

The quality of protecting religious freedom is one of the criteria for measuring the quality of democracy in the country, while the increase of non-secular policy is connected to the problem of legitimacy of the political government and the social crisis in the society.

Because of time limit, I just want to focus on one particular problem related freedom of religion.

As it is known to the public, the Muslim community has been requesting the transfer of land for the construction of a new mosque in Batumi for almost 25 years. The existing mosque is small and unable to contain all people, who want to pray there. Therefore the Muslims have to pray under the open sky, under insufficient conditions.

In 2016 the State refused to allocate land for the construction of new mosque. In same year, Muslim community initiated self-organized process for the construction of a mosque and they bought the land in the center of the city.

In 2017, Muslim community addressed the Mayor of Batumi for the permission of project to build a new mosque in the city. The Mayor of Batumi Municipality rejected the project of new mosque with reason that was beyond of principles of religious freedom.

The main reason for refusing to approve the project for construction new mosque, was that the land is located in residential zone 6, with mostly residential buildings.

In reality, there are several churches around this area that prove that the rejection of new mosque construction has political background that is the discriminative attitude towards Muslim community.

In conclusion, we believe that current policy towards Muslim minorities will be changed and this particular problem will be solved positively and Georgian Muslims will have equal rights in every articular field as the citizen of the state.

Thank you for your attention.

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Background Information  
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### Introduction

The quality of protecting religious freedom is one of the criteria for measuring the quality of democracy and pluralism in the country, while the increase of non-secular policy is largely connected to the problem of legitimacy of the political government and the social crisis in the society. That's why, often, in the periods of transition of power, the policy on freedom of religious changes significantly. In this regard, understandably, the way relationships are configured between the government and dominant religious groups, plays a decisive role.

Current challenges in Georgia in terms of the freedom of religion are of systematic nature and are the result State's non-secular and discriminatory practices formed over the years. The current legislation and the State's relations with the religious organizations are largely based on the preferential attitudes towards the Georgian Apostolic Autocephalous Orthodox Church (further Orthodox Church). Beyond the asymmetric legal and institutional environment, the non-dominant religious groups in reality experience systematic discrimination. It is noteworthy that identity based discriminatory policy also causes increased social and economic vulnerability of the groups belonging to religious minorities. The persecution in case of groups of non-dominant religious groups living as settlements and their exemption from the social structures is revealed at a larger scale and more structurally.

Since 2012, the state of freedom of religion has deteriorated considerably, as compared to the previous period. The series of conflicts involving the Muslim community, as well as, increase of religious violence against the Jehovah witnesses and bigger influence of the Orthodox Church in almost all spheres of political and social life – are the most obvious indicators of this situation. The cases of restricting the freedom of religion, revealed during the reporting period, were not unusual or isolated and were mostly manifested in the conflicts and alienation between different religious and social groups, which demonstrates that the problem is complex and requires implementing methodical policy by the State. Unfortunately, the State has responded with non-secular and discriminatory practices, as a result big part of religious conflicts have been either conserved or there are risks of escalation. Apart from inefficiency, the State's policy is openly loyal to the dominant religious institution and ethnic-religious nationalism, which calls for more criticism towards discriminatory and non-secular policy. It must be noted that the recent critical assessments of a number of national and international organizations working on human rights, confirm that the situation has deteriorated in terms of the freedom of religion.

The State reacted to these challenges by establishing the State Agency on Religious Affairs, which became a centralized agency for religious affairs. Creation of such an institution contained the risks of *taking the issues outside the realm of human rights* and politicizing them. These fears have been confirmed by the activities of the Agency. The Agency, despite the fact that it was working under the direct supervision of the Prime-Minister, failed to efficiently settle actual disputes and problems, which points to the lack of political will for protecting the rights of the non-dominant religious organizations. At the same time, the Agency has been interfering and trying to control the autonomy of the religious organizations, which only worsened already complicated situations and created new types of challenges.

## Religious conflicts

In 2014-2016, several cases of violence on religious grounds against the Muslim community have been revealed. The State failed to respond with effective and secular policy, which resulted in the repeated acts of violence and it also fuelled new conflicts with similar ideological narratives in different social spaces. Particularly,

In the first incidents of local religious confrontations in Nigvziani, Tsinskaro, Samtatskaro in 2012-2013 the Muslim community suffered from aggression from local Orthodox population while the Police remained passive and failed to prevent hate crimes from private parties. In the said cases of religious conflict, Orthodox residents attacked Muslim worshippers and clerics, and blocked places of worship. Some Georgian Orthodox clergy and municipal officials supported them.

In 2013, in Chela in the Adigeni Municipality, the Police took an active role and detained up to 11 Muslim protesters, similar to the Mokhe case. Local Muslims had gathered to protest the removal of a minaret in Chela. The authorities alleged that it had been imported from Turkey in violation of customs rules. The village was sealed off by the police and the minaret removed. The Police used warning shots and violence, physically abused the protesters and arrested 11 of them. The scale of the Police operation in the village, where up to 50 families reside, extended to a helicopter, 45 cars, a truck and up to 200 hundred Police officers. Three months later, the minaret was re-erected.

In the religious dispute in Kobuleti village in September of 2014, similar to the cases in Nigvziani, Tsinskaro, Samtatskaro, the role of the police was passive. The conflict started when, in September 2014, violent protests from local Orthodox Christian residents prevented a new boarding school facility for Muslim children from opening. Orthodox residents blocked the entrance to the school, threatened employees and children and used hate speech towards members of the Muslim community. A pig's head, dripping with blood, was nailed to the school's door. Members of the Orthodox community maintained a permanent protest at the school for several months. They erected barricades and established de facto control of the area, preventing the local water company from connecting a water supply to the building. To date, the boarding school cannot open. The police failed to prevent hate crimes from occurring or ensure that the Muslim community (teachers, parents and children) could access the school. Through its conduct, the police demonstrated partiality to the dominant religious group and the islamophobic conduct of their followers. A conflict is ongoing and the Muslim boarding school cannot be opened until today.

In the Mokhe conflict in October of 2014, the state as in the case of Chela was actively repressive towards the Muslim community, used hate speech and physical violence, and threatened peaceful protesters with administrative and criminal sanctions. Human Rights Watch's World Report 2015 highlights the Mokhe incident, the "disproportionate force to break up a protest" and the fact that "authorities did not effectively investigate police conduct".

The Mokhe case is of particular importance as the factual circumstances around it reveal the broad context of the state discriminatory policy against religious minorities in Georgia. The protest of the local community was triggered by a decision of the Samtskhe-Javakheti Governor to reconstruct the old Mosque building into a public library, despite the promise that had been made by the authorities four months earlier, namely that the Old Mosque building confiscated during the Soviet Era would be returned to the Muslim Community.

Subsequent investigations into the incidents outlined above produced no results and no one has been held responsible for or punished for these hate crimes. Some, for instance former Head of the Akhaltsikhe Security Service Department Akaki Machutadze involved in the incident of Chela has even been promoted to Governor of Samtskhe-Javakheti region. As Governor, he made the decision to turn the old Mosque into a library and was present at the protest in Mokhe. One of the MIA representatives Gela Kokhodze (previously involved in the Chela incident also) who participated in beatings in Mokhe later was promoted from the position of an investigator to the Head of the Police Department opened in Mokhe after the incident.

That the trend continues is visible from the seventh case of religious conflict between Muslim and Orthodox residents of the village of Adigeni in 2016, which was triggered by the objection of the Orthodox population to the allocation of land for a Muslim cemetery. Similarly, no one was punished for physical abuse against members of Muslim community in this case.

By the end of the year (2016), one more conflict took place, this time in the public school in Mokhe. The principal of the public school in the village had allegedly discriminated against a female Muslim student who was forced to remove her headscarf inside the school building. Following the incident, other Muslim students initiated a protest. It is worth noting that an individual appointed as the new principal of the school in September 2016 had been previously actively supporting the Christian community. It needs to be mentioned also that discriminating practices of persecution of Muslim schoolchildren have not ceased and continue into the present day.

During the religious conflicts, the Interior Ministry played a role of a passive observer and did not prevent or stop acts of violence or the limitation of rights. Moreover, on several occasions, the police used repressive force against the Muslims.

The ongoing investigation of the well-known hate crimes does not satisfy the standards of efficient, independent and timely investigation. Nobody has been held responsible for the given cases up to now.

Most of the latest instances of the religious conflicts have been shelved. Apart from non-usage of legal mechanisms of solving the problem, the possibilities of political negotiations have also been ignored, which led to the complete dismissal of the rights of the Muslim communities.

The inefficient response policy in the hate crime cases, created a climate of impunity, which is confirmed by the tendency of increased violence against the Jehovah witnesses.

It is noteworthy that apart from non-effective response, the law enforcement agencies on the institutional level are not prepared to adequately react to the hate crimes, which brings the necessity of implementing significant reforms to the daylight. The positive measures already implemented by the Prosecutor's Office and the Ministry of Internal Affairs, are inconsistent and fragmented.

The increased use of hate language in the public space by some of the government representatives and members of various political, social or clerical groups encourages a hostile and intolerant environment towards the non-dominant religious groups, which harmfully affects their rights and social conditions.

## New mosque in Batumi

As it is known to the public, the Muslim community has been requesting the transfer of land for the construction of a new mosque in Batumi for years. The existing Orta Jame (the mosque) is small and unable to contain all, who want to pray, thus the Muslims have to pray [under the open sky](#), under insufficient conditions. In 2016, despite numerous appeals by the Muslim community, the State refused to allocate land for the construction of a new mosque. Clearly, under the conditions, when the State without providing any grounds or reasons pertaining public interest, had [transferred large property to the Patriarchy](#), the refusal to the Muslim community, must be assessed as discriminatory.

It should be noted that apart from refusing to transfer the property, the State, through the way of various negotiations, has been trying to [halt the construction of a new mosque](#), including, through the proposals offered at various times, regarding expansion of Orta Jame (the mosque), which contradicted to the interest of several private owners and contained serious risks of damaging the cultural heritage, as well as, the offer of real estate transfer to the Georgian Muslim Union for Madrasa and residence as a completely new alternative to the mosque, and attempts (including, by the way of direct funding) to exercise political influence over the Mufti administration. Under the condition of the State's discriminatory policy, the Muslim community, in 2016, initiated self-organized process for the construction of a mosque. Namely, the local Muslims founded Narp. "New mosque construction fund" and purchased a piece of land from private owner on installements and are still in the process of repaying. The fund also prepared the architectural project of the mosque.

On February 8, 2017, New Mosque Construction Fund addressed the Mayor of Batumi for the permission to build a new mosque in the city. By the order issued on 5 May 2017, Batumi Municipality Mayor Giorgi Ermakov refused to issue the first stage of the construction permit (approval of the terms of use of land for the construction).

According to the mayor of Batumi municipality, the main reason for refusing to approve the terms of use of land for construction, was the fact that the land is located in residential zone 6, which is a high intensity residential zone, with mostly residential building. The Mayor, in its own decision, indicates that "the already well established residential nature of this quarter should not be changed and its future development must continue with the construction of residential buildings."

It should be noted that in accordance with the regulations concerning the territory of Batumi municipality itself, in zone 6, apart from residential buildings, the construction of various objects of public purpose is also permitted, including "religious objects" for which, acquiring special (zonal) agreement is required from Batumi Municipality City Hall.

It should be noted that the special (zonal) agreements are issued in cases, when the project-related piece of land is developed according to the functional intentions, which, according to the construction regulation and zonal maps by the local municipality, requires special zonal agreement. The decision on issuing special zonal agreements is based on the submission of the Commission on Regulation of the Settlement and Development of Territories and is issued by Executive body of the Batumi Municipality. According to the mayor's order, the decision on refusal of the special (zonal) agreement was based on the Commission's decision. It is noteworthy

that the decision of the Commission Regulation of the Settlement and Development of Territories has no mandatory power and the mayor has the authority not to consider the submission made by the Commission.

The issuance of a special (zonal) agreement by the Batumi City Hall is a discretionary authority of a local administration, which gives the administrative body the freedom, based on protecting public and private interests, to choose the most acceptable decision from the several possible solutions relevant to the legislation. According to the resolution by the City Council of 14 September 2012 (# 50) on Regulation of the Settlement and Development of Territories of the urban areas of the self-governing city of Batumi, a special (zonal) agreement is possible, if: a) it is required by special reasons in terms of the space-planning and architecture, or the development of the territory A; B) a change is compensated by other measures; C) is not against other public interests.

Thus, Batumi City Hall, taking into consideration the mentioned criteria, and the existing public and private interests, should have chosen the most relevant decision. The City Hall should have evaluated interests behind every solution and decide which of them is the most valuable for the State.

Under the conditions, when there is only one mosque in Batumi and this, taking in consideration the number of Muslims is insufficient to pray and perform religious rituals, hundreds of Muslims have to pray under the open sky. The construction of the new mosque is essentially linked to the Muslim community's freedom of religion. The new mosque construction is requested by tens of thousands of Muslims and it is a prerequisite for exercising their religious freedom. **The protected interest of freedom of religion is opposed with the urban interests outlined by the City Hall, which is not supported by specific reasoning. Thus, it is completely unclear how does the City Hall justify non-compliance of building the mosque in this space, especially under the conditions, when, according to the rules of the residential settlement of Batumi, zone 6 is not exclusively meant for residential buildings and all kinds of public buildings are permitted in the zone, including the 'religious objects' (which should be interpreted here in the broad sense of religious buildings) by a special zone construction agreement, or without it. Moreover, urban interest, if substantiated, the City Hall also must specify why the urban interest in a higher public interest, rather than, the religious freedom of hundreds of Muslims.**

The measures prescribed by the administrative and legal act issued under discretionary powers may not lead to an unjustified restriction of legal rights and interests of a person,<sup>f</sup> which in this case is obvious.

Also, it should be emphasized that, under the circumstances, when there are numerous religious buildings in Batumi, including, in close vicinity of the residential buildings, while evaluating this decision, it is important to test possible discriminatory treatment, especially if we think about general discriminatory political context surrounding the construction a new mosque in Batumi.

### **Restitution of religious property in Georgia**

The problem of restituting property which was confiscated during the Soviet Union is highly problematic for religious minorities. Based on the constitutional agreement of Georgia with the Orthodox Church concluded in 2002, the state recognized as the property of the Church all orthodox churches, monasteries, remnants and land on which they are situated. In parallel with the preferential treatment expressed in recognizing the right to restitution for a single dominant religious group, the Law on State Property permits the transfer of

state property *only* to the Georgian Orthodox Church. Thus, without an amendment to the current law, the state is not permitted to transfer *ownership* of historic buildings confiscated during the Soviet period to religious minorities, but may only transfer for temporary use making the nominal policy to transfer the historic places of worship already in use to religious organizations for temporary use rather restricted.

Unlike the case for the Georgian Patriarchate, historical buildings of other religious organizations remain the property of the State and are in danger of being destroyed, as in the case of the old Mosque. The UN Human Rights Committee, in its concluding observations in respect of Georgia in 2014 observed that it 'remains concerned that insufficient measures are taken to address the restitution to religious minorities of places of worship and related properties confiscated during the Soviet era'.

### **The property dispute in Mokhe**

After the Mokhe incident, in December 2014, the state established the Mokhe Commission with the proclaimed aim to ascertain the historic and confessional origin of a disputed building in Mokhe village (Adigeni municipality), namely whether the building was a Mosque or a Church.

The Commission was composed of representatives from the Georgian Orthodox Church, the Administration of Muslims of all Georgia, local self-government bodies who participated in the police operation in Mokhe, National Agency for Cultural Heritage Preservation of Georgia, and the Head of the State Agency on Religious Affairs. The involvement of the Orthodox Church was artificial, as the Georgian Patriarchate had not previously declared any rights in relation to the historical building, until December 2014 when they claimed that the stones used in its construction were part of a Christian church functioning in the XVI century.

The effectiveness of the commission was questioned from the outset as the decisions of the Commission would be reached through consensus and an objective decision could not be met without expert involvement, but with confronting parties, predominantly sides all against the return of Mokhe Mosque to Muslim community.

As anticipated, the Commission failed to achieve the goals defined by its charter, and on 1 December 2016 a decision was issued not to transfer the disputed property to any religious communities. Hence it would acquire the status of a cultural heritage monument, probably under the label of 'Disputed Place of Worship'. The commission's decision was much to the dissatisfaction of the Muslim community. Prayers are performed in the open air next to the historic building every Friday to protest the ineffectiveness of the Commission. The relationship between the Christian and Muslim communities is notably tense currently

By considering the composition of the commission, which includes representatives of only the Patriarchy (Orthodox Christian) and Muftah Division (Muslim) and had nobody from the local community, it was clear that the current format would fail to recover trust between the parties. Moreover, risks of higher antagonism were created because of efforts made by the Agency to take the issue out of the legal framework and to conserve the dispute.

The unresolved dispute related to the property in Mokhe village essentially resulted from a lack of restitution legislation and consistent, discrimination-free policy. It vividly evidences the need to have a legal remedy to return the property that was foreclosed on during soviet times to the religious organizations. Nevertheless, authorities have refused to even find a limited solution to the restitution problem on a single occasion in Mokhe.

The Advisory Committee on the Framework Convention for the Protection of National Minorities expressed its regrets in this context that the Council of Religions under the Public Defender was not permitted to be a member of the Commission. The Committee stated: "While attempts at mediation are always welcome, they cannot replace the rule of law and must be neutral and based on equal representation of the parties". Similarly, ECRI stated: "In some instances they [the authorities] promoted local mediation mechanisms instead, calling upon the dominant Georgian Orthodox Church to negotiate with the local Muslim community in the aftermath of islamophobic attacks."

## **The Agency**

The institutions similar to the State Agency on Religious Affairs (the Agency) exist in other former Soviet republics as well, and despite their labile mandate, in reality impose control over religious organizations. The analysis of the experiences of those European countries (Germany, France, Italy), which the Agency often uses to substantiate its role and importance, demonstrates that its mandate, competencies and strategy are in fact very different. Unlike the agencies working on religious issues in the mentioned countries, the Agency has the issues of outside legitimacy, independency and horizontality of making a decision. The agency is less focused on the objectives of protection of religious freedom, pluralism and religious neutrality or the integration of religious groups.

Despite the fact that it operates under the Prime Minister's direct supervision and is supposed to have significant resources for political influence, the Agency failed to settle important controversies and issues with regards to freedom of religion, which most likely points to the lack of political will.

The Agency's approach towards the issues of religious freedom is usually not progressive and their analytical and strategic documents, notably contradict the ideas of equality and human rights. Also, its activities contain the risks of strengthening the hierarchal structures of religious organizations, as well as, the safety and control based attitudes.

Despite the fact that according to its mandate, the Agency has mainly research functions, the Agency does not fully document and study the state of religious freedom. Moreover, the Agency did not issue relevant assessments of the cases of serious violations and did not identify the context of religious intolerance and social alienation. Due to this policy of ignorance, the serious cases of violation are still unresolved.

Through the Agency's activities, the State attempts to interfere and control in the autonomy of the Muslim religious organizations, which further alienates these organizations from the Agency and enhances the marginalisation of the community.

The Agency implements the policies of funding the four religious organizations, as well as, the issues of construction of religious buildings and settling disputes between religious organizations in a non-efficient way and in violation of standards of secularism and human rights, which contains the risks for interfering in the autonomy of the religious organizations and politicizing the religious issues.

Despite the declared increase in activities aimed at safety for religious activities the Agency does not in fact have a strategy or a plan for preventing religious extremism. Besides the State's control of the religious organizations, in the first place of Muslim organizations, as well as, the policy of non-recognition of certain

religious groups and ignoring human rights protection, encourages the exclusion of religious groups, their alienation and possible radicalization.

### **International Reports**

The systemic problem of discrimination towards religious minorities in Georgia has been the subject of a number of authoritative reports by influential international and regional bodies. The recent report on Georgia by the European Commission against Racism and Intolerance (ECRI), the second opinion on Georgia by the Advisory Committee on the Framework Convention for the Protection of National Minorities and Concluding observations on the fourth periodic report of Georgia issued by the Human Rights Committee (August 19, 2014) repeatedly refer to ineffective state policy to protect religious minorities, among them specifically the human rights condition of the Muslim community. The Commissioner for Human Rights of the Council of Europe in its Observations on the human rights situation in Georgia also referred to cases against the Muslim community.

Before considering the concrete cases of human rights violations, ECRI unequivocally points to instances of freedom of religion of the Muslim community being impeded by violent local protests. According to ECRI, in several cases of attacks motivated by religious intolerance, the authorities did not enforce the law to safeguard the rights of religious minorities.

Similarly, the Advisory Committee on the Framework Convention for the Protection of National Minorities referred to a pattern of the use of disproportionate force by the Police against the Muslim community and was concerned that during investigations, motives of hate crimes are not identified.

The Council of Europe Commissioner for Human Rights noted with concern the reported instances of intolerance and discrimination against members of religious minorities, specifically referring to incidents against Muslim community.