



PUBLIC DEFENDER  
(OMBUDSMAN) OF GEORGIA

# **SPECIAL REPORT ON COMBATING AND PREVENTING DISCRIMINATION AND THE SITUATION OF EQUALITY**

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ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION



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## INTRODUCTION

This special report was drawn up pursuant to Article 7 of the Law of Georgia on the Elimination of all Forms of Discrimination (hereinafter referred to as Antidiscrimination Law). It reviews activities carried out by the Public Defender of Georgia, as the mechanism to monitor the elimination of discrimination and ensure equality, over the period from **1 September 2015 to 31 August 2016**.<sup>1</sup>

The first special report of the Public Defender on combating and preventing discrimination and the situation of equality<sup>2</sup> was published in September 2015. It provided the review of Anti-discrimination Law and the general principles of investigation into discrimination cases; consequently, this report will not dwell on the mentioned issues.

In accordance with the agenda of Association Agreement signed between Georgia and the European Union in 2014, the government of Georgia assumed the responsibility to establish a mechanism for combatting discrimination. On 2 May 2014, the Parliament of Georgia adopted the Law on the Elimination of all Forms of Discrimination. This law is a legal mechanism for any natural and legal person to defend their right to equality against public as well as private persons.

Under the Anti-discrimination Law, the function to monitor the elimination of discrimination and ensuring equality was assigned to the Public Defender of Georgia. To implement this power, the Public Defender, by his Ordinance N140, established the Equality Department on 22 August 2014. The Department started functioning on 20 November 2014.

In parallel with the adoption of the Anti-discrimination Law, the Civil Procedure Code of Georgia was amended by adding Section 7<sup>3</sup> to regulate the procedure of applying to a court for discrimination-related cases.

The adoption of Anti-discrimination Law is itself a very significant step in the fight for equality in the country; moreover, the Law is equipped with several legal elements that make the law even more effective.

Firstly, the list of protected grounds provided in Article 1 of the Law is not exhaustive, thus enabling the examination of any possible discrimination committed on any ground regardless of whether it is listed in the Law or not. Yet another noteworthy aspect of the Law is that it explicitly specifies disability, sexual orientation, gender identity as protected grounds, i.e. the characteristics which are missing in legislation, including, the Constitution of Georgia and basic documents of international law. It thus emphasizes the

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1 The report also uses information which the Public defender obtained after the reporting period.

2 The Public Defender's 2015 Report on Combating Discrimination, its Prevention and the Situation of Equality is available at <https://drive.google.com/file/d/0B9BM3M8hbgAUTUdIZXd4MFJqX2s/view>

significance of protecting the right to equality of these social groups and the universal nature of the Law.

Moreover, especially instrumental for the effective application of the Law is that it obliges not only administrative bodies but also natural and legal persons of private law to refrain from discriminatory actions and to eliminate inequality.

The Law also defines types of discrimination – *direct and indirect*. Paragraph 5 of Article 2 prohibits *any action carried out for the purpose of forcing, encouraging, or supporting a person to discriminate against a third person within the meaning of this article*. This provision enables the Public Defender, in such cases where neither direct nor indirect discrimination is apparent, to deliberate on incompliance of discriminatory practices and establishment/strengthening of negative stereotypes and stigmas with the Anti-discrimination Law. The Public Defender actively applies the mentioned provision in practice which will be discussed in detail below.

One of achievements of the law is the notion of multiple discrimination envisaged by Paragraph 4 of Article 2 and the notion of discrimination by association or discrimination by perception discrimination which is envisaged by Paragraph 6 of the same article.

Despite the abovementioned important legislative lever, the anti-discrimination legislation has procedural and material flaws which need to be eliminated. On 11 February 2015, to improve the anti-discrimination legislation, the Public Defender approached the Parliament of Georgia with a proposal to amend the Organic Law on Public Defender, the Law on the Elimination of all Forms of Discrimination, the Civil Procedure Code, the Labor Code and the Law on Civil Service. Proposed amendments to the laws will be discussed in detail below.

**This report reviews shortcomings of the anti-discrimination legislation; statistical data of the Equality Department; application of standard of distribution of burden of proof by the Public Defender; recommendations and general proposals issued by the Public Defender as well as Amicus Curiae briefs submitted to common courts; observed trend in investigations of alleged hate crimes; significance of common courts as a mechanism for combating discrimination; also other activities carried out by the Equality Department.**

## CHAPTER I. SHORTCOMINGS OF THE ANTI-DISCRIMINATION LEGISLATION

The adoption of the law and determination of corresponding mechanism of legal defense is indeed a step forward in the area of human rights protection; however, there are issues in the legislation, which require further improvement.

On 11 February 2015, the Public Defender approached the Parliament of Georgia with a legislative proposal regarding procedural changes to the Organic Law on Public Defender of Georgia, the Law of Georgia on the Elimination of all Forms of Discrimination, the Civil Procedure Code of Georgia, the Labor Code of Georgia and the Law on Civil Service. After revising them, the parliamentary committees on the protection of human rights and civil integration and on legal issues supported the legislative proposal, however, the proposal has yet to be considered at a plenary session.

Shortcomings of the legislation were also discussed in the Public Defender's 2015 special report on equality. This issue still remains a challenge.

Procedural and material shortcomings of the Antidiscrimination Law are discussed below.

### A) PROCEDURAL SHORTCOMINGS

The Public Defender's legislative proposal envisages procedural changes. It should be noted that the initial version of the legislative proposal, as compared to the current wording, contained more changes. The amendments in the Public Defender's legislative proposal pursue the aim of enhancing the efficiency of Public Defender as a mechanism of combating discrimination. Although Public Defender and common courts are two independent mechanisms in the fight against discrimination, the Public Defender, at the same time, strives to collect evidence of a case before the case goes to a court, and where discrimination is proved, to issue a corresponding recommendation. Several legislative shortcomings prevent the Public Defender from increasing the efficiency of his activity in combatting discrimination.

The legislative proposal of Public Defender raises the following issues:

### **a.a) To impose the obligation on private persons and to toughen the obligation of public entities to provide information to the Public Defender**

Paragraph 4 of Article 8 of the Law on the Elimination of All Forms of Discrimination shall have such a wording as to obligate natural and legal persons in private law, alike administrative, central and local government bodies, to provide information to the Public Defender within 10 calendar days.

The lack of obligation of natural and legal persons of private law to provide information is one of the factors that impede the activity of Public Defender in combatting discrimination. The practice has shown that facts of discrimination occur in private entities as frequently as in public entities. For example, among 12 recommendations issued by the Public Defender in the reporting period five were addressed to private persons; also, in 45 percent of total applications submitted to the Office of Public Defender, complainants accuse private persons of discriminating them. Therefore it is important to enable the Public Defender to defend alleged victims of discrimination from any discriminating person in an equally effective manner.

In order to comprehensively examine separate facts of discrimination, it is necessary, in the majority of cases, to hear the position of a defendant and to receive relevant information. Refusal of private persons to cooperate with the Public Defender harms the interests of an alleged victim of discrimination as it becomes difficult to establish whether the fact of discrimination occurred or not. Moreover, one of characteristics of the activity of Public Defender, as the mechanism to combat discrimination, in the process of examining a case is the collection of evidence in the case. Given the nature of discrimination, a victim finds it difficult, and on certain occasions even impossible, to conduct an independent fight against inequality and obtain evidence proving that he/she was discriminated against. It is therefore especially important for the Public Defender to assist a victim, to the maximum possible extent, in collecting the evidence and thus enable the victim to apply to a court on the basis of solid arguments.

Hence, in his legislative proposal, the Public Defender demands that Article 8 of the Law on the Elimination of All Forms of Discrimination be added Paragraph 4<sup>1</sup> in the following wording:

“If any administrative, local self-government and state body (including the Prosecutor’s Office, investigation and court bodies), legal and natural person of private law fails to transfer materials, documents, explanations and other information to the Public Defender and the case materials give rise to a reasonable doubt that the discrimination took place while the circumstances indicated in a complaint/application legally justify the claim, the complaint/application shall be satisfied, otherwise, the party shall be denied the satisfaction.”

The abovementioned provision is an additional mechanism of cooperation with public and private persons. Satisfying an application when information is not provided, but



materials in the case provide legal elements of discrimination, will be an effective tool for the Public Defender to ensure effective enforcement of anti-discrimination mechanism and to impose an indirect obligation on private persons to provide information; it will also be an additional motive for public entities to provide the Public Defender with requested information in full.

### **a.b) Suspension of proceedings by Public Defender in case of administrative proceedings**

Pursuant to Paragraph 1 of Article 9 of the Law on the Elimination of All Forms of Discrimination, the Public Defender, on certain occasions, suspends the examination of a case, including, when an administrative proceedings are under way on the same fact of alleged discrimination. In his legislative proposal, the Public Defender demands that this paragraph be deleted from Article 9.

Administrative proceedings represent part of the activity of executive authority which enjoys broad discretion. Given its nature, it may easily come in conflict with human rights. If a lower administrative body commits a discriminative action, a higher administrative body has no possibility to react to an already committed action and effectively reinstate the violated right; because of this the examination of a case by Public Defender cannot be considered an alternative mechanism.

Moreover, in contrast to a court decision, a decision of an administrative body does not represent a ground for the Public Defender to suspend proceedings; this means that theoretically, it is possible for an administrative body and the Public Defender to make different decisions on the same case. Consequently, when the administrative proceedings are underway the Public Defender temporarily suspends the examination of the case which in practice only causes the procrastination of examination.

### **a.c) Establishment of enforcement mechanism against private persons**

In his legislative proposal, the Public Defender also demands that Article 24 of the Organic Law on Public Defender of Georgia be formulated in such a way as to obligate those natural and private legal entities that receive recommendations and general proposals under the Law on the Elimination of All Forms of Discrimination, to consider them and alike public entities, notify the Public Defender in writing about the results of consideration within 20 days.

Pursuant to Subparagraph “h” of Paragraph 2 of Article 14<sup>1</sup> of the Organic Law on Public Defender of Georgia and Subparagraph “g” of Paragraph 2 of Article 6 of the Law on the 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 issue of an administrative legal act or the performance of an action, unless an administrative body responds to or shares a recommendation and there is sufficient evidence of discrimination. Also, pursuant to Article 24 of the Organic Law on Public Defender of Georgia, 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 report in writing on the results of the examination to the Public Defender of Georgia within 20 days.*

The above provisions equip the Public Defender with a lever to ensure the enforcement of his decisions taken with regard to administrative bodies. However, such a mechanism is not provided for decisions taken with regard to natural and legal persons in private law. With this mechanism missing, the Public Defender, in taking a decision towards private persons, applies the name and shame instrument which, naturally, does not represent a legal means and the enforcement of Public Defender's decision entirely depends on the degree of respect by a concrete defendant of his/her personal or business reputation.

When an alleged discrimination committed by a natural or legal person in private law is established, the Public Defender limits himself to issuing a recommendation or a general proposal. No other lever is available to monitor or/and ensure the fulfillment of the recommendation by private persons.

Given the created situation, it is necessary that the abovementioned obligation is also imposed on natural and legal persons in private law because the monitoring function envisaged in Paragraph 1<sup>1</sup> of Article 3 of the Organic Law on Public Defender of Georgia is of declarative nature when it comes to private persons and makes the fight against discrimination ineffective.

#### **a.d) Extending the term for filing a claim concerning discrimination with a court**

According to Paragraph 2 of Article 363<sup>2</sup> of the Civil Procedure Code of Georgia, the term for filing a claim concerning discrimination with a common court is three months after a person becomes aware or ought to have become aware of the circumstance that he/she assumes to be discriminating.

Paragraph 1 of Article 9 of the Law on the Elimination of All Forms of Discrimination stipulates that the Public Defender of Georgia shall suspend proceedings if due to the same alleged discrimination the dispute is pending in court.

In this legislative proposal to the Parliament of Georgia the Public Defender proposes the extension of this term up to one year.

Under the circumstance when a victim is given a short period of time to file a claim with a court and the examination of the case by the Public Defender does not envisage the

compensation of damages, a complainant, in the majority of cases, simultaneously files a claim with a court and submits an application to the Public Defender; this results the suspension of the case examination by the Public Defender. During the reporting period, the Public Defender suspended the examination of five cases because these cases were considered by a court. As a result many disputes remain beyond the competence of the Public Defender since the Public Defender, given the shortage of human and time resources, lacks a capacity to take decisions on every case within the three months' time.

Applying to a court and the Public Defender is the main legal tools for effective implementation of the state policy that pursues the aim of combating discrimination. The legislative framework may be designed in such a way as to ensure that the functions of Public Defender and court do not overlap and their coexistence is oriented on the effective protection of people from discrimination through mutual assistance.

Within the powers granted under the law, the Public Defender has the right to study all circumstances of the case comprehensively and without additional motion of a party, ask for evidence, information, documents and explanations, to conduct expert investigation, to invite specialists, experts and others. When examining a concrete case, the Public Defender carries out comprehensive investigation into factual circumstances of the case and by doing so, contributes to the establishment of truth. The Public Defender's comprehensive study into the case will make it easy for a party to substantiate his/her claim with a court. All these will ensure the identification of discrimination and effective response to it and assistance to a victim. Moreover, the consideration of Public Defender's recommendation may result in settling a dispute without taking it to a court, thus sparing courts from being overloaded with such cases. There were instances when after the issuance of a recommendation by the Public Defender there was no need to continue the dispute in a court because the defendant fulfilled the recommendation.<sup>3</sup> Therefore, we believe in the importance of creating necessary legislative guarantees for the enhancement of efficiency of the mechanism of application to the Public Defender.

Moreover, a three-month term for filing a claim with a court is a very short period of time compared to other similar terms and not sufficient to prepare case materials. In particular, during this term, a victim of alleged discrimination must be able to realize that he/she might be a victim of discriminatory treatment, prepare him/herself psychologically, take a decision on the protection of his/her rights and, if need be, to find a representative, seek financial resources to pay court fee, obtain evidence in the case and draw up a claim.

If the above mentioned term of three months is extended to one year, as it is suggested in the legislative proposal, a victim will have a possibility to apply to the Public Defender and after the Public Defender takes a decision, to file a claim with a court. In case of

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3 For example, <http://www.ombudsman.ge/ge/news/shps-kredom-orsulobis-nishnit-diskriminaciis-ag-mofxvris-shesaxe-b-saxalxo-damcvelis-rekomendacia-sheasrula.page>

timely application to the Public Defender, the one-year term for filing a claim with a court will be a sufficient period of time for the Public Defender to conduct a comprehensive study into the case and take a decision on it.

Hence, to ensure the coexistence of the Public Defender and a court, these two essential institutions, it is necessary to an amendment to Article 363<sup>3</sup> of the Civil Procedure Code of Georgia, which would extend the term for filing a claim with a court to up to one year.

#### **a.e) Extending the term for filing a claim concerning labor disputes with a court**

A short term for filing a discrimination claim with a court is especially problematic when it comes to labor disputes.

Pursuant to Paragraph 6 of Article 38 of the Labor Code of Georgia, an employee may file a claim with a court against the employer's ordinance on his/her dismissal within *one month* after receiving the ordinance. According to Article 127 of the Law of Georgia on Civil Service, the term for filing a claim with a court is *one month*.

According to the practice of the Public Defender, a large amount of discrimination cases concern the termination of labor agreements on discriminatory grounds. Alike other types of dispute, an alleged victim of discrimination in labor relations is interested in applying to a court, but, clearly, it is very difficult for the Public Defender to evaluate an alleged discrimination comprehensively and take a final decision within a short period of time such as one month.

As noted above, common courts and Public Defender are two independent mechanisms of combating discrimination, however, in practice, for a court case of an alleged victim of discrimination to be conducted successfully, it is important that the case is considered by the Public Defender. There are two reasons of that – without the help from the Public Defender, a victim may find it way more difficult, or even impossible, to obtain evidence; and a decision of the Public Defender on establishing discrimination may become a prerequisite for the settlement of a dispute between the parties in the court or the dispute may be settled even before reaching the court.

However, the three-month term, while in case of labor disputes – one-month term, for filing a claim questions the effectiveness of the exercise by an alleged victim of right to appeal to a court and poses a threat of rendering this right illusory. The analysis of information requested by the Public Defender from common courts reveals that the number of applications to courts is quite low. This issue will be discussed below.

The above mentioned factors, taken together, show the necessity of amending the legislation.

## B) MATERIAL SHORTCOMINGS

Pursuant to Paragraph 1 of Article 2 of the Law on the Elimination of All Forms of Discrimination, all forms of discrimination shall be prohibited in Georgia. Paragraphs 2 and 3 of the same article define types of discrimination – *direct and indirect* discrimination. Paragraph 4 prohibits multiple discrimination whilst Paragraph 6 prohibits discrimination by association and by perception. Moreover, Article 12 prohibits *victimization* - no person may be subject to any negative treatment or influence for submitting an application or a complaint to relevant bodies or for cooperating with them in order to protect himself/herself from discrimination.

However, it should be noted that the Law does not reflect all types of discrimination; in particular, the Law does not provide the definitions of forms of discrimination such as *denial of reasonable accommodation* and *harassment*. As noted above, Paragraph 1 of Article 2 of the Law prohibits any form of discrimination; however, the need to provide a detailed definition of the above mentioned notions follows from their difference from other forms of discrimination. The test applied in considering cases of harassment as well as denial of reasonable accommodation in order to identify the violation of the right is the test that is specific for these notions alone.

The Law does not provide for *segregation* as a separate form of discrimination either. We also believe that to increase the efficiency of mechanisms for combatting discrimination it is desirable for the Law to formulate more clearly such forms of discrimination as *victimization* and *instruction to discrimination* so as to make it easy for unprofessional readers to understand their own rights. It is also desirable for the Law to clarify the *notion of multiple discrimination*.

### b.a) Refusal to make a reasonable accommodation

The UN Convention on the Rights of Persons with Disabilities, which was enacted in Georgia on 12 April 2014, defines a *denial of reasonable accommodation* as one of the forms of discrimination.

According to Article 2 of the Convention, *discrimination on the basis of disability includes denial of reasonable accommodation*. Reasonable accommodation, for its part, means *necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms*. At the same time, pursuant to Paragraph 3 of Article 5, *in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided*.

Although the Convention was ratified by the Parliament of Georgia, the domestic legislation has not yet defined the notion of reasonable accommodation; as a result the Public Defender has no possibility to react to such facts of alleged discrimination in cases where this specific form of discrimination is applied and the defendant is a private person.

The Equality Department faced the necessity to discuss the reasonable accommodation in one case: the Public Defender's Office was approached by an applicant E.G. who believed that he was subject to discrimination on the ground of disability in the pre-contractual relations because the employer, a legal person of private law, refused to provide reasonable accommodation. Unfortunately, the Public Defender had no possibility to consider the obligation of a legal person of private law to provide reasonable accommodation to the applicant.

It is necessary for the law to clearly explain that a person committing alleged discrimination is not only obliged to carry out activity in compliance with the objective justification test, but also shall, when need be, provide reasonable accommodation.

In this area, the Public Defender, with the involvement of other interested parties, plans to undertake a number of measures, including to seek best international practice, and to draft a legislative proposal.

## **b.b) Harassment**

According to EU directives, harassment is one of specific forms of discrimination which aims at violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment.<sup>4</sup> Hence, harassment occurs when

- an unwanted conduct takes place for a victim;
- which is carried out to violate the dignity of a person;
- creates an intimidating, hostile and degrading environment;
- a victim has one of protected characteristics.

Considering the above said, the test for identifying harassment differs from the tests for identifying *direct* and *indirect* discrimination. Given its nature, harassment does not need a comparable subject; besides, in most cases, the right may not be violated. Taking into account that in establishing direct and indirect discrimination the law requires that there is a right specified in the legislation and a comparator, harassment, naturally, cannot be considered in the context of *indirect* and *direct* discrimination. This makes it

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<sup>4</sup> Article 2(3) of EU Directive 2000/43/EC on racial equality; Article 2(3) of EU Directive 2000/78/EC on equal treatment when employing; Article 2(c) of EU Directive 2004/113/EC on gender equality in the access to goods and services; Article 2(1)(c) of EU Directive 2006/54/EC on gender equality (recast).

difficult to prove this form of discrimination and some facts of harassment may be left without response.

Moreover, according to the notion of *direct* and *indirect* discrimination, a different treatment shall not be considered discrimination when there is a legitimate aim and this different treatment is a necessary, required and proportionate means of achieving this aim. Since there is no need of comparator to prove harassment, “different treatment” is not considered either. Consequently, in cases when a degrading and hostile environment is created for violating the dignity of a person on the ground of any protected ground, the harassment will be established, which in contrast to other forms of discrimination, cannot be justified by any legitimate aim.

Besides, it is important for the Georgian legislation to define the notion of *sexual harassment*, as one of specific and most frequent forms of *harassment*.

The effective legislation provides definitions of *harassment* and *sexual harassment* only in regards with labor relations,<sup>5</sup> although this notion is way broader and a person may experience this form of discrimination in any sphere of social life.

### **b.c) Segregation**

It is important to prohibit any action which gives rise to a threat of legal or actual *segregation*, i.e. separation of groups from one another or isolation of one group from the main group on the ground of protected characteristic. Segregation mainly represents not the prevention of a concrete person from exercising any right but exercise of this right by a segregated group of persons in isolation so that the exercise of the right is actually not restricted. Consequently, it is important to define segregation as one of the forms of discrimination.

### **b.d) Victimization**

As noted above, Article 12 of the Anti-discrimination Law prohibits *victimization* - negative treatment of or influence on a person for submitting an application or a complaint to relevant bodies or for cooperating with them in order to protect himself/herself from discrimination. This provision is a lever of defense for those people who will apply legal remedies for the protection of their own or others’ rights.

However, it should be noted that victimization is not defined as one of the forms of discrimination; consequently, a question arises as to whether the burden of proof standard, which is applied in discrimination cases, should be used with regard to Article 12.

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5 Paragraph 4 of Article 2 of the Organic Law of Georgia the Labor Code of Georgia; Subparagraphs “a” and “b” of Paragraph 1 of Article 6 of the Law of Georgia on Gender Equality.

As Article 12 provides, protection against discrimination applies to cases when a person a) for the aim of protecting himself/herself from discrimination b) applies to a relevant body. We believe that the threat of victimization when applying legal remedies may be one of main impeding factors; this may also be used to impede the activity of the Public Defender. Consequently, it is necessary to provide a broader definition of *victimization* in the legislation – to apply it to not only applications regarding discrimination, but, in general, applications concerning alleged violation of human rights. Moreover, it is necessary to ensure that a person is protected not only when he/she applies to a relevant body but in any case when he/she provides assistance to another person or performs any other action for the protection of his/her own and other persons' rights.

### **b.e) Instruction to discrimination**

*Instruction to discrimination* is not provided in the law as a form of discrimination. The Public Defender interprets this notion under Paragraph 3 of Article 5 of the Anti-discrimination Law; however, instruction to discrimination is a stricter form of violation of equality than the support of discrimination. The latter may not be deliberate and may result from incorrect information or established stereotypes. However, instruction to discrimination implies that a person applies his/her own power to force another, subordinate person to commit discrimination - this is the coercion to discriminate rather than the support to discriminate. Explicit definition of this notion in the law will also ensure the right of a subordinated person to defend his/her interests in case of such instruction and to disobey the instruction.

### **b.f) Multiple discrimination**

According to Paragraph 4 of Article 2 of the Law on the Elimination of All Forms of Discrimination, *multiple discrimination* is discrimination based on the combination of two or more characteristics. This provision is an additional reminder that in some cases discrimination may occur on the ground of two characteristics and only one characteristic may not be sufficient to prove discrimination; for example, when an employer is against employing a woman who has a child with disability whereas is not against employing a man with such a child or a woman who does not have a disabled child. In such a case, one characteristic – sex, shall not be sufficient to prove discrimination, because the employer does not disfavor those women who do not have children with disabilities. However, the combination of sex and disability creates a group who are treated differently.

Despite such an explanation, we believe that the mentioned provision is not explicit and an unprofessional person may not understand the provision in such a way as to ensure the protection of his/her right.



To improve the antidiscrimination legislation and consequently, ensure the efficiency of the fight for equality, it is necessary for the Georgian legislation to provide the definitions of *denial of reasonable accommodation* and *harassment* as separate forms of discrimination. The Public Defender believes that a general instruction about the prohibition of all forms of discrimination is not sufficient since in order to avoid ambiguity as well as underline the importance of the mentioned forms of discrimination, it is important for the law to clarify the definitions of indicated notions and to specify cases of such forms of discrimination. It is also important to define segregation as a specific form of discrimination.

Moreover, for the establishment of a common practice and better understanding of separate provisions by addressees of the right, it is important to clarify separate articles and make their wording more explicit. *Victimization*, *instruction to discrimination* and *multiple discrimination* are important notions which, together with other provisions, expose incidents of breach of equality and ensure the consideration of a concrete case as discrimination.

## CHAPTER II. CONSIDERATION OF CASES BY PUBLIC DEFENDER

In this chapter the specifics case examination by the Public Defender are reviewed, in particular, statistics on cases under consideration, involvement of a representative when the Public Defender examines cases, cases that were launched by public defender' initiative, application of the standard of distribution of burden of proof. The chapter also discusses the Public Defender's recommendations and general proposals as well as Amicus Curiae briefs submitted to common courts.

### 1. STATISTICAL DATA

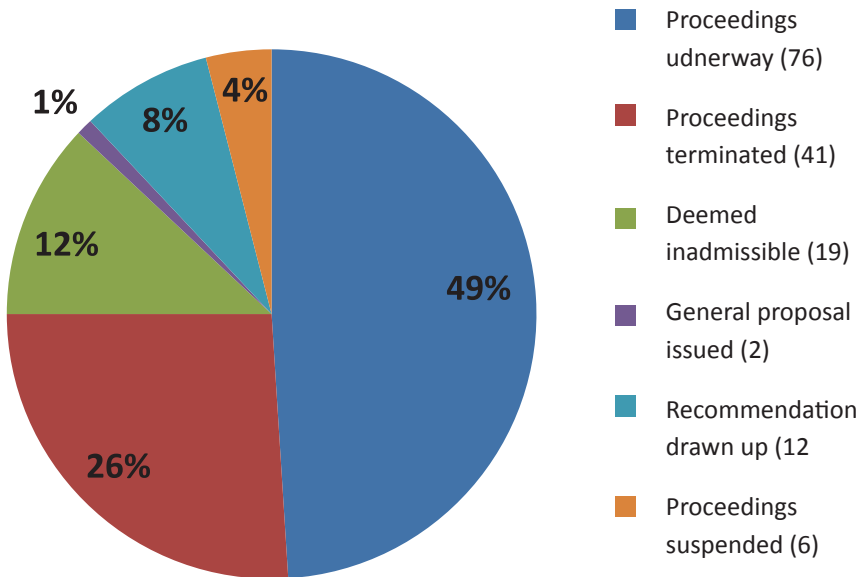
During the reporting period, the Public Defender's Office started to examine 113 new discrimination cases including 106 cases on the basis of applications submitted to the Office and seven cases by the initiative of Public Defender. Moreover, the Public Defender issued 12 recommendations and two general proposals and submitted the friend-of-the-court opinions to common courts in regards with five cases.

At present, the Public Defender is considering 76 cases. The reporting period saw the termination of 41 cases of which four applications did not concern discrimination, but sought opinions of Public Defender regarding the equality issue. Consequently, after responses had been sent to the applicants, the examination of the cases was terminated. Moreover, 19 applications were deemed inadmissible, six cases were suspended as the applicants filed complaints with courts (five) and administrative proceedings was launched (one). Three public statements were also made on equality issues.<sup>6</sup>

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6 See <http://www.ombudsman.ge/ge/news/saxalxo-damcveli-qedis-sakrebulo-wevrebis-seqistur-gamonatqvamebs-exmianebsa.page>;  
<http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-girchis-wina-saarchevno-reklamastan-dakavshirebit.page>;  
<http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-telekompania-maestros-mier-saias-socialuri-reklamis-ettershi-gantavsebase-uaris-shesaxebsa.page>

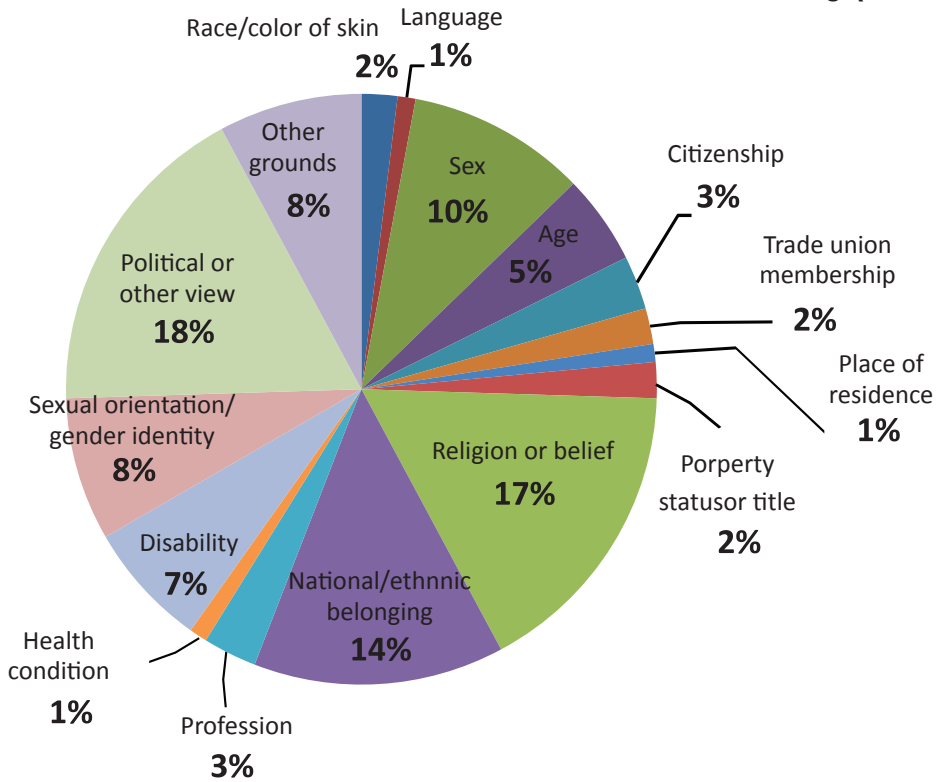
## Consideration of cases



The largest amount of cases being considered by the Public Defender concerns discrimination on the grounds of political or other views (18%), religion (17%) and nationality/ethnicity (14%). Also, a significant amount of cases involve alleged discrimination on the grounds of sex (10%), sexual orientation/gender identity (8%) and disability (7%). Discrimination on other grounds is claimed by 8% of the applicants. It is worth noting that there is a difference between the given statistics and the data of previous reporting period – it shows an increase in alleged discrimination on the ground of political and other views by 3%, on the religious ground by 6% and on the ground of nationality/ethnicity by 4%. Conversely, the applications concerning alleged discrimination on the grounds of sexual orientation/gender identity and disability decreased by 3%.

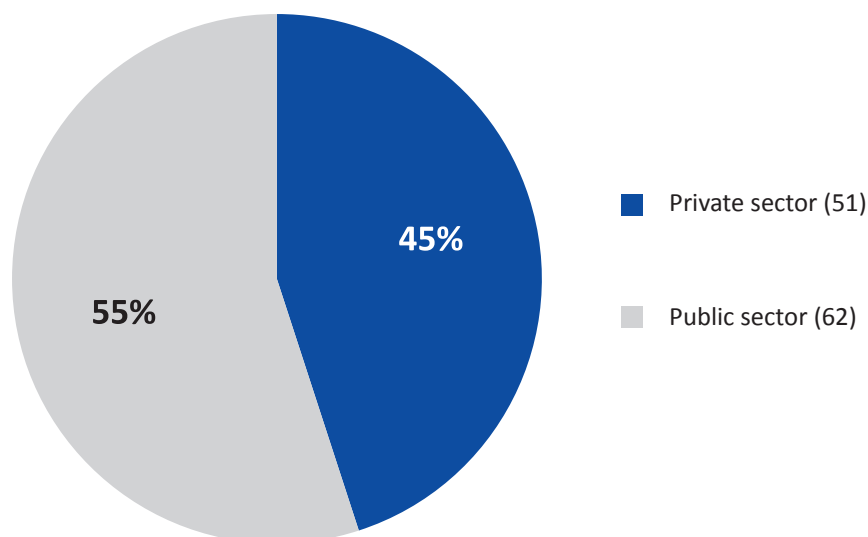
## Ground of discrimination

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Similarly to the previous reporting period, discrimination is equally committed by public and private persons. Some 55% of cases were against public persons whilst 45% of cases were against natural and legal persons in private law.

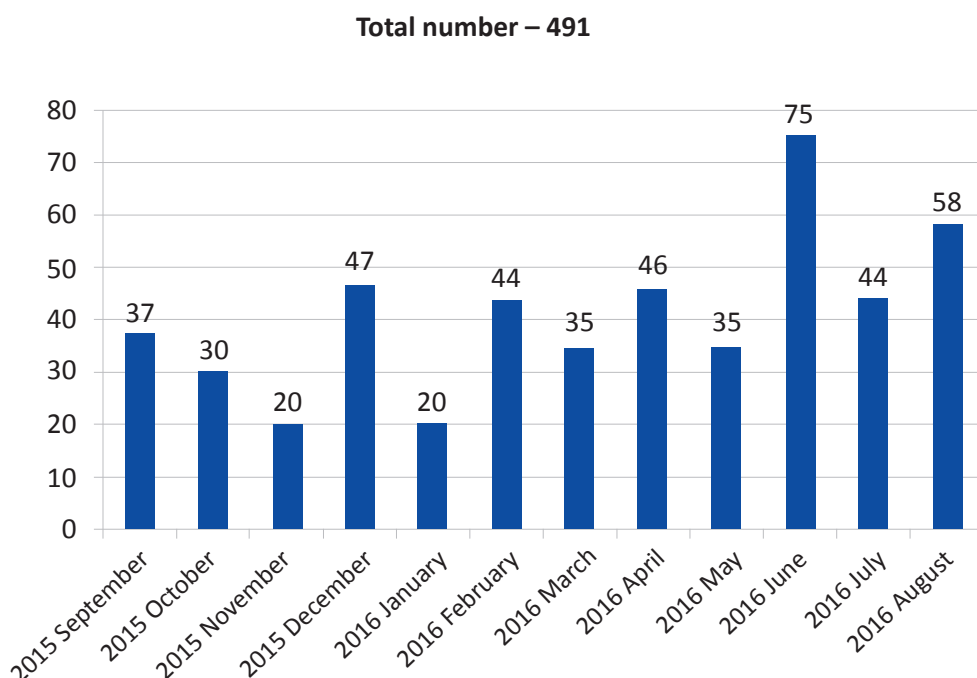
### Alleged discriminating person



An updated list of cases which were being examined by the Equality Department as of 1 August 2016, was published on the webpage of Public Defender.<sup>7</sup> The aim of this move is to ensure transparency of the department and provide an opportunity to third parties to participate in the proceedings, in accordance with Article 11 of the Law on the Elimination of All Forms of Discrimination. In the reporting period, the Public Defender was not applied by any third party for the involvement in the proceedings concerning discrimination.

In the reporting period, the Equality Department, when examining cases, sent 491 letters requesting information.

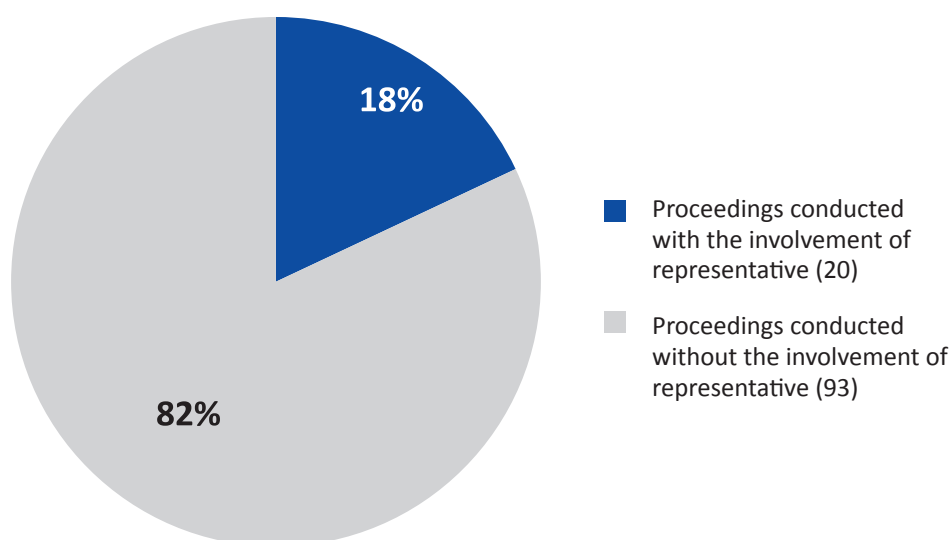
<sup>7</sup> <http://www.ombudsman.ge/ge/diskriminaciis-prevenciis-meqanizmi/siaxleebi/tanasworobis-departamentis-warmoebashi-arsebuli-saqmeebis-ganaxlebuli-sia.page>



## 2. REPRESENTATION IN CONSIDERATION OF CASES BY THE PUBLIC DEFENDER

The Public Defender examines facts of alleged discrimination both on his own initiative and on the basis of applications of individuals. When a case is examined in the Public Defender's Office, a person may have a representative to represent his/her interests in the process of examining the case at the Public Defender's Office. To this end, a representative must submit a notarized power of attorney to the Public Defender's Office. A representative may get involved in the consideration of a case upon applying to the Public Defender as well as at a later stage of proceedings. The participation of a representative in the examination of a concrete case by the Public Defender does not affect the proceedings or the outcome of the case. A representative may submit a written legal substantiation to the Public Defender, indicate corresponding legal sources which he/she deems relevant for the consideration of the case.

## Representative



Some 17 percent of applicants to the Public Defender have their representatives; they mainly are nongovernmental organizations falling within the Coalition for Equality.<sup>8</sup>

### 3. EXAMINATION OF CASES ON THE INITIATIVE OF PUBLIC DEFENDER

Pursuant to Subparagraph “b” of Paragraph 2 of Article 6 of the Law on the Elimination of All Forms of Discrimination, the Public Defender of Georgia is entitled to examine an alleged discrimination on his own initiative.

In the reporting period, the Public Defender started examining the total of seven cases on his own initiative. The previous reporting period saw a proactive launch of investigation into four cases.

On 11 February 2016, the Public Defender started to examine the case concerning the rule of distribution of shelter, which was defined in the resolution #28-116 of Tbilisi City Council, dated 27 November 2015. This case is being examined and the Public Defender will take a decision on it in the near future.

On 20 April 2016, the Public Defender proactively showed interest towards those provisions of the Law of Georgia on Higher Education, which grant the members of

<sup>8</sup> Members of the Coalition of Equality are Georgian Young Lawyers’ Association, Human Rights Education and Monitoring Center, Sapari, Article 42 of the Constitution, Identoba, Partnership for Human Rights and Women’s Initiatives Supporting Group.

student self-government a number of rights which are not enjoyed by non-member students. With regard to this case, the Public Defender issued a recommendation on 13 May 2016. This recommendation will be discussed in detail below.

On 9 June 2016, the Public Defender started to examine the course of investigation into an alleged crime committed against the personnel of vegan café Kiwi and customers of the café. Moreover, the Public Defender inquired about the trend in the investigation of alleged hate crimes committed in recent period. These cases are being examined. Cases of such type, which are being examined by the Public Defender are also discussed below.

On 9 June and 19 July 2016, the Public Defender began to examine job announcements published by private persons, which contained discriminatory criteria. The Public Defender will take a decision on this case in the near future.

On 10 August 2016, the Public Defender started to examine a statement containing gender stereotype, which was posted in Vake Swimming Pool, prohibiting women to use the pool during periods. The case is being examined and the Public Defender will take a decision on this case in the near future.

On 16 August 2016, the Public Defender learned that a new Tsitsishvili Clinic prohibits fathers to stay with their children any other time but during visitors' hours and only mothers are allowed to attend children. The Public Defender requested the information from the clinic and the case is now being studied.

On 26 August 2016, the Public Defender proactively reacted to the information reported in media that tourists were not allowed to the restaurant Stepantsminda for their "European appearance." The case is being examined.

Unfortunately this mechanism is not properly developed because of time shortage caused by ongoing cases or other activities; however, the Public Defender fully understands his role as of activist in the process of combating discrimination and intends to strengthen this direction.

#### 4. THE STANDARD OF DISTRIBUTION OF BURDEN OF PROOF

In contrast to other legal relations, the standard of burden of proof applied in cases involving discrimination is different. According to Paragraph 2 of Article 8 of the Law on the Elimination of All Forms of Discrimination, *a person shall submit the facts and relevant evidence to the Public Defender of Georgia that give reason to suspect discrimination, as a result of which the alleged discriminating person shall bear burden of proving that discrimination did not occur.* A provision of similar content is provided in



Article 363<sup>3</sup> of the Civil Procedure Code, which concerns the distribution of the burden of proof in cases involving discrimination.

When in an application to the Public Defender's Office a person claims that he was discriminated, the Public Defender examines whether the facts submitted by the applicant comply with legal elements of discrimination content-wise. At this stage, the Public Defender does not examine whether the application contains all preconditions of discrimination; he deems it sufficient to launch investigation into the case when the applicant declares that he/she falls under any of protected grounds and is treated differently on this ground. It is worth noting that at this stage the Public Defender evaluates the above mentioned factual description submitted by the applicant and does not demand that he/she present evidence to qualify the application admissible. Consequently, when such an application is submitted, it gives reason to "suspect discrimination" and the Public Defender deems the application admissible and continues to examine the case which, inter alia, involves the request of information about the alleged discrimination from the defendant.

After discrimination is suspected, the Public Defender continues the examination of the case, in particular, the Public Defender sends the complainant's application to the defendant and considering the specifics of the case, asks him/her to express his/her position or addresses him/her with concrete questions – **this means that the burden of proof is placed on the defendant who must provide legitimate reasons justifying those facts or evidence indicated by the complainant**, which gave reason to "suspect discrimination."

In parallel with the above mentioned, the Public Defender, when need be, asks the applicant to provide additional information, if any, concerning concrete issues. Either of the parties receive any information submitted by another party and have a possibility, if they desire, to express their position. If the Public Defender believes that a written communication with the parties is not sufficient to thoroughly study the case, the Public Defender, according to Paragraph 3 of Article 8 of the Anti-discrimination Law, invites the parties to an oral hearing at which the parties may settle the case by mutual agreement. Frequency of communication with the parties depends on the complexity of a concrete case.

**When considering a case, the Public Defender places the burden of proof on a party only once. In particular, after the Public Defender places the burden of proof on the defendant, it is the obligation of the defendant to prove that discrimination did not take place. Sending information submitted by the defendant to the complainant and enabling him/her to express his/her position serves the only aim to inform the complainant about the course of proceedings and does not impose an obligation on him/her to counteract the information provided by the defendant and prove again that he/she was treated in discriminative way. Consequently, at this stage, the establishment of the fact of discrimination depends on whether the defendant submits**

## **proper argumentation to the Public Defender, which justifies a different treatment of the complainant.**

There are cases when the defendant refuses to communicate with the Public Defender. For example, private persons who are not required by the law to provide the Public Defender with information, may refrain from cooperation. In such cases the Public Defender, taking into account international standard and facts and evidence available to him, evaluates the refusal of the defendant to provide information as the proof of presented facts and evidence and **if a corresponding legal ground exists**, establishes the fact of discrimination.<sup>9</sup>

The Public Defender believes that it is vital to use the above mentioned standard of burden of proof in cases which involve discrimination because in the majority of cases, discrimination is committed not overtly, in public places, but covertly when neither discriminating person nor victim of discrimination may realize that the latter is subject to discrimination. In discrimination cases, save rare exceptions, one cannot find evidence which would clearly prove the fact of discrimination. Therefore, when considering the case the Public Defender examines all sorts of materials around the case or other type of information which, at a glance, might not be directly linked to the case; analyzes a general context in which an alleged discrimination took place and based on collated information, takes a final decision. Consequently, the placement of a heavy burden of proof on an alleged victim of discrimination and requiring from him/her to present facts and evidence in accordance with the high standard, would be unjustifiable and endanger the efficient exercise of the right to equality.

## **5. DECISIONS OF PUBLIC DEFENDER**

When a fact of discrimination is established, the Public Defender addresses the discriminating person with a recommendation while when the support of discrimination or encouragement of discrimination is established, the Public Defender issues a general proposal.

### **a) Recommendation**

Pursuant to Paragraph 3 of Article 9 of the Law of Georgia on the Elimination of All Forms of Discrimination, *if the Public Defender of Georgia confirms the act of discrimination after examining an application/complaint and if the consequences of the discrimination*

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<sup>9</sup> For example, the Public Defender's recommendation to Akhali Mzera LLC; available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelma-orsulobis-nishnit-pirdapiri-diskriminaciis-faqti-daadgina.page>

*are not eliminated, the Public Defender of Georgia shall end the proceedings with a recommendation regarding activities to be performed to restore violated equality.*

By issuing a recommendation, the Public Defender completes the proceedings of those cases in which a person, when exercising the rights specified in the Georgian legislation, was treated differently on the ground of any protected characteristic and such a different treatment does not have objective or reasonable justification and hence, a fact of discrimination is apparent.

In the reporting period, the Public Defender issued 12 recommendations concerning the discrimination on the grounds of disability (2), sexual orientation (2), citizenship (2), sex (2), pregnancy (2), property status (1) and membership of association (1). Of these recommendations seven were addressed to administrative entities whilst five recommendations were addressed to private persons. In eight cases the defendants agreed to the recommendations of the Public Defender.

### ***Disability***

In the reporting period, the Public Defender issued two recommendations concerning the discrimination on the ground of disability. One recommendation concerns discrimination by a natural person, while another recommendation is addressed to the Ministry of Internal Affairs.

According to factual circumstances of the first case,<sup>10</sup> a natural person, having learned that one of children of the family renting her house was diagnosed with autism, demanded the cancellation of the rent agreement. In another case,<sup>11</sup> patrol police officers stopped a car with one of its passengers being a person with disability in a wheelchair. The patrol police officers did not allow the applicant to take the wheelchair from the car trunk to go to the lavatory until they finished drawing up an administrative act; because of such action of police officers, the applicant had no other option but to satisfy his physiological need in the car.

It is worth noting that the above mentioned two discriminative actions took place in starkly different situations; this indicates that people with disabilities may be subject to unjustified different treatment in any sphere of social life, which, in the majority of cases, violates their dignity.

Frequently, a reason of discrimination is a wrong stereotyped attitude which a segment of society entertain towards persons with disabilities or other vulnerable groups. It is precisely such an attitude seen in the above cited case – the owner of an apartment took a decision, based on her subjective perception, that a child with disability should not live in her apartment. Representatives of the Public Defender witnessed the eviction

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<sup>10</sup> See the entire recommendation at: <http://www.ombudsman.ge/uploads/other/3/3008.pdf>

<sup>11</sup> See the entire recommendation at: <http://www.ombudsman.ge/uploads/other/3/3868.pdf>

of the family when the owner of the apartment used a clearly stigmatizing language when speaking about the child with autism spectrum: “The child must not stay in my apartment even one night, period!” “You liars, scoundrels; I should not have pitied you; why did you flee the village? Go to villages and see that such diseased children are in abundance there; families even have three such children but they never arrive here;” “This creates a problem to me; why on earth I need such a diseased child; this child may set something on fire or do something wrong;” “I cannot go out because I am afraid this child may break something;” “Since they moved in I have been telling them to leave; I was not aware of this condition of the child, they did not tell me what type of a child this was.”

The above case is also a good example illustrating how discrimination against persons with disabilities may significantly affect members of the family or other close people and prevent them from exercising their rights. In his recommendation the Public Defender also referred to Paragraph 6 of Article 2 of the Law on the Elimination of All Forms of Discrimination and stated that *discrimination shall exist regardless of whether a person actually has any of the characteristics defined in Article 1, on the basis of which the person was discriminated against*. Consequently, it was established that not only direct discrimination took place against the child with disability but also the members of child’s family were subject to discrimination by association on the ground of disability.

Given a special significance of the case, representatives of the Public Defender, as witnesses, gave testimony in the court during the hearing of the case on its merits and recounted the facts they witnessed during the eviction of the family. In this case, the Tbilisi City Court imposed the compensation for moral damages in the amount of 1,000 GEL on the defendant for committing discrimination. Tbilisi Court of Appeals did not overturn this decision.

One can also see the cases when persons with disabilities are in unfavorable conditions as compared to others because the environment is not fully adjusted to their needs and they are devoid of a possibility to act independently, based on their decisions.

Another fact of discrimination on the ground of disability concerned a case in which a person in wheelchair, being under the control of law enforcement officers, was fully dependent on a good will of patrol police officers to allow him to use the lavatory. Such a treatment is the result of, on the one hand, the lack of information among representatives of law enforcement or other bodies about specific needs of disabled persons and on the other hand, shortcoming of state policy, expressed in the lack of proper attention to the needs of persons belonging to this vulnerable group. As a result representatives of law enforcement bodies whose duty is to protect any person, fail to deal with the situation in such a way as to avoid infringement of the rights and freedoms of disabled persons.

As noted above, the rights of disabled persons may be violated by both public and private entities in any sphere. Consequently, in regard with the examined cases, the Public

Defender recommended, on the one hand, the owner of the apartment to refrain, in future, from discriminatory treatment of representatives of this group and on the other hand, the Ministry of Internal Affairs to conduct training for its employees and undertake other corresponding measures to ensure that they obtain theoretical knowledge on the rights and needs of people with disabilities, apply the obtained knowledge in practice, develop skills to manage difficult situations with the involvement of disabled persons and increase the sensitivity of employees towards this issue.

It should be noted that in its response to the recommendation, the Ministry of Internal Affairs informed us that the LEPL Academy of the Ministry of Internal Affairs of Georgia developed an educational course titled “Standards for interacting with persons with disabilities.” The course was undertaken by 31 trainees in June and July 2016; at present, the course is being integrated into special vocational educational programs for training patrol inspectors and district inspectors.

### ***Sexual orientation***

The Public Defender established direct discrimination on the ground of sexual orientation in two cases. Our practice has shown that in cases of discrimination on this protected ground, victims are often forced to reveal their sexual orientation. Moreover, in treating differently on the ground of sexual orientation, discrimination by association may often occur.

In a recommendation concerning direct discrimination on the ground of sexual orientation, which was addressed to the Ministry of Corrections, the Public Defender notes that inmates, who live in a wing of the tuberculosis treatment center under the penitentiary facility #19, are perceived by the administration as representatives of GBT community. In contrast to the rest of the facility, that wing lacks appropriate living conditions and as a result the health of inmate deteriorates instead of improvement.

In the above cited case the Public Defender did not undertake any efforts to establish whether the inmates living in that wing belonged to GBT community because the mere fact of the prison administration perceiving them as representatives of that community and treating them differently on that ground was the direct discrimination on an alleged ground of sexual orientation.

The above case is an example of how stereotypes existing in society may create a perception that an individual belongs to certain group and lead to their isolation on this ground regardless of whether they identify themselves with that concrete group or not. On such occasions LGBT representatives find themselves in an especially vulnerable situation because they are forced, in order to protect their rights, to openly speak about their sexual orientation – either deny or confirm that they belong to LGBT community, though such exposure may not be their independent decision.

With regard to the above recommendation, the Ministry of Corrections and Probation informed us that the repair and rehabilitation works were carried out on the wing of the penitentiary facility #19. The Public Defender visited the facility to double check this information. In its letter, the Ministry also noted that the health condition of inmates living in that wing significantly improved whilst one of them completed the course of treatment and rehabilitation.

The Public Defender issued yet another recommendation concerning the direct discrimination on the ground of sex and sexual orientation, which concerns the ordinance #241/n of the Ministry of Labor, Health Care and Social Affairs, dated 5 December 2000, prohibiting blood donation by MSM group (men who have sex with men). Moreover, the ordinance defines the term of delay of 12 months in case of risky heterosexual contact.

The problem is that in case of MSM group, it is a blanket prohibition and risks are not evaluated on an individual basis as it happens in case of heterosexuals or women who have sex with women. Moreover, it is arguable whether such a different treatment is a suitable means to achieve the goal of ensuring safety because the disclosure of information about MSM contact is up to a good will of a blood donor.

The Ministry explains the prohibition by the difficulty to define the “window period,” though it is not clear why, given modern technologies, it is a problem to conduct such a test especially considering that in cases of other types of sexual contact, risk related to each potential blood donor is evaluated individually. The above mentioned recommendation remains unfulfilled to date.

Alike other protected grounds, discrimination on the ground of sexual orientation is largely conditioned by wrong and outdated information existing in society, which leads to isolation of the group from various spheres of social life.

## ***Citizenship***

Direct discrimination on the ground of citizenship was established in two cases by the Public Defender in the reporting period.

Giving preference to citizens of your country may be justified in certain cases, but to justify such an action the state must present a legitimate aim and substantiate that the different treatment is the most justified and lightest means of achieving the aim.

One recommendation<sup>12</sup> of the Public Defender concerning the direct discrimination on the citizenship ground concerns the establishment of unequal rates for entry tickets to the Botanical Garden for citizens of Georgia and for foreign citizens. In the process of examining the case, the defendant – the Batumi City Council, focused on economic

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12 See the full recommendation at <https://drive.google.com/file/d/0B9BM3M8hbgAUN2dnU3RJeDdw-MTQ/view?pref=2&pli=1>

conditions of Georgian citizens and the legitimate aim of promoting the Garden. Moreover, the defendant noted that despite a differentiated rates of tickets, the number of local visitors did not increase.

The Public Defender did not share the defendant's opinion that economic conditions of people should be evaluated by their citizenship; he also noted that the establishment of differentiated rates cannot be a suitable means of achieving the legitimate aim, especially under the conditions when the defendant admits itself that despite the differentiated tariff the number of visitors did not increase.

It should be noted that in response to the Public Defender's recommendation, rates were levelled for citizens of any country.

Yet another recommendation<sup>13</sup> of the Public Defender also regarding the direct discrimination on the ground of citizenship, concerns the access by inmates not having Georgian citizenship of the Hepatitis C treatment program implemented by the government of Georgia – inmates who did not have 11-digit personal number of ID certifying the citizenship of Georgia were unable to register for the program. The Ministry of Corrections stated that limiting program beneficiaries to citizens of Georgia served the aim of safety of medication in order to prevent it from taking out of Georgia.

In this case, the Public Defender underlined that inmates were under a full control of the state and therefore, the state assumes especially high responsibility for the protection of their health and life. In the absence of treatment, when the inmates' right to health or life is endangered, the safety of medication, a technical shortcoming of the program or any other reason cannot justify the different treatment.

It should be noted that as a result of Public Defender's recommendation, the access to Hepatitis C treatment program has been provided to all inmates.

As noted above, a different treatment on the ground of citizenship may be justified in separate cases, however, the state must provide convincing arguments that the motive behind such a different treatment is the protection of larger benefit. In the abovementioned cases, which were examined by the Public Defender, the legitimate aim presented by the defendants was neither a proportionate measure nor a suitable means of achieving the aim. The Batumi City Council said that the establishment of a higher rate for foreign citizens did not lead to the increase in the number of visitors. Similarly unconvincing was the argument – the safety of medication, provided by the Ministry of Corrections, as it was not clear how an inmate, being under the control of the state, would be able to use it otherwise, especially, to take the medication out of the country.

Public Defender is studying several cases of alleged discrimination on the ground of citizenship, which concern a different treatment of foreign citizens by private banks. The Public Defender will take decisions on these cases in the near future.

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13 See the full recommendation at <http://www.ombudsman.ge/uploads/other/3/3381.pdf>



## Sex

Discrimination on the ground of sex mainly occurs against women. One of the spheres where women are especially frequently discriminated against, is the pre-contractual and labor relations. As the cases studied by the Public Defender reveal, employers view men as desirable candidates for managerial positions whereas for such jobs which do not require significant qualification they seek “20-25 year old girls with pleasant appearance”. This problem is of complex nature – on the one hand, employers set discriminatory requirements for jobs while, on the other hand, webpages posting vacancy announcements facilitate the release of such statements. In the previous reporting period, the Public Defender addressed the webpage [www.jobs.ge](http://www.jobs.ge)<sup>14</sup> with a general proposal requesting to stop such practice; however, this request was left without response.

In the reporting period, the Public Defender issued two recommendations regarding the discrimination on the ground of sex. One of these recommendations concerns an unjustified different treatment in pre-contractual relations.<sup>15</sup> In the examined case, a vacancy announcement of Elit Service LLC, posted on the webpage [www.myjobs.ge](http://www.myjobs.ge), said that the company was seeking an “unmarried, totally complex-free girl aged between 16 and 25” for a position of secretary. The defendant did not inform the Public Defender about any measure undertaken for the fulfillment of the recommendation.

Unfortunately, such announcements are not an exception to the rule and along with the sex, they often stress the age and marital status of applicants. These announcements, as a rule, place women in unfavorable condition. Such approach contributes to strengthening negative stereotypes existing in society, according to which women are less capable than men to perform responsible jobs. Especially alarming is the fact that such practice is applied by those companies which are expected to show social responsibility and play a significant role in the process of establishing the principle of equality in the country.

Either based on submitted applications or on his own initiative, the Public Defender examines a number of vacancy announcements which contain discriminative criteria. Although such announcements are in abundance, none of defendants named a legitimate aim which would justify existence of such criteria in announcements. The Public Defender will take decisions on the mentioned cases in the near future.

It is worth noting that yet another recommendation<sup>16</sup> issued by the Public Defender with regard to direct discrimination on the ground of sex, concerned a different treatment of men. In particular, Tbilisi children’s hospital of infectious diseases allowed only women to attend children in the hospital, thereby stripping fathers of a possibility to stay, in post-surgery period, with their children save during the visiting hours. The basis of this

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14 See the general proposal at <http://www.ombudsman.ge/uploads/other/2/2501.pdf>

15 See the recommendation at <http://www.ombudsman.ge/uploads/other/3/3433.pdf>

16 See the recommendation at <https://drive.google.com/file/d/0B9BM3M8hbgAUaTiORGhfR19Sa2s/view?usp=sharing>



vice practice was not a threat coming from an individual behavior endangering the order and security of patients but a prejudiced opinion that a man could arrive inebriated and endanger the order. Such a practice further strengthens negative stereotypes about the participation of men in family lives.

Although the practice existing in the hospital prevents men from exercising their rights, such approach has an indirect negative effect on women too. This attitude places the responsibility of taking care of children on women alone, even be it for a limited period of time when a child is in hospital.

In its response, the defendant informed us that both parents can attend children on equal grounds; the defendant put the blame for that concrete case on the head of department who was issued a warning for that action.

Based on the analysis of the practice of Public Defender one may conclude that women have to make a choice between their professional and private lives and that the environment is not favorable to enable them to combine these two important aspects. Besides, the scale of involvement of women in the family life is so large that even on occasions when a man's right to respect family life is restricted, this affects a woman since such attitude strengthens negative stereotypes about the distribution of family duties between a woman and a man and imposes undue burden on a woman.

### ***Pregnancy***

As the practice of the Equality Department revealed, pregnant women represent a separate group of victims of discrimination on the ground of sex. The Public Defender set out pregnancy as a protected ground and issued two recommendations concerning direct discrimination on this ground, through which he addressed the companies the limited liability microfinance organization Kredo<sup>17</sup> and Akhali Mzera LLC<sup>18</sup> to reinstate employees dismissed from jobs on a discriminatory motive and to conduct the activity on the basis of equality.

It is worth noting that both cases of discrimination on the ground of pregnancy were committed by the employers who after the expiry of labor contracts with the applicants, did not extend the labor relations on various formal reasons.

The Public Defender deemed the existence of comparable person not necessary in discussing discrimination on the ground of pregnancy, because pregnancy itself is a unique state of women and a non-pregnant woman or a man cannot be a comparator.

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<sup>17</sup> See the recommendation at <http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/saxalxo-damcvelma-kerdzo-kompanias-orsulobis-nishnit-shromit-urtiertobebshi-diskriminaci-is-agmofxvris-shesaxeb-mimarta.page>

<sup>18</sup> See the recommendation at <http://www.ombudsman.ge/uploads/other/3/3877.pdf>

Moreover, in both cases the employers did not extend the labor contract with the applicants on the basis of legally correct argument – the expiry of labor contracts.

Factual circumstances studied by the Public Defender showed that the reason behind the refusal to extend labor contract was pregnancy of employees. In this regard, the Public Defender referred to Subparagraph “c” of Paragraph 3 of Article 37 of the Labor Code, which prohibits termination of labor relations from the moment a female employee notifies the employer about her pregnancy, except for the grounds under Subparagraph “b” of Paragraph 1 of Article 37 which includes the expiry of labor contract. In particular, the Public Defender noted that this article shall not be interpreted as automatic exclusion of the extension of labor relations upon the expiry of the term of contract and that the refusal to extend contract in conditions when the expiry of the term coincides with pregnancy of employees raises doubts and requires additional evaluation.

It should be noted that the limited liability microfinance organization Kredo shared the recommendation of the Public Defender – the applicant was reinstated to her job and a labor contract was concluded with her for an indefinite term, which she will start to fulfill after the end of pregnancy leave. Also, the applicant was fully compensated the costs of treatment and the back-pay for the period between the dismissal and reinstatement. Moreover, with the decree of the director of Kredo, a written warning issued to the applicant was abolished.<sup>19</sup> This is a successful example illustrating the respect of the right to equality envisaged in the law and social responsibility of the private sector. In another case, the applicant noted that it was precisely the recommendation issued to Kredo LLC that encouraged her to submit her application to the Public Defender.

In a recommendation addressed to Akhali Mzera LLC, the Public Defender also discussed the distribution of burden of proof in discrimination-related cases. In particular, the Public Defender noted that facts presented by the applicant gave reason to suspect discrimination and hence, the burden of proving that discrimination did not take place lies with the defendant. To have a better understanding of general situation, the Public Defender requested Akhali Mzera LLC to provide explanations about the legitimate aim which would justify a different treatment and show that the different treatment is a proportionate means of achieving this aim; however the defendant did not provide any such information that was not provided by the applicant to the Public Defender. Consequently, the defendant failed to dispel the doubt, which arose from the information submitted by the applicant, that a discriminatory action took place. The Public Defender was told by Akhali Mzera LLC that since the administration was not informed about the pregnancy of the applicant, her demand was unfounded.

As noted above, an unjustified different treatment of women is a specific form of discrimination where a woman, when performing her biological function, is prevented from exercising various rights.

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19 See information at <http://www.ombudsman.ge/ge/news/shps-kredom-orsulobis-nishnit-diskriminaci-is-agmofxvris-sheaxe-b-saxalxo-damcvelis-rekomendacia-sheasrula.page>

## ***Property status***

The Equality Department considered only one case concerning discrimination on the ground of property status. It established direct discrimination in this case and addressed LEPL Association of Kindergartens of Khulo Municipality with the recommendation.<sup>20</sup>

The case concerned different treatment in pre-contractual relations. As discussed above, a vacancy announcement by the employer setting discriminative criteria in regards with sex, age and marital status is not a rare occasions, though setting a property status of applicant as one of criteria had never been encountered in the earlier practice of the Public Defender. In particular, the announcement said that preference would be given to an applicant whose family, as compared to those of other applicants, was in the worst economic condition.

It should be noted that this was for the first time ever in discrimination-related cases that the Public Defender deliberated on positive measures and noted that such measures might be the most effective means of combating inequality in certain instances but they must be undertaken in the context of concrete circumstances and should not cause the violation of others' right to equality.

In the above mentioned case the Public Defender resolved that the applied positive measure was not a proportionate means as there was no common criterion developed to evaluate the property status of applicants and the evaluation was based on oral information received from rural population; moreover, it led to automatic exclusion of one group of persons.

It is noteworthy that the defendant viewed applicants as an integral part of their families because it evaluated the income of family members. By doing so, it ignored the fact that employment is one of manifestations of individual choice. When performing job a person is given a possibility of self-realization and having a source of income.

LEPL Association of Kindergartens of Khulo Municipality informed us that they shared the comments in the recommendation and to eliminate them, offered a victim of discrimination the employment in the kindergarten.

## ***Membership of association***

Membership of association is the only ground among "other grounds" on which direct discrimination was established in a case the Public Defender began to examine on his own initiative. To study the violation of the right to equality in the legislation regulating the higher education, the Public Defender issued a recommendation concerning protest rallies staged by students of Tbilisi Ivane Javakishvili State University.

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<sup>20</sup> See the recommendation at <http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/rekomendacia-xulos-municipalitetis-sabavshvo-bagebis-gaertianebas-qonebrivi-mdgomareobis-nishnit-diskriminaciis-agmofxvris-sakitxze.page>

In particular, the Public Defender addressed the government of Georgia with the recommendation to draft amendments to the Law of Georgia on Higher Education, which would not guarantee the right to participate in governing educational institutions to only those students who are the members of self-government.<sup>21</sup>

The Public Defender explained that the provision in the law conflicts with the negative aspect of the right to association because a necessary condition for the participation in governing a faculty and university is the membership of a student of self-government which represents a mechanism of indirect compulsion and thereby restricts a negative aspect of student's right to association. As a result of violating the negative aspect of the right to association, students who do not join self-governance are in unfavorable condition as compared to the members of this association. Moreover, the aim of the provision is ambiguous as it forces a student, in order to exercise a number of fundamental rights, to join an association the membership of which may not be his/her free choice.

The government administration informed the Public Defender that the government of Georgia shares the recommendation of Public Defender and will begin working in this direction.<sup>22</sup>

## **b) General proposal**

Based on Subparagraph "c" of Paragraph 2 of Article 6, the Public Defender issues general proposals. The Public Defender does so in cases when conditions specified in Paragraph 5 of Article 2 are apparent, namely, when an action is carried out for the purpose of forcing, encouraging, or supporting a person to discriminate against a third person. As noted above, the Public Defender believes that the possibility to issue general proposals is an important mechanism for combating discrimination as this mechanism is used in cases when a legal element of any form of discrimination envisaged in the law is not apparent – a fact of discrimination itself cannot be established but the created situation poses a threat of establishing and strengthening negative stereotypes or stigmas and of discriminative treatment in the future.

In the reporting period the Public Defender issued two general proposals towards public entities – one of them concerned the support to discriminate on the ground of disability<sup>23</sup> whilst another concerned discrimination on the ground of disease.<sup>24</sup>

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21 See the recommendation at <http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/rekomendacia-gaertianebis-wevrobis-nishnit-diskriminaciis-faqtis-dadgenis-sheaxebe.page>

22 <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-rekomendacia-gaitvaliswines.page>

23 See the proposal at <https://drive.google.com/file/d/0B9BM3M8hbgAUSFRGMC1vYmRWdVE/view?pref=2&pli=1>

24 See the proposal at <http://www.ombudsman.ge/ge/recommendations-Proposal/zogadi-winadade-ba2/zogadi-winadadeba-diskriminaciis-tavidan-acilebisa-da-mis-winaagmddeg-brdzolis-sakitxe.page>

The support to discriminate was manifested in stereotyped and aggressive attitude of a driver of municipal transport towards a child with autism. With regard to this case the Public Defender noted that children with disabilities and their parents face resistance daily which negatively affects their psychological or emotional state. Against the backdrop of negative attitude displayed by society, parents try to spare their children from stress, which results in isolating these children from society. The access to public transport is one of main factors ensuring the integration of persons with disabilities in social life.

Tbilisi Transportation Company LLC informed the Public Defender that the company is willing to participate in creating the environment free from stereotypes and stigmas concerning disability and to support the integration of persons with disabilities into social life. Moreover, the company expressed its support to the Public Defender's initiative to provide educational trainings on special needs of persons with disabilities to employees of Tbilisi Transportation Company LLC.

Another general proposal concerned wrong information about AIDS and HIV infected and drug-dependent persons, provided in a school textbook of biology for the 8<sup>th</sup> grade. The information provided in the textbook is not scientifically sound and is mainly based on incorrect reports circulating in society – a drug-dependent person is referred to as a narcotic addict and is portrayed as a person dangerous to society while HIV infection and AIDS are shown as analogous diseases and wrong information is provided about the spread and treatment of these diseases.

Given that stereotypes established in society about the above mentioned diseases is a problem, it is extremely important to prevent such incorrect information from being reflected in school textbooks that children learn. This leads to children getting such an impression about concrete issues, which may encourage marginalization of concrete groups and contribute to stereotypic reasoning from the school age.

The Ministry of Education and Science of Georgia informed the Public Defender that the recommendations of the Public Defender will be taken into account at the next stage of textbook approval.

It is worth noting that discriminative treatment is often not a result of deliberate, motivated action by a discriminating person but a result of those negative stereotypes and strong stigmas that are established in society. Such an attitude, as a rule, results from lack of information about concrete groups and incorrect perception that they might pose threat. One fact of discrimination or support to discriminate may become a ground of many instances of discriminatory treatment. It is therefore extremely important to provide correct information to society about the rights of vulnerable groups and get rid of prejudices and negative attitudes. No less effective than legal remedies will be the education of society about the elimination of discrimination; however, this is a long-term process and requires an active work with various groups of society.

## 6. PUBLIC DEFENDER AS THE FRIEND OF THE COURT

Pursuant to Paragraph “e” of Article 21 of the Organic Law of Georgia on Public Defender of Georgia, the Public Defender may act as a friend of the court (**Amicus Curiae**) in common courts and the Constitutional Court of Georgia.

In discrimination-related cases the Public Defender provides opinion of the friend of the court either on the basis of application of complainant or on his own initiative. The Anti-discrimination Law is a novelty in the legislation of Georgia and the court practice in this area is in the process of development. Consequently, the institution of the friend of the court is one of important mechanisms in combatting discrimination since the Public Defender or any other competent person has an opportunity to provide a study about legal standards established by international or local institutions to a court which is hearing a case.

Taking into account the high degree of sensitivity of the issue and for the aim of establishing a uniform court practice, the Public Defender takes a decision to submit a friend-of-the-court opinion. The amicus curiae brief submitted by the Public Defender does not aim at supporting any of the position but identifying that standard of human rights law which is established by local and international institutions.

At present, a working group is set up in the Public Defender’s Office to develop criteria for submitting friend-of-the-court opinion by the Public Defender.

In the reporting period, with regard to discrimination-related cases, the Public Defender submitted six friend-of-the-court opinions to the common courts, four friend-of-the-court opinions to the Chamber of Administrative Cases, and two opinions to the Chamber of Civil Cases. The submitted friend-of-the-court opinions concern the jurisdiction of discrimination-related cases (1), alleged discrimination on religious ground (2), alleged discrimination on the ground of membership of trade unions (2) and alleged discrimination on the ground of sex (1). It should be noted that the majority of cases were related to discriminatory treatment in pre-contractual and labor relations.

The issue of jurisdiction between the Chamber of Administrative Cases and the Chamber of Civil Cases in considering discrimination-related cases by court still remains unsolved. In particular, when a case is to be considered by the Chamber of Administrative Cases, the latter considers the administrative law aspect of the case and sends the part of the claim which concerns discrimination to the Chamber of Administrative Cases for consideration.

A case on which the Public Defender submitted a friend-of-the-court opinion<sup>25</sup> to Tbilisi City Court, concerned the dismissal of a complainant from an administrative body on an allegedly political ground and the legality of individual administrative legal act about this dismissal.

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25 See <https://drive.google.com/file/d/0B9BM3M8hbgAUQTFFbkRtanktekE/view?pref=2&pli=1>

The Public Defender noted that the issue of discrimination is so closely interlinked with the dismissal from the job that it is impossible to separate them. An artificial separation of these two issues would still result in the consideration of dismissal from the job by the Chamber of Civil Cases because it was precisely the dismissal that constituted the ground of alleged discrimination. If it were established that the dismissal was politically motivated it would prove that discrimination took place during dismissal and the administrative legal act issued on the dismissal would be considered unlawful. Consequently, it would be impossible to evaluate the lawfulness of the act and the discrimination separately when the main ground of lawlessness was the alleged discrimination.

If after the consideration of the case, a court established that discrimination took place, the court would apply provisions in Article 363<sup>3</sup> of Civil Procedure Code and also take a decision on the compensation of material and moral damages as well.

The Public Defender noted that the absence of a provision in the Civil Procedure Code which is missing in the administrative procedures legislation does not represent a factor for determining jurisdiction and a judge of the Chamber of Administrative Cases is free to apply articles of the Civil Procedure Code. Since specifics of hearing discrimination cases are not regulated under the Administrative Procedure Code, the Chamber of Administrative Cases, pursuant to Paragraph 2 of Article 1 of this Code, should apply Chapter 7<sup>3</sup> of the Civil Procedure Code in discrimination disputes. The issue of jurisdiction of the mentioned case is now considered by the Supreme Court.

Moreover, the Public Defender submitted two friend-of-the-court opinions concerning alleged discrimination on the ground of religion to the Rustavi City Court and the Tbilisi Appeals Court. It is noteworthy that the highest number of friend-of-the-court opinions (four opinions) were submitted by the Public Defender in regards with the discrimination on religious ground.<sup>26</sup>

The case heard by the Rustavi City Court concerned the claim of representatives of the Catholic Church regarding the issuance of permit by the Rustavi Mayor's Office for the construction of religious building (cult building) on the land plot owned by them.

Apart from issues related to administrative proceedings, the above mentioned case was interesting for its general context which prevented the religious association from constructing a cult building – the complainant stated that it went through all stages of administrative proceedings necessary for the issuance of construction permit; this fact was also proved by a decision of Rustavi City Court. However, despite repeated applications of the complainant, the permit was not issued. Nor did the administrative body inform the complainant about the administrative proceedings which were allegedly conducted in violation of the law. Moreover, an oral administrative sitting organized to

<sup>26</sup> In the previous reporting period, the Public defender submitted friend-of-the-court opinions to Zestaponi district court and Batumi city court. See opinions at <https://drive.google.com/file/d/0B9BM3M8hbgAUaFRva1h3bFVWa28/view>; <https://drive.google.com/file/d/0B9BM3M8hbgAUWVXZH-hFSWkxRjQ/view>



discuss the mentioned issue, was attended, inter alia, by a group of local representatives of the Orthodox Church. During the sitting, the representatives of the Orthodox Church as well as deputies of the city council declared that they would not allow a Catholic church to be built on the territory of Rustavi. At the sitting, representatives of the dominant church also distributed booklets aimed at discrediting the Catholic Church. Besides, deputies of city council attacked the lawyer of the complainant, saying that it was unacceptable for him, as Orthodox Christian, to defend interests of the Catholic Church. Moreover, representatives of the local government offered the complainant an alternative land on the outskirts of Rustavi; this offer was rejected by the complainant.

On 6 June 2016, the Rustavi city court took a decision on this case in favor of the complainant and the Rustavi Mayor's Office was instructed to issue a permit for the construction of cult building. The court also deliberated on the test of direct discrimination and resolved that the construction permit was not issued on the ground of religious discrimination.

The discussed case is an example of violating minority interests under the influence of a dominant religious group. It should be noted that such cases cannot be confined to a formal aspect of administrative proceedings and, to resolve the conflict, require the involvement of the state. By observing principles of neutrality and pluralism, the state must ensure the balancing of interests of religious groups so that not to place one group in an unfavorable condition under the pressure of another group. However, such cases prove that the state prefers to play a passive role – avoiding discussion of problematic issues and trying to satisfy interests of one group only in such a way that will not cause dissatisfaction among the dominant group. In this process, the state does not investigate the cause of conflict and does not perform the role of an arbiter who would make efforts to eliminate the problem through a direct communication with both parties.

As noted above, discrimination takes place frequently in pre-contractual and labor relations. People encounter different treatment on different grounds in this sphere. Five friend-of-the-court opinions submitted by the Public Defender in the reporting period concern pre-contractual and labor disputes.

Two friend-of-the-court opinions submitted by the Public Defender to the Tbilisi City Court concerned the dismissal of employees of JSC Georgian Railways on the alleged ground of their membership of trade unions. With regard to one of these cases, the court did not deliberate on discrimination whereas with regard to another case, a preparatory sitting has not been scheduled yet.

Another case on an alleged discrimination on religious ground, about which the Public Defender submitted a friend-of-the-court opinion,<sup>27</sup> concerns an alleged discrimination against a Muslim person committed in the process of electing a candidate to the position of representative of the head of municipality's executive body in an administrative unit

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27 See the opinion at <http://www.ombudsman.ge/uploads/other/3/3716.pdf>



of Adigeni municipality. In this case the complainant claimed that the motive behind the denial of his candidacy was his activity when he expressed his support to the Muslim community during a protest rally. This case is now being considered in the court.

Yet another friend-of-the-court opinion<sup>28</sup> submitted to the Kutaisi Court of Appeals concerned discrimination on the ground of sex against a complainant during a competition to fill the vacancy of representative of head of municipality's executive body in an administrative unit of Zestaponi municipality. The claim indicated that during the hearing of the case in a court of first instance, a member of the commission, when testifying, said that given the difficulty and specifics of **the job of representative of the head of municipality's executive body in the administrative unit it was more suitable for a man. The court did not satisfy the claim.**

The considered two cases were interesting, inter alia, because they gave the Public Defender an opportunity to discuss the interrelation between the discretionary powers of an administrative body and the right to equality. In this regard, the Public Defender noted that the competition-attestation commissions have a discretionary power to evaluate the contestants' conformity with the job to be performed; however, this does not relieve the commission from the responsibility to justify its decision. Assuming that the legality of application by an administrative body of its discretionary power cannot be questioned means rendering the crucial function of a court as mechanism of protecting human rights senseless and allowing the reality to emerge where a decision taken by a competition-attestation commission cannot be considered by a court and will be left outside its control. Thus, in establishing discrimination, a decision taken within the discretionary power cannot be used as a counter argument to the violation of equality, because fulfilling discretionary powers implies itself taking a decision which is absolutely free from any discriminatory motives. Consequently, a discretionary decision taken by an administrative body shall not be in conflict with the Georgian legislation, including the right to equality.

As noted above, a friend-of-the-court opinion is one of the significant tool of the Public Defender in combating discrimination. The aim of the Public Defender in this area is to provide a court which considers a case with studies about the standards of international law and to develop a court practice in the area of discrimination disputes. Although judges do not always cite documents submitted by the Public Defender to courts in their rulings, or in other words, those legal standards that are relevant to hearing discrimination cases, the Public Defender expresses the hope that friend-of-the-court opinions submitted by the Public Defender or other competent persons will eventually become one of the important supporting instruments for courts.

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28 See the opinion at <http://www.ombudsman.ge/uploads/other/3/3595.pdf>

## CHAPTER III. CLEAR TENDENCIES

In order to outline the important tendencies in the process of fighting discrimination, the Public Defender, in the reporting period, has collected information in different directions, from which 2 of them – investigation of the alleged hate crimes and application to the common courts will be addressed below.

As it is revealed from the Public Defender's practice, in the majority of cases, the alleged hate motive is not taken into consideration in the process of investigation, as a result of which, the objective of the prevention of the crime is disregarded as well.

At the same time, the Public Defender has requested the complaints and decisions related to the discrimination cases from the City and Regional Courts. It is revealed from the provided materials that in the main cases reviewed by the courts, the Public Defender was involved as an *amicus curiae* or has issued a recommendation before addressing the court.

### 1. INVESTIGATION OF THE ALLEGED HATE CRIMES

Part of the cases before the Public Defender is related to the alleged facts of discrimination, which contain the signs of the alleged hate crimes. While studying the similar cases, the Public Defender has a relatively passive role and is monitoring the effectiveness of the investigation carried out by the investigation authorities.

On 17 August, 2016, the memorandum was signed between the Chief Prosecutor's Office of Georgia and the Office for Democratic Institutions and Human Rights (ODIHR) in order to implement the training programme, the so called PAHCT (Prosecutors and Hate Crimes Training) for the prosecutors on the topic of the hate crimes. One of the members of the working group of the above programme is the representative of the Public Defender. The functions of the working group constitute the preparation of the training materials and the training programme and modification of the training module in conformity with the local needs and challenges.

The Public Defender welcomes the initiative of the Prosecutor's Office of Georgia and considers that taking into consideration the current situation, providing trainings to the prosecutors constitutes a step forward in terms of the effective investigation of the hate crimes.

However, alongside the development of the training materials and the trainings, it is necessary for the Prosecutor's Office to extend the approach on the alleged hate crimes

that will be utilized to identify the motive of the crime, especially in cases when the discriminatory motive is clear. **The analysis of the cases before the Public Defender reveal that the prevention and investigation of the alleged hate crimes in the country constitutes one of the acute challenges.** As a result of analyzing the factual circumstances submitted through the individual applications, as well as based on the cases, that have been initiated by the Public Defender, the alleged crimes are committed on the grounds of religion, ethnicity, disability, sexual orientation or other grounds of hate.

**On 19 July 2016, the Public Defender of Georgia has requested from the Chief Prosecutor's Office of Georgia the information on the investigations that were suspended or completed after 1 January, 2014, which may have a bearing on hate crimes/crimes committed with a discriminatory motive.**

With the letter of the Chief Prosecutor's Office of Georgia dated 3 August, 2016, the Public Defender of Georgia was informed that the *Human Rights Protection Unit of the Chief Prosecutor's Office of Georgia has prepared the recommendation on the practical use of Article 53 para 3<sup>1</sup> of Criminal Code of Georgia, as an aggravating circumstance. The recommendation addresses the issues like the classification of the hate crimes, the course of investigation and obtaining the evidences, also, collecting the relevant statistics. The above documents was disseminated in the system of the Prosecutor's Office on 2 January, 2016, consequently, up to date, the Chief Prosecutor's Office of Georgia has no statistical data on outlining the hate motive in course of investigating the criminal cases.*

*As for the period after spreading the recommendation, the hate motives foreseen by Article 53 para 3<sup>1</sup> of Criminal Code of Georgia was discussed in the framework of 6 criminal cases (in 4 cases – based on sexual orientation, in 2 cases – on the grounds of religious intolerance). In 4 cases, five individuals were convicted and the minimum sanction foreseen by the norm was not used in any of the cases.*

*Besides, in one of the cases, despite the investigative actions carried out to reveal the hate motive, existence of the above motive was not demonstrated. The investigation is ongoing on the above case.*

*As for the statistical data regarding the investigation launched based on Articles 142, 142<sup>1</sup>, and 142<sup>2</sup> of the Criminal Code of Georgia from 1 January, 2014 till August 2016, the information is as follows:*

*Article 142<sup>1</sup> (Racial Discrimination) – 2 criminal cases. The investigation is ongoing on one case, another case is considered on the merits in the court.*

*Article 142 (Violation of Human Equality) – 1 criminal case. Investigation is ongoing.*

*Article 142<sup>2</sup> (Restriction of rights of persons with disabilities) – 1 criminal case on which the investigation was terminated based on the ground foreseen by Article 105 paragraph "a" of the Criminal Procedure Code of Georgia.*

*The Public Defender of Georgia welcomes the readiness of the Chief Prosecutor's Office of Georgia to cooperate in terms of investigation of the hate crimes. However, unfortunately, it has to be underlined that till 22 January, 2016, the Chief Prosecutor's Office of Georgia was not carrying out the registration and systematization of the hate crimes, especially in the conditions that paragraph 3<sup>1</sup> was added to Article 53 of the Criminal Code of Georgia<sup>29</sup> on 27 March, 2012, according to which, "Commission of a crime on the grounds of race, colour, language, sex, sexual orientation, gender identity, age, religion, political or other beliefs, disability, citizenship, national, ethnic or social origin, material status or rank, place of residence or other discriminatory grounds shall constitute an aggravating circumstance for all the relevant crimes provided for by this Code."*

*A number of proceedings on the similar cases are ongoing in the Public Defender's Office.*

### **Case N2486/15**

The Office of the Public Defender of Georgia is studying the application of the lawyer of the partnership „Legality and Justice in Caucasus” – M.Ts., dated 2 March, 2015.

According to the application, L.Sh. and G.Sh. are the followers of the religious organization "Jehovah's Witnesses" who live together with their juvenile children in the A. Municipality. The applicant notes that the family is subjected to the systematic abuse, insults, threats and defamation by their neighbor Z.Z. due to their religious affiliation. The application also indicates one of the cases, when Z.Z. was abusing the Jehovah's witnesses in the presence of the police officers that were called on site by the family.

According to the documentation presented in the case, M.Ts. has addressed the Chief Prosecutor's Office of Georgia with the request to take appropriate actions on the above fact on 26 February, 2015.

The applicant also indicates the discriminatory actions of the prosecutor's office and the police.

The Office of the Public Defender of Georgia has addressed the Prosecutor's Office and requested the information.

In response to the Public Defender's request of information from the Prosecutor's Office of Georgia, we were informed that *based on the application of M.Ts. dated 26 February, 2015, on 2 March, 2015 the investigation was launched in the regional unit of the Ministry of Internal Affairs of Georgia on the fact of the physical abuse of G.Sh. and L.Sh., the crime foreseen by Article 125 of the Criminal Code of Georgia. The evidences obtained as a result of the investigative actions do not confirm the facts of beating or other violence committed against G.Sh. and L.Sh. On 16 March, 2015, the investigation*

29 The Law of Georgia on the Amendments to the Criminal Code of Georgia. (Legislative Herald of Georgia, № 41(48) available at: <https://matsne.gov.ge/ka/document/view/1637963#>)

*was terminated in accordance with Article 105 (1)(a) of the Criminal Procedure Code of Georgia.*

On 19 July, 2016, the Public Defender has additionally addressed the Prosecutor's Office of Georgia regarding the alleged crimes committed against the Jehovah's witnesses and requested the information on the number of cases on which the investigation has started on the crimes committed against the Jehovah's witnesses from 1 January, 2014 till present; the number of cases on which the criminal prosecution was initiated and the number of cases in which the hate motive was revealed; also, how many cases were transferred to the court and on how many cases was the investigation terminated.

On 3 August, 2016, we have received a response from the Prosecutor's Office of Georgia by which we were informed that in 2015, investigation of the religious hate crimes has started on 22 criminal cases. 20 cases concerned the criminal acts committed against the Jehovah's witnesses with the religious motive. Criminal prosecution has started in 5 cases against 5 individuals. All 5 accused individuals were found guilty. ***The hate motive was not revealed in any of the cases.*** Besides, out of the above 20 cases, in 9 cases the investigation was terminated based on the ground foreseen by Article 105 (1) (a) of the Criminal Procedure Code of Georgia.

It is also indicated in the response of the Prosecutor's Office of Georgia that according to the data of 7 months of 2016, the investigation of the crimes committed on religious motives has started on 14 criminal cases at the Prosecutor's Office. Out of the above cases, 11 cases concerned the criminal acts committed with the religious motives against the Jehovah's witnesses. Criminal prosecution was initiated against 7 individuals in 6 cases. According to the Prosecutor's Office, as of today, in total, 4 individuals were found guilty in 3 criminal cases. Out of the above 11 cases, the investigation was terminated in 2 cases based on the ground foreseen by Article 105 (1) (a) of the Criminal Procedure Code of Georgia.

**According to the Prosecutor's Office, currently, the alleged religious intolerance motive in the above-mentioned cases, as an aggravating circumstance, foreseen by Article 53 paragraph 3<sup>1</sup>, is being discussed in 2 cases.**

### **Case N 7319/16**

The Public Defender studies the application of M.Q. dated 9 June, 2016.

According to the application, M.Q.'s clients -G.K. and L.K., who are the Jehovah's witnesses, became the victims of the crime motivated with religious hate in the Q. Region. According to the applicant, on 29 April, 2016, B.B.'s speeding car has crushed into the motorcycle driven by G.K. and L.K., who are the Jehovah's witnesses. As a result of the crush, L.K. has lost a leg and the father, G.K. has suffered serious injuries. According

to the witness, B.B. was watching the unconscious family and did nothing to help them. It is underlined in the application that the above witness is not yet questioned by the investigation authorities. The applicant also notes that before the incident, B.B. has often verbally abused the Jehovah's witnesses, which is confirmed by the witnesses.

The application also included other facts that took place in the Q.'s region, In particular, in 2015, the local cleric has repeatedly committed criminal actions against the Jehovah's witnesses. Namely, according to the application, in 28 May, 2015, the cleric has twice crushed with the minibus into the stand of the literature of the Jehovah's witnesses, afterwards, he left the car, poured gasoline on the literature and tried to burn it. According to the application, he has physically and verbally abused two Jehovah's witnesses. The Jehovah's witness, N.P. describes the episode of 8 May, 2015 and notes that he/she was physically and verbally abused by the same cleric during the religious service.

On 22 June, 2016, the Office of the Public Defender was informed by the Chief Prosecutor's Office of Georgia that regarding the facts of 8 and 28 May, 2015, the investigation is ongoing on the criminal case by Article 156 paragraph 1 of the Criminal Code of Georgia. Witnesses were questioned on the above case, forensic medical, trasological, chemical examinations were carried out. At this stage, no concrete individual is known as a victim or as an accused and the investigation is ongoing.

*According to the letter of the Chief Prosecutor's Office of Georgia regarding the accident that ocured on 29 April, 2016, the investigation has started and is ongoing on a criminal case under Article 276 paragraph 1 of the Criminal Code of Georgia. The witnesses were questioned on the above case, including the victims L.K. and G.K., forensic medical, chemical, auto-technican and auto-trasological examinations were set. In addition, the witnesses were questioned in order to reveal the possible hate motive in the actions of the driver B.B. They have noted that B.B. is a confilct-free and a balanced person and in past, he never had any conflict with the Jehovah's witnesses or representatives of any other confessions.*

### **Case N9385/15**

The Public Defender studies the application of M.Ts. dated 15 August, 2015.

M.Ts. has addressed the Public Defender regarding the facts of abuse of his/her clients – M.Gh. and L.Z. and breaking of the stand due to the religious hatred. According to the applicant, the above individuals are the Jehovah's witnesses. On 10 August, 2015, they were conducting religious service and were using a special stand, which was broken by an unknown man, who has also verbally abused women. M.Gh, and L.Z. were transferred to the Patrol Police Department for the interrogation, where the investigator intentionally forced them to describe the fact as committed due to the personal motive instead of the religious hatred.

In the framework of the case proceedings, the Public Defender of Georgia has requested from the Chief Prosecutor's Office of Georgia information on the investigative actions that are ongoing in order to establish the truth on the above case; At the same time, whether the investigation is ongoing in terms of revealing the alleged discriminatory/hate motive, whether the concrete individual was found as a victim or an accused; also, whether the copies of resolutions on finding persons as accused or victims were requested.

According to the information provided by the Chief Prosecutor's Office of Georgia, on 10 August, 2015, in the Unit of Fighting Crime of the Tbilisi Main Division of the Patrol Department of the Ministry of Internal Affairs of Georgia, investigation was launched on the fact of breaking the informational stand owned by the Jehovah's witnesses, under the crime foreseen by Article 187 paragraph 1 of the Criminal Code of Georgia. In the framework of the investigation of the case, individuals participating in the incident were questioned, also, the goods examination was set for the damaged stand. There were no signs of the crime foreseen by the criminal legislation of Georgia, therefore, on 15 September, 2015, investigation on the above case was terminated on the ground foreseen by Article 105 (1) (a) of the Criminal Procedure Code of Georgia. Additionally, an individual identified by the representatives of the law enforcement body was found as an offender under Article 166 and 173 of the Administrative Procedure Code of Georgia and was sentenced to the administrative imprisonment for 3 days.

### **Case N9126/16**

The Public Defender is studying the application of the representative of the partnership "Legality and Justice in Caucasus" – Z.Ts., dated 15 July, 2016.

According to the application, the citizen Z.Ts. is actively engaged in the discreditation of the Jehovah's witnesses. The above individual is secretly recording the conversations with the Jehovah's witnesses and uploading the recordings on the web-page [www.youtube.com](http://www.youtube.com). The application also mentions those individuals, whose tapes are placed in internet.

It is also noted in the application that every Sunday, Z.Ts., together with the supporters, goes to the entrance of the Jehovah's Witnesses' Assembly Hall holding the insulting and abusive posters, prevents the movement of the cars in the yard of the hall and commits other types of provocations, in order to tense the situation. The applicant considers that the above actions aim to kindle the religious strife and hatred.

The Public Defender has requested from the Prosecutor's Office of Georgia the information on whether the investigation is ongoing in the direction of the alleged discriminatory/hate motive and whether the investigative measures have been taken. It is revealed from the letter received from the Chief Prosecutor's Office of Georgia, that the 8<sup>th</sup>



*Division of the Tbilisi Isani-Samgori Unit has studied the above case. Jehovah's witnesses were questioned in the presence of a lawyer. They have stated that the citizen Z.Ts. was making the recordings of the conversations without their approval. Additionally, Z.Ts. also admits in the report of interrogation that he/she was recording the conversations with the Jehovah's witnesses sometimes openly and sometimes secretly. Z.Ts. refuses to delete the above tapes from the web-page [www.youtube.com](http://www.youtube.com).*

According to the information provided by the applicant, he/she has also addressed the Personal Data Protection Inspector, who has noted that the violation of the privacy of the private communication constitutes a crime foreseen by the Criminal Code and the violator is subjected to the criminal responsibility, consequently, making responses to the facts of unlawful collection of the private conversations and their unlawful distribution on internet is the function of the law enforcement authorities. The applicant states that it is incomprehensible why the law enforcement authorities refrain from launching the criminal proceedings, especially with reference to the motive that the signs of the crime were not identified in the case. The applicant organization believes that the action punishable under Article 158 of the Criminal Code of Georgia took place, which is confirmed by the interrogation reports of the Jehovah's witnesses and Z.Ts. The negative decision of the Prosecutor's Office to start the investigation indicates that the facts and evidences were not properly studied.

At this stage, the Chief Prosecutor's Office of Georgia has not stressed out its position regarding the argumentation of the applicant organization.

### **Case N 10922/16**

The Public Defender studies the application of the representative of the organization "Legality and Justice in Caucasus" – M.Q. dated 24 August, 2016.

According to the applicant, people are secretly throwing stones at the Royal Hall of the Jehovah's Witnesses situated in the city Kh. The windows and the paving means of the outer wall façade were broken many times. The material damage caused by the above actions is of a considerably big amount. Besides, the service is hampered, since the Jehovah's witnesses, who gather in the "Royal Hall," cannot feel safe.

The attacks on the above "Royal Hall" had occurred seven times since 2014 till present. The Kh. Regional Division of the Ministry of Internal Affairs of Georgia has started the investigation under Article 187 (damage or destruction of property) of the Criminal Code of Georgia on the attack committed against the "Royal Hall" on 25 May, 2016. However, as far as according to the expert's opinion the damage comprised less than 150 GEL, the investigation was suspended due to the lack of the signs of the crime on 30 June, 2016. On 10 August, 2016, the attack was repeated. The applicant notes that the motive of the attack is the religious hatred, therefore, it is possible for a person to regularly damage



any religious place and the damage might not reach 150 GEL in any case. Since the law enforcement authorities have repeatedly close the investigation due to the small amount of damage, the attacks on the “Royal Hall” took a regular character.

The applicant considers that when the places of worship are damaged, especially of the religious group that has repeatedly become the object of religious persecution, the main value to be protected is not the right to the property but the freedom of religion. Consequently, the applicant believes that it would have been appropriate to start the investigation not under Article 187, but under Article 156 (persecution) of the criminal code of Georgia, which addresses the persecution of persons because of their confession or faith and constitutes a more specific norm.

### **Case N6933/16**

The Public Defender of Georgia studies N.A.’s application dated 1 June, 2016.

The applicant points out that he/she and his/her eight family members are the citizens of Iraq. They have been living in Georgia for 2 years and possess a residence permit.

According to the applicant, two years ago, his/her family has purchased a house in Tbilisi and 6 months ago, they have started building a fence. Despite all necessary documentation, the neighbours do not give them the possibility to build a fence. From the day when they started building the fence, the neighbours started persecuting and harassing the family. Also, they are forcing the family to sell the house and telling them that there is not place for the Iraqis in Georgia. The applicant explains that on 31 May, 2016, up to 50 individuals broke into their house, who were screaming at them to leave Georgia. They have destroyed their belongings and beaten two juvenile children. His/her brother in law broke his leg during the physical confrontation.

The applicant considers that the representatives of the law enforcement bodies were not making adequate responses. The applicant also notes that they are persecuted by the neighbours because they are Iraqis.

The Prosecutor’s Office of Georgia has informed us with a letter that *on 31 May, 2016, in the 5th Division of the Isani-Samgori Police Department of Tbilisi Division of the Ministry of Internal Affairs of Georgia, 4 different reports were registered, which addressed the fact of sexual violence and the conflict in the neighborhood. It was established as a result of the interview that the applicant and his/her family members were verbally abusing the neighbours and were walking in the yard without the clothes. On 30 May, 2016, in the yard of the above house was an Iraqi man without the underwear, who was seen by the 5 years old child living nearby. The child told the parents about the incident. Due to the above-mentioned, the relations between the citizens of Iraq and the citizens of Georgia deteriorated, which turned into the verbal confrontation.*

It is also indicated in the response of the Prosecutor's Office that *in the framework of the above report, individuals participating in the conflict were questioned. The applicant and his/her family members have noted that their physical injuries are caused by falling to the ground.*

### **Case N8162/16**

The Public Defender is studying T.K.'s application dated 24 June, 2016.

The applicant indicates that the neighbor T.D. is constantly threatening and harassing him/her and his/her mother – I.K. According to the applicant, T.D.'s actions have an ethnic motive, since he/she and his/her family members speak in Russian. T.K. notes that the patrol police called after the first conflict did not want to study the issue and only gave verbal explanations that the above fact was beyond their competences and advised T.K. to address the court or the relevant institution. After T.D. has injured I.K. with a knife, they have applied to the Old Tbilisi Division of the Ministry of Internal Affairs, however, the police has only drafted the protocol. He/she was informed that the injury on I.K.'s body was not enough to start an investigation. It is noteworthy that the forensic examination was not set to determine the severity of the damage. T.K. has also addressed the General Inspection in order to instruct the police to conduct a comprehensive and objective investigation, however, no response was followed from the General Inspection.

The Public Defender has addressed the Chief Prosecutor's Office of Georgia and requested the information on whether the investigation was ongoing on the above case in terms of revealing the alleged discriminatory/hate motive and what kind of investigative measures were taken. It is demonstrated by the letter received from the Prosecutor's Office that *the investigation on the fact of beating on T.K.'s case has started, the witnesses were questioned, including T.D., forensic-medical examinations were set, however, the conclusions are not yet received. The investigation is ongoing on the case, nevertheless, the ethnic origin is not being determined as a motive of the crime.*

### **Case N7216/16**

The Public Defender is studying V.T.'s application of 22 June, 2016.

The applicant has informed the Public Defender through the hotline that a few transgenders were in the street, when they were subjected to the severe physical abuse. The applicant was objecting the police's inactivity and was requesting the Public Defender's representative's arrival on site, otherwise, he/she was threatening with the suicide.

The trustee of the Public Defender of Georgia visited the site and talked to the applicant who noted that during the night time, his/her friends were physically abused and threatened by death by the strangers. According to V.T., they have called the patrol police due to the above incident, however, after arriving on site, the law enforcers did not make a proper response. Besides, the patrol police officers were addressing him/her and his/her friends with mocking and insulting words.

In order to react on the above application, the Equality Department of the Public Defender has addressed the General Inspection of the Ministry of Internal Affairs of Georgia and requested information on whether the Ministry of Internal Affairs has started studying the incident; whether the individuals participating in the incident were questioned; also, requested the copies of the video tapes of the patrol police officers' cars and shoulder cameras.

It is noted in the letter dated 26 July, 2016 that as a result of the official examination carried out in the General Inspection of the Ministry of Internal Affairs, the fact of disciplinary offense committed by the employee of the Ministry of Internal Affairs was not confirmed. At the same time, we were provided with the copies of the materials of the official examination conducted at the General Inspection and the video recordings of the shoulder cameras.

### ***Case N1600/15***

The Public Defender is studying I.V.'s application dated 25 February, 2015.

According to the application, the applicant and his/her friends are under the death threats due to the fact that their job is the protection of the rights of the LGBT community. As stated by the applicant, because of the scope of his/her work, the investigation is deliberately delayed based on the discriminatory grounds.

Based on the above application, in the framework of the case proceedings, the Public Defender of Georgia, at the initial stage, has twice requested the information from the Chief Prosecutor's Office of Georgia on whether the investigation is ongoing on the case of death threats against the individuals indicated by the applicant; additionally, in case of a positive response, the Chief Prosecutor's Office of Georgia was requested to clarify what procedural measures were taken in regards with the above case and at what stage is the investigation currently. Also, whether the individuals noted in the application are granted the status of a victim.

According to the response letter of the Prosecutor's Office of Georgia, *on 9 January, 2015, in the 7<sup>th</sup> Division of the Old Tbilisi Unit of the Tbilisi Main Division of the Ministry of Internal Affairs of Georgia, the investigation was initiated on the criminal case regarding the fact of threats against the individuals indicated in the application, under Article 151*

*of the Criminal Code of Georgia. The witnesses, including the applicant and the other individuals named in the application, were interrogated on the case. In the course of investigation, the article placed on the informational portal “ambebi.ge,” the so call “photo-screenshots” from the social network “facebook.com” and the mobile phone of the applicant were examined. We were also informed from the Prosecutor’s Office that at this stage, no one is granted the status of a victim or an accused in the framework of the above case and the investigation is ongoing.*

On 2 June, 2016, the Public Defender of Georgia has requested the information from the Chief Prosecutor’s Office of Georgia for the third time. This time, the Public Defender was interested in what kind of investigative measures are taken on the present case in order to establish the truth; Additionally, whether the investigation is carried out in terms of revealing the possible discriminatory, hate motive; whether anyone was granted the status of a victim or an accused; also, the copies of the resolutions on finding individuals as victims or accused were requested. The response received from the Chief Prosecutor’s Office of Georgia was not essentially different from the previous two letters provided to the Public Defender in the framework of the case and it was noted that *at this stage, no concrete individual is found as a victim or an accused on the present criminal case and the investigation is ongoing.*

### **Case N49702/16**

Based on Article 12 of the Organic Law of Georgia on “Public Defender,” on 9 June, 2016, the Public Defender of Georgia, on his own initiative has started studying the incident that occurred in the vegan-café “Kiwi” regarding the information spread through the mass media.

According to the media reports, based on the administration of the vegan-café, the information was spread that on 29 May, 2016, the event was held in the vegan-café “Kiwi,” when about 15-20 individuals, who are the members of the group „Georgian Power (“Bergman”), broke into the café. They were holding the barbeques and had sausages around their necks. They have thrown the barbeques and the sausages on the plates of the café’s customers, were also throwing around the barbeques and the sausages and were recording this situation. Due to the noise, the neighbours got interested in the incident. They had no information regarding the ongoing circumstances. Some of the neighbours attacked the personnel of the café, one of the neighbours was holding a knife and was threatening with killing them. The neighbours called the police.

In addition, on 2 June, 2016, in the same café, the representative of the Public Defender has witnessed the incident, when a couple of men have introduced themselves to the employees of the café as the journalists and were harassing them.

The Public Defender has requested from the Chief Prosecutor's Office of Georgia the information on whether the investigation was launched on the above-mentioned fact, what kind of investigative measures are ongoing and whether the staff of the café "Kiwi" was questioned; Besides, whether the investigation is conducted in order to establish the discriminatory/hate motive and what investigative measures were taken in this direction; At the same time, whether the accused individual/individuals were identified on the above case. Also, we have requested the information and the copies of the resolutions on granting the status of a victim/accused.

*According to the letter of the Chief Prosecutor's Office of Georgia dated 28 June, 2016, on 30 May, 2016, in the First Unit of the Old Tbilisi Division of the Ministry of Internal Affairs of Georgia, the investigation was launched on the criminal case regarding the case of beating G.I. nearby the Vertskhli Street N40, Tbilisi, the crime foreseen by Article 125 paragraph 1 of the Criminal Code of Georgia. In order to establish the motive in the above criminal case, a number of investigative actions were carried out: the witnesses, including the employees of the café "Kiwi" were questioned, the scene of the accident was examined, the vide tapes were obtained, identifications were conducted and the examinations were set. At this stage, no concrete individual is granted the status of a victim or of an accused and the investigation is ongoing.*

### **Case N6091/16**

The Public Defender is studying M.O.'s application dated 16 may, 2016.

According to the applicant, he/she has a child with disability, L.A. who, on 12 may, 2016, was stopped by three juveniles, taken to the isolated place, thrown to the ground and beaten mercilessly.

According to the application, despite the fact that L.A. was asking the offenders not to hit him/her since he/she was a person with disability, he/she was still severely beaten. As a result, L.A. has 4 stitches on the head. The applicant indicates that the case is investigated by the Samgori Isani District Police. The applicant considers that the violence committed against his/her child has a discriminatory motive.

The Equality Department of the Public Defender's Office of Georgia has requested the information from the Chief Prosecutor's Office of Georgia. In particular, whether the investigation is ongoing on the occurred fact, also, under which article of the criminal code is the investigation is conducted and what concrete investigative measures were taken.

It is stated in the response received from the Prosecutor's Office that on 12 May, 2016, in the 2<sup>nd</sup> Division of the Isani-Samgori Office of Tbilisi Police Main Division of the Ministry of Internal Affairs of Georgia the investigation was launched on the fact of L.A.'s beating,

with the signs of the crime foreseen by Article 125 paragraph 1 of the Criminal Code of Georgia. A number of investigative measures were taken on the case – the scene of the accident was inspected, forensic-medical examination was set, the eye-witnesses were questioned. The qualification was changed due to the severity of health damage and the investigation is ongoing under Article 120 of the Criminal Code of Georgia.

According to the interrogation records of the witnesses and the victim, L.A. has not provided the offenders with the information regarding his/her health and the above has not become the cause of the conflict.

It is also explained in the Prosecutor's Office's response that L.A. is granted the status of a victim. In addition, A.Ts.'s action constitutes a crime foreseen by Article 120 of the Criminal Code. However, since he/she is a juvenile, he/she is not subjected to the criminal responsibility, as far as according to Article 38 of the Juvenile Justice Code, If there is a probable cause that a minor has committed a minor or a serious crime, the possibility of applying diversion shall be considered in the first place and it shall be evaluated whether diversion can ensure the re-socialisation and rehabilitation of the minor and the prevention of a new crime.

The Public Defender notes that despite the number of applications regarding the crimes committed with the alleged hate motive, in the process of investigation, the hate motive is generally not revealed. As it is demonstrated by the responses received from the Prosecutor's Office of Georgia, in terms of the similar type alleged crimes, in most of the cases, the investigation is not launched or is terminated due to the lack of evidence confirming the crime.

The Public Defender is aware of the exclusive competence and discretion of the Prosecutor's Office in terms of starting the investigation and criminal prosecution, however, the Public Defender, as an authority responsible for monitoring the protection of human rights and equality in the country, studies and monitors on his/her own initiative or based on the applications the factual circumstances that constitute the crime committed with the alleged hate motive. The Public Defender considers that the ignorance of the hate motive by the investigative authorities in the process of investigation leads to the denial of importance of this kind of crimes, even in case of finding an individual guilty, the offender does not have a real understanding why he/she was punished and therefore, the sentence does not have a preventive effect.

According to the all above-mentioned, the Public Defender calls on the investigative authorities to use the approach during the identification of the crime motive that is generally utilized in the process of clearance of the case and to direct the investigation in the direction that will give the possibility to identify the alleged hate motive.

## 2. APPEALLING TO THE COMMON COURTS WITH THE CASES RELATED TO DISCRIMINATION

The Public Defender of Georgia has requested from the City and Regional Courts of Georgia information regarding the number of applications on the cases related to discrimination. Namely, the Public Defender's subject of interest was the number of complaints submitted before the courts from the entry into force of the Law of Georgia on "Elimination of All Forms of Discrimination" (June 2016) till present. In addition, the court decisions on the above cases were requested, including the decisions on deficiencies and the decisions on inadmissibility of the case.

It is revealed from the information received from the courts that from 7 May, 2014 till present, not a single complaint was submitted to 14 courts out of 34 on the cases based on Chapter 7<sup>3</sup> of the Civil Procedure Code of Georgia (Legal Proceedings for the Matters Relating to Discrimination) and the Law of Georgia on "Elimination of All Forms of Discrimination." Besides, we were informed from the **Samtredia, Poti and Ambrolauri** courts that the discrimination complaints were not submitted to the magistrate courts under their subordination.

According to the responses received from the courts, in the indicated period, in terms of the cases related to discrimination, only 19 complaints were submitted. Out of these complaints, the discrimination fact was not confirmed on **10** cases. Legal proceedings are ongoing on **3** cases, **1** case is related to the restraint order, which was approved by the court and the discrimination fact was confirmed by the court in **2** cases.

We were informed from the **Tbilisi City Court** that the court is not producing the statistics of the discrimination cases and therefore, were unable to satisfy our request and they would provide us with the copies of the complaints and the decisions they could find. In particular, we have received from the Tbilisi City Court 6 complaints related to discrimination, out of these complaints, legal proceedings were carried out by the equality coalition member on 3 cases. **The Public Defender has submitted the amicus curiae on one of the cases on the complaint regarding the jurisdiction.**<sup>30</sup> With the provided 6 complaints the applicants addressed the Administrative Chamber of the Tbilisi City Court. Out of these, 4 complaints were not satisfied in terms of establishing the discrimination fact and 2 complaints were not found admissible by the Administrative Chamber and were transferred to the Civil Chamber.

It is noteworthy that in the Tbilisi City Court, the Public Defender has also submitted **2 amicus curiae**s regarding the establishment of the alleged discrimination fact on the ground of the membership of the trade union, however, the court has not provided us with the above lawsuits.

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30 The full version available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/amicus-cur-iae2/sasamartlo-megobris-amicus-curiae-mosazreba-tbilisis-saqalaqo-sasamartlos.page>



According to the response received from the **Rustavi City Court**, one administrative complaint is registered regarding discrimination. It was submitted to the court on 16 November 2015 and is currently ongoing. In addition, it is noted in the response that while lodging the complaint, the applicant was requesting to establish the discrimination fact, however, *since establishment of the discrimination fact falls under the jurisdiction of the civil court, the applicant has specified the request and noted that discrimination was indicated only as a legal ground and he/she was not requesting the establishment of the discrimination fact and therefore, the court has not confirmed the fact of discrimination on the present case.*

The Rustavi City Court has not provided us with the copy of the above complaint, however, most likely, it is the case conducted by the member organization of the coalition and on which **the Public Defender has submitted the *amicus curiae* on 12 February, 2016.**

**The Zugdidi District Court** has considered **3 cases**, out of which one was related to the issuance of the restraint order against an individual who was harassing on the ground of sexual orientation. The other **2 cases** were considered in an administrative manner. The discrimination fact was not confirmed in any of the cases.

4 claims were filed before the **Batumi City Court**. Out of them, the members of the equality coalition were carrying out the representation. The court has established the discrimination fact on 1 case, 1 complaint was not satisfied and one case was not found admissible by the court. In addition, the Batumi City Court has found discrimination based on religion in 1 case, on which **the Public Defender has submitted the *amicus curiae*.**<sup>31</sup>

**The Zestaponi District Court** has considered 2 cases through the administrative proceedings. **On both cases, the Public Defender has submitted the *amicus curiae* regarding the alleged facts of discrimination.**<sup>32</sup> **The Public Defender has also submitted an *amicus curiae* to the Kutaisi Court of Appeal regarding the alleged fact of discrimination.**<sup>33</sup>

**The Gori District Court** was addressed with one case that is ongoing through the civil proceedings.

**The Akhaltsikhe District Court** has considered one case regarding the alleged fact of religious discrimination. The equality coalition member was the representative. The discrimination fact was not established on the above case. **The Public Defender has**

31 The full version available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/amicus-cur-iae2/sasamartlos-megobris-mosazreba-batumis-raionul-sasamartlos.page>

32 The full version available at: <http://www.ombudsman.ge/ge/news/sasamartlos-megobris-mosazreba-zestafonis-raionul-sasamartlos.page>

33 The full version available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/amicus-cur-iae2/sasamartlos-megobris-mosazreba-genderuli-nishnit-diskriminaciis-savaraudo-faqttan-daka-vshirebit.page>



submitted the *amicus curiae* to the Kutaisi City Court at the stage of appealing the decision.

**The Kutaisi City Court** has considered 1 complaint submitted by the equality coalition member regarding the alleged discrimination based on sexual orientation. The Court has established the fact of discrimination.

The proceedings are ongoing on 1 case related to the alleged fact of discrimination based on social condition in the **Khelvachauri District Court**. **The Public Defender has issued a recommendation on the above case before addressing the court.**<sup>34</sup>

The Public Defender notes that the information provided by the courts is incomplete. The Public Defender has submitted the *amicus curiae*s, has also issued the recommendations on the cases before the court that were not provided by the courts. In addition, not a single case before the Public Defender is terminated based on the fact that the court is considering the case on the same fact of discrimination. However, the Public Defender has not received the relevant complaints/decisions from the courts.

As a result of analyzing the complaints and decisions provided by the courts, the active participation of the Public Defender is demonstrated in the proceedings of the discrimination related cases before the courts. In particular, the *amicus curiae* is submitted at some stage of the proceedings of the recommendation is issued before addressing the court.

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34 The full version available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/rekomendacia-xulos-municipalitetis-sabavshvo-bagebis-gaertianebas-qonebrivi-mdgomareo-bis-nishnit-diskriminaciis-agmofxvris-sakitxze.page>

## CHAPTER IV. INFORMATIONAL-EDUCATIONAL ACTIVITY

Anti-discrimination law obliges the Public Defender to ensure the awareness raising of the public on the matters of equality. To this end, during the reporting period, the representatives of the Equality Department have conducted the trainings for the school-children, teachers, prosecutors and the parents of the children with disabilities.

### 1. TRAININGS FOR THE SCHOOL-CHILDREN

**In 2015 fall semester** (September-December), in order to raise the awareness on discrimination, 16 trainings were conducted in 10 schools of Georgia.<sup>35</sup> 309 pupils of IX-XI grades attended the trainings. Each training lasted for about 2 hours and a half.

The trainings caused a particular interest at schools. Besides the theoretical part, the trainings have foreseen various fun exercises, brainstorming, roleplays and cases.

The trainings was focused on the school children, however, at the request of the teachers, they were also attending the trainings and in some cases were participating in the discussion. There was a case when the teacher could not understand why, for example, the ethnic discrimination is unacceptable.

The rights of the LGBT community turned out to be the most sensitive topic in the course of the trainings. The opinion of the pupils divided in two on the above issue. The pupils were mainly repeating the false beliefs established in the society and did not possess the objective and complete information on the topic.

### 2. TRAINING FOR THE TEACHERS

**On 19-23 October, 2015**, in the framework of the Human Rights Academy of the Public Defender's Office, the training was held for the teachers, which was attended by 25 teachers from Tbilisi and the regions (Telavi, Gurjaani, Marneuli, Akhaltsikhe, Zestaponi, Kutaisi, Kobuleti, Poti, Batumi, Oni, Terjola, Nigvziani, Tsintskaro, Tshela, Ambrolauri, Vardzia, Mokhe, Samtatskaro).

The topic of the training was the human rights and the principle of prohibition of discrimination at schools. The teachers have studied the human rights teaching tasks

35 LEPL – Akaki Tsereteli N1 Public School in Zugdidi; LEPL – N3 Public School in Zugdidi; LEPL – Poti Public School N3; LEPL – Poti Public School N11; LEPL – Poti Public School N7; LEPL – Ozurgeti Public School N3; LEPL – Ozurgeti Public School N4; LEPL – Lanchkhuti Public School N3; LEPL – Lanchkhuti Public School N1; LEPL – Tbilisi Public School N167; LEPL – Dimitri Iznadze Public School N22 in Tbilisi.

for children, the challenges, tools and methodologies; the right to education, indoctrination and the use of religious symbols at school, prohibition of discrimination on different grounds; the teachers have also learned about the labour rights, the principle of prohibition of discrimination in labour relations, the authority of the Public Defender, the procedures of applying to the Ombudsman and etc. The teachers also underwent the practical training.



The training was facilitated by the human rights lawyer, the certified trainer of the Council of Europe, Ivana Roana, who has a long-standing experience of working at the European Court of Human Rights and various international organizations.



### 3. TRAINING FOR THE PROSECUTORS

**On 21-25 March, 2016**, the Human Rights Academy of the Public Defender has conducted the trainings to 42 prosecutors and investigators of the Prosecutor's Offices of Tbilisi and the regions on the topic of "Investigating the Hate Crimes."

The training course was aimed at raising the awareness of the participants on the methodology of investigating the hate crimes.



In the framework of the course, the participants learned the indicators of the hate crimes, the standards set by the international institutions and the Georgian legislation.

The trainings were facilitated by the representatives of the OSCE - ODIHR Hate Crime Officer Ales Hanek and the OSCE Mission Officer in Macedonia Tome Shekerdziev, also, the representatives of the Public Defender's Office – Maka Stevenson and Levan Meskhoradze. The participants were granted the certificates after the trainings.

The training was also attended by all employees of the Equality Department of the Public Defender's Office.

#### 4. TRAINING FOR THE PARENTS OF CHILDREN WITH DISABILITIES



On 11-12 June, 2016, the representatives of the Equality Department together with the representatives of the Department of the Protection of the Rights of Persons with Disabilities and the Childs Rights Centre of the Public Defender's Office have conducted a training on the issues of equality for the parents of children with disabilities. The training was held with the support of the EU project "Support to the Public Defender's Office of Georgia II." The training has covered the anti-discrimination legislation of Georgia, international standards and legal protection mechanisms, the role of the public defender as an anti-discrimination mechanism and the specifics of the reviewing the cases by the Ombudsman. The training has also focused on the rights of persons and children with disabilities.

The training was interactive and was mainly held in the form of discussion. The meeting turned out to be also informational for the representatives of the Public Defender's Office, since, during the discussions with the participants, the representatives of the Public Defender's Office were once again given the opportunity to discuss those problems and challenges that are posed to the persons with disabilities.

## CHAPTER V. IMPROVING THE CAPACITY OF THE EQUALITY DEPARTMENT

The employees of the Equality Department participated in various trainings.

**On 4-9 July, 2016**, with the support of the East-West Management Institute, Support to the Rule of Law in Georgia (EWMi-PROLoG) programme, a Slovenian expert on discrimination – Bojdan Vernik Setink was invited to Georgia. The expert was selected based on the advice of the European Network of Equality Bodies (Equinet). The expert has provided a two-day training on the “Investigation Methodology on the Discrimination Cases” for the employees of the Public Defender’s Office. The training has covered the notion of discrimination, its forms and types, also, the examples and methodology was presented, which will help the employees of the Office in finding the discrimination facts and in improving the skills of its inspection.



During the week-long visit, the expert has also met the representatives of the Georgian Government and the NGOs and heard their opinions and suggestions on the ways improving the gaps of the anti-discrimination legislation and practice.

The objective of the expert’s visit was the experience sharing with the employees of the Public Defender’s Office and preparation of the report on the anti-discrimination legislation and practice based on the obtained information.

**On 20-22 May, 2016**, the training on “Fighting Intolerance and Protection of Social Rights” was held for the employees of the Public Defender’s Office. The training was conducted in the framework of the Council of Europe Project “Strengthening the operational capacities of the Public Defender’s Office in Georgia.”

**On 22-24 April, 2016**, the training on “The Public Defender as an *Amicus Curia*” was conducted for the employees of the Public Defender’s Office. The training was held in the framework of the Council of Europe Project “Strengthening the operational capacities of the Public Defender’s Office in Georgia.”

**On 12-13 November, 2015**, the training on the “Protection of Human Rights in Accordance with the European Convention on Human Rights” was conducted for the staff of the Ombudsman’s Office. The training was held in the framework of the Council

of Europe Project “Strengthening the operational capacities of the Public Defender’s Office in Georgia.”

**On 14-15 November, 2015**, the training on the “Protection From Discrimination According to the European Convention on Human Rights” was conducted for the representatives of the Public Defender’s Office. The training was held in the framework of the Council of Europe Project “Strengthening the operational capacities of the Public Defender’s Office in Georgia.”



## CHAPTER VI. CONCLUSION

Adoption of the law on “Elimination of All Forms of Discrimination” constitutes a progressive step in terms of protection of equality and generally – human rights. A number of norms of the law make the process of fighting discrimination more effective.

In addition, the law has the positive effect on the realization of the right to equality. The number of applications submitted to the Public Defender’s Office is relatively high, which means that the addressees of the law realize that there is a mechanism for the protection from discrimination, through which they can fight for restoring their violated rights.

In addition, despite the fact that the mechanism for the enforcement of the Public Defender’s decisions by the private individuals does not exist, there are a number of successful cases when both the private individuals and the public authorities enforce the Public Defender’s recommendations or general proposals and/or express their readiness for cooperation. There is also the trend according to which, the Public Defender’s decision regarding the concrete applicant encourages other victims in similar situations to fight for their own rights.

Despite a number of important provisions laid out in the law, there are still some procedural and material legal gaps, which cause certain barriers to the practical implementation of the law. Improvement of the similar gaps constitutes one of the priorities of the Public Defender and hence, the Equality Department will actively work in this direction.