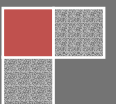


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**State of freedom of religion in Georgia since the adoption of
Constitutional Agreement between Government and the
Orthodox Church of Georgia**

Religious freedom report

Human Rights Centre
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The Human Rights Centre (HRIDC) is a non-governmental human rights organization, without any political or religious affiliations. The purpose of HRIDC is to increase respect for human rights and fundamental freedoms in Georgia, as well as to contribute to the democratic development of the country.

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State of freedom of religion in Georgia since the adoption of Constitutional Agreement between Government and the Orthodox Church of Georgia

The aim of this report is to examine the situation with respect of freedom of religion and belief in Georgia since the adoption of the Constitutional Agreement between the Government of Georgia and the Georgian Orthodox Church in 2002 and to identify main trends and problems in this respect.

1. Background

Study of Georgian Public Defender's Annual Reports and US State Department's International Religious Freedom Reports reveals improvements in terms of freedom of religion and belief. Based on the analysis it is evident that the tendency of religious extremism is neutralized to some extent after reaching its peak in late 90s. However these improvements are primarily related to the attacks on religious minorities, including violence, verbal harassment, and disruption of services and meetings. Citizens generally do not interfere with traditional (Orthodox, Muslim, or Jewish) religious groups; however, there is widespread suspicion of nontraditional ones. Government officials contribute to this negative attitude by sometimes making derogatory statements about certain religious minorities, especially Jehovah's Witnesses. Repeatedly, public opinion polls indicated that a majority of citizens believe that nontraditional minority religious groups are detrimental to the state and that the prohibition of some of these groups is desirable.¹ Societal attitude towards religion and the influence of the church on Georgia's policymaking are to a large extent determined by the historical legacy and the role of the Orthodox Christianity in the Georgians' self-identification as a nation. The identity crisis experienced on the eve and in the immediate aftermath of the Soviet break-up led to a revival of ethnic nationalism in Georgia, which also included a strong religious component and resulted in the adoption of policies hostile towards minorities.²

While the number of violent attacks has decreased since 2002, the widespread culture of intolerance towards religious minorities and the government's failure to create a tolerant and minority-friendly environment results in everyday discrimination and the inability of representatives of religious minorities to practice religion without interruption. The prevailing discriminatory attitude of Georgian media greatly contributes to the problem.

There are several property related disputes left over unsolved. While the property rights of the Orthodox Church have mostly been restored minority denominations are still experiencing problems in this respect. There is an increasing trend of state funding of the Orthodox Patriarchy. Funding allocated is mainly used for orthodox religious education.

Representatives of most religious minorities are not satisfied with the form of registering as a non-profit legal entity and claim recognition of their status as a religious organization.

¹ International Religious Freedom Report, US State Department's Bureau of Democracy, Human Rights, and Labor, 2005

² State and Religion in Black Sea Region, <http://www.nato-pa.int/Default.asp?SHORTCUT=1164>

The de facto favored position of Orthodox Church has been legitimized de jure by the signing of the Constitutional Agreement which contains several discriminatory clauses. State-church relations clearly demonstrate disrespect of the principle of secularism and the adoption of the concordat has clearly contributed to closer ties between ruling political elites and the orthodox patriarchy.

The use of religion as an effective tool for vote mobilization represents a dangerous tendency. Some of the newly created political parties have realized the usefulness of using religion for vote mobilization and often their rating is solely based on religious propaganda. On this background, revisiting the problem of respect for religious freedom and paying adequate attention to the elimination of the problems described in this report should be viewed as a matter of high priority.

2. Legality of the Concordat

The overview of national arrangements in terms of freedom of religion highlights two important aspects of the relation between state and religion: the way states organize relations with their majority religions and the way states deal with minorities. The latter aspect often tends to attract more attention from international institutions, as there are clear international requirements regarding the treatment of religious minorities. On the contrary, there is no common standard dictating how states should organize relations with the majority religion.³ The latter is illustrated by the great variety of state-church relationships worldwide, especially in Europe, where historic arrangements of such relationships still have a big role to play in societal arrangements. Regrettably, insufficiency of the legal framework often leads to unequal treatment and legalized discrimination. The constitutional Agreement between the Georgian State and the Georgian Apostolic Autocephalous Church (Concordat), which was signed on 14th of October 2002 on the basis of article 9 of the Georgian Constitution, is a clear demonstration of the aforesaid.

While declaring complete freedom of belief and religion, Article 9 of the Constitution also recognized the special role of the Apostolic Autocephalous Church in the history of Georgia and its independence from the State. Recognition of the special role in history did not constitute a problem or discrimination *per se*, however, not much time has elapsed since the adoption of the constitution when the above-mentioned clause of Article 9 has become a subject of political speculation which has subsequently resulted in the adoption of the Constitutional Agreement. To create an illusion of transparency and participation, representatives of different religious minorities have been invited in the process of drafting the text of the Concordat. In exchange for the promise that agreements of similar character would be signed with other religious organizations, they were invited to sign the memorandum of consent to the text of Concordat. However, the final text of the Constitutional Agreement that became public after the ratification by the Parliament significantly differs from the one upon which the minorities gave their consent.

³ Ibid

Constitutional Agreement is discriminatory in many ways. In practice, most of the provisions of the agreement are in breach of the several principles of the Georgian Constitution, including the principle of equality⁴ and the principle of state-church separation enshrined in the Article 9 of the Constitution.⁵

It is also worth mentioning that, after introducing amendments to the Constitution on March 30 2001, the Constitutional Agreement enjoys high legal status in terms of normative hierarchy and prevails over not only Georgian laws but international agreements ratified or otherwise recognized by the country.⁶

The discriminatory clauses of the Constitutional Agreement include the following:

- The Concordat grants special status of “entity of the public law”, a status that no other religious organization enjoys⁷
- The Patriarch of the Georgian Orthodox Church enjoys immunity, a privilege that heads of other religious organizations do not have⁸
- All major Orthodox holy-days are state holidays⁹, whereas other religious holidays, Muslim for example are not recognized as holidays
- Only orthodox religious marriage is to be recognized by the state¹⁰
- Ecclesiastics of the Orthodox Church are free from military conscription, while religious personnel of other denominations can only request postponement of the military service on individual basis or claim and justify exemptions on conscientious grounds¹¹
- Based on Article 4.2. of the agreement the State accepts the obligation to staff military camps, penitentiary institutions and other places of deprivation of liberty in cooperation with the church and enact necessary legislation in this respect
- The state is obliged to implement joint educational programs and to support educational institutions of the Orthodox Church. Moreover, the State agrees to officially recognize the certification document issued by the educational institutions of the Orthodox Church¹²

⁴ Article 14 of the constitution of Georgia

⁵ In addition it can be argued that certain provisions of the Constitutional Agreement contradict to the right to freedom of religion enshrined in the Article 19 of the Constitution which reads as follows:

1. *Everyone has the right to freedom of speech, thought, conscience, religion and belief.*
2. *The persecution of a person on the account of his/her speech, thought, religion or belief as well as the compulsion to express his/her opinion about them shall be impermissible.*
3. *The restriction of the freedoms enumerated in the present article shall be impermissible unless their manifestation infringes upon the rights of others.*

⁶ See Article 6 of the Georgian Constitution

⁷ Article 1.3. of the Constitutional Agreement

⁸ Article 1.5. of the Constitutional Agreement

⁹ Article 1.6. of the Constitutional Agreement

¹⁰ Article 3 of the Constitutional Agreement. It has to be noted no relevant amendments have been introduced to the Civil Code of Georgia to make Article 3 of the Constitutional Agreement operational

¹¹ Article 4 of the Constitutional Agreement

¹² Article 5 of the Constitutional Agreement

- The Orthodox church is exempt from tax payment while no other religious organization enjoys such exemption¹³

This list of the discriminatory provisions of the Constitutional Agreement is not exhaustive. Regrettably, adoption of the Constitutional Agreement does not contribute to the elimination of the numerous problems that religious minorities are facing in Georgia. On the opposite, adoption of the Concordat has deepened the gap between the Orthodox Church and other denominations in many ways and has provoked religious intolerance.

3. Religion in Schools and State Funding of Religious Education

The idea of teaching the history of Christianity in public schools in Georgia dates back to the mid 1980s. Several authoritative representatives of academic circles claimed that it was unfeasible to give an appropriate rendering of Georgian history without inclusion of the Bible and Christianity due to the closeness of these concepts. Thanks to “Perestroika”, the subject of “the History of Christianity” was accepted as a part of the school curricula. The initial purpose of this course was to contribute to the teaching of literature and arts. The subject was changed and its title renamed several times during early 1990s. On this background, the Patriarchate became increasingly active; especially in relation to training of teachers who had to teach the subject in the schools. Moreover, the contents of the “History of Religion” became the subject of disputes between some representatives of the academic circles and Patriarchate.¹⁴

The Orthodox Patriarchate’s intervention in teaching the history of religion had roots in law as well. For example, Article 18.2. of the Georgian “Law on Education” (adopted on June 22, 1997) stipulated that: “Ministry of Education and Science of Georgia (MES) had to cooperate with the Georgian Patriarchate while working on the elaboration of the school curricula.”

At present, the discriminative and xenophobic environment in public schools remains one of the acute problems.¹⁵ Public schools offer an elective course on religion in society; however, the course deals exclusively with the theology of Orthodox Christianity, and the primary textbook approved for use in the course focuses on Orthodox Christianity to the exclusion of other religious groups. To address this, the MES began developing a curriculum for the course pursuant to a memorandum signed by the Orthodox Patriarchate and the MoE in 2005. Although the MES formed a joint working group toward this end, it included representation only from the Orthodox Church. The working group suspended activity in early 2007 without effecting any changes to the curriculum. At the same time the MES continued a separate project of textbook development to replace older textbooks that contain themes or materials considered inappropriate under legislation promoting freedom of religion. The new textbooks include materials on religious groups other than the Orthodox Christians and discuss various religions in a neutral

¹³ Article 6.5. of the Constitutional Agreement

¹⁴ Human Rights Center Interview with Nugzar Papuashvili, Georgian expert on religious issues, April 12, 2008

¹⁵ Public Defender’s Report of 2007 pp. 116

fashion. During 2007 new textbooks were scheduled to be introduced for grades 1, 7, and 10; in subsequent phases new textbooks were to be introduced for the other grades. In the national curriculum, schools must teach religion only as a component of a general chronological or thematic treatment of history and culture, describing religious themes, texts, and beliefs without endorsement or favor. As early as the third grade, excerpts from religious texts or with religious themes may be taught in literature courses, for instance. MES guidance states that such texts and themes are to be integrated with civics and morals teaching to emphasize interfaith tolerance and mutual understanding. Plans called for civics curriculum guidelines to make religious tolerance an element of mandatory civics training in the ninth-grade level.¹⁶

However, by the time of writing this report, schools are still using textbooks that do not coincide with the idea of interfaith tolerance. The following extract from the book “History of Religion and Culture” clearly demonstrates the spirit of the textbooks used in schools: “There are men that are not followers of any religion; they do not believe the existence of the God. These men are called “faithless” or atheists. They are unfortunate. When a Georgian man calls someone “faithless” this is the most degrading thing.”¹⁷

Cases of teachers discriminating and sometimes even humiliating non believing children as well as believers of other than Orthodox religions are not rare. If the parent of non-believer child, for example, decides to exclude his/her child from the classes of history of religion it automatically causes marginalization of the child from his/her classmates which can have very negative consequences for the future of the child. Instead of working on elimination of this kind of problems MES continues to closely work with the Orthodox Patriarchy. A clear demonstration of this statement is the Memorandum of Joint Collaboration Commission of the Ministry of Education and Science and the Georgian Apostolic Autocephalous Orthodox Church, signed on January 22, 2005. The purpose of the creation of the Collaboration Commission was to intensify the relations between the Patriarchy and MES to make it more concrete. The Commission decided to create working groups that would work on issues like: the elaboration of the legislative basis for the mutual recognition of the diplomas/certificate issued by public and religious educational institutions; creation of the relevant guidebooks and curricula for teaching Orthodox Christianity; identification of those teachers who would teach the above-mentioned subject; creation of the formal procedure for the selection and appointment of such teachers; funding of the educational institutions of the Georgian Apostolic Autocephalous Orthodox Church. Local educational authorities are also closely cooperating with the local Church administrations in the educational field while representatives of minority religious denominations are practically deprived of such possibilities.

The educational institutions of the Orthodox Patriarchy annually receive funding from the state budget. There are cases of allocating additional funding from the budget based on the requests of

¹⁶ US State Department International Religious Freedom Report, 2007

¹⁷ Revaz Tvaradze, History of Religion and Culture, Saqartvleos Macne, 2003 pp. 21

patriarchy.¹⁸ The dynamic of state funding of religious education and related activities is changing rapidly. From 1.290,000 GEL in 2005¹⁹ funding went up to 9.521,100 million GEL in 2008.²⁰ As a matter of comparison the annual budget of Georgian Public Defender in 2008 is 1.877,300 GEL, five times less than funding allocated to the Patriarchy. Spending money of the Georgian tax payers who do not belong to the Orthodox Church or are not believers is another clear example of ignorantly violating constitutional principles.

It needs to be noted that general legislative framework regulating religious teaching in schools improved in the recent period. The “Law on General Education” adopted in 2005 is of particular importance in this respect.

Article 18 of the law is formulated as follows:

- 1. A pupil, parent or teacher have the right on freedom of faith, religion and conscience stipulated by the law, on the right to choose or change any faith or world outlook or not to choose any.*
- 2. A pupil, parent or teacher can't be obliged to fulfill duties, which contradict to their faith, confession or conscience, if it doesn't substantially infringe the rights of others or doesn't hinder mastering of the level of achievements stipulated by the national curriculum.*
- 3. Display of religious symbols on the territory of a public school must not serve non-academic goals.*
- 4. Pupils in public schools may study religion or perform religious rituals during time free from classes, if it serves religious education.²¹*

Article 8 of the same law provides more guarantees against spreading of religious intolerance in the schools by stating following:

A school may define the rules for not discriminative and neutral restriction of rights and freedoms of pupils, parents and teachers and their associations during academic period and on school territory for the fulfillment of demands of the present law, as well as in other cases if there is substantiated and inevitable danger of: (c) distribution of obscenity or slandering, inspiration of ethnic or religion hostility, encouragement of crime or violence;²²

¹⁸ See for example the Decree of the President on allocation of additional funding to the Patriarchy, Decree No 1028, 24.09.200

¹⁹ See Article 61 of the Law on State Budget, 2007

²⁰ See Article 57 of the Law on State Budget, 2008

²¹ Law on General Education, Adopted on April 8 2005

²² Ibid

These improvements in legislation are positive and essential steps for improving situations in public schools. However, as practice shows the state still has a lot to do in this respect in order to balance exceedingly discriminatory environment in schools.

4. Property Related Problems

Most of the property owned by religious organizations was aggressively nationalized in Soviet times. Nationalized properties included religious sites and large pieces of land. The major victim of the nationalization was the Orthodox Church. The return of this property became increasingly important from the very first days of gaining independence. The importance of this issue was reflected in the Constitutional Agreement as well.²³ Today most part of the nationalized property of the Orthodox Church is returned to its owners. Depending on various sources value of the returned property exceeds 3 billion GEL.

At the same time return of the property of minority religious organizations remains problematic. The Roman Catholic and Armenian Churches have raised concerns about the authority the Orthodox Church enjoys over decisions regarding the return of its historical church property. They have been unable to secure the return of their churches and other facilities that were closed during the Soviet period, many of which later were given to the GOC by the State.²⁴

Most religious minorities believe that property disputes are not resolved in a transparent legal process but rather on a case-by-case basis that distinctly favored Orthodox Church claims. For instance, the commission established under the auspices of the Ministry of Culture to resolve these disputes included an Orthodox Church representative but none from other religious groups. However, by mid-2007 the commission had ceased operation, and the Ministry planned to use non-partisan expert opinion for assessment of future ownership disputes. Disputed ownership led to some interfaith disturbances and remained a cause for which extremist Orthodox priests and activists organized demonstrations and incidents, such as anti-Catholic agitation at Ivli in late 2006 and early 2007. The RCC and AAC, as well as Protestant denominations, continued to have difficulty obtaining permission to construct new churches, mostly due to the reluctance of local authorities to antagonize locally powerful conservative supporters of Orthodox Church; however, the GOC itself did not oppose new church construction by other religious groups when such construction did not modify or obstruct GOC sites.²⁵

5. Practicing Religion in Places of Deprivation of Liberty

Under international law prison authorities are expected to recognize the religious needs of those deprived of their liberty by allowing inmates to take part in religious observances. Thus where religion or belief dictates a particular diet for example, this should be respected by the

²³ See above

²⁴ US State Department Religious Freedom Report, 2005

²⁵ US State Department Religious Freedom Report, 2007

authorities. Further, adequate provision should be made to allow detainees to take part in religious worship or to permit them access to spiritual guidance

The inclusion of religious care as part of prison treatment owes much to historical attitudes towards reformation and rehabilitation of offenders. Although some prisoners are helped to change their attitudes and behavior through religious conviction, there is also a danger that coercion occurs, particularly when a state has tightened relations with majority religion. It is essential that in any treatment programmes for prisoners religious norms should not be used indiscriminately to judge a prisoner's progress towards self-development. A prisoner should not be judged as immoral or incorrigible because his or her religious convictions differ from prevailing religious norms.²⁶

Church-state relations in Georgia have a great influence on religious observances in places of deprivation of liberty. While there are operative churches in most of the penitentiary facilities, prisoners who represent minority religions are deprived of the possibility to practice their religion. Religious personnel of non Orthodox denominations report problems with accessing prisons. Orthodox religious literature is readily available, whereas literature on other religious teaching is hardly to be obtained.

The Ministry of Justice of Georgia signed an agreement with Patriarchate of the Orthodox Church. According to this agreement, the Georgian Orthodox Church is entitled to have its representatives at all penitentiaries to conduct holy liturgies and other religious ceremonies, whereas representatives of other religions can realize such a right only subject to the consent and supervision of the Georgian Orthodox Church.

6. Status and Registration of Religious Organizations

Since the religious organizations traditionally exist in organized structures issues related to their status and legal capacity are of particular importance. In the modern-day world existence and effective functioning without having a legal personality is practically impossible. Ownership of property, religious teaching, import-export of religious literature many other forms of transactions all require legal personality and capacity.

Under the Civil Code of Georgia, Religious organizations had to be registered a “entities of public law”. However, legislation related to setting up and running such entities was in principle incompatible with the substance of existence of religious organizations. Because of above-mentioned, several religious organizations including Jehovah Witnesses, obtained legal personality in breach of law and were registered as “unions” or “funds”.

Amendments introduced to the Civil Code in 2004 made it possible to register religious organizations as non-profit making organizations. However, many religious denominations,

²⁶ Making Standards Work, Penal Reform International, 2001, pp 126-127

especially the traditional ones are not content with the form of registration that Georgian legislation offers today. While Georgian Orthodox Church has special legal status with certain discriminatory privileges attached to it rest of the religious organizations can only have a status of non-profit making entity.

7. Conclusion

The examination of different aspects of the life of religious organizations in Georgia reveals significant problems and discriminatory practices from the side of the Government. It is clear that adoption of the Constitutional Agreement contributed to furthering the gap between religious minorities and Orthodox Christians on the one hand and tightened the relations between the Government and Orthodox Church on the other. State-Church relations often cross boundaries of the relations that could take place in a democratic state and lead to political speculation.

The marginalization and radicalization of the parts of the population based on religious faith can have a serious negative impact on national security and state stability for the long term. The elimination of such discriminatory practices and the creation a tolerant environment should remain of high priority considering the complex ethnic and religious structure of the Georgian society.

State-Church relations are in conflict with the basic constitutional principle of separation of church from the state. The funding of Orthodox Schools from the state budget is a clear demonstration of this. It is essential that Ministry of Education takes immediate steps to eliminate existing religion-based discrimination in schools. Several steps need to be undertaken in this respect:

- a. MES has to make sure that textbooks used for teaching the history of religion are replaced by new unbiased textbooks.
- b. make sure that not only the Patriarchate but also representatives of other minority denominations take part in the elaboration of such textbooks.
- c. introduce by laws regulating in detail what constitutes religious discrimination and how this discrimination is to be eliminated.
- d. select and train teachers of history of religion.
- e. carry out systematic monitoring of public schools and implement necessary disciplinary measures towards teachers involved in incitement of religious hatred and intolerance.

The government has to show the same diligence in returning the property of religious minorities as it does with the Patriarchy and must remain neutral in the resolution of property related disputes that arise between the Patriarchy and other religious organizations.

Those representatives of religious minorities that have been deprived of liberty should have same treatment and possibility to practice their religion in prisons, including the possibility of meeting with religious personnel.

Considering the dissatisfaction of religious minorities, the issue of registration of religious organizations needs to be revised.

Georgian media needs to pay more attention to the elimination of religious hatred and support minority-friendly and tolerant thinking.