a must for secular development of Georgia, for fostering the tolerant environment and safeguarding the equality for religious organizations.