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## **Occupied S. Ossetia bans Jehovah's Witnesses as 'extremist'**

By Thea Morrison

Georgia Today (17.10.2017) - <http://bit.ly/2hOns27> - Georgia's Russian-occupied region of South Ossetia has banned religious group Jehovah's Witnesses as an extremist organization, also officially declaring their activities as illegal.

The information was spread on October 17 by Sputnik-Ossetia.

The so called Supreme Court of de facto South Ossetia satisfied the lawsuit of the so called Prosecutor General's Office about the ban on the activity of the religious association Jehovah's Witnesses and its recognition as extremist on the territory of the "republic", de facto Justice Minister Zalina Lalieva told Sputnik.

On October 17 the court verdict went into force, which means that the religious organization has been banned in the occupied region.

Zalina Lalieva did not specify exactly how many members of Jehovah's Witnesses are there in the region, however she added that they are more than a thousand.

"In the republic there is only one religious organization registered in the Ministry of Justice - the Alan Diocese," she added, without specifying what punishment awaits the Jehovah's Witnesses' members if they still continue their activities.

It should be noted that in August 2017 Russian Federation also banned Jehovah's Witnesses administrative center in Russia and its 395 local branches.

The move was based on an April supreme court decision that declared Jehovah's Witnesses an extremist organization and ordered its property to be turned over to the state.

United Nations human rights experts said the court case against Jehovah's Witnesses "signals a dark future for all religious freedom in Russia."

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## **Constitutional changes to impose impermissible freedom restrictions?**

***Constitutional changes already adopted in second reading would allow restrictions on freedom of religion and belief based on vague criteria, including "state [national] security or public safety", an impermissible restriction. Human***

***rights defenders object to the proposed changes. Parliament's final reading is expected on 26 September.***

By Mariam Gavatdze

Forum 18 (21.09.2017) - <http://bit.ly/2xf8T28> - Georgia's ruling Georgian Dream party appears to be moving to amend the Constitution to restrict freedom of religion and belief in ways Georgia's legally binding international human rights obligations do not allow. Unless the government changes the text before Parliament holds its third reading, the new amended Constitution would allow new restrictions on freedom of religion and belief based on the vague and undefined criteria of "state [national] security or public safety", "the prevention of crime", and "the implementation of justice".

Parliament – which is overwhelmingly dominated by ruling party deputies - could adopt the amended Constitution at its third and final reading as early as 26 September. The Council of Europe's Venice Commission is due to send to Georgia's Parliament its Draft Opinion on the latest text on 22 September (see below).

The Public Defender (human rights ombudsperson), religious communities and human rights defenders are among those strongly protesting against these and other proposed Constitutional changes. The government ignored a Venice Commission legal Opinion on an earlier draft of the Constitution (see below).

***Initial draft, Venice Commission Opinion***

The draft amendments to the Constitution were prepared by the State Constitutional Commission. On 1 May, 108 parliamentary deputies, all of them representing the ruling party Georgian Dream, presented the draft to Parliament. At that point the text proposed in Article 16 that manifestations of freedom of religion or belief should be restricted only "if these manifestations violate the rights of others", echoing the wording of the current acting Constitution. At the same time Parliament asked the Council of Europe's Venice Commission for a legal Opinion on the entire proposed new Constitution.

Ucha Nanuashvili, the Public Defender, strongly criticised various parts of the draft amended Constitution, stating in a 25 May public letter to the Venice Commission that the proposed changes "compared to the current edition of the Constitution, weakens the human rights standard in relation to a number of other rights .. The issues of freedom of religion and secularism are particularly important." He noted that the amendments "contribute to weakening of the principles of freedom of belief and confession, and secularism".

Among his many other criticisms, Nanuashvili noted that "the current edition of the Constitution provides for freedom of thought, conscience, religion and belief for everyone" and that the proposed Constitution weakens this (see <http://www.ombudsman.ge/en/news/public-defender-appeals-to-venice-commission-concerning-draft-constitutional-amendments-of-georgia.page>).

The Venice Commission's Opinion, published on 19 June, stated that the proposed (and also the existing) limitation relating to "violation of the rights of others": "seems too narrow. This creates the risk that, in order to achieve an adequate balance between the right to freedom of belief and conscience and competitive interests, the scope of this right will be interpreted too narrowly or the restriction ground 'violation of the rights of others' will be interpreted (too) broadly."

The Venice Commission recommended that the draft amended Constitution should include "an explicit recognition of the 'freedom of religion'", as well as "the inclusion of other legitimate aims of restriction of the right to freedom of belief and conscience, such as those contained in Article 9 ECHR [European Convention for the Protection of Human

Rights and Fundamental Freedoms] and Article 18 ICCPR [International Covenant on Civil and Political Rights]".

Article 9 of the ECHR and Article 18 of the ICCPR protect "freedom of thought, conscience and religion", and Georgia is legally obliged to ensure that everyone can fully exercise this freedom and other fundamental freedoms.

### ***Government ignores Venice Commission, introduces impermissible restrictions***

However, the government ignored the Venice Commission recommendations. On 22 June, three days after the 19 June Opinion was published, the draft amended Constitution had its first parliamentary reading. Ruling party deputies added new grounds for restricting freedom of religion and belief that international human rights law does not allow: "state [national] security or public safety", "the prevention of crime", and "the implementation of justice".

On 23 June, the draft Constitution passed its second reading with the votes of all 115 Georgian Dream deputies in the 150-seat unicameral parliament.

The European Court of Human Rights (ECtHR) has explicitly stated that such limitations – for example national security – are not permitted (see Guide to Article 9 freedom of thought, conscience and religion [http://www.echr.coe.int/Documents/Guide\\_Art\\_9\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf)). Similarly, the United Nations Human Rights Committee has also explicitly stated that "restrictions are not allowed on grounds not specified there [in ICCPR Article 18], even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security" (see the interpretative General Comment 22 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en)).

The full limitations text in the new draft Constitution's Article 16 states that freedom of religion and belief "may be subject to such restrictions as are prescribed by law and are necessary in a democratic society in the interests of state [national] security or public safety, for the prevention of crime, protection of health, implementation of justice or protection of the rights of others."

The government has a record of proposing legal changes with unclear and vague formulations against international law to undermine human rights. In 2016 a draft law that would have imposed fines for insulting religious feelings, was withdrawn as a result of "resistance from civil society", Giorgi Gotsiridze of the Georgian Young Lawyers' Association told Forum 18. Journalists and artists – including artist Lia Ukleba threatened with violence for her painting attacking committing violence in the name of religion - also warned of the dangers to their freedom if the Law were passed. Baptist Bishop Rusudan Gotsiridze told Forum 18 that "the Law, which contains the unclear category of 'feelings', would serve as a tool against opponents in the hands of any powerful institution". "If the government decides that politically it needs a similar proposed Law, it might initiate it again in the future", Gotsiridze of the Georgian Young Lawyers' Association noted (see F18News 23 February 2016 [http://www.forum18.org/archive.php?article\\_id=2152](http://www.forum18.org/archive.php?article_id=2152)).

### ***Major Constitutional changes, opposition boycott***

The entire parliamentary opposition boycotted the process of adopting the new amended Constitution as it opposes many of the planned changes. Among these are abolishing direct nationwide elections for President, and changing the parliamentary electoral system to benefit whichever party gains the largest number of votes. The opposition argues that this is intended to keep the Georgian Dream party in power permanently.

### ***Increasing freedom of religion and belief violations***

Non-Georgian Orthodox religious communities repeatedly face obstruction from local municipal councils and national state bodies such as the State Agency for Religious Issues to building new places of worship. Communities such as Muslims, Jehovah's Witnesses, Catholics and Protestants face such obstruction.

Typically, local Georgian Orthodox clergy and congregation members oppose proposals to build non-Georgian Orthodox places of worship. Then the local council finds excuses to bow to Georgian Orthodox demands, even if the demands go against a court decision, often using spurious reasons to deny the building permit application. State authorities also often tell non-Georgian Orthodox communities to stop trying to build a place of worship on their own land and find some other land to build on (see F18News 5 November 2015 [http://www.forum18.org/archive.php?article\\_id=2118](http://www.forum18.org/archive.php?article_id=2118)).

Non-Georgian Orthodox religious communities also face multiple obstructions from the government, including the State Agency for Religious Issues, in regaining their places of worship confiscated in Soviet times. For example, Mokhe's Muslims have not yet regained a confiscated mosque and were beaten by police in October 2014. The Georgian Orthodox Church also claims the building, despite some government commission members finding it was originally a mosque (see F18News 28 February 2017 [http://www.forum18.org/archive.php?article\\_id=2260](http://www.forum18.org/archive.php?article_id=2260)).

The authorities also have a long record of ineffective investigations and non-prosecution of those who prevent people exercising their freedom of religion and belief. In 2013 mobs of non-Muslims obstructed Muslims in the eastern village of Samtatskaro from praying freely, but no-one has been punished for their crimes in this or similar incidents (see F18News 4 July 2013 [http://www.forum18.org/archive.php?article\\_id=1854](http://www.forum18.org/archive.php?article_id=1854)).

### ***"New risk for the unjustified restriction of religious freedom"***

After Parliament's approval in the second reading of the proposed new amended Constitution, the 19 religious communities of the Council of Religions under the auspices of the Public Defender issued a 2 August public statement "that the added criteria present a new risk for the unjustified restriction of religious freedom. The addition of causes such as state security, prevention of crime, and implementation of justice raises utmost concern." They complained that these criteria "are not easily foreseeable and create a high risk for their misuse in pursuing aims unlike those necessary for the existence of a legitimate and democratic state".

The Council of Religions also noted that such reasons for restricting the exercise of freedom of religion or belief are not permitted by the European Convention for Human Rights, the International Covenant on Civil and Political Rights, "and the absolute majority of European constitutions".

The 19 religious communities pointed to their own experience of freedom of religion and belief violations. "We have been victims of abuse, intolerance and confrontations while practicing religion. If the abovementioned vague and unpredictable causes are added to the supreme law of the country, we may be faced with the legitimization of unjustified restriction of religious freedom on the basis of the Constitution" (see <http://www.ombudsman.ge/en/news/council-of-religions-address-to-the-parliament-of-georgia.page>).

Tariel Nakaidze, Chair of the Georgian Muslim Union, told Forum 18 on 11 August that he thought the state might use the new vaguely-worded restrictions to legitimise Muslims not being allowed to build a mosque or failure to investigate violent actions against Muslims. "The state might use such restrictions against those persons who are active in advocating for Muslims' freedom of religion and belief and who are speaking up about discrimination," he added.

### ***Georgian Orthodox Church reaction***

Fr Kakhaber Gogotishvili, Deputy Head of the Georgian Orthodox Patriarchate's Foreign Relations Department, commented on the government's vague and illegitimate proposed restrictions on freedom of religion and belief. "Freedom of religion is truly a freedom until it violates the rights of others," he told Forum 18 on 8 August. "If I decide to impose religion on others, this should be punishable."

Fr Gogotishvili acknowledged that people had been beaten and their places of worship desecrated, vandalised and destroyed. He stated that such cases were not only against Muslims. "There were cases against Orthodox, Muslims, Jehovah's Witnesses. That is totally unacceptable."

"If the Patriarchate sees the threat during the adoption of the law, it will definitely voice its opinion," Fr Gogotishvili told Forum 18. "If the law contains threats, it must be reviewed thoroughly, must be well advised with the society in order to take all aspects into account and not to miss anything." The Patriarchate has not yet made any formal statement on the proposed restrictions on freedom of religion and belief.

***"The risk that the state will interfere in freedom of religion without any grounds is very high"***

Civil society organisations, human rights defenders, and many religious communities fear that the new Constitutional restrictions will be used to legitimise freedom of religion and belief violations. "If we take into account existing and recent cases of unjustified freedom of religion and belief limitations by the state, it is definitely preferable to maintain the current Constitution's text or to exactly conform with the Venice Commission's recommendation," opposition parliamentary deputy George Tugushi, Deputy Chair of the Human Rights Committee and Georgia's member of the European Commission against Racism and Intolerance (ECRI), told Forum 18 on 9 August.

"Freedom of religion and belief is one of the most important and fundamental rights," former Supreme Court Chair and currently law professor at Ilia State University Konstantine Kublashvili told Forum 18 on 8 August. "Adding these grounds for restricting this freedom is a very negative trend." He thought that the government will use these new criteria to restrict the freedom, and that the court will have to take them into consideration as criteria for restrictions.

"The new draft leaves the impression that the authors consider freedom of religion and freedom of expression to be especially dangerous rights," law professor Konstantine Vardzelashvili of Ilia State University, former Vice-President of the Constitutional Court and member of the UN Human Rights Committee, told Forum 18 on 9 August. He noted that restricting freedom of religion and belief based on hypothetical threats is unjustifiable. "The risk that the state will interfere in freedom of religion without any grounds is very high."

Similarly, Gotsiridze of the Georgian Young Lawyers Association told Forum 18 on 8 August that "restricting freedom of religion on the basis of state security is problematic, especially as the government already sees religious minorities in this context instead of a human rights context".

Baptist Bishop Rusudan Gotsiridze also warned against the government using security as a pretext for limiting freedom of religion and belief. "The Constitutional amendments on freedom of religion and belief are a logical new step in the government's current strategy," she told Forum 18 on 8 August. "Freedom of religion and belief has been moved from being a human right into being solely a security issue since the State Agency on Religious Issues announced their strategy."

The government established the State Agency In February 2014. In 2015 the new State Agency published a draft strategy for the development of state religious policy. This

identified religious or ethnic minorities living in coastal regions as posing the threat of interference by neighbouring countries into Georgia's internal affairs.

State Agency Chair Zaza Vashakmadze has not replied to Forum 18's questions on whether he realises that limiting freedom of religion and belief on the basis of "state [national] security or public safety", "the prevention of crime", and "the implementation of justice" contradicts Georgia's binding international human rights obligations.

On 2 August a coalition of human rights defender organisations, lawyers, academics and academic institutions protested against the proposed Constitutional changes. The coalition focused particularly on adding an illegitimate restriction of freedom of religion and belief based on alleged "national security". They appealed to Parliament not to pass the changes and, if adopted, to President Giorgi Margvelashvili to veto them.

The coalition also called on the Venice Commission, the UN Special Rapporteur on Freedom of Religion or Belief, the Committee of Ministers of the Council of Europe, and the European Commission against Racism and Intolerance (ECRI) to assess the current proposed Constitutional changes (see <http://www.tdi.ge/en/statement/address-civil-society-organizations-and-lawyers-limitation-freedom-religion-draft>).

### ***"There are such restrictions in some European constitutions"?***

Georgian Dream deputy Sopio Kiladze, Chair of the Human Rights and Civil Integration Committee, told Forum 18 on 8 August that she was responsible for the new restrictions. She claimed that they were the same as in Article 9 ("Freedom of thought, conscience and religion") of the ECHR. When Forum 18 pointed out that the new restrictions are not in the ECHR's Article 9 - for example that there is no "national security" limitation - she claimed: "Public safety includes both state security and public security. As for the 'prevention of crime', this is compatible with 'public order'. What else can be public order if not prevention of crime?"

Kiladze then claimed that "we have to take into consideration when the Convention was written. Also, this is the convention of many states and not of one state, and it has its own particularities too".

Her fellow-Georgian Dream deputy Irakli Sesiashvili, Chair of the Defence and Security Committee, told Forum 18 that a reason for restrictions "can be preaching of ideas that contradict the state system and might be dangerous for human life and health". He then claimed on 10 August that "there are some religious groups that are fully based on terrorist activities and there are also groups whose religion directly urges them to violence" Deputy Sesiashvili refused to name to Forum 18 any specific religious groups in Georgia he had in mind.

Asked by Forum 18 which European country restricts freedom of religion and belief based on "state [national] security or public safety", "the prevention of crime", and "the implementation of justice", Deputy Sesiashvili replied: "it is hard to say but there are such restrictions in some European Constitutions". He was unable to name a single country which imposes such restrictions.

### ***"The special role of the Apostolic Autocephalous Orthodox Church of Georgia"***

Article 9 of the draft amended Constitution has been changed from the current Constitution to bracket freedom of religion and belief with the Georgian Orthodox Church: "Together with freedom of religion and belief, the State recognises the special role of the Apostolic Autocephalous Orthodox Church of Georgia". Human rights defenders fear that, although this changes little in terms of freedom of religion and belief protection, it downgrades the protection of this freedom.

The Public Defender's 25 May letter to the Venice Commission (supported by the Tolerance Centre and the members of the Council of Religions) describes this change as a "weakening of principles of freedom of religion or belief and secularism".

Similarly, the NGO coalitions' 2 August statement notes that it can "create grounds for the assumption that the State restricted freedom of religion and belief through recognising the role of the Orthodox Church. Such formulation of the provision is a step towards a deterioration of the human rights standard."

Georgian Dream deputy Kiladze rejected these fears. "This does not affect other religions," she claimed. Similarly, Fr Gogotishvili of the Patriarchate told Forum 18 that this proposed wording is not problematic.

Despite the concerns expressed by the Public Defender and civil society, the Venice Commission did not comment in its Opinion on this proposed change.

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## **OSCE/ODIHR Supplementary Human Dimension Meeting on freedom of religion or belief**

By Roland Shavadze

Georgian Muslims Union (23.06.2017) - <http://bit.ly/2s7ZR4r> - 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 particular field as the citizen of the state.

### **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 humanrights 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, 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.

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## **European Court upholds religious rights of Jehovah's Witnesses**

JW.org (21.02.2017) - <http://bit.ly/2mc4DaI> - The religious freedom that Jehovah's Witnesses in Georgia enjoy today stands in sharp contrast to their situation a few years ago. The Witnesses now have legal registration, and the government allows them to worship freely. But the circumstances were much different from 1999 to 2003, when the government at the time allowed religious extremists to attack the Witnesses viciously and refused to prosecute the perpetrators.

The persecution the Witnesses experienced during that dark period led them to file several applications with the European Court of Human Rights (ECHR). One of these applications, entitled *Case of Tsartsidze and Others v. Georgia*, addressed three incidents that occurred in Georgia during 2000 and 2001 involving mob violence, disruption of religious meetings, destruction of property, and physical and verbal abuse by police.

On January 17, 2017, the ECHR released its judgment in the *Tsartsidze* case and found that the rights of the Witnesses had been violated. The ECHR recognized that Georgian police were either directly involved in the incidents or failed to intervene to protect the victims. It also found that Georgian courts and judges failed to restrain the aggression against the Witnesses by their own biased and superficial examination of the facts.

### **Third Judgment Condemning Government-Sponsored Persecution**

This was the third judgment against Georgia released by the ECHR in the context of what the Court identified as "country-wide religious violence against Jehovah's Witnesses" that occurred between 1999 and 2003. In all three judgments, the ECHR found that Georgia had violated the European Convention on Human Rights by failing to uphold the religious freedom of Jehovah's Witnesses and by discriminating against them.

The Court described the situation existing in Georgia at the time in the following terms: "Through the conduct of their agents, who either participated directly in the attacks on Jehovah's Witnesses or by their acquiescence and connivance into unlawful activities of private individuals, the Georgian authorities created a climate of impunity, which ultimately encouraged other attacks against Jehovah's Witnesses throughout the country."

### **ECHR Upholds Rule of Law and Religious Freedom**

In the three attacks examined by the ECHR in the *Tsartsidze* case, the victims suffered injustices because of the actions or complicity of the police.

On September 2, 2000, in the city of Kutaisi, police took Mr. Dzamukov to the police station. They confiscated the religious literature he was carrying and then insulted and beat him. The following day, a police officer assaulted Mr. Gabunia, punching him in the stomach and tearing up the religious literature he was carrying.

On October 26, 2000, in the city of Marneuli, police rudely interrupted a religious meeting and confiscated religious literature. They took Mr. Mikirtumov, who was giving a religious

discourse, and Mr. Aliev, the owner of the home where the meeting was being held, to the police station. The police later forced Mr. Mikirtumov into a car and drove him out of the city, ordering him never to return. They also ordered Mr. Aliev never to hold religious meetings of Jehovah's Witnesses in his home.

On March 27, 2001, in the city of Rustavi, a mob of Orthodox religious extremists stormed the home of Mr. Gogelashvili while a religious service was in progress. They insulted those in attendance and forced them to leave. The mob confiscated religious literature and publicly burned it at a nearby market the following day. Police refused to intervene to protect the victims.

In each case, the victims turned to Georgian courts for relief but found none. As the ECHR observed, Georgian judges were biased in favor of the police and failed to examine the victims' evidence properly. Regarding the domestic judges' attitude when considering such cases, the ECHR stated the following:

Such a superficial and one-sided consideration of the case coupled with an automatic reliance on law-enforcement officials and the unsubstantiated rejection of the applications' version of events cannot but amount, in the Court's view, to connivance on the part of the judiciary with the violent acts committed against the applicants.

Because the ECHR found that the applicants' rights under Articles 9 (freedom of religion) and 14 (discrimination) of the European Convention on Human Rights had been violated, it awarded damages of 11,000 euros (\$11,840 U.S.) in total, along with 10,000 euros (\$10,762 U.S.) for legal costs.

### ***Will This Judgment Have Broader Implications for Russia and Azerbaijan?***

In coming to its conclusion, the ECHR reiterated its verdicts in the earlier cases of *Gldani* and *Begheluri* from Georgia and the cases of *Kuznetsov* and *Krupko* from Russia. The Georgian government has gradually implemented the earlier judgments, and Jehovah's Witnesses in Georgia are grateful that they now enjoy better protection, which allows them to meet and share their faith in freedom and safety.

International human rights attorney André Carbonneau, who participated in the domestic hearings in Georgia as well as in the preparation of the application to the ECHR, commented: "By this excellent judgment, the ECHR has clearly indicated that it will not tolerate the actions of governments under its jurisdiction that promote or support the repression of religious freedom of citizens. Jehovah's Witnesses are pleased that the Georgian government is moving forward in implementing these judgments so that they can worship freely. Hopefully, other countries of the Council of Europe, such as Russia, will take note."

This latest judgment from the ECHR protects the cherished freedoms to meet together for worship and to share religious beliefs peacefully with neighbors. The worldwide community of Jehovah's Witnesses hopes that this robust ruling by the ECHR will have a bearing on the applications pending against Russia and Azerbaijan on these same issues.