

**PUBLIC DEFENDER  
(OMBUDSMAN) OF GEORGIA**

**SPECIAL REPORT  
ON COMBATING DISCRIMINATION,  
ITS PREVENTION AND THE SITUATION  
OF EQUALITY IN THE COUNTRY**

**2015**

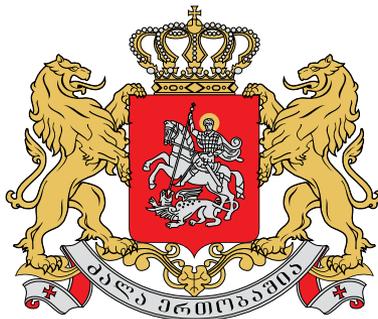


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**Special Report  
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*The document was elaborated pursuant to the Article 7 of the Law of Georgia on the Elimination of all Forms of Discrimination*



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## **Chapter I. Introduction**

On May 2, 2014 the Parliament of Georgia adopted the law on the Elimination of All Forms of Discrimination (hereinafter Antidiscrimination Law). The law is intended to ensure the elimination of all forms of discrimination and equal rights of natural and legal bodies under the legislation of Georgia.

The principle of prohibition of discrimination had been embedded in the Constitution of Georgia as well as other legal acts. However, the practice proved that it was not sufficient to develop a discrimination free environment largely due to the absence of effective legal leverages in the existing legal acts; in particular, the lack of effective court and administrative mechanisms, which should have guaranteed the restitution of infringed right of equality.

Pursuant to the Association Agreement concluded with the EU in 2014 Georgia has shouldered the responsibility to gradually harmonize its legislation with the European law.

Antidiscrimination law was adopted within the frames of the agreement and it represents a consolidated mechanism for the legal implementation of the principle of the prohibition of discrimination enshrined in the Article 14 of the Constitution of Georgia.

One of the achievements of the Antidiscrimination Law is the expansion of its scope to reach out administrative organs, natural bodies and legal entities of private law.

The Law has introduced the concept of direct and indirect discrimination and prohibited support or encouragement of discriminatory actions. The Antidiscrimination Law provides an open list of grounds of discrimination to ensure that discrimination regardless the nature of prohibited grounds never eludes the law.

The above mentioned law entitles the Public Defender of Georgia to monitor and oversee the efforts for the elimination of discrimination. The introduction of additional mechanism together with the court further invigorates the fight against discrimination and makes efforts more effective.

The Public Defender pursues four directions in order to ensure the implementation of his functions:

- Examining cases of discrimination;
- Developing legislative proposals;
- Implementing public awareness raising campaigns;
- Maintaining database of discrimination cases and preparing annual special reports.

The Public Defender can exercise proactive functions granted by the law in the process of examining discrimination cases. Under this right the Public Defender can not only start reviewing cases upon the submission of relevant application but also initiate such action.

The role of a mediator granted to the Public Defender by the law is an innovative approach. If the Public Defender deems it appropriate s/he is authorized to schedule hearing and invite parties to settle the case by mutual agreement.

Pursuant to the law, the Public Defender has the right to issue a recommendation and general proposal against the perpetrator and require from the latter to undertake certain actions. If an administrative body refuses to comply with the Public Defender's recommendation the Public Defender is authorized to apply to court and demand from perpetrator to issue an administrative act.

In order to effectively implement his competences Equality Department department was established under the Resolution N140 of August 22, 2014. The department is tasked to assist the Public Defender in implementing functions and competences granted by the Antidiscrimination Law. The Equality Department Department started up on November 20, 2014.

The Public Defender of Georgia became a member of European Network of Equality Bodies (EQUINET) with the status of observer. By cre-

ating this network EQUINET supports 41 bodies of 31 states in the process of the elimination of discrimination. Its main objective is to strengthen strategic capacities and professional human resources, reveal best practices of different equality bodies, learn, share and support the implementation of the legislation on the equal treatment in Europe. The experience of the EQUINET will help the Public Defender of Georgia to effectively ensure equality.

The present report is the first published document under the competences stipulated by the Antidiscrimination Law. The report reviews efforts against discrimination undertaken by the Public Defender from the adoption of the law to August 31, 2015.

The report provides specifics of the investigation of the discrimination cases, the submitted amicus curiae, public awareness raising campaigns, lacunas in legislation and activities aiming at capacity building for the purpose of the elimination of discrimination.

## **Chapter II. Examination of the Discrimination Cases**

The present chapter provides specifics of the methodology employed by the Public Defender while examining discrimination cases, general review of applications /claims submitted to the Public Defender and decisions made by the latter regarding the application.

### ***1. Key Principles of the Case Studies***

The Public Defender examines the alleged case of discrimination either upon the submission of a application /claim upon his own initiative.

#### **a) Examination of cases initiated by the Public Defender**

Under the initiative of the Public Defender and while examining cases of alleged discrimination, the Equality Department contacts the applicant if there is any and ascertains whether or not the latter is willing to participate in reviewing the case. In case of refusal, the Public Defender decides to whether or not proceed with the case without the applicant.

#### **b) Examination of cases upon applications/claims**

Upon the submission of the application, the Public Defender immediately confirms the receipt of the application in a written form.

As the first action, the Public Defender ascertains the admissibility of the application/claim. At this stage the applicant must present those circumstances which indicate the alleged discriminatory action against him/her. However, at this stage the applicant is not obliged to provide all evidences of discriminatory treatment. For instance, in one of the cases, the applicant indicated that because of his/her political views s/he was given less classes to teach. However, the teacher did not submit any documents or evidences to support the application. Nevertheless, considering the possibility discriminatory treatment the claim was deemed admissible.

In another case, the applicant stated that s/he was a victim of discrimination as s/he was suffering from unpleasant odour of chemicals from his/her neighbor's house and was also disturbed by the noise caused by the latter walking on high heels. As the circumstances represented pre-conditions of a dispute between the neighbors rather than an allegation of discriminatory treatment, the application was deemed inadmissible.

In some cases, assertion of admissibility requires additional information and the Public Defender asks the applicant to present additional documentation and/or interviews him/her or requests information.

The applicant is notified in a written form upon the decision on admissibility of his/her application.

**c) Review of admissible applications/claims**

To thoroughly examine the case, taking into consideration the specificities of the individual cases the Equality Department obtains explanations from the parties and other bodies who may hold information concerning the case in question, requests relevant materials from natural/legal bodies, carries out on spot assessment and invites the parties to an oral hearing.

- Request of information

Pursuant to the Antidiscrimination Law, the Public Defender is authorized to request information from both public and private establishments and private persons who are entitled to present requested information in 10 working days. If the latter fails to provide response within 10 working days, a reminder (in writing) will be sent again.

The obtained material are then provided to the applicant/victim of alleged discrimination who is given 10 working days to submit additional evidence and/or confirm his/her position if any.

- On spot examination of circumstances related to the case

The Equality Department, upon the relevance, shall examine the circumstances of the alleged discrimination on spot including taking photos, obtaining explanations and examining the place. These measures make proceedings faster and more flexible.

- Interviewing witnesses

The Public Defender of Georgia is authorized to interview those who may have an information related to the case in question. Witnesses can be interviewed at any stage of case review. A representative of the Equality Department shall draft a protocol during the interview which is signed by an interviewee after familiarizing with the protocol and making comments/remarks (if any) that are reflected in the document.

Interviewing witnesses is of utmost importance for the examination of the case as the process may reveal additional evidence which in turn may confirm discrimination or challenge claims.

- Oral hearing

The Public Defender is entitled to invite the parties to oral hearing and offer to settle the case by mutual agreement at any stage of the proceedings if the Defender deems that case materials and the process may motivate the parties to do so. Victims of alleged discrimination and/or his/her legal representative as well as the other party and/or his/her legal representative can participate in the hearing.

At the oral hearing the representative of the Equality Department has the right to ask the parties questions and participants are also authorized to question each other about the case. When the presentation of arguments is over, the parties have the right to provide additional explanation regarding the case in question.

A representative of the Equality Department shall draft a protocol during the hearing to be presented to the participating parties. The protocol should reflect any comments or remarks which the participants may have with regard to the content.

If mutual agreement is achieved a respective protocol shall be drafted. Otherwise the Public Defender will continue the proceedings and issue recommendation/general proposal addressing the perpetrator of discrimination or issue a decision on the termination of proceedings if the fact of discrimination cannot be established.

The Public Defender often uses the possibility to conduct hearings as it gives an opportunity to ascertain whether or not discriminatory treatment has taken place by the direct participation of both parties and counter questions and answers.

- Participation of the third parties in reviewing cases

Pursuant to the Antidiscrimination Law, an organization, which works to protect from discrimination has the right to apply in writing to the Public Defender and request their inclusion as a third party while reviewing cases.

Information on cases under the Public Defender's proceedings is available at the official website of the Public Defender's Office.

Immediately after the application is submitted by the organization, the Public Defender shall ascertain whether or not the scope of activities of the applicant covers protection of individuals from discrimination and if so the Public Defender asks the victim of alleged discrimination whether or not the latter is willing the organization to be involved in his/her case as a third party.

If the victim gives her/his consent it needs to assess if there is any confidential information that the victim is not willing to share with the third party after which case materials (barcoded if needed ) are sent to the third party.

If the victim of alleged discrimination is against the inclusion of the third party, refusal is sent to the third party.

The Public Defender's Office received two requests from third parties. In one case a victim of alleged discrimination consented to include the organization as a third party.

Third parties are given the opportunity to present their opinions, explanations and evidences related to a case in question. This ensures the inclusion of human rights organizations and their contribution to in-depth and multi-faceted examination of cases.

## **2. Statistical Data**

From the day the Antidiscrimination Law was adapted to 31 August 2015 (inclusive) 107 applications/claims were submitted to the Public Defender's Office. In addition the Public Defender initiated the examination of 4 more cases.

From these 111 cases:

A decision on termination of proceedings was issued on 8 cases as the examination of case materials revealed no facts of discrimination;<sup>1</sup>

13 cases were referred to the other departments as the examination of case materials revealed the violation of other rights rather than discrimination.

6 case proceedings were suspended as applicant had decided to refer to the court

21 applications/claims were deemed inadmissible because of apparent lack of evidence<sup>2</sup>

General proposals were issued on 2 cases<sup>3</sup>

A recommendation was issued on 1 case<sup>4</sup>

60 cases are still pending.

Cases initiated by the Public Defender concern:

The restriction of access for persons with disabilities to event held in the Sports Palace;

The announcement of two gender based discriminatory vacancies by companies;

The announcement of an age based discriminatory vacancy.

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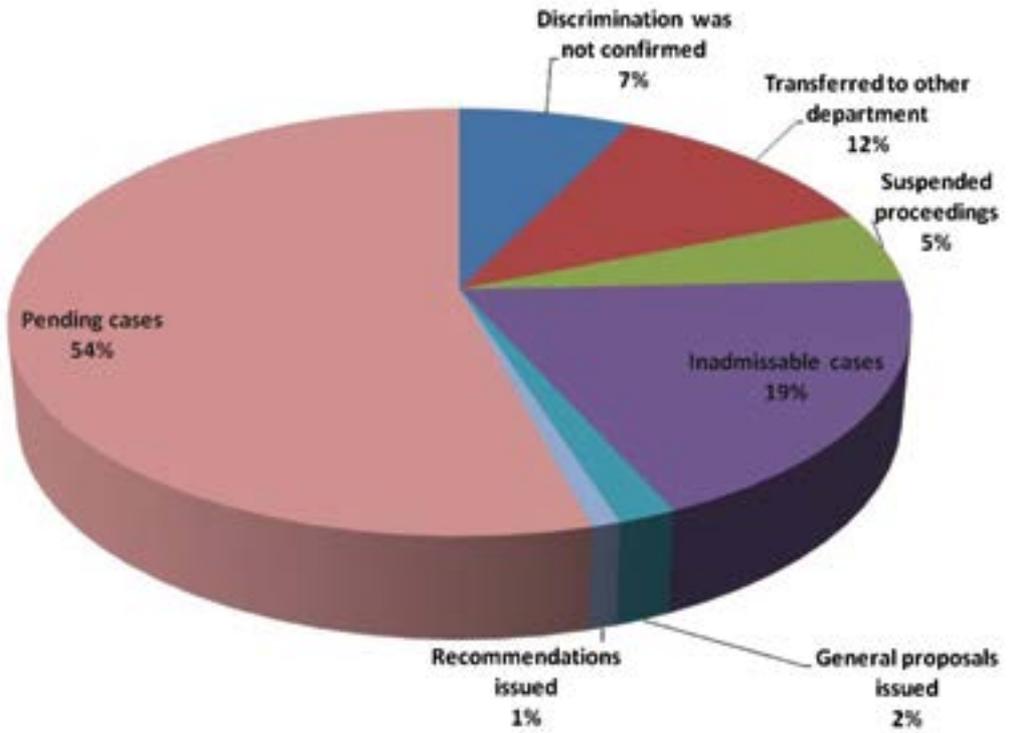
1 Decisions on the termination of the proceedings are available in the Part III of this chapter;

2 On some of the cases deemed inadmissible please refer to the Part III of this chapter;

3 For information on general proposals issued by the Public Defender please refer to the Part III of this chapter;

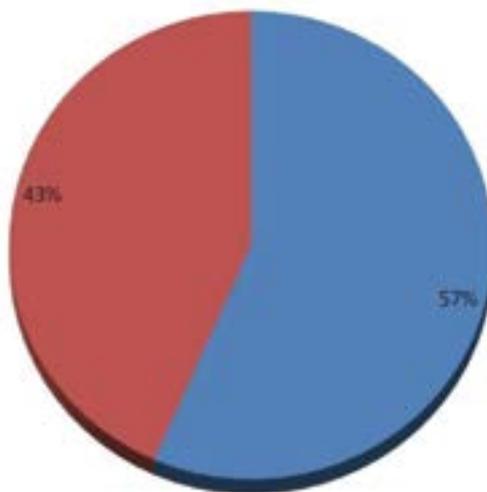
4 For information regarding the recommendations issued by the Public Defender please refer to the Chapter III of this chapter;

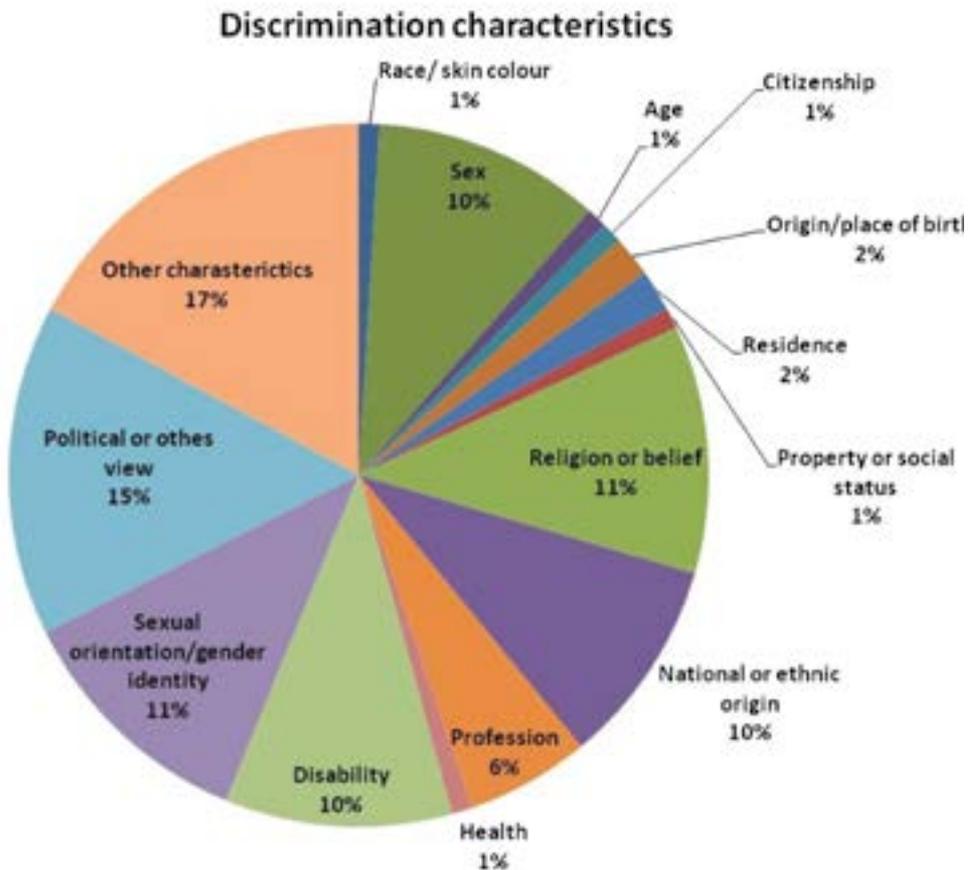
### Case review



### Discrimination sector

■ Public sector ■ Private sector





5 applications were submitted to the Public Defender’s Office on request of the Amicus Curiae.

Two opinions of the Amicus Curiae were prepared and submitted to courts in Batumi and Zestafoni.<sup>5</sup>

An opinion was prepared in a written form on one case. However, it was not submitted to court as the parties reached a mutual agreement.

1 Amicus Curiae have been prepared on one case and we are waiting for hearing to be scheduled for its submission.

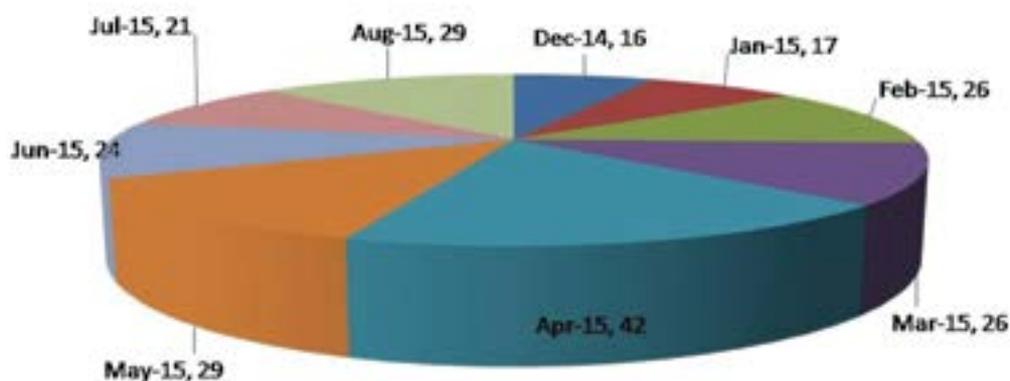
1 Amicus curiae was not submitted to court due to an amendment in the Administrative Code according to which Amicus Curiae must be sub-

<sup>5</sup> For information on Amicus Curiae please refer to the Chapter III;

mitted to court five days prior to hearing. In this case a trial had already begun before an applicant requested the submission of Amicus Curiae.

The Equality Department has sent 230 letters in total during the reporting period.

## Letters sent Total - 230



### ***3. Decisions made by the Public Defender***

#### **a) General overview**

Further to the examination of a case the Public Defender makes one of the following decisions:

- A decision on mutual agreement;
  - Recommendation;
  - General proposal;
  - A decision on suspension of the case;
  - A decision on termination of the case;
  - A decision on admissibility
- 
- *A decision on mutual agreement*

Pursuant to the Article 8, Clause 3 of the Antidiscrimination Law, the Public Defender of Georgia is authorized to schedule a hearing and invite parties to conclude a mutual agreement if s/he deems appropriate to do so. In case of successful mutual agreement, the Public Defender of Georgia monitors the adherence of obligations by the parties enshrined in a mutual agreement.

The Public Defender of Georgia conducted three hearings; however none of them ended with a mutual agreement.

- *Recommendation*

Pursuant to the Article 9, Clause 3 of the Antidiscrimination Law, if a fact of discrimination is confirmed as a result of the examination of an application/claim by the Public Defender and if the consequences of discrimination are not eliminated, the latter concludes the proceedings with a recommendation regarding Activities to be performed to restore infringed equality.

- *General proposal*

Pursuant to the Antidiscrimination Law, the Public Defender is authorized to issue a general proposal in order to prevent discrimination.

The Public Defender issued two general proposals (described below) during the reporting period.

- *Decision on suspension of the proceedings*

Pursuant to the antidiscrimination legislation, the Public Defender suspends case proceedings if:

- Dispute is pending before the court
- Administrative proceedings are under way
- Criminal prosecution is under way.

The Public Defender suspended 6 case proceedings during the reporting period as applicants chose to go to the court. The disputes evolved the discharge from workplace for various discriminatory motives.

- *Decisions on termination of the proceedings*

According to the Antidiscrimination Law, the Public Defender shall terminate the proceedings if:

There is a court decision on the case

Fact of discrimination was not confirmed as a result of reviewing a application/claim

Overall, 8 cases were terminated during the reporting period as case reviews did not reveal the fact of discrimination.

- *Decision on admissibility*

The Public Defender makes decisions to deem application/claim inadmissible if a application/claim is groundless. The Public Defender will deem a application/application/claim inadmissible even when there has been a procedural error on the admissibility of a claim which a applicant fails to eliminate.

21 statements/claims were deemed inadmissible during the reporting period.

## **b) Recommendation**

### ***Recommendation to Artpalace LTD***

On February 12, 2015 the Sports Palace hosted Paata Burchuladze's jubilee concert. Tickets to the concert were also purchased by persons with disabilities who could not enter the building because of poor adaptation which failed to accommodate to the needs of these individuals. As there were signs of discrimination based on disability, the Public Defender initiated the examination of the case.

The recommendation clarified that there was an apparent discriminatory treatment when an individual is prevented from exercising rights granted by the Georgian legislation, individuals in similar circumstances are not treated equally, there is no specific goal identified by the law, different treatment lacks objective and reasonable justification and is not proportional to the goal.

With regard to exercising the right stipulated by the legislation, the Public Defender stated that the right to participate in public and cultural life of the

country is enshrined in the Article 16 of the Georgian Constitution, Article 8 of the European Convention on Human Rights, Article 15, Clause 3 of the European Social Charter and Article 30 of the Convention on the Rights of Persons with Disabilities. The Victim of discrimination had no opportunity to attend the event in an accessible way as s/he would have been carried by a guard if s/he had chosen to stay and attend the event.

The issue related to comparator was also touched upon in the recommendation which ascertained that M.D. sitting in a wheelchair was an individual in a different situation and therefore required different treatment. By destructing a ramp in the sports palace, individuals with special needs were treated unequally.

The building was totally incompatible with adaptation standards. However, it was still possible to enter the premises and approach the stage for persons with disabilities before the reconstruction of the Sports Palace took place. If the organizer was going to remodel the building in a way that would be inaccessible for persons with disabilities, s/he should have requested adapted infrastructure at the Sports Palace or, if this was not possible to give up reconstruction efforts. The Sports Palace was made inaccessible for persons with disabilities because of reconstruction measures by the organizers and therefore, *Artpalace LTD* was the perpetrator of direct discrimination.

*Artpalace LTD* failed to provide a legitimate aim which would have justified unequal treatment.

The Public Defender of Georgia deemed that *Artpalace LTD* committed discrimination by removing ramps. In his recommendation issued on July 17, 2015 the Public Defender called on *Artpalace LTD* to develop an internal document (a statute/rules/principles) to consider the interest of persons with disabilities while organizing various events and provide opportunity for them to take part in such events in a manner which is compatible with their dignity.

### **c) General Proposals**

#### ***General proposal to the Bank of Georgia***

The Public Defender of Georgia was approached by an executive director of NGO Sapari Babutsa (Baia) Pataraia (hereinafter an applicant).



The applicant indicated that a photo published by Bank of Georgia on their official Facebook page titled “*Husband-ATM*”<sup>6</sup> contained gender stereotypes and discriminatory content defying the Law of Georgia on the Elimination of All Forms of Discrimination.

The content of the advertisement pointed out that the woman financially depends on the man as the former has no source of own income. The bottom-line of the contested advertisement was that a woman must stay at home to take care of her husband and children, while a man is always a breadwinner. The Public Defender holds that having read the title and captions on the photograph, readers are highly likely to develop an attitude that women lack capacity to have their own source of income, therefore, they financially are depended on men and bother them by constantly asking for money. It is because of such deeply rooted stereotypes that rise gender based discrimination over the extended period of time.

In his general proposal the Public Defender underlined the fact that advertisements disseminated either by conventional or social media, significantly contribute to shaping public opinion or can have detrimental effects youngsters in particular. Stereotypes developed under the influence of sexist advertisement, justify gender discrimination and reinforce its historical forms. Sexist advertisements and commercials constantly prove the truthfulness of deeply rooted stereotypes within the society and further promote them.

<sup>6</sup> Photo: the official Facebook page of the Bank of Georgia, available at: <https://www.facebook.com/BankOfGeorgia/photos/a.124659380925590.19207.119630781428450/789947701063418/?type=3&theater>.

The Public Defender also point out that according to standards of many states, an advertisement or commercial must not support any form of discrimination. Therefore, moral values, as the foundation of the democratic society need to be taken into consideration while developing a concept of any advertisement while its content must not violate the principles of freedom, dignity and equality.

It should be noted that the Public Defender did not established that the fact of discrimination however, held that the sexist advertisement had a negative effect on gender equality, contributed to the spread of harmful stereotypes among public and hindered the fight against discrimination. This was the reason for Public Defender issuing a general proposal instead of a recommendation.

The Public Defender of Georgia in his general proposal called on the Bank of Georgia to refrain from developing sexist and discriminatory commercials and instead promote respectful treatment towards women being depicted as equals to men. The Public Defender also deemed reasonable to conduct training on gender issues for the staff of public relations department and a team working on developing commercials at the Bank of Georgia.<sup>7</sup>

The above mentioned general proposal was issued on December 9, 2014 and sent to JSC Bank of Georgia for their consideration. However, the company has not notified the Public Defender's Office on any measures taken by them. At the same time, two letter sent by the Public Defender remain unanswered. It is also worth mentioning that the sexist photo is still up on the official Facebook page of the Bank of Georgia.

### ***General Proposal to Jobs.ge***



An Executive Director of NGO 'Article 42 of the Constitution' Nino Elbakidze (hereinafter an applicant) approached the Public Defender.

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<sup>7</sup> A full version of the general proposal is available at: <http://www.ombudsman.ge/uploads/other/2/2164.pdf>

The applicant stated that they had conducted a research to identify the use of sex oriented language in advertisement placed at vacancy web-pages through pre-determined search words. The research covered a period from 2010 to 2014. Out of 71.360 vacancy announcements 10.01% were characterized by the usage of feminine oriented language, while 24.02% where masculine oriented. More specifically, the work 'man' or 'male' was used 1088 times, 'pleasant looks' - 1589 times, 'stable' 780 times while 'lady' 607 times. The applicant requested that the Public Defender should respond to the usage of discriminatory sex based words in vacancy announcements.

The Public Defender stated that in parallel to efforts to treat men and women equally, the differences between jobs to be performed either by men or women are gradually fading away and women have become more or less emancipated in labor relations. However, employers still have stereotypical relations towards specific jobs which further encourage discriminatory practices at pre-contractual stage. The Georgian reality is characterized with clear-cut attitudes what 'a woman', 'a man' and a person with 'pleasant looks' should do as their work. Employers' prejudices regarding the gender roles often translate into discriminatory contents of vacancy announcements and ultimately recruiting process acquires discriminatory character.

The main goal of fighting off discrimination in labor relations is to create equal opportunities for work and development so that they can realize their potential to the maximum extent. Healthy environment on a labor market contributes to the growth of competition which in turn has an evident positive effect on the economic wellbeing of the state.

Search engines and public web-pages play a particularly important role in this process. Job seekers are able to search for vacancies fitting their profession and qualification. As [www.jobs.ge](http://www.jobs.ge) is the largest and the most popular web engine placing both public and private announcement, it is not surprising that the company enjoys high visibility among a broader public reflecting on the number of visitors. Jobs.ge is considered to be very reputable and trustworthy company both by employers and job seekers.

While deciding whether or not the administration of Jobs.ge has any obligation to refrain from publishing discriminatory vacancies, the Public

Defender pointed out that pursuant to Article 2, Clause 2 ‘any action which coerce, encourage or support any individual to commit a discriminatory act as defined by this Law against the third person, shall be prohibited’.

The Public Defender holds that by not filtering vacancy announcements containing discriminatory words, jobs.ge supports employers to disseminate discriminatory vacancies and through them discriminate against employees at the very first stage of employment while it also encourages extrapolation of discriminatory practices. Not only does the Antidiscrimination Law prohibit discrimination and discriminatory practices, it also prohibits supporting discrimination.

The Public Defender issued a general proposal to jobs.ge and asked the company to develop regulations for the elimination of publishing discriminatory announcements on its page. At the same time the Public Defender expressed his readiness to provide support to the company’s administration in developing a guideline which will help job.ge to restrict publishing of discriminatory vacancies.<sup>8</sup>

The general proposal issued on April 8, 2015 was sent to the director of Jobs.Ge Ltd Alexander Khubulava, however, there has not been any feedback on measures taken by the company.

#### **d) Decisions on the termination of proceedings**

##### ***Case N 17324/1***

A citizen G.C. (hereinafter referred as the applicant) approached the Public Defender with the purpose to contest the distribution of academic hours in one Senaki’s public schools. More specifically, the applicant argued that s/he was given only six hours per week while the other teacher of history M.C. who had already reached the pension age was given 17 hours per week to teach history, geography and civic education. The applicant considered himself/herself a victim of discrimination based on his/her political views and believed that M.C. was given advantage as she was a sister of local representative’s wife and an active member of

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<sup>8</sup> Full versions of the proposals are available at:  
<http://www.ombudsman.ge/uploads/other/2/2501.pdf>

the political bloc Georgian Dream who was a member of the election commission while the applicant was a member of the United National Movement.

In order to investigate the case in depth the Public Defender requested information from the public school in question as well as from the Ministry of Education and Science of Georgia; considering the specifics of the case information was also requested from Senaki District Unit of Ministry of Interior's Samegrelo-Zemo Svaneti Chief Regional Department. An oral hearing was held on January 21, 2015 where the parties presented their arguments.

The examination of the case materials showed that the applicant had been working as a history teacher in the public school since 1992. In 2006 s/he was appointed as a head of the village where the school is located. S/he worked as a chief specialist in the village's Division from 2010 to 2014. Due to a nature of his/her employment s/he had only 6 hours per week as a teacher in the local school.

In August 2014 the applicant was discharged from the position of the chief specialist in the local Division as a result of which s/he applied to the school to request additional academic hours. More specifically s/he wanted to have more hours to teach history and/or to be appointed as a head teacher.

The school administration allocated 10 hours per week (instead of 6) at the expense of reduced number of hours for M.C. whose capacity was cut to 14 academic hours per week. The applicant turned down the offer. During the hearing it was ascertained that M.C. is sister-in-law of the village representative. The representative and G.C. are members of the United National Movement and they both started working in the local authorities in 2006. The representative's authorities were terminated in August 2014 and so were those of the applicant. The last distribution of academic hours took place in September 2014.

The Public Defender ascertained that the school administration increased the number of hours up to 10 on behalf of the applicant who refused the proposal. In addition, at the time when the distribution of hours and appointing head teachers took place, the village representative had no effective leverage of influence as he was not on the position

of the village representative any more. At the same time it should be noted that both the representative and the applicant were the members of the same political parties and therefore, claims made by the applicant that the distribution process at the school was politically motivated was groundless. Also, neither presented documents nor hearings proved that M.C.'s membership to the local election commission had been a decisive factor for the school director while allocating 17 academic hours to M.C. as the latter had had the same number of academic hours as in the previous years.

Based on the fact that no evidence of discriminatory treatment had been found, a decision on termination of the proceeding was made on April 8, 2015.

### **Case N 1385/15**

On February 5, 2015 legal aid center *Fides et Spes* (hereinafter an applicant) approached the Public Defender to present a claim.

The Applicant argued that in ID cards and birth certificates names and surnames of ethnic minorities are written in Georgian, often distorting pronunciation and style of many of these names and surnames in their respective languages. The applicant suggested that this practice was of discriminatory character based on ethnicity.

Based on the information obtained from the Ministry of Justice ascertained that pronunciation rules are not followed while making entries on ethnic minorities.

On April 6, 2015 the applicant informed the Public defender that there had been a communication between the applicant and the Civil Registration Service of the Ministry of Justice and as a result the Service had started taking measures in order to eliminate the problem. More specifically, documents are now being corrected based on the referral of concerned citizens. The applicant expressed their gratitude towards the Public Defender for the efforts and pointed out that it is because of his prompt response that the problem is being eliminated.

The Public Defender terminated the proceedings upon the request of the applicant on April 14, 2015.

**Case N2602/15**

The Public Defender was approached by K.K. (hereinafter an applicant) who stated that she had a one year contract with a company P to work for its branch. The contract took effect on March 15, 2014. On March 5, 2015 she was notified by the employer that her contract would not be prolonged. She believed the reason for this was her pregnancy.

Based on the claim the Public Defender launched an investigation. However, on March 24, 2015 the applicant notified the Public Defender that the employer agreed to compensate her and therefore she requested the proceedings to be terminated.

The Public Defender terminated the proceedings on April 15, 2015.

**Case N 1004/15**

The Public Defender found out about a vacancy announcement for a position of marketing assistant placed on [www.jobs.ge](http://www.jobs.ge) by a private company on December 26, 2014. The announcement stated that because of the specifics of the job, priority would be given to male applicants.

The Public Defender initiated the investigation of the case and requested information from a bank. The bank clarified that the content of the announcement was a technical error and they have changed phrasing after having learnt the opinion presented by the third party.

Based on the factual circumstances and after conducting a legal analysis, the Public Defender concluded that the alleged perpetrator in this particular case eliminated the consequences of presumed discrimination as it has immediately removed the phrasing that put men and women in unjustifiably unequal condition.

**Case N 1299/15**

A citizen N.K. (hereinafter an applicant) submitted an application to the Public Defender in which s/he indicated that a medical facility H. treated him/her in a discriminatory manner because of his/her religious views as the applicant is a Jehovah's witness. As a result of an accident the applicant needed hospitalization and blood transfusion to which the s/he

refused because of his/her religious beliefs while the hospital refused to refer him/her to another hospital without covering the cost of treatment.

The Public Defender requested information from the medical facility H on treatment rendered to the patient including costs. The Public Defender also requested information on whether or not the patient was given the possibility to move to another medical facility as s/he wished.

In a letter sent by the medical facility H on April 3, 2015 it is indicated that the dispute had already been settled between the clinic and the patient. On April 15, 2015 the applicant also requested the case to be terminated. In his/her statement the applicant stated that after receiving a letter sent by the Public Defender, the representative of H contacted him/her to offer settlement. More specifically, the representatives offered that the sum of 1000 GEL which the patient was demanded to pay would no longer be the case. Therefore, the applicant expressed his/her gratitude to the Public Defender and reiterated that s/he did not have any claim against the medical facility.

On April 30, 2015 the Public Defender made a decision on termination of the proceedings.

### **Case N 19702/1**

The Public Defender received an application from an NGO *Teachers Professional Development and Innovative Projects Association*. The Association indicated that teachers of one of Batumi's public schools committed discriminatory actions against a trainer of the Association G.C. (hereinafter an Association's trainer). More specifically, the teachers of the above mentioned school prevented the Association's trainer from conducting a planned training because of his/her sexual orientation and gender identity.

In order to examine the circumstances of the case, the Public Defender requested information concerning the incident from the public school. The teachers were also interviewed while the applicant presented video and audio materials as the evidence of the incident.

The examination of the information corroborated that on November 30, 2014 the school received information from the applicant at its electronic

mail. In their email the Association offered the school to provide a training which was aimed on capacity building of the teachers. The Association also indicated that participants would receive accredited bilingual certificates. 22 teachers paid the participation fee of 20 GEL each and showed up on the training day.

The video recording showed the deputy director of the school asking whether or not the Association acted under the Ministry of Education and Science to which the trainer responded that the Association acts independently and therefore they would issue their own certificates. After this the deputy director announced that s/he is not satisfied with the training conducted by the Association's trainer because of trainer's personal characteristics and qualification. The teachers were asking whether it was possible to replace the trainer to which the trainer gave a negative answer; after which the teachers made a decision to walk out from the training and demand that the Association's trainer return the training's fee. The trainer explained that the fees will be returned except of amount which was necessary to cover his/her travel costs. The recordings failed to provide any evidence of any of the teachers insulting the Association trainer or making hints about his/her sexual orientation and/or gender identity. The voice of the Association's trainer explaining that the conversation is being recorded was heard in the video.

The protocols of interviews with the schools' deputy director and other teachers indicate that they knew that the Association's trainer had had a legal dispute with their colleagues and was involved in financial fraud with several companies. The deputy director of the school states that s/he referred to non-pedagogical experience of the trainer while mentioning qualification while reputation covered all above mentioned financial fraud.

The applicant was provided with all above mentioned documents however, s/he failed to provide additional evidence. Nor did s/he expressed his/her own opinion concerning these documents. Due to the fact that neither evidence provided by the applicant nor the materials obtained by the Equality Department could confirm an alleged discriminatory treatment against the applicant based on sexual orientation and gender identity, the Public Defender made a decision on termination of the proceedings on May 21, 2015.

**Case N15956/1**

Kh.Z. (hereinafter an “applicant”) appealed to the Public Defender of Georgia with a complaint that he had been treated in a discriminatory manner by the principal of one of the public schools of Poti. S/he considered the fact that s/he specialized in Georgian Language and Literature and the principal let him/her teach only Fine Arts classes due to the existing conflict in their political views as a discriminatory factor. Besides, s/he was only allocated 4 academic hours of class time.

In order to examine this case the Public Defender of Georgia requested information from the Public School of Poti twice, and the received information was sent to the applicant with the purpose to state his/her position. In addition, the Public Defender interviewed other teachers and resource officers of the school. The representatives of the Equality Department also conducted an oral hearing with the participation of both parties.

After the examination of the acquired information it was revealed that the principal does not express his political views in school; the applicant also stated that there are other teachers at school who belong to the same party but does not face any obstacles at work. In addition, after interviewing both parties and witnesses it was revealed that the reason for replacing the Georgian Language and Literature classes with Fine Arts was related to the professional and pedagogic skills of the applicant rather than his/her political views. The applicant himself/herself did not deny the existence of problems with his pedagogic skills and communication with pupils and parents and also claimed that he/she had faced similar problems in previous years, before the current principal was appointed on his position.

On the present case, unequal treatment on the basis of political opinion was not established, therefore, the Public Defender of Georgia made a decision on termination of the proceedings on May 25, 2015.

**Case M 12830/1**

Foreign citizen A.Ch. (hereinafter an “applicant”) appealed to the Public Defender of Georgia with an application claiming the inaction of security guards of Smart Supermarket and Restaurant Mc-

Donald's and the police was discrimination because of the color of his skin.

The applicant stated that on June 26, 2014 he was in the Smart Supermarket with his wife when they noticed a strange man watching them with an apparent hostility. Because of this, the applicant's wife approached the stranger and asked the reason of his hostile gaze. Stranger acted aggressively and yelled at the applicant, asking him to go and talk outside. According to the applicant, the security guard was standing nearby during the quarrel, however, he did not do anything to defuse the situation.

The Public Defender of Georgia addressed JSC Smart Retail regarding the mentioned case and requested the video recordings of June 26, 2014. They provided the footage of the incident, which showed that the applicant and his wife are standing close to the cafeteria tables. They were approached by a customer of Smart Supermarket who looked at the applicant several times and then went to the food counter. He was afterwards approached by the applicant's wife and they had an approximately 40 second's long discussion. This was followed by an argument between the applicant and the stranger. After that the stranger returned to the food counter. The video shows that the security guard talked to the stranger. After this the stranger left the building, while the applicant and his wife continued using services of Smart Supermarket.

As for the fact occurred at the Restaurant McDonald's, the applicant mentioned that he went to the Restaurant McDonald's on Marjanishvili Street together with his student. They were approached by two individuals who addressed the applicant and his student quite rudely. The applicant tried to ignore their action, although they did not leave and one of them assaulted him physically. The applicant states that after this fact the security guard of McDonalds asked him to leave instead of the attacker. According to him the police arrived at the scene of the incident. The police talked to the security guard of McDonalds and approached him as well. Two attackers left McDonalds, one of them shook hands with him and suggested to make up, and the applicant refused to shake hands with another one, since he had assaulted him. One of the policemen asked the applicant whether he had any problems, and he answered that he did not need problems (applicant explains that in his country when the police asks whether one has problems, it may have quite negative meaning). Afterwards both the applicant and the

police left the McDonald's. Soon the applicant, his wife, father-in-law and the police returned to McDonald's. The applicant told the policeman that one of the attackers had punched him in the nose and told him the approximate whereabouts of the offenders. The police stated that since he had said that he did not want any problems, they did not provide a proper response.

The Public Defender of Georgia requested information from the Ministry of Internal Affairs with regard to this incident. Provided response indicated that the incident had not been reported to the police and thus the information was not available. The Public Defender addressed the Patrol Police Department of the Ministry of Internal Affairs, who claimed that they were not aware of the applicant's physical and verbal abuse. In addition, the Public Defender of Georgia requested the video footage of the incident from the Restaurant McDonald's. According to the information provided by this private institution, McDonald's network of restaurants stores the video files during 10 days and then they are deleted automatically. Respectively, they do not have the access to the video records of June 28, 2014.

Based on the abovementioned, the Public Defender of Georgia assumed that the materials provided by the applicant and acquired by the Public Defender did not reveal the discriminatory treatment towards to applicant by the security guard of Smart Supermarket due to his skin color. As for the second case, due to the lack of evidence the Public Defender was not able to review the incident occurred at McDonald's. Respectively, on May 25, 2015 the Public Defender of Georgia made a decision on the termination of the proceedings.

#### **e) Decisions on admissibility**

##### ***Case N1412/15***

On February 5, 2015 S.D. (hereinafter an "applicant") appealed to the Public Defender of Georgia claiming that s/he had applied to the 3<sup>rd</sup> Division of the Isani-Samgori Office of Tbilisi Police Main Division of the Ministry of Internal Affairs with a request to begin investigation. S/he stated that his/her debtor had not returned him/her the due amount. The applicant noted that the investigator did not start the proceedings because of applicant's Russian ethnicity.

The application did not suggest any direct or indirect discrimination, it was deemed inadmissible on March 2, 2015.

### **Case N19989/1**

On December 4, 2014 N.M. (hereinafter an “applicant”) appealed to the Public Defender of Georgia claiming the discrimination against him/her on religious grounds, as a particular priest was not allowed to conduct a public lecture in a certain educational institution.

Equality Department of the Office of Public Defender interviewed the mentioned priest and revealed that s/he did not see himself as a victim of discrimination and refused to participate in the proceedings of the case. The Office of the Public Defender of Georgia asked the applicant to provide authorization of those students’, who considered themselves as victims of alleged discrimination, although the applicant did not respond.

Accordingly, on March 11, 2015 the application was declared inadmissible.

### **Case N1958/15**

On February 18, 2015 Kh. B. (hereinafter an “applicant”) appealed to the Public Defender of Georgia. The applicant claimed that s/he had been discriminated because of his/her disability, in particular, his/her poor eyesight. The Equality Department and the Department of Protection of the Rights of Persons with Disabilities interviewed the applicant in his/her apartment.

The applicant explained that s/he left for USA in 1992. In 2012 s/he returned to Georgia together with his mother.

In 2003 s/he lost his job in USA due to his/her vision problems. S/he hired a lawyer and filed a lawsuit against the employer, since s/he believed that s/he had been treated in a discriminatory manner. His/her lawsuit did not lead to any specific results and no compensation was provided.

In addition, the applicant stated that his/her son was treated quite offensively by the doctors of the Hospital of Infectious Diseases. S/he also claimed s/he could not reach the state institutions with his phone.

When the applicant was asked to specify his/her request to the Public Defender, he responded that s/he wished to return to USA, as s/he did not feel secure in Georgia.

Given that the solution of this particular problem was beyond the competence and authority of the Public Defender of Georgia on March 12, 2015 the application was declared inadmissible.

### **Case N 3032/15**

Citizen G.Ch. (hereinafter an “applicant”) appealed to the Public Defender of Georgia on March 23, 2015.

The applicant claimed that the smell of chemicals was coming out of his/her neighbors’ house and also mentioned that his/her neighbor used to wear high-heels shoes at home causing disturbing noise. The applicant also noted that his/her neighbors tapped his phone calls. He perceived his/her neighbors’ actions, including the aggressive slamming of the building door, as a discriminatory treatment and considered it to be a means of psychological abuse. During the interview with the applicant s/he mentioned that his/her neighbor had an evil intention to get his apartment.

As the applicant was unable to provide facts arousing the motivated doubt for discriminative treatment towards him/her, his/her application was deemed inadmissible on April 8, 2015.

### **Case N 3399/15**

On March 25, 2015 I.K. (herinafter referred as the “applicant”) appealed to the public defender of Georgia regarding the discriminatory treatment on religious grounds. In particular, according to the applicant, s/he is an Orthodox Christian and does not want to get a new identity card, although s/he is forced to do so, as his old ID card has expired causing the problems of registration of immovable property.

Given that the materials of the mentioned case failed to reveal any direct or indirect discrimination, the application was declared inadmissible on April 30, 2015.

**Case N3397/15**

On March 24, 2015 L.L. (herinafter an “applicant”) appealed to the Public Defender of Georgia. In her/his application the applicant claimed that s/he was working as a cleaner at a local café and her/his supervisors violated her/his rights systematically. In particular, they checked her/his private belongings.

During an interview the applicant failed to provide any facts revealing discriminatory treatment. Respectively, her/his application was declared inadmissable on May 8, 2015.

## **Chapter III. Appealing to the court with Amicus Curiae**

According to the Clause E of the Article 21 of the Organic Law of Georgia *on the Public Defender of Georgia*

*“The Public Defender of Georgia may in certain cases, act as a friend of the court (amicus curiae) in Common Courts and the Constitutional Court of Georgia.”*

Regarding the disputes related to discrimination, during the reporting period the Public Defender of Georgia submitted Amicus Curiae on two cases.

Amicus Curiae did not aim to support the positions of either side. It identified the standards defined by the European Court of Human Rights on the similar cases.

### **1. Amicus Curiae submitted to the Zestaphoni District Court**

On January 16, 2015 M. Ts, the representative of the Partnership of “Lawfulness and Justice in Caucasus”, appealed to the Public Defender of Georgia and asked submission of the Amicus Curiae to the Court with regard to the administrative lawsuit of the claimants A.V, T.T.S. and N.B.

The materials presented by the applicant revealed that a non-registered union “T” which was represented by the members of the religious organization “Jehovah’s Witnesses”, was granted an authorization to implement construction works in the city of Terjola.

According to the order of the Chairman of the Assembly of Terjola Municipality, dated June 3, 2014, the construction permission was revoked on the basis of the appeal of K.M, resident of Terjola, according to which the given construction endangered the integrity of his land plot and the nearby highway; the construction also put the sustainability of the highway under the risk.

According to the expert opinion submitted by the claimants and the conclusion provided by the *Levan Samkharauli National Forensics Bureau*, construction works on the mentioned street would not have a negative impact on the residential houses of I.Ts. and K.M, nor affect their sustainability. The construction permit was not extended even after the submission of the mentioned conclusion.

*Given the fact, that the mentioned case might have been revealed the discriminatory treatment, the Public Defender of Georgia decided to provide the Amicus Curiae to the court.*

Amicus Curiae was fully based on the practice of the European Court of Human Rights and offered the judge to evaluate the case in compliance with the guiding preconditions applied by the European Court of Human Rights in the process of resolving similar disputes.<sup>9</sup>

Amicus Curiae interpreted that discrimination exists when a person is prevented from enjoyment of the rights provided for by the legislation of Georgia, when there is a differential treatment towards persons in a comparable situation, when it does not serve the statutory purpose, a differential treatment does not have an objective and reasonable justification, and the means of achieving that purpose are disproportional.

With regards to enjoy of the rights provided for by the legislation, it was noted that religious freedom is protected by paragraph 1 of the Article 19 of the Constitution of Georgia and the paragraph 1 of the Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This right also protects the rights to religious expression and construction of buildings for religious rituals.

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<sup>9</sup> Sources used in the Amicus Curiae:

Eweida and others v. United Kingdom, app. nos: [48420/10](#), [59842/10](#), [51671/10](#) and [36516/10](#), 15/01/2013;

Jehovah's Witnesses of Moscow v. Russia, app. no. [302/02](#), 10/06/2010;

Burden v. United Kingdom, app. no. 13378/05, 29/04/2008;

Metropolitan Church of Bessarabia and Others v. Moldova, app. no. [45701/99](#), 27/03/2002;

Serif v. Greece, app. no: 38178/97, 14/12/1999;

Buscarini and Others v. San Marino, app. no. 24645/94, 18/02/1999;

Manoussakis v. Greece, app. no. [18748/91](#), 26/09/1996;

Kokkinakis v. Greece, app. no. [14307/88](#), 25/05/1993;

The UN Human Rights Committee, General Comments and Recommendations 22.

Amicus Curiae also evaluated the issue of persons in inherently equal conditions and the specifics of distribution of the burden of proof.

It was mentioned that in this case the administrative body should have proved that it was acting to achieve a legitimate aim. There must be evaluated what was the real reason for revoking the construction permit and whether the limitation of the right of religion was proportional with pursued legitimate aim.<sup>10</sup>

*The judge accepted the Amicus Curiae and attached it to the case. Zestaphoni District Court made a decision on the present case on March 19, 2015.*

The judge did not establish the fact of discrimination. The court has explained that the fact that the claimants were not able to exercise the right enshrined in the Georgian Legislation had not been proved, as initially they were able to obtain a construction permit and the later revocation was based on legal grounds.

The court further discussed that unequal treatment was not present either, as comparator did not exist; in particular, defendants claimed that the similar claim had never been filed to them and respectively the comparator did not exist.

The court ruled that the defendant acted within the framework of a legitimate aim, as the aim of revoking the construction permit was to assess the compliance of the issued administrative-legal acts with the current legislation.

In its conclusion, the court pointed out that the proportionality of the applied means of provision was verified by the decision of Kutaisi Appeal Court of July 11, 2014, which ruled this act as legal and proportionate to the legitimate aim.

The Public Defender of Georgia welcomes the fact that the court accepted the Amicus Curiae and examined the case of alleged discrimination.

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<sup>10</sup> Full version is available on the website: <http://www.ombudsman.ge/ge/diskriminaciis-preveneciis-meqanizmi/gadawyvetilebebi/amicus-curiae>

## **2. Amicus Curiae submitted to the Batumi District Court**

On December 10, 2014 the director of the Human Rights Education and Monitoring Centre – (EMC) T.M. appealed to the Public Defender of Georgia and asked him to submit an Amicus Curiae regarding the lawsuit of the representatives of LEPL *Georgian Muslims Relation* ,K.K, B.I, and T.Kh.

The lawsuit states that the applicants had leased the building, where they planned to open a boarding school for the Muslim pupils.

In order to hinder the opening and operation of the boarding school for the Muslim pupils, the population of the city of Kobuleti, who belong to the Orthodox congregation, slaughtered a swine near the school territory and nailed the head of the animal to the building's door.

According to the applicants the protestor population has controlled applicant's movement within the building. Besides, on September 15, 2014 they built artificial barricades in front of the school entrance, constantly patrolled and restricted their freedom of movement through systematic threats and verbal abuses..

The applicants also mentioned that the law enforcement officials were in familiar relations with the demonstrators and accordingly, they failed to dismantle the barriers and ignored occurred offenses. Respectively, due to the demonstrations of individual defendants and failure of the state to enforce its positive obligations, it was impossible to open the boarding school.

Amicus Curiae prepared by the public defender of Georgia focused on two main legal issues – the standards defined by the European Court of Human Rights for evaluating the possible discriminatory treatment on religious grounds on the one hand perpetrated by private individuals and on the other hand perpetrated by the state.<sup>11</sup>

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11 Decisions used in the friend of the court's opinion:

Resolutions of the Constitutional Court of Georgia: Resolution N1/1/493 on the Case: Political Union of Citizens *The New Rights Party* and *The Conservative Party of Georgia* vs. the Parliament of Georgia, dated December 27, 2010 Resolution N 1/1/477 on the Case: The Public Defender of Georgia vs. the Parliament of Georgia, dated December 22, 2011 Resolutions of the European Court of Human Rights: *Eweida and others v. United Kingdom*, application nos: 48420/10, 59842/10, 51671/10, 36516/10;

Based on the analysis of international agreements in the field of human rights and the precedents of the European Court of Human Rights, Amicus Curiae expressed an opinion that the presumable rights of the applicants, which were possibly hindered in the discussed case, were allegedly related to the right to the uninterrupted use of property and the right to religious freedom.

The written opinion also elaborated the issues of distributing the burden of proof. In compliance with the Law of Georgia *on the Elimination of All Forms of Discrimination* and the European Convention on Human Rights, the defendants were obliged to prove that their actions were not provoked by the applicants' religion. In order to reveal the possible religious motivation of their actions it was necessary to evaluate the public statements made by the defendants, religious rituals accompanying the demonstrations, the fact of slaughtering a swine, an impure animal for the Muslim population, and nailing its head to the door of the boarding school. If the defendants pointed out that the boarding school was paralyzed in order to defend the public order, morality or other rights and freedoms, then they would have to prove how the operation of the boarding school violated public order and abused morality.

As for the positive obligations of a state, amicus curiae stated that the Ministry of Internal Affairs was responsible to prove that they had applied all measures to ensure the proper enjoyment of the right to property and religious expression without discrimination.

The mentioned case is on a trial stage and the final decision has not been made yet.

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Burden v. United Kingdom, application no: 13378/05;  
Nachova and others v. Bulgaria, Application nos. 43577/98;  
Members of the Gldani Congregation of Jehovah's Witnesses and 4 others v. Georgia, Application no. 71156/01  
Begheluri and others v. Georgia, Application no. 28490/02  
Milanović v. Serbia, Application no. 44614/07;  
P.F. and E.F. v. the United Kingdom (dec.), Application no. 28326/09;  
Metropolitan Church of Bessarabia and Others v. Moldova, applicarion. no. 45701/99;  
Manoussakis v. Greece, application. no. 18748/91;  
Jehovah's Witnesses of Moscow v. Russia, application. no. 302/02;  
Saghinadze and Others v. Georgia, Application no. 18768/05;  
Kokkinakis v. Greece, Application no. 14307/88;  
Serif v. Greece, Application no: 38178/97;  
Young, James and Webster v. United Kingdom, Application no. 7601/76

## **Chapter IV: Lacunas in the anti-discrimination law**

By adopting the anti-discrimination law the Parliament of Georgia recognized the elimination of discrimination as one of the core priorities, as the promotion of a discrimination-free environment is essential for a proper functioning of a democratic society based on the idea of pluralism and formation of a tolerant society.

It is noteworthy that the law prohibits not only direct and indirect discrimination, but also discrimination by association and coercion, incitement and promotion of discrimination in public and private sectors.

Despite the affords of the legislator, there are a number of gaps, which prevent the present law to effectively promote the elimination of discrimination and fight for equality. The mentioned lacunas can be conditionally divided into procedural and material types of flaws.

### ***1. Procedural Lacunas***

The antidiscrimination law has granted the Public Defender of Georgia with the function of supervising the elimination of discrimination and ensuring equality. This fact indicates the necessity of existence of such body which would monitor the facts of discrimination in the country. The law not only formally granted the Public Defender of Georgia the mentioned function, but also envisaged an effective mechanism aiming to assist the Public Defender in the provision of equality, in particular the investigation of discrimination cases, settlement procedure and a right to issue recommendations and general proposals to the private and public entities. In spite of the above mentioned, different legal norms and flaws pose a realistic obstacle to the Public Defender of Georgia to effectively carry out the imposed function of ensuring equality and eliminating discrimination; they also prevent the victim of discrimination from effectively restoring his/her violated rights.

- According to the Paragraph 1 of the Article 127 of the Law of Georgia on “*Public service*” and the Paragraph 6 of the Article 38 of the Organic Law of Georgia the “*Labour Code*”, within one month from the receipt of the employer’s written order of dismissal, the employee may file an appeal with the court against the employer’s decision for termination of the labour agreement. According to the Article 363<sup>2</sup> of the Civil Procedure Code, individuals considering themselves to be victims of discrimination may bring a court action against a person/institution which he/she considers to have committed a discriminatory act. Instituting proceedings in a court is possible in the period of three months after an individual learnt or was supposed to have learnt about circumstances that he/she believes to be discriminatory.

The paragraph 1 of the Article 9 of the Law on “elimination of all forms of discrimination” defines that the Public Defender suspends proceedings if the same alleged discrimination dispute is pending in court.

Based on the case law of the Public Defender it can be noted that majority of discrimination facts address termination of labour agreements on discriminatory grounds. Since employed has essentially short period of time for bringing court actions and because of fact that the during the process of examination of the case by the Public Defender will not lead to the remuneration for the forced truancy, in the majority of cases a applicant, simultaneously with applying to the Public Defender also applies to the court. This leads to suspension of the case proceedings by the Public Defender. The Public Defender has already suspended proceedings on especially important 6 cases due to application to the court. The same can be said on other disputes where the period for application to a court is three months and where a plaintiff brings a court action due to a fact that he/she may claim for the damages. As a result we see that numerous disputes and opportunities of their prompt resolution are left beyond the scope of the Public Defender’s competence.

Application to the Public Defender and bringing a court action are the main leverage for effective implementation of the state policy aimed at combating discrimination. The legislation can be regulated in such a way that functions of the Public Defender and the court do not overlap and their mutual coexistence through mutual assistance is oriented at effective protection of individuals from discrimination

- Pursuant to the Article 9, paragraph 1, subparagraph “b” of the law of Georgia *on the Elimination of All Forms of Discrimination*, the Public Defender of Georgia shall suspend proceedings if due to the same alleged discrimination *administrative proceedings are under way*.

Administrative proceedings are the part of work of executive authorities exercising broad discretion and relevance. Given the nature of the activity, it can “easily” come into conflict with human rights. If a fact of discrimination has already taken place by a lower administrative body, a superior body does not have a possibility to respond to the occurred fact and effectively restore a violated right (to determine a discrimination fact, to provide reimbursement for damages, due to this fact it cannot be considered as an alternative mechanism to the Public Defender for case hearing; delay in proceedings during administrative proceedings is a common practice, therefore waiting for the end of the proceedings will delay response to the discrimination fact.

Thus, it will be appropriate to remove subparagraph “b” from the Article 9 altogether.

- Pursuant to the Article 8, paragraph 4 of the law of Georgia *on the Elimination of All Forms of Discrimination* “*any administrative, local self-government and state body (including the Prosecutor’s Office, investigation and court bodies) shall be obliged to transfer materials, documents, other information and explanations related to the case hearing to the Public Defender of Georgia within 10 calendar days after the request as provided for by law.*” Pursuant to the same article the private persons are entitled to provide information only voluntarily.

There is no leverage, a certain compulsory mechanism in the law through which it will be possible to receive materials, documents, explanations and other information related to the hearing from legal persons of private law and natural persons and it is only based on their good will. The aforementioned is a significant problem in practice since in this case comprehensive investigation of case circumstances, determination of discrimination and issuance of a relevant response is considerably complicated and sometimes rendered impossible.

The Public Defender considers that it will be reasonable to make a note in the Law of Georgia “on elimination of all forms of discrimination” in

accordance to which if private persons or public bodies fail to present requested information and there is sufficient evidence in the case to suspect discrimination then factual circumstances indicated in a complaint/application are considered proven. The fact of consideration of factual circumstances in case of failure to provide information will be an effective instrument for the Public Defender to carry out appropriate enforcement of the anti-discriminatory mechanism and to impose an indirect responsibility to provide information on private persons.

This instrument will serve as a certain stimulating factor for all private persons and public institutions to state their positions on a fact of alleged discrimination and to undertake the burden of proving the opposite.

- According to the Subparagraph “h” of the Paragraph 2 of the Article 14<sup>1</sup> of the Organic Law of Georgia on the Public Defender and the Subparagraph “g” of the Paragraph 2 of the Article 6 of the Law on “elimination of all forms of discrimination” the Public Defender “ is authorized to apply to a court, as an interested person, according to the Administrative Procedure Code of Georgia, and request the issuance of an administrative legal act or the performance of an action, unless an administrative body responds to or fulfils a recommendation and there is sufficient evidence of discrimination”; also, in accordance with the Article 24 of the Organic Law of Georgia on the Public Defender “state and local self-government authorities, public institutions and officials that receive recommendations or proposals of the Public Defender of Georgia shall be obligated to examine them and send a written report on the results of the examination to the Public Defender of Georgia within 20 days”.

Based on the content of the above mentioned articles, the Public Defender has a real leverage to ensure application of a decision it adopted towards administrative bodies. The same mechanism is not envisaged towards natural persons and legal persons of private law. In case a fact of alleged discrimination conducted by natural persons and legal persons of private law is proven the Public Defender will be limited to issuance of a recommendation or a general proposal. After that there is no leverage to ensure supervision or/and provision of fulfillment of the recommendations by private persons.

In such circumstances it is necessary to extend the above obligations in certain forms to legal and natural persons of private law, as the function

of the Public defender to provide monitoring stipulated in the Paragraph 1<sup>1</sup> of the article 3 of the Organic Law of Georgia on the Public Defender becomes declaratory in nature with regards to the mentioned persons and makes combating discrimination ineffective.

Thus, the Public Defender believes that the Article 24 of the Organic Law on Georgia on Public Defender should also include an obligation of natural and legal persons of private law to consider recommendations on cases of elimination of discrimination and to provide results of this consideration to the Public Defender. The Civil Code of Georgia stipulates that the period of limitation on contractual claims is three years, and the period with respect to contractual claims regarding immovable things – six years. The period of limitation on claims arising out of obligations subject to periodic performance is three years. The general period of limitation is ten years.

- For the purpose of a discrimination victim to have his/her rights restored and to claim for material and/or moral damages, the Article 363<sup>2</sup> of the Civil Procedure Code of Georgia envisages the right of an individual to apply to a court with a claim regarding circumstances that he believes to be discriminatory in the period of three months after this individual learnt or should have learnt about the aforementioned circumstances.

It should be noted that the defined period of three months is very short compared to other periods of limitation and furthermore, it is not sufficient to bring a court claim and prepare case materials. Therefore, the Public Defender believes it to be appropriate to extend the above-mentioned period from three months to a year.

- Given a very important role that the Public Defender has in relation to cases related to discrimination we believe it is necessary for the Public Defender to be granted the right to use the mechanism of *Amicus curiae* in the process of discussion of disputes of this category. In addition, it is important to grant the opportunity of using this leverage to any interested person who has a special knowledge and competence with regards to the discussed issue. So far there is no extensive practice in Georgia regarding disputes related to discrimination; therefore it is important to share international experience in application of international standards of human rights. During considering these types of cases the use of *Amicus curiae* institute can create a better opportunity for sharing international experience. The above will have a

positive effect on improvement of the quality of court judgments since the court will base its decision on more diverse sources. In addition, it will promote inclusion of the society which will further increase the level of trust towards a court decision.

Thus, it is necessary to introduce changes into the part of the Civil Procedure Code of Georgia that regulates special proceedings for discrimination-related cases that will enable an interested party that is not a party to the case or a third party in the dispute to present his/her arguments/opinions to the court.

On February 11, 2015 in order to improve the anti-discrimination law, the Public Defender of Georgia addressed the Parliament of Georgia with a proposal to make amendments to the *Law on the Elimination of All Forms of Discrimination*, the *Law on the Public Defender of Georgia*, *Civil Procedure Code of Georgia* and the *Law of Georgia on Civil Service*. The Human rights and Civil integration Committee and the Legal Issues Committee approved the legislative proposal with certain remarks.

It is of paramount importance that the Human Rights and Civil Integration Committee, which is currently one of the leading committees, commences committee hearings on this initiative, since the effective implementation of the anti-discrimination law largely depends on a timely adoption of the mentioned legislative change.

## **2. Material Lacunas**

In order to improve the legislative gaps revealed during the examination of cases of discrimination, the Public Defender of Georgia may occasionally present the proposals on necessary legislative amendments, aiming to improve the legislation and ensure its practical and effective implementation. Below are two issues, which are currently being elaborated:

- One of the gaps of the anti-discrimination legislation is the lack of notion of harassment is not integrated in the *Law of Georgia on the Elimination of All Forms of Discrimination*.

According to the directives of the European Union harassment is one of the specific forms of discrimination, expressed in unwanted conduct with the purpose of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.<sup>12</sup> Harassment by its nature, does not require a comparator; in addition, in often violation of a certain human right may not occur. Given emphasis to the fact that while arguing about direct and indirect discrimination the law requires the presence of a right defined by legislation and a comparator, it is apparent that interpreting harassment as a direct or indirect discrimination sometimes becomes impossible. This gives rise to a problem in terms of proving and accordingly, certain facts of harassment may remain without response..

Based on the nature of the problem, it is crucial to emphasize the notion of harassment in the legislation and to define it as a type of discrimination in the antidiscrimination law.

- According to the Article 2, paragraph 2 and 3 of the *Law of Georgia on the Elimination of All Forms of Discrimination* unequal treatment shall not be considered to be discrimination *if it serves the statutory purpose of maintaining public order and morals, has an objective and reasonable justification, and is necessary in a democratic society, and the means of achieving that purpose are appropriate.*

According to the Constitutional Court of Georgia<sup>13</sup>, the principle of proportionality requires that the legal regulation restricting a right should be a **useful** and **essential** means in achieving public (**legitimate**) **purpose**. At the same time, the intensity of the restriction of the right should be **proportionate** to the intended public purpose.

In compliance with the case-law of the European Court of Human Rights, unequal treatment is not deemed to be discrimination if it has a reasonable and objective justification, which means that the unequal treatment has a legitimate aim and the means used are proportionate.

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12 Directives: 2000/43/EC on the Racial Equality, article 2 (3); 2000/78/EC, on the equal treatment in employment and occupation, article 2 (3); 2004/113/EC, unequal treatment between men and women in the access to all good and services, article 2 (c); 2006/54/EC, on the equal treatment for men and women (recast), article 2 (1) (c);

13 Resolution #3/1/512 of the Constitutional Court of Georgia on the case: Heike Kronqvist, a citizen of Denmark, vs the Parliament of Georgia, II, 65, dated June 26, 2012.

Neither the Constitution of Georgia nor the European Convention on Human Rights envisages the list of legitimate aims in the articles prohibiting discrimination and their legitimacy is assessed on case by case. . In addition, while discussing the interference in the rights envisaged by Articles 8 -11 of the convention, the European Convention on Human Rights and the European Court of Human Rights employs the principle of “necessary in a democratic society”, which means that the interference has to have a legitimate aim and the means to achieve this aim are proportional.

Anti-discrimination law establishes a cumulative set of principles, in particular, there should be a statutory purpose protecting public orders and morals with an objective and reasonable justification and it should be necessary in a democratic society, while the applied measures should be proportionate to such purpose.

If we interpret this provision literally, it means that the law envisages the sole legitimate aim – protection of public order and morals; in addition, the aim has to be envisaged by law, or the law should specify a complete list of purposes and thus, excludes the existence of other legitimate aims justifying unequal treatment.

At the same time, the law uses both the objective and reasonable justification and the necessity in a democratic society; while both of them imply proportionality between the purpose and applied measures, first one is applied for reviewing the cases related to discrimination and another – for the cases of interference in human rights.

To avoid any confusion, it would be better to keep only the principle of objective and reasonable justification in the disposition of this article.

## **Chapter V. Conducting the Awareness Raising Campaigns**

In accordance with the anti-discrimination law the Public Defender of Georgia is implementing public awareness raising activities on the issues related to discrimination.

Within the framework of these activities the Public Defender of Georgia developed a set of frequently asked questions, prepared a promotional video, conducted trainings for police officers, prosecutors, journalists and school students

### ***1. Frequently Asked Questions***

The Public Defender of Georgia prepared a set of frequently asked questions which were uploaded on the website and are available to anyone who is interested. The mentioned document provides a simple explanation of the notion of discrimination, grounds of discrimination, powers of the Public Defender, who can appeal to the Public Defender, requirements of the application, decision making process by the Public Defender, etc.

### ***2. A promotional video***

The Office of the Public Defender of Georgia prepared a promotional video which was broadcasted by the public broadcaster, the Maestro TV and shared through social media. The video explains the prohibited grounds of discrimination and how to apply to the Public Defender.

### ***3. Trainings for the Police Officers and Prosecutors***

The main theme of trainings was the definition of discrimination, positive obligations of the state with regards prohibition of discrimination, the definition of hate crimes, techniques of investigation etc.

The trainings were organized by the Ministry of Internal Affairs of Georgia and the Prosecutor's Office of Georgia within the frameworks of a project financed by the Council of Europe and the European Union.

The trainings were conducted by several trainers, including the representative of the Public Defender’s office of Georgia. 9 trainings were organized in Tbilisi and the regions.

#### 4. Trainings for the Journalists

The Office of the Public Defender of Georgia organized trainings for the journalists. The training covered various issues including the rights protected by the European Convention of Human Rights, the notion of discrimination, experience of Ombudsman in investigation of discrimination cases, discrimination based on sex, gender identity and sexual orientation and prohibition of discrimination in exercising the right to religion and freedom of assembly.

Besides the representatives of the Office of the Public Defender of Georgia, the training was conducted by the representatives of the non-governmental organizations.

#### 5. Trainings for the school students

In order to raise legal awareness on discrimination the Equality Department conducted trainings in schools from February 12 to March 15, 2015. 37 trainings were organized in 31 schools of Tbilisi and the regions for 763 pupils.





Conducted trainings were found quite interesting. The duration of training was 2-2.30 hours and the most of the participants were the pupils from VII, IX, X and XI grades. In addition to a theoretical lecture course trainings has encompassed exercises, brainstorming, role plays and case studies.



The trainings were mostly organized during school hours and the children did not have to stay after school, although even when the trainings were conducted after school hours, children were so interested that they returned to school from home upon the arrival of the representatives of the Public De-

fender of Georgia in order to attend the sessions. In addition, within the framework of a civic education project initiated by the majoritarian MP Nodar Ebanoidze, on May 12, 2015 (public holiday) educational sessions were organized for the students of the Centre for Civic Education and for pupils from surrounding villages in the MP bureau in Kharagauli.

The trainings focused on pupils, although in some schools teachers also expressed their desire to attend and in several cases they even got actively engaged in discussions. There were several cases when the teachers obviously could not understand why a woman's financial dependence on her husband was an issue and why the commercial "Husband-ATM Machine" (Kmarkomati) of the Bank of Georgia promoted sexist stereotypes.

The teachers from the regions expressed their concern regarding the lack of attention from the society, absence of re-trainings for school teachers and

low quality of civic education handbooks. They asked the Public Defender of Georgia to participate in the development of a new handbook of civic education and conduct similar trainings for teachers as well.

Pupils believe that the most serious problem lies within the society itself. Some pupils think that older generations need to attend more trainings and *“unless they change their attitudes they will raise children exactly like themselves and the harassment of minorities will never end”*, *“problem is that parents never imagine themselves in the place of the minorities and cannot understand how they feel”*.

Problem of communication in Georgian language is still severe in Akhaltsikhe and Akhalkalaki as well as in Marneuli. In non-Georgian language schools children are unable to speak fluent Georgian, find it hard to express themselves in Georgian and thus, prefer to speak in Russian. Georgian language is not taught at high level, although some pupils intend to continue education in Tbilisi and due to the poor quality of Georgian language classes in schools, they have to take classes from private tutors, and that is associated with the additional expenses. Some pupils, who were religious/ethnic minorities in Akhalkalaki and Akhaltsikhe, disagree with the idea that the women need to be actively involved in public life. They see woman’s role only in performing family chores. Young girls, who are against early marriage and want to receive higher education, have a different opinion. They are annoyed by their male classmates’ and families’ attitudes towards a woman’s role in the society. Unlike the above-mentioned cities, such an attitude was less observable in Marneuli. The pupils had more tolerant approach towards different issues.

The issue of LGBT community appeared to be the most sensitive during the trainings. Children had distinct opinions regarding the rights of persons with different sexual orientation and gender identity. Mostly children copy the popular attitudes of the society and do not have an objective and complete information on this issue.

The Office of the Public Defender of Georgia continues conducting trainings for children in Tbilisi and the regions.

## Chapter VI. Improving the capacity of the Equality Department

The representatives of the Equality Department the Office of the Public Defender of Georgia attended various capacity building trainings and study visits on local and international levels.

### 1. Trainings Conducted on Local Level



⇒ On April 27-28, 2015 the staff of the Equality Department attended the trainings - “Gender Equality and the Mechanisms for its Protection” which was held in the conference hall of the Human Rights House. The training was organized by *Article 42 of the Constitution*. The training was facilitated by Marley S. Weiss, the Professor of the University of Maryland (USA).



⇒ In order to effectively implement the anti-discrimination legislation, on April 28-30, 2015 an international expert on equality issues Chila Van Der Bas visited the Apparatus of the Public Defender of Georgia. She introduced to the staff of the Office of the Public Defender of Georgia the work, competences decision making process and specifics of obtaining evidences at the Netherlands Equality Department. The visit was organized with the help of

## European Commission's Technical Assistance and Information Exchange Instrument (TAIEX).



⇒ On June 22-23, 2015 with the help of the European Commission's Technical Assistance and Information Exchange Instrument the Office of the Public Defender of Georgia organized a workshop on the effective implementation of the anti-discrimination legislation of Georgia. The main aim of the workshop was

to study the European anti-discrimination legislation and sharing the best practices of implementation of anti-discrimination legislation by the EU member states. The workshop was facilitated by international experts, the representative of Netherlands Human Rights Institute Chila Van Der Bas, Senior Investigator of the Ombudsman's Institute of Greece Maria Karageorgu and the Senior Specialist of the University of Turin Ivana Roagna. The workshop was attended by the representatives of the Office of the Public Defender of Georgia, members of judiciary branch and non-governmental organizations.

## ***2. International Study Visits***

⇒ In February 2015 within the framework of visa liberation process for Georgia the representatives of the Office of the Public Defender of Georgia, Parliament of Georgia and non-governmental organizations visited Romania.

The visit included meeting with the Committee of European Affairs of the Parliament of Romania. The discussions revolved around the challenges and complications Romania had to face during the process of integration with the EU, including necessity to improve the protection of human rights and the anti-discrimination mechanism.

During the meeting with the non-governmental sector of Romania the group was introduced to the history of adoption of the anti-discrimina-

tion law of Romania and the societal attitudes towards the mechanism. Development of tolerance towards the minorities and the contributing factors to the anti-homophobic attitude was also discussed. In addition, the discussions also focused on the rights of LGBT community and their integration within the society.

The meetings were organized with the Ombudsman's Office of Romania and the Anti-discrimination Council of Romania. The discussions focused on their functions, objectives, goals and their competences. In addition, the group was introduced to Romanian and European best practices experience and consulted on a better implementation of future activities.



⇒ The representatives of the Equality Department visited Warsaw, Poland in April, 2015.

The meetings were organized at the Office of the Public Defender of the Republic of Poland, with the Deputy Ombudsman and the employees of the Department of Equality and Protection of the Rights of People with Disabilities, With Malgorzata Fuszara who is the head of the Government's Plenipotentiary body for Equal Treatment existing with the Prime Minister of the Republic of Poland and with the representatives of non-governmental organizations, including the Helsinki Foundation for Human Rights and the Polish Society of Anti-Discrimination Law.

The staff of the Office of the Public Defender of Georgia provided comprehensive information to their Polish colleagues on the authority and work of the Equality Department. The meetings were held in the dialogue and Q&A format. The representatives of the Equality Department got acquainted with the problems and their applied solutions in terms of discrimination in Poland. Non-governmental organizations shared to the representatives of the Office of the Public Defender of Georgia several interesting cases from their portfolio. The main topic of the meeting with the head of the Government's Plenipotentiary body for Equal Treatment existing with the Prime Minister of the Republic of Poland was the state policy in terms of elimination of discrimination.

## Chapter VII . Conclusion

In February 2015 the European Commission evaluation mission visited the Public Defender of Georgia in order to assess its work in terms of elimination of discrimination. The mission was composed of several experts from the EU states. They were provided with detailed information on planned and conducted activities with regard to the promotion of equality.

The mission evaluated the activities of the Public Defender of Georgia as satisfactory and issued a recommendation to the Government of Georgia to increase its efforts in terms of awareness raising campaigns. In 2015-2016 the Public Defender of Georgia plans to conduct at least 60 trainings for pupils throughout Georgia; 10 trainings for teachers; 10 trainings for the staff of the local self-government bodies. The Public Defender also plans to develop awareness raising brochures and educational videos.

In addition, the Public Defender of Georgia is planning to study the facts of alleged discrimination on his own initiative, improve the learning process and conduct researches on various issues related to discrimination.

In terms of awareness raising campaigns, it is recommended to conduct trainings on the prohibition of discrimination for government bodies. In order to ensure the effective implementation of the anti-discrimination mechanism it is essential for the Parliament of Georgia to accelerate the process of adopting a legal proposal prepared and presented by the Public Defender of Georgia.

In addition, it should be emphasized that, in accordance with *the Law of Georgia on the Elimination of All Forms of Discrimination*, the public/private institutions should make sure that their activities, legal acts and internal regulations are into conformity with the *Law of Georgia on the Elimination of All Forms of Discrimination* and other anti-discrimination laws.



