

Hate Crimes in Georgia

2009

This report represents a work in progress by HRIDC and has no ambition to provide comprehensive analysis on the issues of hate crimes in Georgia. The report outlines relevant provisions of national legal system and highlights those pitfalls and shortcomings of it which hinder effective fight against hate crimes in Georgia. It also lists international legal instruments which are relevant to the issues and are binding for Georgia as well as those ones which are important to effectively fight hate crimes but Georgia has not signed them until now. In the end, the report gives particular examples in order to provide a better understanding of the nature and specificities of hate crimes in Georgia.

Executive Summary

Hate crime is not classified in Georgian legal system as a separate type of crime. Instead obligations of the state to combat crimes motivated by intolerance and hate towards certain groups derive from Constitutional and criminal law provisions, as well as international instruments to which Georgia is a party. However, these legal norms are not systematized but rather scattered in different instruments and a number of crimes motivated by hate, prejudice or intolerance still remain beyond their reach.

The most important deficiencies of Georgian legal system in respect of its capacities to identify and combat hate crimes can be summarized as follows: absence of effective legal mechanisms to combat hate speech and hate motivated public discourse; lack of a general provision which expressly mandates to take into consideration the perpetrator's racist motive as an aggravating circumstance of the crime; in certain cases attachment of criminal responsibility not to the hate motive of the crime but its result, omission of certain characteristics, such as sexual orientation e.g. from the list of motivating grounds which if present aggravate criminal responsibility, lack of specific prohibition at targeting property and other material goods on the grounds of their connection, attachment, affiliation, support, or membership of certain groups, lack of express mandate in the law that hate motivated crimes will incur heavier criminal responsibility regardless of the fact whether the connection of the victim with certain group, e.g. religious, is real or perceived.

Georgia has neither signed nor ratified a number of important international instruments to fight racism, xenophobia and prejudice motivated crimes, e.g. Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, European Charter for Regional and Minority Languages, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, etc.

Concerns remain that the Constitutional Agreement signed between the state and the Georgian Orthodox Church in 2002 includes discriminatory clauses and denies different religions and denominations equality before the law. Furthermore, some experts have expressed their alarm on the rise of tendencies towards religious fundamentalism in Georgia.

The factors outlined above are the key reasons of why capacities of the Georgian legal system to effectively identify and combat hate crimes remain limited.

The legal system:

a) The Constitution:

Inviolability of human dignity, honor (Article 17) and equality before the law regardless of race, skin color, language, sex, religion, political and other beliefs, national, ethnic and social origin, property and title of nobility or place of residence” (Article 14) is guaranteed under the Constitution of Georgia (Article 14).

The Constitution further specifies that “Citizens of Georgia are equal in social, economic, cultural and political life regardless of national, ethnic, religious or language origin. . . all have the right to develop their culture freely without any discrimination and interference, use their language in private and public life as long as exercising of minority rights should not oppose the sovereignty, integrity and political independence of Georgia. (Article 38)

Freedom of religion, speech, thought, conscience, and belief is guaranteed. Persecution of anyone on the grounds of thought, beliefs or religion and compulsion to express opinions about them is prohibited (A.19). These rights may not be restricted unless the exercise of these rights infringes upon the rights of other individuals. (Article 19)

b) Shortcomings in the Constitutional system of rights protection:

The Constitution does not list age, mental or physical disability and sexual orientation among the prohibited grounds of discrimination, neither does it entail the notion of “other similar factor” as a prohibited ground of discrimination, which would allow the courts, with full observance of the principles of rule of law and democratic society, to adapt the law to factual realities when necessary.

Although the Constitution announces complete freedom in religious belief and the independence of the church from the state”(Article 19) it also recognizes “the special importance of the Georgian Orthodox Church in Georgian history” (Article 9) and further enshrines it in the Constitutional Agreement signed between the state and the Georgian Orthodox Church in 2002. Concerns that the Agreement includes discriminatory clauses and denies different religions and denominations equality before the law remain strong.

c) Relevant International instruments ratified by Georgia

Georgia is a state party to a number of international human rights instruments prohibiting racism, discrimination and intolerance, *inter alia* the European Convention of Human Rights and Freedoms (1999), Protocol 12 ECHR (date of ratification 2001) International Convention on the Elimination of All Forms of Racial Discrimination (date of accession 1999)¹, International Covenant on Civil and Political Rights (date of accession 1994), International Covenant on Economic, Social and Cultural Rights 1966 (date of accession 1994) , The Framework Convention for the Protection of National Minorities (date of ratification 2005), The (Revised) European Social Charter (date of ratification 2005), European Charter of Local Self-Government on 8 December 2004 (date of entry into force 2005).

International Convention on the Prevention and Punishment of the Crime of Genocide 1948 (date of accession 1993), Convention on the Elimination of All Forms of Discrimination against Women 1979 (date of accession 1994), Convention on the Rights of the Child 1989 (date of accession 1994), ILO 111 Discrimination (Employment and Occupation) Convention, 1958 (date of ratification 1993), Rome Statute of the International Criminal Court 1998 (date of ratification 2003), Framework Convention for the Protection of National Minorities 1995.

d) Relevant international instruments neither signed not ratified

As of March 2009 Georgia has neither signed not ratified the following international instruments:

European Charter for Regional and Minority Languages, although the Georgian authorities have long stated their intention of ratifying the European Charter for Regional and Minority Languages as soon as possible.

¹ Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination allows individual communications to be considered by the Committee for the Elimination of Racial Discrimination. In June 2005 Georgia made the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination accepting its authority.

Convention on the Participation of Foreigners in Public Life at Local Level.

European Convention on Nationality.

Additional Protocol to the Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Criminal Code

There is no general provision in the Georgian Criminal Code which expressly mandates taking into consideration the perpetrator's racist motive as an aggravating circumstance of the crime.

Instead the Code provides for heavier penalties in respect of certain crimes if committed in specific circumstances, *inter alia*, on certain grounds such as race, religion or skin color:

- a) Crimes which incur heavier penalties when committed on the grounds of race, religion, nationality or ethnicity:

murder (Article 109); **infliction of serious injuries** (Article 117); **Systematic beating or other form of violence** which causes the victim to suffer physically or physiologically (Article 126); **Disrespect of the diseased** which is desecration of graves on the grounds of race, religion or national or ethnic intolerance (Article 258)

- b) Crimes which incur heavier penalties when committed on one of many grounds listed in the law, e.g. place of residence or political viewpoint:

Infringements of the right to equality on the grounds of race, skin color, language, gender, attitude towards religion or religious belief, political or other viewpoint, national, ethnic or social status or

the fact of belonging to any public association, birth, place of residence or property, when the violation of equality leads to substantial violation of the victim's human rights, (article 142);

Racial discrimination which is defined as an act aiming to create national or racial animosity or conflict, humiliate national pride and dignity, also direct or indirect restriction of human rights or granting advantages to an individual because of his or her race, skin color, social status, national or ethnic origins (article 142');

Sexual violence, such as homosexual, lesbian or any other abnormal sexual act accompanied by violence or the threat of violence or by taking advantage of the helpless situation of the victim is prohibited (article 138)

Torture, an act which by its nature, intensity or duration causes deep physical pain or physiological or moral suffering and the motivation for which is to gain information, evidence or confession, scare someone or force him, or punish a person for an committed or presumably committed by himself or a third party(article 144') accompanied by violation of equality among man based on the grounds of race, skin color, gender, religious attitude or beliefs, political or other points of view, national, ethnic, social belonging, place of birth, place of residence, property or status.

Threat of torture (144")

Inhuman and degrading treatment, a treatment which degrades or forces an individual, puts him under conditions which are inhuman, degrade his honor and dignity, which causes strong physical or moral suffering when accompanied by infringement of equality on the grounds of race, skin color, gender, religious attitude or beliefs, political or other points of view national, ethnic, social belonging, place of birth, place of residence, property or status (144")

Persecution *of a person because of* grounds of speech, thought, conscious, religious belief or worldview, or in connection with his political, social professions religious or scientific work. (156)

Interference with the establishment of entities of a religious, political, public nature or illegal

interferences in its activities (166)

Production and distribution of materials which propagate violence and merciless (256)

c) Crimes which incur heavier penalties only when committed on one specific ground

Denial of the enjoyment of ones rights guaranteed by national law and/or international agreement motivated to the person who suffers from physical disability handicapped/ challenged when such a denial leads to substantial violation of his or her rights (article 142");

Illegal interference in religious practice when accompanied by violence or threat of violence, humiliation of the believers or religious officials 's belief, (155)

e) **Pitfalls and Shortcomings of the national criminal code:**

1. Attachment of criminal responsibility not to the hate motive of the crime but its result

Article 142 (infringements of the right to equality) and Article 142' (Denial of the enjoyment of ones rights on the grounds of physical disability) leads to criminal responsibility only if they lead to "substantial violation of human rights."

Article 155 (prohibition of illegal interference in religious practice) leads to criminal responsibility only if accompanied by violence or threat of violence, humiliation of the believers or religious official's belief.

2. Ineffective regulation of hate speech

in Georgia incitement to racial, national, religious, etc. hatred goes beyond the reach of the criminal justice system. Hate speech as such is not defined by the Criminal Code and consequently, is not criminalized.

Instead the issue is dealt with by Georgian Law on Broadcasting (adopted in 2004, in force since 2005) which prohibits broadcasting a program which in any form creates a clear and direct danger of inciting racial, ethnic, religious or other kind of animosity, discrimination or violence against any group.

Programs directed at humiliating a person or a group based on physical abilities, sexual orientation, or other characteristics or status, or at discriminating or specially emphasizing this characteristics or status is prohibited except for the cases when the latter is necessary because of the content of the program and aims to illustrate the existing animosity. (Article 56.2) Pornography, as well as a program or an advertisement containing obscenity and violating dignity and fundamental rights of a human being or a citizen is prohibited. (Article 56.3)

Each broadcaster is responsible to make sure that its programs and advertisements are in compliance with the requirements of the legislation and the conditions of licensing. Sole authority to supervise compatibility of the work of a broadcaster with the legislation of Georgia rests within the Commission of Broadcasting, together with the tax inspection and law enforcement authorities in the fields of their respective competencies. (Article 70) If the broadcaster is in violation of the legislation of Georgia, a decision of the Commission or license conditions, the Commission will warn the broadcaster about this by a written notice.

If within the reasonable time the broadcaster does not eliminate the violation indicated in the written notice, the Commission is authorized to impose a fine amounting 0,5% of the annual income of the broadcaster but no less than 2500 Georgian Laries (Article 72); If within one year of receiving the written notice the broadcaster commits another violation, the Commission is authorized to impose the fine amounting to 3% of the total income of the broadcaster bur no less than 5000 Georgian Laries) or, alternatively to initiate procedure of putting the broadcasting license of the violator on hold. (Article 72)

Authority to terminate the license or put it on hold is vested exclusively within the Commission. Judiciary is excluded from regulating the work of a broadcaster in terms of the fight against hate speech. That may seriously hinder effectiveness of hate speech regulations.

HRIDC is not aware of any cases when the license of a broadcaster was put on hold or terminated on the grounds of hate speech. We remain reluctant to believe that this fact is due to the absence of hate

motivated discourse in broadcast media in Georgia.

While regulation of hate speech in broadcast media is not effective, printed media as well as the internet are left without any legal restrictions on voicing messages motivated by hate, prejudice or intolerance. The Law of Georgia on the Freedom of Speech and Expression (adopted in 2004, entered into force the same year) provides that law can regulate the content of the freedom of speech and expression in certain cases which do not include encouraging national, racial or etc. hatred (Article 9). While incitement to crime or threat can be restricted according to the law, this provision still remains quite unclear and cannot directly be applied to address hate speech in general.

This is probably the explanation why Georgian newspapers and internet are often converted into a free space to unleash discourse motivated by hate and intolerance, newspaper “Alia” and forum.ge can be sighted as examples of such developments.

3. Omission of certain factors from the list of motivating grounds which if present aggravate criminal responsibility

Crimes motivated by sexual orientation or mental disability are not addressed by Georgian Criminal Code. Criminal Code provisions provide a closed list of motivating grounds which is present aggravate the criminal responsibility and do not leave space for “other similar factors” to be in addition regarded as aggravating circumstances; hence, absence of sexual orientation as well as mental disability presents a serious trait of the existing legal mechanism to fight hate crimes.

4. Incompatibility of the wording of certain provisions with the principles of a democratic society based on equality of dignity and rights

Article 138 prohibits “homosexual and lesbian sexual act or any other sexual contact of abnormal character” accompanied by violence or the threat of violence. . . Although homosexuality as such is no longer a crime in Georgia, the current wording of article 138 considers it as “abnormal” which itself may easily lead to humiliation of the dignity and rights of sexual minorities.

Article 142” which protects right of people who suffer from physical disability uses the Georgian equivalent for the word “invalid” rather than disabled, which should be changed.

Raid on the Halloween Party

The type of incident (brief description): religious intolerance, omission from the state to ensure protection of the rights of its citizens: right to peaceful assembly, property, freedom of expression and belief, effective remedy.

On October 31, 2008 Ltd. Adrenalin.ge organized a Halloween party on Erekle Street, Tbilisi. The admission was with tickets and invitation cards. The people on the party were dressed up in Halloween costumes and had Halloween make-up (imitations of cut of throat, red spots in form of blood and so on.)

On 1 a.m. two Orthodox priests together with about 50 men arrived on the party. The priests demanded that the organizers stopped the party immediately as they considered the Halloween party to be Satanist ritual.

After the visitors came violence broke up. Organizers and many eyewitnesses who were interviewed by HRIDC claim that several party attendees were beaten, two severely, one had concussion of the brain and the other had his nose broken. Nika Tsereteli, the party DJ was beaten too. The equipment and the DJ desk was destroyed. As the organizers estimate the damage to the equipment amounted to 8 000 US Dollar, Part of the money from the tickets was lost as well.

The law enforcement bodies were present at the place, however they were reluctant to take adequate measures and detain the organizers of fight. Neither did they make an effort to identify and detain the inspirers of the fight.

Sandro Chomakhidze, one of organizers of the party who participated in the fight was detained by the law enforcers and was fined with 400 GEL for resisting the law enforcer.

The victim(s) Adrenalini ge – organizers of the party, people present at the event.

Information on the perpetrator; One of the priests was Father Davit Isakadze. Also the members and leadership of the Union of Orthodox Parents

Response of the government, law enforcement or any other public body: The Organizers of the event were from the beginning very willing to take the case to the court, but then they became hesitant and decided – better to leave it as it is.¹ Some think that this happened because the City Hole, which was the sponsor of the event, wanted to avoid conflict with religious authorities and convinced the organizers to do so.

The Prosecutor's office according to the legislation of Georgia can initiate investigation in this kind of cases even if the victim does not bring the claim forward. However, as to the knowledge of HRIDC, the law enforcement bodies or any governmental bodies have not started investigation on the incident.

Any other relevant information

It is noteworthy to say, that there was no public discussion on what happened on the 31st October and the fundamental issues involved in it. No official statement was made about the event by any government body, or the Church. Media coverage of the event was very limited and biased. Consequently, the only source of information is exchange of information in non-formal settings and private interviews.

a) Distinctly biased media coverage of the raid

The day it was supposed to take place TV channels including *Imedi* and *Rustavi 2* spread the news about it. However, once raided the Halloween party was mostly covered in a negative way, rather than neutral or positive. E.g. Newspaper "Alia" wrote that the Halloween is a Satanist ritual. Georgian youth who celebrated it on the 31st of October 2008 was under drugs and were engaging in sexual acts directly on the stage during the event. The newspaper placed the entire blame of destroying the equipments and the accompanying violence on the organizers and participants.

Two interviews with the comments published by the newspaper "Alia." Some parts of this interview can in fact be regarded as an example of the hate speech. The author is journalist Dito Chubinidze,

who was rather biased in the evaluation of the incident and interviewed only one eyewitness “or this horrible event” [as he and the interviewee refer to the Halloween party] and the representative of the Union of Orthodox Parents.ⁱⁱ

After the eyewitness Nikoloz Chkikvadze, the first interviewee, describes with disgust what was going on during the event, the journalist poses him a question : “were the participants Georgian?” and the answer is:

“ all where Georgian” Another question is” how many people were dressed up in this Satanist clothes” , answer: “Almost 1000. The population around was suffering. Imagine what was happening (!!)- hard rock on the highest volume and fireworks.”

“Dear friends, as you see the sinful place of Shardeni (part of Tbilisi where the event happened) is awaiting the triumph of new sins and one day the evil himself will climb out of the ground and eat us all.“ - end of the first interview.

Co-Chairman of the Union of Orthodox Parents, Avtandil Ungiadze was the second interviewee. “They have been trying for several years already to legalize this event, behind this stands the West, more –the USA. The roots of Halloween can be traced in pagan traditions and is a Satanist ritual. “ – says the interviewee. “ Further: “Statehood of Georgia today is based on the Constitution and Constitutional Agreement between the State and the Church, therefore those who fight against the Church are fighting against the State and their place is in the prison.” Further: “Girls came at the party and openly said they were lesbians, can you imagine what is going on?”

b) Coverage of the raid by a youth TV program blocked, the program closed down.

The youth TV programme “Our Express” which is the InterNews project and is done in all three countries in South Caucasus, prepared a public opinion poll about the raid and prepared a program also showing certain moments of violence which took place during the raid. When it was prepared the copy as always was sent to Imedi TV. According to Tako Kobakhidze, supervisor of the TV program, the same evening Imedi representative called her and said Imedi could not broadcast the part of the program which covered the Halloween party, consequently it will be taken out. “It was explained to us the protest coming from the youth would be perceived in a bad way by the general society. Later on I visited them and asked what topics should we abstain from covering in order to avoid repetition of similar development in the future. They said that we should avoid covering the

issues of sexual minorities, national minorities and minorities in general. That in fact meant that programme would lose its nature as we have the ambition to cover exactly those issues which are tabooed in our society. “ – Kobakhidze says.

All this was taking place in December, in January a new set of programmes was prepared in the Imedi TV. They told to “Our Express” that since the program had a low rating, its time would be changed to 10 o’clock in the morning.

“This was an absurd, says Kobakhidze, because on Sunday morning at 10 o’clock no one watches youth TV program. This was a diplomatic way of getting free from us, as we did not really have problems with the rating, e.g. our blog is being visited by 400 people a day at least who watch our internet program. “

As Kobakhidze noted, Union of Orthodox Parents in the past as well were protesting against them when they were on the Public Broadcaster and demanded “Our Express” and another youth program “Kedeli” (the Wall) to be closed down. “Its true in the past we prepared program on the issues of religious minorities which generated a lot of discussions on the forums in the internet, but not any kind of direct pressure or violence on us have ever taken place. “

Ana Natsvlishvili from HRIDC says: “Halloween incident reveals a dire lack of tolerance in Georgia towards a different viewpoint and groups who choose to deviate from historically and socially given *status quo*. Opposition towards the “dissidents” takes forms of strong social condemnation and labeling of certain individuals, groups and actions as immoral, blasphemous, Satanist, etc. While public intolerance is an important obstacle in Georgia for enjoying equality of rights and maintaining freedom of choice and perspective, the key role in this and similar situations is upon the state to play as a neutral arbiter. It is the reluctance and/or inability of the state to act with due responsibility and protect non-mainstreams. It is exactly this attitude from the state which nourishes and legitimizes social intolerance and violence towards racial, ethnic, etc. minorities as well as those who do not fully uphold the culture and traditions of the mainstream society.

HRIDC expresses its strong hope that the case of Halloween Party and other expressions of hatred and intolerance will be promptly and effectively investigated by Georgian authorities and those who violate the law will be brought to justice, irrespective of their race, skin color, language, gender, attitude towards religion or religious belief, political or other viewpoint, national, ethnic or social status or the fact of belonging to any public association as dictated by the Constitution of Georgia.

Desecration of Jewish Graves

The type of incident (brief description): Desecration of Jewish Graves

On April 26, 2008 the graves of Jewish people were desecrated on the Peria cemetery that is situated at the border of Batumi city and Khelvachauri district. Swastikas and the words characteristic to Nazis such as SS, ZIG-HAEL, HAEL and HAEL HITLER were discovered on grave stones. The door of Jewish Synagogue was broken in Batumi as well, though nothing was stolen.

The victims: individual victims not identified

Information on the perpetrators: The perpetrators have not been identified yet.

Response of the government, law enforcement or any other public body: The police arrived at the crime scene soon after the discovery of the crime. The criminal case under Paragraph B of Part III of Article 258 of the Criminal Code of Georgia i.e. Disrespect to the Deceased based on Racial, Religious, National or Ethnic Intolerance was launched.

The government of Adjara Autonomous Republic within Georgia (AAR) and the Office of Public Defender of Georgia as well as various NGOs condemned the fact.

It is noteworthy that when the incidents occurred Jews were celebrating Pesach.

Any other relevant information: A president of the *Association of Georgian-Jewish Relationships* Emil Krupnik made a statement: “this is a shocking fact. I have heard a lot about anti-Semitist marches which often take place in Russia and Ukraine, but I have been living on this great land [Georgia] for many years and never thought that anything similar could happen in Georgia. This is a barbarism of those people who have lost their minds and intend to generate conflict among the local population and national minorities, in particular Jews, but they cannot attain this goal. This is clear by the reaction the local population have in respect of the incident; they are so concerned about the fact as if their own relatives’ graves were violated. Hope we [Georgian and Jews people] will continue the relationships in the future too, which were built up during the centuries. The society should take all the measures that it never happens again.”

According to the Association nearly 600 Jews live in Batumi now.

Beka Mindaishvili – senior expert at the *Center for Tolerance* at the Public Defender’s Office said, it was clearly an act of intolerance based on anti-Semitism. “It is very regrettable that this has happened in Georgia. But I think anti-Semitism is not characteristic to Georgia. It is difficult to say for sure before the investigation is going on, but the perpetrators could have been a naughty youth group who are obsessed with the ideas of world Zionism. There are some anti-Semitism sentiments in Orthodox circles, but it can’t say that it is reflected in practical actions, e.g. desecration of graves.”

Preliminary Conclusions

Georgian legal system to effectively identify and combat hate crimes remain limited.

Although Georgian nation is boasting with its centuries-honoured tradition of multiculturalism and tolerance, public mentality still remains hostile in general towards new developments and “dissidents” who aim to deviate from historically and socially given *status quo*.

Passivity of the state and law enforcement authorities, as well as broader civil society in general, will send a message of endorsing and legitimizing violence towards minorities and “dissidents” which threatens to undermine foundations of democratic social order based on protection of fundamental human rights and freedoms, a guaranteed by the Constitution.

ⁱ It is interesting to note that the organizers after some time made a promise that next time when they decide to organize a Halloween Party, they will ask for the permission and blessing from the Orthodox Christian Church. This promise was welcomed by the Union of Orthodox Parents and representatives of the Church as well.

ⁱⁱ Though the journalist mentioned that he contacted the City Hole for the comment, but they refused to comment. No one from the side of organizers or targeted eyewitnesses were given the chance to express their opinion in this article.