

# **Human Rights Monitoring Group of Ethnic Minorities**

## **A report on the state of the Azerbaijani Muslim community in Georgia**

The implementation by Georgia of its obligations to observe the rights and freedoms of religious minorities in the country. This report which covered the period from 1995 to May 2011 has been prepared by the «MRMG».

## Introduction

1. Issues of freedom of conscience and faith, as well as state-church relations invariably attract heightened attention from the authorities and religious, public and human rights organizations. This interest is no accident since all this is directly linked not only to the observance of fundamental human rights and freedoms, but also to the strengthening of moral freedoms of society, the preservation of its spiritual and cultural heritage and the strengthening of civil peace and concord.

2. The protection of the individual and collective rights of national (ethnic) and religious minorities, which is an organic part of fundamental human rights and freedoms, is one of the most topical problems of the modern world. The legislative establishment of the status of national and religious minorities, which complies with the generally-recognized principles and norms of international law, morality and humaneness, and its consolidation in public practices are an essential factor of political and social stability, peace and justice. It stimulates the acceleration not only of the domestic, but also of the common process of democratization on the international scale. The rights of national (ethnic) and religious minorities are one of the most important components of the idea of “democracy”. Their legal state and real protection determine the essence of the democratic nature of society in many respects. Lawmaking and the adoption of relevant democratic constitutional-legal norms form the basis of a practical solution to the problems of interethnic and inter-religious relations.

3. The authors of the NGO report welcome Georgia’s official position on the aspects aimed at protecting the rights and freedoms of religious minorities in the country, as well as all the democratic reforms that have taken place in recent years. We agree that the Georgian government, in a number of positions, is trying to follow the country’s international obligations in the sphere of protecting the rights of religious minorities, and that recent years have seen some positive changes in national legislation and domestic policy.

4. From the very beginning, we did not see our goal as a confrontation with the position of the government or a denial of official information and official conclusions. The task of the report was to express a view that is different from the official view on the situation, using other sources of information. We tried to do everything possible to avoid duplicating information of a general nature contained in government reports. Such work is meant, in our view, to promote a more comprehensive and better understanding by interested international organizations of problems facing religious

minorities in Georgia, specifically, the Azerbaijani Muslim community, as well as interesting and constructive discussions on these subjects inside the country.

5. The report considers the idea of “protecting religious minorities” as the basis of one of the possible approaches to the understanding and description of religious diversity, as well as the settlement of related problems. By no means, do the authors offer their own interpretation of the idea of “a religious minority”, and they totally keep to the meaning laid in the *Framework Convention for the Protection of National Minorities*, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and other fundamental international norms of the European system of protecting human rights and the UN system of protecting human rights.

6. The authors of this report and the NGOs which support it hold similar views on the contents of the idea of a “religious minority”. For the purposes of this report, it was symbolically recognized that in the most general sense, it can be used to signify public relations based on the separation of groups for religious reasons. Therefore, the approach based on the idea of “protecting religious minorities” suggests an analysis of all situations linked to such relations.

7. We prefer discussing the subject of religious minorities (in this case and in the entire report, the Azerbaijani Muslim community) not only as the “state” of the religious community as such, but also the problems that face or might face specific people, as well as the role of the state in creating or solving these problems. We thought it necessary to highlight four groups of such problems in the report:

- 1) Situations involving direct discrimination for religious reasons;
- 2) Regulatory instructions and administrative measures or practices which promote and stimulate discriminatory treatment;
- 3) Regulatory instructions and administrative measures or practices that have or can have a disproportionately unfavourable impact on religious minorities;
- 4) The norms and measures or practices that have no proportional impact on religious minorities, but are perceived as a threat to religious minorities and are capable of causing hostility and alienation between people of different religious affiliation.

8. While compiling the report, the authors used the following main sources of information: reports and statements by organizations set up on an ethnic basis, complaints from people who regard themselves as victims of discrimination and have applied to human rights and other non-government organizations for help, the results of monitoring, the analysis of legislation and judiciary practices and official statistics (wherever possible), official speeches and responses to queries from members of parliament and NGOs and media publications.<sup>1</sup>

9. While working on the report to research the situation, we tried to cover the main groups of the Azerbaijani Muslim community: both those which have centuries-long bases in the Kvemo -Kartli region and in Georgia as a whole. A poll was conducted in more than 40 large Azerbaijani population centers. Summarizing the monitoring information that was garnered, we drew a conclusion about gross violations of the rights of people belonging to the Azerbaijani minorities living in the Kvemo - Kartli region and in Georgia as a whole.

10. Work on the report was carried out in view of exceptional and deep respect for the Orthodox Church and the whole philosophy of Christianity and with respect for all the holy books of all religious denominations represented in Georgia. With this survey, the monitoring group intends to ensure equal relations between the secular state – Georgia - and all religious denominations, not to reduce or curtail the rights that the Georgian Autocephalous Orthodox Church has.

### **The analysis of legislation**

11. The analysis of the domestic regulatory-legal field and political realities of Georgia shows that the situation surrounding freedom of conscience and the protection of the rights of religious minorities in this country is not good.

According to the Georgian Constitution of 1995 (Article 9), the state recognizes the exceptional role of the Georgian Orthodox Church in the country's history and at the same time, declares full freedom of faith and the independence of the church from the state.

12. Georgia is the only country in the post-Soviet area where there is no separate law on religion and religious associations.

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<sup>1</sup> If a certain incident is widely covered by the media and human rights organizations and becomes public, the report does not quote a specific source of information.

13. On 14 October 2002, a concordat was signed: “The Constitutional Treaty between the State of Georgia and the Georgian Apostolic Autocephalous Church”. In connection with preparations for the signing of this treaty, the Georgian parliament adopted a law “On changes and addenda to the Georgian Constitution”. According to the law, Point 2 was added to Article 9 of the Constitution, which regulates the special status of the Georgian Orthodox Church. Though this concordat is quite positive, we regret to say that other religious communities which are in a minority did not sign any document regulating relations between the state and the religious community. Such a situation leads to unequal relations between the state and the dominant religion on the one hand and the religious minority on the other.<sup>2</sup>

The table given below graphically shows the inequality of the titular religious community and the religious minority in the state.

**14. The table of the rights and freedoms of the titular religion and the Azerbaijani religious minority in Georgia**

	The privileges of the titular religion in Georgia	The lack of these privileges in the Azerbaijani Muslim community
I	The state and the church have the right to conclude agreements in various spheres of common interest and adopt relevant acts in order to implement them	Relations are not regulated as there is no status
II	The church is recognized as a legal person of public law	The Muslim community has only the rights of a private person (as a non-government and non-commercial organization)
III	The state supports the secrets of the confession and the secrets of the church. A priest should not divulge information which is entrusted to him as a pastor or which he learns as a religious figure	It is not know how the situation will develop if the issue applies to Muslim religious figures
IV	The state recognizes marriages executed by the Church in the order established by the law. Data on the state registration of the marriage are used in legal relations	The state does not recognize “kabin” – the Muslim religious marriage ceremony
V	An ecclesiastic is exempted from military service	Muslim clerics are not exempted

<sup>2</sup> It must be noted that the principle of separating the church from the state can be regarded as the basic element of the European Convention of Human Rights.

		from military service
VI	According to an agreement with the Church, the state ensures the establishment of the pastors' institute in military units and prisons and adopts relevant legal acts in this regard	The state does not examine the situation of Muslims and does not regulate the access of the clergy to military units and prisons
VII	In the order established by the law, mutually and on equal grounds, the state and the church recognize documents confirming education issued by relevant institutions of education, scientific degrees and titles	The state does not recognize documents of Muslim religious institutions which confirm education. At least there is not a single norm that regulates this sphere
VIII	The state and the church are authorized to implement joint programmes in the education system. The state helps the operation of ecclesiastical institutions of education	The state creates an unequal situation by failing to help the operation of Muslim institutions of education for religious minorities
IX	The property and other ownership rights of the church are protected by the law. The church can own any property that is not banned by Georgian law	The issue of the ownership of mosques and other Muslim property has not been solved since the lack of registration of all the Muslim religious centers without exception does not provide any official status
X	Products made by the church and used in divine service – their production, import, supplies and donations, as well as property and land that is not used for economic purposes are exempted from tax	This provision does not apply to the Muslim community of Azerbaijanis
XI	According to an agreement with the church, the state issues permits or licences for using official church terminology and symbols, as well as for producing, importing and supplying products used in divine service	There are no regulatory provisions that could regulate this sphere for the Muslim community of Azerbaijanis
XII	The state recognizes all Orthodox churches and monasteries on Georgian territory (both operating and non-operating), their ruins and the land on which they stand as the property of the church	The state does not recognize the Spiritual Department of Muslims of the Caucasus (SDMC) as the owner of mosques and prayer houses, as well as other types of property on Georgian territory
XIII	Measures to protect property and buildings and ways of owning and using them are determined by a relevant	The state does not agree procedures of protecting property

	state service in compliance with the law and the agreement with the Church	and buildings and ways of owning and using them with the Muslim clergy. The state has not allocated resources for this and there is no relevant state service
XIV	The state recognizes the whole church treasury protected by the state (in museums and depositories), except for privately-owned items, as the property of the church	The state does not recognize Muslim items protected by the state (in museums and depositories) as the property of the SDMC, even if it does not own such property at the moment
XV	The state and the church are jointly taking care of the appropriate protection of church buildings and the church depository	The state protects the historical, cultural, archaeological and architectural artifacts and buildings of the Muslim community of Azerbaijanis on a general basis. It does not commit itself to looking after them
XVI	The state commits itself to negotiating with relevant states on the protection of Georgian Orthodox churches, monasteries and their ruins, other church buildings, church artifacts located on their territories and to looking after and owning them.	The state does not give the SDMC an opportunity to ensure the full protection of mosques, buildings and items that have a historic, cultural, archaeological and architectural value for the Muslim community of Azerbaijanis
XVII	The state confirms the material and moral damage inflicted on the Church when the country lost its state independence in the 19 <sup>th</sup> -20 <sup>th</sup> centuries (especially in 1921-90). As the real owner of confiscated property, the state commits itself to partial compensation for material damage (Resolution 183 of the Council of Ministers of the Georgian SSR dated 12 April 1990)	The state does not confirm the material and moral damage inflicted on Muslims of Georgia when the country lost its independence in the 19 <sup>th</sup> -20 <sup>th</sup> centuries (especially in 1921-90). As the real owner of confiscated property, the state does not commit itself to partial compensation for material damage. An example is the blowing up of a mosque in old Tbilisi in 1950.

15. The establishment and registration of religious organizations in Georgia is regulated by Article 1509 of the Georgian Civil Code. According to the code, religious organizations have been given an opportunity to register only as non-commercial legal persons with all the rights that ensue.

16. As the biggest religious minority community, the Muslim community of Azerbaijanis regards such a situation as one of the forms of discrimination and its existence as a fund or union as unacceptable; they want to have the same status as the one that the state has granted to the Georgian Orthodox Church. They also want the state to recognize the Muslim community of Azerbaijanis as a legal person with all the rights that ensue. Therefore, this religious minority demands either the adoption of a clear-cut law on religious associations or the formation of a separate agreement (like a concordat). Leading Georgian rights champions and experts hold the same view. Georgian ombudsman S. Subari<sup>3</sup> thinks that the provision on granting equal opportunities should cover all traditional religious minorities in Georgia.

17. The lack of legal mechanisms for the registration of religious associations in Georgia is also closely related to the property rights of the Muslim community of Azerbaijanis. The people's defender of Georgia said in a report on this issue in parliament on 23 December 2005: "According to the Constitutional Treaty between the Georgian state and the Georgian Orthodox Church, Orthodox clerics are exempted from military service, the state recognizes church marriage, defends the secrets of the confession, declares church holidays as off-days, the state and the church cooperate in various spheres of common interest, the church uses tax privileges, the state commits itself to compensating partially for the damage that was caused to the church in the 19<sup>th</sup>-20<sup>th</sup> centuries, etc. The state grants these privileges only to the Georgian Orthodox Church. In fact, this is a violation of the fundamental principle of equality recognized by the Constitution (Article 30) and international agreements. As long as the state has not granted the same privileges to other denominations, the latter... will in fact experience discrimination and will be in an unequal state with the Orthodox Church."<sup>4</sup> It must be noted that before the concordat was concluded, many Georgian rights organizations and NGOs actively criticized the adoption of such a legal act.

18. In his report of 23 December 2005, the ombudsman recommended changes to the approach to issues of registering religious denominations operating in the country: "It is necessary to conclude an agreement with religious associations that do not want to register according to the existing law, which will determine their legal status and envisage the application of the privileges granted to the Orthodox Church under the Constitutional Treaty to other denominations as well."<sup>5</sup>

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<sup>3</sup> From an interview with the well-known Georgian expert P. Zakareishvili (7 February 2006) and the Georgian Public Defender (Ombudsman) S. Subari (6 February 2006)

<sup>4</sup> See details: "Disputed Churches", A Greek Demonstration and A Missing Mullah. A report by the Georgian people's defender // <http://www.regnum.ru/news/569444.html>, 7 January 2006

<sup>5</sup> See details: "Disputed Churches", A Greek Demonstration and A Missing Mullah. A report by the Georgian people's defender // <http://www.regnum.ru/news/569444.html>, 7 January 2006

19. The current situation causes many problems that have a negative impact on the right of religious minorities to profess their religion and carry out their religious rituals. Such a discriminatory approach contradicts most of the international norms also accepted by Georgia. One of them is the **International Convention on the Elimination of All Forms of Racial Discrimination**.

20. The granting of official status to the public law of the religious community of Azerbaijanis is quite important because religious centers and buildings are being restored in the country. As is known, many mosques and prayer houses of the Muslim community of Azerbaijanis in Georgia were damaged under Soviet rule. In this case, the problem arises of returning all religious centers, premises and property confiscated under Soviet rule from the then religious communities of Georgia.<sup>6</sup>

### **The law on education and mutual relations between the school and the church**

21. On 8 April 2005, the parliament adopted a law “On general education”. Article 13 of Chapter 1 of the old law envisages cooperation with the Orthodox Church. According to the new law, proselytism, indoctrination and displays of religious symbols for non-academic purposes are banned in public schools. This means that during the educational process, not a single representative of a religious association or teacher have the right to spread this or that religion and involve pupils in any religious ritual. The state and religion are separate from each other according to the Constitution and the Constitutional Treaty, and therefore, a public school or a religious association is banned from spreading, supporting or campaigning against this or that faith during the teaching hours. The law gives full freedom to the pupils themselves in this sphere.

### **The memorandum between the Ministry of Education and the Georgian Orthodox Patriarchate**

22. Three months before the adoption of the law, on 22 January, on the basis of the treaty concluded between the state and the Georgian Patriarchate, the Ministry of Education issued a memorandum that provides for the establishment of a joint commission. The commission started working on the following issues: The creation of Orthodox Christian textbooks and educational programmes; the development of procedures of selecting, training, appointing and dismissing teachers; the development of procedures for the participation of representatives of the Georgian Autocephalous

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<sup>6</sup> The last mosque in Tbilisi was blown up in 1953. It was of historical and cultural importance not only to Azerbaijanis. The mosque was also part of Georgia’s cultural heritage. Currently, there is only one mosque in Tbilisi which was restored after the collapse of the Soviet Union, and it still has no registration or status.

Apostolic Orthodox Church in compiling educational plans and examining relevant textbooks on Orthodox faith; legal support for the financing and property issues of educational institutions of the Georgian Autocephalous Apostolic Orthodox Church; the determination of forms and conditions of cooperation between the state and Georgian Autocephalous Apostolic Orthodox Church in the issue of nurturing students.

23. The memorandum violates the principle of separating the church from the state, recognized by the Constitution, and implies inequality in relations between the state and the religious majority on the one hand and religious minorities on the other:

	<b>The privileges of the titular religion in Georgia in the sphere of education (including agreements planned and confirmed by the memorandum for the near future)</b>	<b>The lack of privileges in the sphere of education among the Muslim community of Azerbaijanis</b>
I	On the basis of Articles 1 and 5 of the Constitutional Treaty between the state and the Autocephalous Orthodox Church to protect the principles recognized in Article 9 and 19 of the Georgian Constitution, work will start on a draft agreement in the sphere of education between the state and the Autocephalous Orthodox Church	There are no provisions that would be able to lay legal foundations of public relations between the state and the Muslim community of Azerbaijanis
II	The memorandum confirmed once again: In order for the draft agreement in the sphere of education between the state and the Autocephalous Orthodox Church to be implemented in time and at the high level, united working groups will be set up from representatives of relevant structural units of the Ministry of Education and Science and the Georgian Autocephalous Orthodox Church	The absence of any commission between the state and representatives of the Muslim clergy of Azerbaijanis of Georgia and the full absence of any agreement at any level makes the situation of Muslim Azerbaijanis quite vulnerable
III	The state organizes legal support for and development of documents that affirm the education, degree and honorary titles granted by relevant state-run institutions of education and the Georgian Autocephalous Orthodox Church by means of mutually	The full absence of the Georgian authorities' political will in this sphere with regard to the Muslim community of Azerbaijanis

	confirmed procedures that level them	
IV	The development of procedures of appointment and dismissal, the selection of teachers, compilation of educational plans and necessary textbooks for teaching the Orthodox Christian faith	The full absence of political will in the Georgian authorities
V	The development of procedures on the participation of representatives of the Georgian Autocephalous Orthodox Church in the examination of relevant textbooks and preparation of education plans that substitute subjects and issues of the Orthodox Christian faith	The full absence of political will and alienation of the clergy of Muslim Azerbaijanis
VII	Legal support for property issues and financing of education institutions of the Georgian Autocephalous Orthodox Church	The lack of separate legal support for property issues
VIII	The establishment of conditions and forms of cooperation between the state and the Georgian Autocephalous Orthodox Church in the issue of educating pupils	The absence of equality and any conditions and forms of cooperation
IX	According to the memorandum, an agreement on cooperation will be signed between the state and the Autocephalous Orthodox Church in the sphere of education	Absolutely nothing is being done for relations at the public level

24. According to the memorandum, the state can finance the study of Orthodox Christianity both at schools and in church institutions of education; the Patriarchate may participate in the selection, training, appointment and dismissal of a religion teacher (the name of the subject has not been identified yet). In this case, the teacher's religious affiliation, not his qualification, may be the decisive factor, which may result in the violation of the principle of academic freedom and in discrimination against non-Orthodox teachers; The memorandum does not say that the study of Orthodox Christianity is voluntary (the Constitutional Treaty recognizes this); the subjects and textbooks that include Orthodox faith may be religion, literature, history and natural disciplines. Therefore, if the Patriarchate has the right to participate in compiling them: a) the scientific nature of education will be damaged (the study of the theory of creationism); b) probably, the education system will have an

element of religious censorship; c) education with regard to other faiths may acquire not a pluralistic, but a tendentious nature. The memorandum runs counter to the law on education, according to which the state ensures the independence of public school from religious and political associations, forms thinking based on liberal-democratic values in pupils and assumes responsibility not to allow the study of non-scientific views or theories under the guise of scientific facts or scientific theories.

25. This provision violates the **International Convention on the Elimination of All Forms of Racial Discrimination** since it does not concern representatives of religious minorities.

26. After Georgia ratified the the International Convention on the Elimination of All Forms of Racial Discrimination, its provisions became a norm and a basis for action for us. However, in reality, this cannot be felt. There is no religious pluralism proclaimed in the country by the Constitution. Though all laws and agreements ICERD should be brought in line with the convention, this did not happen. In practice, we have facts about benefits, restrictions or other forms of discrimination depending on affiliation to this or that religion. The Constitutional Treaty is observed only between the state and the Georgian Apostolic Autocephalous Orthodox Church, while the religious communities of Muslims are left beyond the line of “the law”.

### **The media and religious minorities**

27. The mass media may play a decisive role in introducing the culture of tolerance. However, in Georgia, the Muslim Azerbaijanis often encounter manifestations of Islamophobia at the highest level. An example could be the negative fact that on the English page of the official website of the Georgian Orthodox Church (the section of questions from parishioners and answers from clerics - [http://www.patriarchate.ge/\\_en/?action=kitxva&start=30](http://www.patriarchate.ge/_en/?action=kitxva&start=30)), the answer to the question “can a Christian man or woman marry a Muslim man or woman?” said that this is impossible because the Muslim religion serves the teaching of the Devil. Apart from that, the Islamic religious was equated with paganism. This incident caused great dissatisfaction and an investigation. Subsequently, after this fact was investigated between Azerbaijan and Georgia at a high level, this page was removed.

28. It must be noted regretfully that Georgian society is not impartially informed about issues that are topical in terms of inter-religious relations. There is no full cooperation between the religious minority of Muslim Azerbaijanis and the mass media, which could help “discover” subjects tabooed in society and provide real information regarding various faiths, including Islam. It is necessary to demonstrate

special delicacy and correctness in this sphere. However, unfortunately, for many years the Georgian media has been one of the main sources of negative stereotypes about religious and national minorities, specifically Muslim Azerbaijanis.

29. The obligations of the state to ensure freedoms of thought, conscience and religion imply that the state observes these rights (does not violate them), protects them (from violations by state and private organizations) and ensures that they can be exercised in reality.

30. Georgia has undertaken a commitment according to which every person has the right to freedom of thought, conscience and religion. This right includes freedom of religion or convictions of any type of one's own choosing and freedom to practice religion and express convictions both independently and jointly with others, in a public and private manner, freedom of cult, religious and ritual ceremonies and teaching. However, the commitments of the state are not being implemented at the appropriate level. We have already cited facts which show that there are both "privileged" and 'unfavoured' religious communities in Georgia. The religious communities of Muslim Azerbaijanis could be attributed to the latter.

### **The situation in Georgia according to a poll conducted among the Muslim community of Azerbaijanis**

31. Many Muslim communities think that their religious rights and freedoms are not protected by the law at the appropriate level since legislation is too far from international standards and the Georgian Constitution. A certain category of religious communities claim that their constitutional rights are restricted, which is why they regard themselves as being oppressed by the authorities. There have been numerous cases of the authorities' illegal interference and pressure on the owners of prayer houses in the process of building prayer houses and mosques. Below are given the names of the villages where mosques and prayer houses were built in different years, their number, registration, state status and the presence of a minaret (the distinguishing feature of a Muslim mosque) – in many places, it is exactly the construction of a minaret that is an object of discrimination by the local and regional authorities.

32. The situation surrounding the issue of permits to build new religious premises to the communities of Muslim Azerbaijanis is very difficult. In most cases, minorities encounter groundless bans. Most

prayer houses were built as residential houses, not mosques. A number of Azerbaijani religious figures said in interviews that the attitude of the state to representatives of the Georgian Orthodox religion and other religions is ambiguous. They cited the fact that, for example, a notification which needs to be received for the construction of mosques in fact implies permission from the Georgian Orthodox Eparchy. They regard such a situation as discriminatory and as running counter to the principles of equality. For example, using this situation, a number of Orthodox organizations organize protests demanding a ban on the construction of mosques in areas populated by Muslim Azerbaijanis.<sup>7</sup>

33. The most widespread types of arbitrary restrictions on religious organizations are obstacles created by the authorities to the construction of religious buildings – prayer houses and mosques. Muslim Azerbaijanis encounter such difficulties more often. These obstacles can range from red tape that lasts many years to direct refusal. For example, in 2006, the construction of a mosque in Tbilisi's Saburtalo district was banned. As a rule, these problems are linked not only to the position of officials, but also to protests by part of the population and religious leaders of the regional religious majority.

34. On 25 January 2008, the local government bodies in the village of Muganlo (where ethnic Azerbaijanis comprise 100 per cent of the population) in the Gardabani District of the Kvemo -Kartli region banned the construction of a new prayer house (instead of the old smaller one). It must be noted that the religious ritual of Shi'i Muslims – Ashura – has been held in this place for more than 100 years. This ritual was not banned under Soviet rule or after Georgia regained its independence. The prayer house where the ritual had been held for many years was too small for the growing population of the village, which is why a decision was made to build a new and more spacious one. The ban was imposed by the local executive authorities without considering the current situation. Most of the population perceived this as discrimination and an attempt on freedom of faith. After a long dispute and bureaucracy, the prayer house was built, however, the construction of a minaret is not being allowed under various pretexts.

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<sup>7</sup> <http://www.pravoslavie.ru/news/23610.htm>

20 August 2007 – Georgia's Orthodox Christians are protesting against the opening of a mosque. The David Agmashenebeli Georgian Union of Orthodox Parishioners staged a march in protest against the opening of the mosque in the village of Asagi Bolnisi where a great number of Muslims live. The protesters were outraged as, they said, the opening of the mosque was not agreed with the Georgian Orthodox Church and that the Georgian Patriarchate was not even notified of this. According to the chairman of the union, Aftandil Ungiadze, funding for such mosques come from the consulates of Azerbaijan and Turkey, and they do not even ask either the Georgian government or the patriarchate for their opinion, Regnum news agency reported. The opening of the mosque on 17 August was attended by the chief mufti of Tbilisi, Ali Aliyev, and local MP Kamal Muradkhanov. According to Muradkhanov, the construction of the mosque was financed by a local businessman who now lives in Moscow, while the mosque itself was built in compliance with a project which does not run counter to Georgian legislation. However, representatives of the patriarchate claim that the construction of the mosque was not agreed with them, which is a violation of the 2003 concordat between the state and the Georgian Orthodox Church.

35. The monitoring group thinks that such a situation runs counter to the right to practice religion and express convictions, as well as the right to set up religious institutions, organizations or associations.

**The situation surrounding the construction of mosques and their registration (as of the 1 of May 2011)**

	<b>Towns and villages</b>	<b>Number of mosques</b>	<b>Registration on the basis of Georgian legislation</b>	<b>State – status</b>
1	Tbilisi "Dzhuma" a mosque	1	On the books of the Georgian Ministry of Culture	No status
2	Village Soganlyg a mosque "Ahli - Bejt"	1	There is a document for the construction of a private house	No status
3	Marneuli, "Dzhuma" a mosque of a name of Imam Ali	1	No	No status
4	Marneuli, Minasazdy a mosque of a name of Imam Huseina	1	No	No status
5	Marneuli, the Talyblinsky mosque	1	No	No status
6	Marneuli, village Kiziladzhilo a mosque	1	No	No status
7	Marneuli, village Dzhandar a mosque of a name of Imam Safara Sadyga	1	No	No status
8	Marneuli, Sabirkand a mosque of a name of Imam Kjazyma	1	No	No status
9	Marneuli, Algeti (Gorarhi) a mosque	1	No	No status
10	Marneuli, village Bajlar, a mosque	1	There is a document for the construction of a	No status

			private house	
11	Marneuli, village Bajdar, a mosque	1	No	No status
12	Marneuli, Village Kutlar, a mosque	1	No	No status
13	Marneuli, village Lezhbjadtin, a mosque	1	No	No status
14	Marneuli, village Dashtapa a mosque of a name of Imam Huseina	1	No	No status
15	Marneuli, village Araflo, a mosque	1	No	No status
16	Marneuli, village Ahlymahmudlu, a mosque	1	No	No status
17	Marneuli, village Imiri, a mosque of a name of Hazrata Rasula Akrijama	1	No	No status
18	Marneuli, village Takali, a mosque of a name of Imam Huseina	1	Until recently, it operated as a library and was restored as a mosque under a presidential decree, but has no registration.	No status
19	Marneuli, village Agmammatly, a mosque of a name of Imam Rzy	1	There is a document for the construction of a private house	No status
20	Marneuli, village Algeti (grape state farm), a mosque of a name of Imam Rzy	1	No	No status
21	Marneuli, village Big Muganlo, a mosque	1	No	No status
22	Marneuli, village Bajtally, a mosque	1	No	No status
23	Marneuli, village Gasymlly, a mosque	1	No	No status
24	Marneuli, village Kiranch	1	No	No status

	Muganlo, a mosque of a name of Hazrata Muhammada			
25	Marneuli, village Garihly, a mosque of a name of Hazrata Fatimy-Zohry	1	No	No status
26	Marneuli, village Keshaly, a mosque	1	No	No status
27	Marneuli, village Second Kesalo, a mosque	1	No	No status
28	Marneuli, village Huldara (Sadahlo), a mosque of a name of Shahid Jaguba of the Half-hell	1	No	No status
29	Marneuli, the village Sadahlo, a new mosque	1	No	No status
30	Marmeuli, village Sadahlo, a mosque of a name of Hazrata Muhammada Mustafy	1	No	No status
31	Marneuli, village Mollougly, a mosque	1	No	No status
32	Marneuli, village Damija Gorarhy, an ancient mosque	1	No	No status
33	Marneuli, village Damija Gorarhy, a mosque of a name of Imam Huseina	1	There is a document for the construction of a private house	No status
34	Marneuli, village Mamej (Kirovka), a mosque of a name of Imam Hussein	1	No	No status
35	Marneuli, village Bottom Saral, a mosque of a name of Zahry ханым	1	No	No status
36	Marneuli, village Top Saral, a mosque of a name of Imam Zamana	1	No	No status

37	Gardabani, the Maragallinsky mosque	1	No	No status
38	Gardabani, village Nazarly, an ancient mosque	1	No	No status
39	Gardabani, the village Nazarly, a new mosque	1	No	No status
40	Gardabani, village Sartichalo Munganlo, a mosque	1	There is a document for the construction of a private house	No status
41	Gardabani, village Kosaly, a mosque of a name of Hadzhy Vali	1	No	No status
42	Gardabani, a new mosque of village Kosaly	1	No	No status
43	Gardabani, village Garadzhal, a mosque	1	No	No status
44	Gardabani, village Agtahla, a mosque of Molla Hasan	1	No	No status
45	Gardabani, village Garatahla, an ancient mosque of village	1	No	No status
46	Bolnisi, village Fahrly, a mosque	1	No	No status
47	Bolnisi, village Fahrly, a mosque of Ahli-sunna	1	No	No status
48	Bolnisi, village Kapanahchi, a mosque	1	There is a document for the construction of a private house	No status
49	Bolnisi, village Imirhasan, a mosque	1	No	No status
50	Bolnisi, village Hasanhodzhaly, a mosque	1	No	No status
51	Bolnisi, Bala-Munganlo village, a mosque of a name of Imam Hussein	1	No	No status
52	Bolnisi, village Arihly, a	1	No	No status

	mosque			
53	Bolnisi, village of Zol-Goadj, a mosque of a name of Imam Hussein	1	There is a document for the construction of a private house	No status
54	Bolnisi, village Hamamly, a mosque	1	No	No status
55	Dmanisi, village Gizilkilisa, a mosque	1	No	No status
56	Tetritskaro district , village Kosalilar, mosque	1	There is a document for the construction of a private house	No status
57	Tetritskaro, the village Kosalar, a new mosque	1	No	No status
58	Tsalka District , village Dag-Sarvan, mosque of a name of Imam Hussein	1	No	No status
59	The Caspian area, village the Ferma, a mosque of a name of Hazrata Ali	1	Registered as an elders' home	No status
60	Kareli , Ashagi street mosque	1	No	No status
61	The Zazmans mosque	1	No	No status
62	Village Mshaldidi, mosque	1	No	No status
63	Sagaredjo, village Lambalo, a mosque	1	No	No status
64	Sagaredjo, the village Lambalo, a new mosque	1	No	No status
65	Garachop, village Keshali, a mosque	1	No	No status
66	Sagaredjo, village Keshali (Tarabash street) a mosque	1	No	No status
67	Garachop, village Gazlar, a mosque	1	No	No status

68	Sagaredjo, village Tullar, a mosque	1	No	No status
69	Garachop, Mugarly a mosque	1	No	No status
70	Sagaredjo, a mosque of Garabagly	1	No	No status
71	Garachop, village Djuzayram, a mosque	1	No	No status
72	Lagodehi, village Gabal, the Gabalsky mosque	1	No	No status
73	Lagodehi, village Garadzhal, the Garadzhalarsky mosque	1	No	No status
74	Lagodehi, village Uzuntala, a mosque of Hazrata Abbasa	1	No	No status
75	Lagodehi, village Gandzhali, a mosque of a name of Imam Huseina	1	No	No status
76	The Telavi district, village Garadzhal, Grardzhalinsky mosque	1	No	No status
77	Ahmet's area, village Duisi, Duisy ancient mosque	1	No	No status
78	Ahmet's area, village Duisi new mosque	1	No	No status
79	Village Dmanisi a new mosque		no	No status

**The information about the mosques was prepared by the clergy of the communities of the Kvemo Kartli region.**

### **Discrimination in institutions of education**

36. "The problem is that many parents are unaware of their rights. In their opinion, the fact that the rights of their children are being violated in the name of the Orthodox faith is natural," said an expert

of the Religious Tolerance Centre under the Georgian people's defender, Beka Mindiashvili, who taught religious at school previously.<sup>8</sup> "Religion teachers called Muslims, Judaists and Kurds 'stooges of the Devil' at lessons. Unfortunately, parents often do not speak about it openly," said the founder of Multinational Georgia, Arnold Stepanyan. The representative of the research department of the parliament, Levan Abashidze, thinks that "when a school voluntarily makes a decision to teach religion, this subject becomes mandatory for all pupils of this school." "The history of different religions should be taught at schools. But most of the textbooks used at schools are a direct path of conversion to the Orthodox faith," Abashidze said. Last year, the Institute for Peace, Democracy and Development non-governmental organization conducted training sessions on the teaching of religion for teachers. "It turned out that some teachers are intolerant of representatives of other religions. This was acknowledged by participants themselves," said an employee of the NGO, Bella Beradze. The coordinator of the inter-religious council of the Georgian Patriarchate, Lela Jejelava, says that representatives of traditional religions may demand that their religious be taught at schools, "but this issue has yet to be solved at the legislative level". According to Jejelava, the Roman Catholic Church, the Armenian Apostolic Church, the Judaic and Muslim communities refuse to register as legal persons because they do not want to exist "as a company or foundation". We can talk about the teaching of other religions at schools only after they apply for legal status, she said. Until then, Georgian schools will be dominated by the Orthodox faith.

## Monitoring results

37. Having analyzed the common condition of Muslim Azerbaijanis, the monitoring group came to the conclusion that their opportunities are restricted by the "law" that runs counter to the **International Convention on the Elimination of All Forms of Racial Discrimination**. Unfortunately, rules of granting the political status of a legal person to the Muslim community of Azerbaijanis in Georgia are compiled in a way that does not prevent bureaucratic arbitrariness and veiled and at times open discrimination.

38. It is impossible to agree with the provision under which restrictions are "imposed" not in the interests of public security, not to protect public order, health or morality, or to protect the rights and

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<sup>8</sup> Fati Mamiashvili, an independent journalist, Tbilisi. The material was prepared by the Caucasus Information Service of the Institute for War and Peace Reporting, IWPR, 13 March 2007. Source: Novosti-Georgia

freedoms of other people, but in the interests of suppressing and freezing the community of Muslim Azerbaijanis.

Moreover, there is no need for such unofficial restrictions if we are talking about a really democratic Georgia.

39. A real democratic society implies political pluralism in a mandatory manner, the lack of which in Georgia is discovered during a comparative analysis of legislation, a whole number of memorandums, norms and agreements with the dominant religion and by the absence of such documents with the religious minority.

The situation surrounding the community of Muslim Azerbaijanis requires pluralism, tolerance and a width of views without which there can be no democratic society, as well as the consideration of cultural differences between the religious minority and the religious majority. In the process of integration in which the state invests great efforts, it is of vital importance to maintain respect for differences in the sphere of culture and religion. However, everything is questioned and becomes illusory when true religious pluralism, which is typical of the idea of “a democratic society”, is not considered and is protected restrictedly, which is certainly the case with regard to the religious community of Muslim Azerbaijanis in Georgia. Veiled restrictions cannot be justified by a public need in any specific situation, and the restrictions are not proportionate to the legal goal that is pursued.

40. Such an approach to relations between the public authorities and different religious convictions has nothing in common with the spirit of pluralism proclaimed by the European *Convention for Human Rights Protection* .

41. Complaints from the religious communities of Muslim Azerbaijanis about refusal to grant them the status of a legal person, which does not allow them to operate efficiently, allow us to say that there is no tolerance, pluralism of ideas and concepts in society. The lack of opportunities and equality in creating and operating a religious association makes the very existence of the community illusory, since “religious communities traditionally exist in the form of organized entities everywhere”. Therefore, participation in the life of the community is part of “religious activity and is protected by Article 9 of the *European Convention for Human Rights and Fundamental Freedoms Protection*”.<sup>9</sup>

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<sup>9</sup> The European Court of Human Rights: “Sidiropoulos and Others v. Greece” and “Khasan and Chaush v. Bulgaria”

42. The absence of legal status restricts the protection of the activity of the association from unjustified state interference. The autonomous existence of religious communities is an integral part of pluralism ensured by the democratic society and is guaranteed by Article 9 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. This applies not only to the organization of the community as such, but also to the effective exercise of the right to freedom of religion by all its active members. Since the activity of the community as an organization has no status, everyone's right to freedom of religion is vulnerable.<sup>10</sup>

The denial of recognition and the obstacles created by the local authorities to the construction of mosques and minarets as one of the main attributes of the mosque in a number of population centers have made religious activity impossible because the presence of such restrictions does not allow the religion to be practiced in full in terms of the religious dogma laid in the tradition and philosophy of religion.<sup>11</sup>

43. The absence of or obstacles created by the authorities to the issue of a permit to build a mosque, a prayer house and a minaret as an integral part of the mosque do not meet the criteria of "necessity in a democratic society". In many cases, the imposition of sanctions on the builders is not fair, justified and necessary in a democratic society, because such a situation has been "fabricated" by the state. The state forces Muslim communities of Azerbaijanis to commit "offences" and answer for their consequences only because of their convictions.<sup>12</sup>

44. In Georgia, there is a church with an adopted constitutional memorandum and complex financial schemes, which grants great privileges to the dominant religion. At the same time, the community of Muslim Azerbaijanis which has much fewer privileges is restricted in implementing certain types of religious activity and in implementing its tasks, though generally-recognized principles of international law grant religious associations the right to acquire the legal capacity of a legal person, the right to

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<sup>10</sup> There is a direct link between the right to freedom of faith and the right to freedom of association. The European Court recognized the right to set up religious associations as an integral part of the system of fundamental human rights and freedoms. This was confirmed once again at the end of 2001 in the case "Metropolitan Church of Bessarabia and Others v. Moldova". Agreeing with earlier decisions on the cases "Khasan and Chaush v. Bulgaria" and "Sidiropoulos and Others v. Greece", the court said: "Moreover, one of ways of exercising the right to religion in its collective dimension, especially for a religious community, is the possibility of ensuring the legal protection of the community, its members and property; so, Article 9 should be examined not only in the light of Article 11, but also Article 6 (the right to a fair court investigation).

<sup>11</sup> Only the officially recognized religion has the rights of a legal person, can prepare and sell service items or recruit employees or paid workers officially.

<sup>12</sup> A presumably innocent request for permission to run premises for prayers was turned into a weapon against the right to freedom of religion

judicial protection, the right to engage in economic activity, the right to establish labour relations, the right of self-government and so on.

45. Georgia has undertaken clear-cut obligations in the sphere of protecting freedom of conscience and faith. At the same time, some provisions of the law which apply to the sphere of freedom of speech and religious associations run counter to the principles established by the *European Convention for the Protection of Human Rights and Fundamental Freedoms*.

46. A number of provisions and unofficial and veiled actions by the local authorities, as well as by the regional authorities lead to discrimination against the community of Muslim Azerbaijanis in Georgia and run counter to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and all international norms.

47. The law protectors believe that there are:

- Violations of the principle of prevention of religious discrimination;
- Violations of the principle of religious tolerance which reflect religious extremism;
- Violations of the right to express and profess religious convictions openly;
- Violations of freedom to use the property of religious communities and organizations and freedom to carry out religious rituals.

## **Recommendations**

1. To bring national legislation in line with the Georgian Constitution, **the International Convention on the Elimination of All Forms of Racial Discrimination** which says that religious freedoms are liable to restrictions imposed only by the law and required in a democratic society.
2. To guarantee the status of a legal person for the religious community of Muslim Azerbaijanis and religious associations if their activity does not violate the Georgian Constitution, human rights or international law.
3. To take effective measures to guarantee the freedom of religious minorities, paying special attention to their protection from discrimination or persecution by representatives of the state secular authorities.

4. To take measures to ensure equal access to the media, education and culture for representatives of the community of Muslim Azerbaijanis in Georgia as one of the biggest communities among the religious minorities in Georgia.
5. To introduce and increase the effectiveness of measures to prevent and overcome racism, nationalism and xenophobia by promoting tolerance and respect for cultural diversity among representatives of all authorities, first of all, employees of the law-enforcement agencies, judges and health sector and social security employees. To develop and introduce codes of professional ethics for public servants.
6. To eliminate the privileged attitude of the authorities towards this or that religion, drawing a clear line between the secular authorities and religion.
7. To carry out immediate and effective investigations into complaints about the actions of representatives of government agencies (first of all, the police, the prosecutor's office and the courts) which insult national and/or religious feelings; to ensure the application of sanctions against employees of government agencies responsible for such actions.
8. To organize special training courses for employees of government agencies in order to increase their awareness and foster an attentive attitude to representatives of various ethnic and religious groups.
9. To ensure the development of dialogue between the law-enforcement agencies, regional authorities and religious minorities.
10. To promote the spread of knowledge about cultural diversity and positive coverage of this subject in raising children in order to avoid forming negative stereotypes, disinformation and