



**Special Report of the Public Defender of Georgia**

**On Combating and Preventing Discrimination and the State of Equality**

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## Introduction

The Law of Georgia on the Elimination of All Forms of Discrimination was adopted by the Parliament of Georgia on May 2, 2014. The law defines the Public Defender of Georgia and the court as legal mechanisms for the protection of the right to equality. In 2019, significant changes were made to anti-discrimination legislation: The mandate of the Public Defender has been extended to private individuals with similar legal regulations that apply to public agencies - natural persons and legal entities under private law have been required to submit information to the Public Defender;<sup>1</sup> In case of non-implementation of the recommendation, the Public Defender has been authorized to sue a legal entity under private law;<sup>2</sup> The deadline for applying to the court relating to a case of discrimination has been increased from 3 months to a year;<sup>3</sup> *Harassment* and *sexual harassment* have been defined as forms of discrimination.<sup>4</sup>

According to paragraph 1 of Article 7 of the Law on the Elimination of All Forms of Discrimination, *the Public Defender of Georgia shall draw up and publish a special report once a year on combating and preventing discrimination and the state of equality*. The present document is the 6<sup>th</sup> report the Public Defender of Georgia on this issue, which covers the period from January 1 to December 31, 2020.

Throughout 2020, effective realization of the right to equality, of course, was negatively affected by the epidemiological situation created by the novel coronavirus. Beyond the objective obstacles caused by the pandemic, the regulations imposed by the Government treated different groups unequally. For example, the imposition of mandatory quarantine according to citizenship on persons entering Georgia, for the legitimate aim of protecting public health, raised many questions. In addition, statements inciting discrimination on ethnicity, disability and other grounds could be heard in public space. In addition, due to the pandemic, the Public Defender was unable to properly carry out educational activities to disseminate information on the principle of equality.

It should be noted that in 2020, significant changes were made to anti-discrimination legislation – under the Law of Georgia on the Elimination of All Forms of Discrimination, *the denial of reasonable accommodation* was defined as discrimination on the ground of disability, and the Parliament adopted the Law on the Rights of Persons with Disabilities. In the direction of the protection of the right to equality, substantial changes were made to labour legislation. It is important that the prohibition of labour discrimination was detailed in a separate chapter of the Labour Code.

In addition, the new edition of the law directly establishes the obligation of the employer to ensure equal pay for equal work performed by male and female employees. Furthermore, an incomplete list of specific issues relating to labour and pre-contractual relations (selection criteria, employment conditions, access to trainings, etc.), to which the principle of equal treatment applies, has been defined; the principles of the

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<sup>1</sup> Paragraph b of Article 18 of the Organic Law on the Public Defender of Georgia; Article 24.

<sup>2</sup> Subparagraph h<sup>1</sup> paragraph 14<sup>1</sup> of the Organic Law of Georgia on the Public Defender.

<sup>3</sup> Part 2 of Article 363<sup>2</sup> of the Civil Procedure Code of Georgia.

<sup>4</sup> Paragraphs 3<sup>1</sup> and 3<sup>1</sup> of Article 2 of the Law on the Elimination of All Forms of Discrimination.

distribution of the burden of proof and reasonable accommodation have also been explicitly defined. The employer has been required to respond to sexual harassment. The same changes somewhat improved remedies for pregnant women and conditions for the enjoyment of pregnancy, childbirth and parental leave.

Unfortunately, the Public Defender's proposal<sup>5</sup> to limit the Labour Inspector's mandate to the assessment of the general policy of equality at work while inspecting the implementation of anti-discrimination provisions and to introduce a mechanism of referring individual cases to the Public Defender in case of detection of an alleged case of discrimination, has not been taken into account. According to the Public Defender, granting an unconditional mandate to the Labour Inspector to review discrimination cases will have a negative impact on the process of establishing consistent national standards relating to the principle of equality, as the above duplicates the Public Defender's institution as an equality mechanism and, in specific cases, may create a threat of making different decisions.

Not surprisingly, state institutions again failed to find time for developing equality policies or a unified vision, to create an environment tailored to vulnerable groups, or to raise public awareness of anti-discrimination issues in this reporting period. Instead of tackling systemic practices of inequality, the agenda was largely still focused on the elimination of individual cases of discrimination.

Unfortunately, there were numerous attacks on the LGBT+ community and activists in 2020; When imposing the pandemic-related restrictions, the Government unequally treated non-dominant religious groups; entrants with disabilities, as well as those representing religious minorities, encountered obstacles in accessing the environment and conditions tailored to their needs while passing the Unified National Exams; Cases of harassment and sexual harassment in the workplace were common in both public and private sectors in this reporting period as well. Restrictions on the labour rights of representatives of the media on the ground of different opinion were also problematic. At the same time, no steps were taken to bring the state or municipal social or health care programmes in line with the principle of equality; Sexist, homo/transphobic, xenophobic and other discriminatory expressions could still be actively heard in public spaces; in addition, despite some improvements, challenges remained in terms of the effectiveness of the investigation of alleged hate crimes, including in terms of the identification of hate motives.

A significant increase in the rate of endorsement of the Public Defender's recommendations by legal entities under private law was a positive trend. 36% of the recommendations/general proposals made to natural persons and private sector were endorsed. The rate of endorsement/implementation by public sector was 50%.

In terms of equality, most of the obstacles were again faced by women, members of religious minorities, LGBT+ community and persons with disabilities.

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<sup>5</sup> Statement of the Public Defender of Georgia, available at: <https://rb.gy/6aqtg7>

## 1. The right to equality in the wake of the novel coronavirus pandemic

The situation relating to the novel coronavirus has negatively affected the equality of individual groups. In some cases, the measures taken to prevent the spread of the virus discriminated against certain individuals.

Some of the regulations imposed by the Government of Georgia were applied to people of a particular nationality or age, which in practice led to alleged restrictions on the rights of substantially equal persons. For example, all persons, including Georgian citizens, were subject to mandatory quarantine when entering the territory of Georgia, except for citizens of 5 specific states; people over the age of 70 were not allowed to leave home during the state of emergency, with certain exceptions.

The restrictions on freedom of movement also unequally treated members of religious and ethnic minorities when celebrating their holidays. In addition, in the reporting period, the Public Defender identified a case of sexual harassment by a doctor in the quarantine space.

There were also alarming cases of statements inciting discrimination, including the demonstration of an aggressive attitude by some members of the community on ethnic grounds, for example when Marneuli and Bolnisi were quarantined after a representative of the Azerbaijani-speaking community tested positive for the novel coronavirus at the initial stage of the pandemic. This issue is discussed in detail in Chapter 9 of this report.

### 1.1. Imposition of mandatory quarantine on the basis of citizenship

The main criteria for developing the rules for entering the territory of Georgia during the pandemic were related to the epidemiological situation and economic conditions. In this process, regulations changed many times. During the reporting period, according to the decree issued by the Government of Georgia, Georgian citizens (as well as citizens and/or persons with permanent residence permits of other countries) were subject to a mandatory 12-day<sup>6</sup> quarantine<sup>7</sup> upon arrival in Georgia, which restricted their right to liberty. However, the above requirement did not apply to the citizens and persons with permanent residence permits (including Georgian citizens) of five EU countries - Germany, France, Latvia, Lithuania and Estonia.<sup>8</sup>

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<sup>6</sup> As a result of the Decree of the Government of Georgia of September 14, 2020, this period was reduced to 8 days (except for persons arriving from the occupied territories of Georgia, with some exceptions). Before the enactment of the Decree of the Government of Georgia of August 12, 2020, this term was set at 14 days. See Decree No. 577 of the Government of Georgia on amending Government's Decree No. 322 of May 23, 2020 (September 14, 2020) on the Approval of the Rules of Isolation and Quarantine; Decree No. 495 of the Government of Georgia on amending Government's Decree No. 322 of May 23, 2020 "On the Approval of the Rules of Isolation and Quarantine (August 12, 2020).

<sup>7</sup> Government's Decree No. 322 of May 23, 2020 on the Approval of the Rules of Isolation and Quarantine, paragraph 4 of Article 11.

<sup>8</sup> Letter No. GOV 9 20 00031304 from the Administration of the Government of Georgia (31 July 2020).

The general reasons for such an approach were several legitimate aims: proper, effective management of the virus and the rapid economic recovery. The regulations indicated that the nature of the restrictions imposed on five EU countries was conditioned by two factors: the principle of reciprocity and the epidemiological situation. The issue of the so-called family clusters is also worth noting. Reducing the risks of spreading the epidemic by preventing the so-called family clusters was named among the reasons of introducing the mandatory quarantine for Georgian citizens.

The above regulations are based on variable criteria, however, they do not have only a legal dimension. In this regard, it is important to assess the legitimacy of differentiated treatment on the ground of citizenship, as the imposition of mandatory quarantine, which aims to protect human life and health, restricts the right to liberty. In the amicus curiae brief<sup>9</sup> filed with the Tbilisi City Court, the Public Defender indicated that it was important to assess how useful it was to impose different - lighter or stricter regulations only on the basis of citizenship. To this end, it is important for the court to consider whether different regulations facilitate the achievement of the tasks set by the Government of Georgia for the legitimate aims of recovering the country's economy (at the expense of controlling the so-called family clusters, without assessing the purpose or duration of a person's arrival in Georgia), maintaining public order and health, and observing the bilateral agreements (the principle of reciprocity) with the 5 named states.

## 1.2. Age-related restriction

The measures taken by the Georgian Government against older persons during the pandemic were also problematic. During the state of emergency,<sup>10</sup> persons aged 70 and over were prohibited from leaving their actual/registered place of residence. Exceptions were made for persons leaving the place of residence for the purpose of receiving the kind of medical services that could not be received at home, as well as for purchasing food and medical/pharmaceutical products.<sup>11</sup>

When imposing the above restriction, the State in fact neglected the possibility of using an individual approach. The Georgian Government considered age as the only indicator of the health condition of older persons and did not take into account the fact that even in cases where age is statistically associated with a higher morbidity rate, the individual condition of a specific older person may differ so much from the trend that consideration of only age may turn out to be an incorrect indicator.

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<sup>9</sup> The Public Defender filed an amicus curiae brief with the court regarding the imposition of mandatory quarantine on Georgian citizens, available at: <https://rb.gy/lrvzib>

<sup>10</sup> Decree of the President of Georgia of March 21, 2020 on Measures to be Taken in connection with Declaration of State of Emergency on the Entire Territory of Georgia.

<sup>11</sup> Decree No. 204 of the Government of Georgia of March 30, 2020 on amending Decree No. 181 of the Government of Georgia of March 23, 2020 on the Approval of Measures to be Taken to Prevent the Spread of the Novel Coronavirus in Georgia, Article 5<sup>1</sup>.

### 1.3. Freedom of movement during religious and secular holidays

During the state of emergency, on the basis of the decision of the Government of Georgia, the movement of cars was banned from April 17 to April 21, 2020. On the same day, the Georgian Patriarchate issued a statement expressing dissatisfaction over the fact that no exception was made for the clergy. According to later reports, the Government made an exception for the clergy of the Orthodox Church. Later, passes were granted to the representatives of other religious organizations as well, on request; however, the Public Defender's Office had to involve in this process, as the issuance of passes, in some cases, was faulty.<sup>12</sup>

Apart from the above case, on November 27, 2020, the Public Defender responded to the regulations related to the novel coronavirus, which prohibits movement and presence in public space after 21:00 from November 28, 2020 to January 31, 2021, and may be discriminatory against non-dominant religious associations. It should be noted that such a restriction will not apply to Christmas Eve - January 6, while the holidays of other religious associations, which are also celebrated overnight in the same period, were not mentioned in a statement issued by the Government.

Another unequally restrictive regulation was the Georgian Government's refusal to satisfy the request of the Azerbaijani community and activists to temporarily lift restrictions on movement at night on March 21, 2021, in order to enable the Azerbaijani citizens of Georgia to celebrate the Nowruz Bayram holiday without hindrance. Of course, the reason named by the Government - to prevent the spread of the virus - is important, however, it should also be borne in mind that Georgia had a practice of lifting restrictions on holidays and football matches, which has not complicated the epidemiological situation.<sup>13</sup>

It is important to ensure that state regulations apply equally to all religious associations and groups so that they can exercise their right to freedom of religion and right to free development on an equal basis. By giving unreasonable preference to any group, the expediency of depriving others of the same right remains unclear. It is necessary for the Government of Georgia to consider the possibility of making an exception to the above-mentioned rule during holidays celebrated overnight.

### 1.4. Sexual harassment

In terms of assessing the rights situation of women, the cases of sexual harassment of women in quarantine space is worth noting. In the reporting period, the Public Defender discussed a case of sexual harassment

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<sup>12</sup> According to the information received from the Administration of the Government of Georgia, 15 representatives of religious confessions applied to the operational headquarters relating to the movement permission. Based on individual consideration, permits were issued to 234 persons, including 202 representatives of the Administration of All Muslims of Georgia.

<sup>13</sup> Public statement of the Public Defender of Georgia, available at: <https://cutt.ly/7cZZ5Sm>



of a quarantined woman by a doctor.<sup>14</sup> The examination of the case revealed the problem of absence of special guidelines, which would describe the procedures for examining quarantined persons by doctors.

In the recommendation on the case of sexual harassment, the Public Defender pointed to the specifics of the provision of medical services and noted that the patient did not have accurate information about the scope of the competence of doctors. In addition, the relationship between doctors and patients is based on trust and, often, consent is obtained by abusing patients' trust. Unfortunately, the harasser took advantage of the professional situation and misled the patient, which was quite simple given that the victim had no medical education and was quarantined in a strange city, which made her even more vulnerable.

In this case, the doctor's behavior was manifested in verbal, non-verbal and physical acts of sexual nature, creating a humiliating and intimidating environment for the quarantined woman. The contract with the doctor, who was examining quarantined citizens, was signed by the Social Service Agency (LEPL). The doctor was retrained by the Georgian Medical Holding (non-commercial legal entity). Accordingly, the Public Defender appealed to the Social Service Agency and the Medical Holding of Georgia to take proactive steps, inter alia, to develop an internal policy document on sexual harassment and to raise awareness; The Public Defender called on the same organizations to provide information on the inadmissibility of sexual harassment to the contracted doctors or those to be contracted.

It is welcome that after the issuance of the recommendation, the Public Defender was informed by the respondents that they had actively started providing relevant information/recommendations to the medical staff employed in the quarantine areas. In addition, the Social Service Agency started to work on an internal policy document on sexual harassment and in this process the Service is being consulted by the Public Defender's Office as well.

## 2. Equality of women

Despite important measures taken to protect women's rights, there remain many areas that fail to see the needs of women and create an unequal environment for them. This year, the problem of sexual harassment was still common and was mainly detected in the workplace or during the provision of medical service. At the same time, the number of persons applying to the Public Defender has relatively increased after the legislative regulation of sexual harassment in 2019.

Women victims of sexual violence continue to face legislative obstacles in terms of terminating their pregnancy resulting from sexual abuse. During the reporting period, discriminatory practices were also identified in the conduct of examination of women victims of sexual violence, as, in some cases, they were not offered the services of a female expert.

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<sup>14</sup> Public Defender's recommendation of June 29, 2020 to N.B., LEPL Social Service Agency, Georgian Medical Holding (non-commercial legal entity), Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, available at: <https://bit.ly/2J8kJSX>

In addition, it is important that as a result of the amendments made to the Labour Code, maternity leave has been divided into pregnancy and childbirth leave and parental leave. The previous edition of the law cumulatively required the existence of all three preconditions (pregnancy, childbirth and child care) for the enjoyment of leave, which excluded surrogate mothers and mothers of children born through surrogacy from the above right in a discriminatory manner. It has also become possible to distribute the days of pregnancy and childbirth leave and parental leave between the baby's mother and father. Unfortunately, no changes applied to the maternity pay in the private sector and it still depends on the employer to pay the wage beyond the 1000 GEL assistance set by the State.

## 2.1. Sexual harassment

In 2019, significant changes were made to legislation in terms of prohibition of sexual harassment - prohibitive norms emerged in the Law of Georgia on the Elimination of All Forms of Discrimination and the Organic Law of Georgia Labour Code. In addition, within the framework of the amendments made to labour legislation in 2020, the employer has been obliged to respond to sexual harassment.<sup>15</sup>

In addition, according to the amendments carried out in 2019, sexual harassment committed in public space is considered an administrative offence under Article 166<sup>1</sup> of the Administrative Offences Code of Georgia and the mandate of responding to the above offence is granted to the Ministry of Internal Affairs of Georgia. Independent consideration and regulation of the phenomenon of sexual harassment in public space is a definitely positive change, but at the same time, it is important to implement it effectively in practice. For example, in one of the cases, it was problematic for the Ministry of Internal Affairs to respond to a case of sexual harassment committed in public space. In addition to the police being unable to detect alleged sexual harassment, the alleged victim was victimized - the woman was forced to speak in a foreign language for several hours, telling her story to various patrol crews several times, at the police station and on the street, including in the presence of strangers.<sup>16</sup>

It is noteworthy that after the direct prohibition of sexual harassment by law, the number of applications sent to the Public Defender has increased. The cases examined by the Public Defender during the reporting period included those related to labour relations and sexual harassment in the medical field. One of the

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<sup>15</sup> "Imposing liability on an employee who commits harassment and/or sexual harassment does not exempt the employer from liability. The employer may be held liable if he/she was aware of harassment and/or sexual harassment and did not report it to the Labour Inspector's Office and/or did not take appropriate measures to prevent such an action. Organic Law of Georgia Labour Code, note in part 2 of Article 78 (effective from January 1, 2021)

<sup>16</sup> Public Defender's recommendation of January 22, 2020 to the Minister of Internal Affairs of Georgia, available at: <https://bit.ly/360FPLH>

cases of sexual harassment by a medical worker took place at a quarantine hotel.<sup>17</sup> In another case, the doctor examined the mammary glands of the applicant who complained about gastrointestinal problems.<sup>18</sup>

In addition, an independent majoritarian candidate, Ana Dolidze, pointed out in the pre-election period that organized groups had been constantly attacking her as a woman and politician through social networks, as well as threatening to kill and destroy her. The Public Defender has repeatedly stressed the importance of women's involvement in political and public life. At a time when women's equality and equal participation in decision-making remain problematic in Georgia, creation of a hostile environment for politically and socially active women serves as a barrier to the full, free and safe conduct of their political activities. For a healthy political and public environment, it is important to ensure the kind of public space that is free from hostile environments and does not aim to humiliate, threaten or insult a person.

With regard to sexual harassment in the field of medical services, it should be noted that the abuser usually enjoys a professional status and misleads the patient - explaining that specific physical contact or personal questions serve to properly treat the patient. In this regard, convincing victims is quite simple, as, in most cases, they have no medical education or accurate information about the limits of competence of doctors or the necessity of procedures, which makes them even more vulnerable. As in the previous reporting period, women victims reported the highest number of cases of sexual harassment in the workplace.<sup>19</sup> Harassment was mainly manifested in verbal, non-verbal and physical actions by the harasser - unwanted personal questions/comments; requesting a patient to wear a swimsuit for the purposes of her work; offering a sexual intercourse; touching the intimate parts of the victim's body, etc. In all cases, the victims made a decision to take legal action only after quitting, as the work environment had become abusive and intimidating for them.

Importantly, unlike previous years, in case the Public Defender finds sexual harassment, employers respond to the cases by dismissing the harasser or enshrining provisions prohibiting sexual harassment in their internal regulations.

In addition, it was a positive trend in the reporting period that a number of private companies proactively expressed a desire to introduce an internal organizational mechanism for the prevention of sexual harassment. At the same time, with the involvement of the Human Rights Secretariat of the Government of Georgia, internal sexual harassment mechanisms are being introduced in public institutions. This will

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<sup>17</sup> Public Defender's recommendation of June 29, 2020 to N.B., LEPL Social Service Agency, Georgian Medical Holding (non-commercial legal entity), Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, available at: <https://bit.ly/2J8kJSX>

<sup>18</sup> Public Defender's recommendation of April 13, 2020 to I.Kh. and LEPL State Regulation Agency for Medical Activities, available at: <https://bit.ly/3fwhZum>

<sup>19</sup> Public Defender's recommendation of April 13, 2020 to D.A. and Ras Al Khaimah Investment Authority Georgia Ltd, available at: <https://bit.ly/361kiCI>. See also the Public Defender's recommendation of 13 April 2020 to L.J., available at: <https://bit.ly/39bdjsE>

help to properly inform employees of specific organizations and prevent sexual harassment in the workplace, and enable the organization's management to review the cases of alleged harassment themselves.

## 2.2. Women victims of sexual abuse

In terms of women's equality, women victims of sexual violence are one of the most vulnerable groups. It is worth noting that after the expiration of the statutory period, the artificial termination of the pregnancy resulting from violence is possible only after the court delivers a guilty verdict,<sup>20</sup> which is problematic, as the duration of criminal proceedings usually exceeds the term of pregnancy. For a woman in this situation, refusal of the termination of pregnancy may become a source of psycho-emotional stress and social stigma.

It is important that the Parliament of Georgia, in its resolution on the Public Defender's report, endorsed the Public Defender's recommendation aimed at ensuring that the launch of a criminal investigation into sexual assault be sufficient to terminate and finance the termination of the pregnancy resulting from sexual violence. Nevertheless, according to the information received from the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, no changes are planned to be made in this direction.

Another problem that creates a traumatic environment for women victims of sexual violence is the insufficient number of female experts at the Levan Samkharauli National Forensics Bureau.<sup>21</sup> Despite the fact that legislation provides for the necessity of transferring a woman to another branch of the Bureau on request or inviting an expert of the same sex,<sup>22</sup> this rule is not observed in practice.

As the Public Defender's recent study showed, the examination of victims of sexual violence is often a traumatic procedure, as they often encounter insensitive, degrading and gender-based stereotypes during examination, which undermines their participation in the justice process and results in their revictimization. Victims of sexual violence often refuse examination because of the sex of the expert. Victims do not have the opportunity to choose the sex of the expert, therefore, in some cases, conducting a similar type of examination by a representative of the opposite sex brings additional stress. There are numerous cases when victims refuse examination due to the expert's sex. Another factor is that medical experts use non-sensitive language towards victims.<sup>23</sup>

This problem was proved by the information requested from the Levan Samkharauli National Forensics Bureau as well, according to which, the Bureau employs a total of 39 medical experts throughout Georgia,

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<sup>20</sup> Annex No. 5 to Order No. 01-74/N of the Minister of Labour, Health and Social Affairs of Georgia on the Approval of the Rules of Artificial Termination of Pregnancy.

<sup>21</sup> Public Defender's recommendation of December 21, 2020 to LEPL Levan Samkharauli National Forensics Bureau, available at: <https://rb.gy/usm0tk>

<sup>22</sup> Part 9 of Article 111 of the Criminal Procedure Code of Georgia.

<sup>23</sup> Public Defender's Study on Administration of Justice on of Sexual Violence Crimes against Women in Georgia, 2020, p. 37-38, available at: <https://rb.gy/uswdhi>

of which only 9 are women. Only 8 out of 20 experts employed in Tbilisi are women. This problem is particularly acute in regions where only one out of 19 medical experts is a woman.<sup>24</sup>

It is also noteworthy that in all cases, the expert's report says that the examination was conducted in a calm environment, without complications. Such a record raises questions in light of the traumatic experiences of victims of sexual violence and points to a formal, alleged gender-sensitive approach.<sup>25</sup>

It is important that in response to the recommendation, the Samkharauli National Bureau provided information, according to which, they plan to employ women experts for women victims of sexual violence to avoid discomfort during examination and that the staff responsible for conducting such an examination will be trained in the psychological aspects of communication with victims. The Public Defender's Office has already offered cooperation to the Bureau in this process.

### 2.3. Pregnancy and childbirth, perental and child adoption leave

Significant legislative changes were made to legislation relating to maternity leave in 2020.<sup>26</sup> According to the new edition of the Labour Code, pregnancy and childbirth leave (126 calendar days) and parental leave (604 calendar days)<sup>27</sup> have been separated. The old version of the Code cumulatively required the existence of three preconditions (pregnancy, childbirth and child care) for the enjoyment of maternity leave, which was termed by the Public Defender as a significant shortcoming, as such a regulation excluded the use of the relevant right by surrogate mothers and mothers of children born through surrogacy in a discriminatory manner.<sup>28</sup> Thus, the distribution of 730 calendar days of maternity leave between two components should be assessed as unequivocally positive, as it enables surrogate mothers and parents of children born through surrogacy to enjoy pregnancy and childbirth leave and parental leave. However, no similar changes were made to the Law of Georgia on Public Service. Accordingly, the problem remains unresolved and the recommendation issued by the Public Defender in 2019 can be considered only partially implemented.<sup>29</sup>

In addition to the above, a number of changes were made to improve the rights situation of employees: it has become possible to distribute the days of maternity leave between the child's mother and father;<sup>30</sup> pregnant women have been granted the right to conduct medical examinations during working hours, without losing their wages;<sup>31</sup> It has been clearly defined that the employee has the right to return to the same job under the same working conditions after the end of her leave due to pregnancy and childbirth,

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Organic Law No. 7177-I of Georgia of September 29, 2020 on Making Amendments to the Organic Law of Georgia Labour Code, Chapter VII.

<sup>27</sup> Labour Code of Georgia, Article 37.

<sup>28</sup> See the Public Defender's special report of 2019 on combating and preventing discrimination and the state of equality, pp. 13-14.

<sup>29</sup> Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2019, pp. 184-185, available at: <https://rb.gy/60frrb>

<sup>30</sup> Labour Code of Georgia, Article 37, para. 4.

<sup>31</sup> Ibid. Article 29.

child care, or adoption of a newborn, and to enjoy any improved working conditions, which would be enjoyed by her if she had not taken the leave.<sup>32</sup> The Public Defender hopes that the above will help the smooth achievement of the goal of maternity leave - to protect the biological condition of a woman during pregnancy and to achieve the smooth development of a special relationship between a parent and a child.

However, the issue of pay during the pregnancy and childbirth leave, as well as parental and child adoption leave, has been left without further regulation. According to the results of the examination of this issue in 2019,<sup>33</sup> problems in the private sector are largely caused by the existing regulation, under which the total amount of financial assistance provided by the State for the entire period of paid leave is no more than 1000 GEL,<sup>34</sup> while the possible additional remuneration shall be the subject of an agreement between the employer and the employee.<sup>35</sup> As a result, the duration of leave and payment are determined by internal regulations of each company, therefore, the employers' practices vary and depend on the good will of each particular private company.<sup>36</sup>

It should be noted that in order to promote women's equality in labour relations and to protect the safety of mothers and children, international legal instruments emphasize that cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.<sup>37</sup> According to the crucial convention of the International Labour Organization, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.<sup>38</sup> The European Directive 92/85, the provisions of which Georgia is obliged to comply with under the Association Agreement,<sup>39</sup> considers the entitlement to an adequate allowance as an alternative to maintenance of a payment.<sup>40</sup> Both international instruments require that the allowance shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation.<sup>41</sup> In addition, according to the Convention, each member state shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women,<sup>42</sup> while the Directive stipulates that these conditions may under no circumstances provide for periods of previous

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<sup>32</sup> Ibid. Article 20, para. 8.

<sup>33</sup> See the Public Defender's special report of 2019 on combating and preventing discrimination and the state of equality, pp. 12-13.

<sup>34</sup> Labour Code of Georgia, Article 39.

<sup>35</sup> Ibid.

<sup>36</sup> See the Public Defender's special report of 2019 on combating and preventing discrimination and the state of equality, p. 12-13.

<sup>37</sup> ILO Maternity Protection Convention No. 183 (C183, 2000), Preamble, Article 6, para. 2; Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, Article 11, para. 2 (b).

<sup>38</sup> ILO Maternity Protection Convention No. 183 (C183, 2000), Article 6, para. 3.

<sup>39</sup> Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, Annex XXX.

<sup>40</sup> Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, Article 11, para. 2 (b).

<sup>41</sup> Ibid. Article 11, para. 3; ILO Maternity Protection Convention No. 183 (C183, 2000), Article 7, para. 1.

<sup>42</sup> ILO Maternity Protection Convention No. 183 (C183, 2000), Article 6, para. 5.

employment in excess of 12 months immediately prior to the presumed date of confinement.<sup>43</sup> It should also be noted that none of the above tools differentiates between the established standards according to the sector (private or public) where the pregnant woman/parent is employed.

According to the latest official data (III quarter of 2020), the average monthly nominal payment is 1 240 GEL in Georgia.<sup>44</sup> Accordingly, the amount of money to be paid during the pregnancy and childbirth, parental and child adoption leave (which is about 6 months in total), in accordance with the rules of the Labour Code, does not meet international standards according to any calculation method.<sup>45</sup> As a result, due to the small amount of assistance and the lack of willingness of private employers to maintain wages, women are often forced to enjoy only short leaves during pregnancy, childbirth or child care.<sup>46</sup> With this in mind, women employed in the private sector enjoy a much lower standard of protection than civil servants, the remuneration of which is based on the wage and class supplement, without limits on the total amount.<sup>47</sup>

Thus, in order to ensure the equality of women during pregnancy and childbirth, it is necessary to introduce a new system of payment during pregnancy and childbirth, parental and child adoption leave on the basis of analyzing the budgetary resources and the impact on private employers to define the amount, sources and preconditions for assistance/remuneration so that to enable employees of the private sector to enjoy the minimal standards provided by international regulations and be protected like those employed in public service as much as possible.

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<sup>43</sup> Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, Article 11, para. 4.

<sup>44</sup> Available at: <https://rb.gy/zsom89shorturl.at/sLRW7>

<sup>45</sup> If we compare to the payment maintenance mechanism proposed by the European Directive, the established amount (1000 GEL) cannot be considered as a maintenance of payment (1240 GEL) for even one month, on average. According to the model proposed by the Convention of the International Labour Organization, the total amount will cover only two-thirds of the employee's payment (approximately 827 GEL) for a period of one month and a few days. Compliance can neither be achieved when applying the minimum standard intended for temporary work incapacity offered by both international instruments. According to the currently applied legislation, the total amount of assistance due to temporary work incapacity shall be determined by multiplying the average daily payment (remuneration) by the number of missed working days in a given month (Order No. 87/N of the Minister of Labour, Health and Social Affairs of Georgia of February 20, 2009 on Rules of Appointing and Issuing Assistance for Temporary Work Incapacity, Article 6, para. 8). Thus, employees shall receive the same amount as they would receive as remuneration in the same period, although the period of temporary work incapacity should not exceed 40 calendar days in a row or 60 calendar days within a period of 6 months (Labour Code, Article 46, para. 2 (i). Given that the total period of leave in question is also 6 months, it would be reasonable to take 60 calendar days, as a result of which, the total assistance should be at least 2.5 times as much as the one established by the State (the average daily payment multiplied by 60 calendar days).

<sup>46</sup> Motherhood and Parenting - Georgia's Forgotten Commitments, Open Society Georgia Foundation, p. 3, available at: <https://rb.gy/3dtxcm>

<sup>47</sup> Law of Georgia on Public Service, Article 64, para. 2.

### 3. Disability

Important legislative measures were taken in 2020 to protect the rights of persons with disabilities - the Parliament adopted the Law on the Rights of Persons with Disabilities, which offers important legal remedies. At the same time, the Law on the Elimination of All Forms of Discrimination defined the *denial of reasonable accommodation* as a form of discrimination. However, a number of important issues remained beyond the regulation of the law.<sup>48</sup>

It is noteworthy that some steps were taken to ensure the proper realization of the rights of persons with sight problems. For example, according to the Ministry of Health, in accordance with the recommendation of the Public Defender,<sup>49</sup> they drafted changes to be made to the relevant order<sup>50</sup> relating to the use of Braille or other alternative means while filling in a social status declaration. In addition, according to the information received from the Administration of the Government of Georgia, on the basis of the Public Defender's recommendation,<sup>51</sup> it became possible to file an application with the Chancellery by using Braille and other alternative forms.

Unfortunately, in practice, the situation of equality of persons with disabilities has not improved. People with disabilities still have to struggle for access to the environment, as well as for the equal use of various public and private services. This year, entrants with hearing problems encountered obstacles during the Unified National Exams, as no conditions were tailored to their needs.

Cases of discrimination could be observed at the general education level as well. In the reporting period, the Public Defender assessed the regulation that excluded the simultaneous enjoyment of an age-related pension and a disability social package as a discrimination against persons with disabilities of the retirement age.

#### 3.1. Changes to legislation

Significant legislative changes were made in the reporting year to ensure the protection of the rights of persons with disabilities. On July 14, 2020, the Parliament of Georgia adopted the Law of Georgia on the Rights of Persons with Disabilities<sup>52</sup> in the third reading, which was an important step towards bringing the domestic legislation closer to international standards. The law, based on the principles of the UN Convention, defines the obligations and responsibilities of the State in terms of exercising the rights and fundamental freedoms of persons with disabilities. The adopted document obliges the Government of Georgia to develop and approve a unified strategy and action plan on issues relating to persons with

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<sup>48</sup> Statement of the Public Defender of July 16, 2020, available at: <https://rb.gy/nlolla>

<sup>49</sup> Public Defender's recommendation of May 4, 2018 to the Minister of Labour, Health and Social Affairs of Georgia, available at: [shorturl.at/afqM1](https://shorturl.at/afqM1)

<sup>50</sup> Order No. 141/n of the Minister of Labour, Health and Social Affairs of Georgia of May 20, 2010.

<sup>51</sup> Public Defender's recommendation of August 6, 2018 to the Administration of the Government of Georgia, available at: [shorturl.at/hsGHY](https://shorturl.at/hsGHY)

<sup>52</sup> According to Article 39 of the Law, the articles of the law, except for the transitional and concluding provisions set forth in Chapter IV, shall enter into force on 1 January 2021, and Chapter IV shall enter into force upon its promulgation.



disabilities, as well as to establish a body responsible for the implementation of the Convention on the Rights of Persons with Disabilities.

This law re-defines the basic principles and mechanisms for enabling persons with disabilities to live independently and fully participate in all spheres of life, without discrimination, on an equal basis with others. The law introduced the principle of denial of reasonable accommodation as a form of discrimination on the ground of disability in the national legal framework. The obligation to ensure equality in accordance with the principle of reasonable accommodation was defined by the Law of Georgia on the Elimination of All Forms of Discrimination<sup>53</sup> as well. Regulation of the concept of reasonable accommodation at the legislative level is important, as it allows persons with disabilities to apply to both the Public Defender and the court relating to this specific form of discrimination. It is true that the absence of the denial of reasonable accommodation as a form of discrimination in anti-discrimination legislation has not prevented the Public Defender from describing the neglect of this principle as discrimination in a number of cases, however, regulating the above at the legislative level will make the issue of protection of the rights of persons with disabilities even more effective.

The Public Defender of Georgia has repeatedly submitted opinions regarding various editions of the draft law to both the Ministry of Justice of Georgia and the Parliament of Georgia.<sup>54</sup> Although a number of recommendations of the Public Defender were endorsed, there remain some assessments, the reflection of which would significantly improve the protection of the rights of persons with disabilities.

The Public Defender considers<sup>55</sup> that the law does not regulate certain issues relating to persons with disabilities, such as management of their own financial affairs, ownership and inheritance, equal access to bank loans, mortgages and other financial credits. In addition, the aspects of the involvement of persons with disabilities and organizations working on their issues are not clearly regulated by law. The remedies provided by the law for the protection of the rights of persons with mental health problems are insufficient. In particular, the law does not provide for the obligation to introduce modern community-based services. In terms of education, the law says nothing about the challenges faced by persons (children) with disabilities left beyond formal education or the obligation to respond to such challenges - such as coordination between agencies, collection of statistical data and introduction of mechanisms for inclusion in the education process. In addition, the deadlines set by the transitional provisions of the law are quite long and do not provide a timely solution to the systemic problems faced by persons with disabilities, which is particularly problematic in terms of introducing a biopsychosocial model of disability assessment. In addition, it is necessary to focus more on social rights in the law and to pay special attention to the provision of adequate housing and social package for persons with disabilities.

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<sup>53</sup> Law of Georgia of July 14, 2020 on Amendments to the Law of Georgia on the Elimination of All Forms of Discrimination.

<sup>54</sup> Public Defender's proposal of March 10, 2020 to the Parliament of Georgia, available at: <https://rb.gy/fcnzis>

<sup>55</sup> Public Defender's statement of 16 July, 2020 available at: <https://rb.gy/nlolla>

### 3.2. Physical accessibility

In the reporting year, changes were made to improve physical accessibility standards. On December 4, 2020, the Government of Georgia approved the Technical Regulation - National Accessibility Standards.<sup>56</sup> It is important that the document is based on universal design principles and outlines technical criteria for the accessibility of buildings, land and other elements. In addition, the document takes into account the needs of persons with various disabilities. However, despite the positive changes, the Public Defender believes that in terms of ensuring accessibility, efforts should be continuous. Inter alia, before the enactment of the National Accessibility Standards, an information campaign should be conducted on legislative changes, provisions and obligations under technical regulations, in order to properly inform the public and responsible entities. Relevant architectural and supervisory staff should be trained as soon as possible. A national accessibility plan should be developed in a timely manner, with maximum involvement of persons with disabilities and organizations working on their issues. In addition, the plan should set reasonable deadlines for fulfilling the obligations.

As for the current situation of persons with disabilities, unfortunately, access to various services for people with disabilities is still a topical issue despite numerous responses by the Public Defender of Georgia to discriminatory restrictions on the right to accessibility,<sup>57</sup> which naturally hinders their full participation in public life.

The practice of the Public Defender made it clear that the use of social facilities, municipal transport and road infrastructure remains a problem for persons with disabilities. Most private and public buildings are still inaccessible to persons with disabilities. According to a study conducted by the Georgian Young Lawyers' Association relating to the implementation of standards set by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in national law, the practical implementation of the space arrangement standards for persons with disabilities and effective oversight of their enforcement remain problematic.<sup>58</sup>

The problem of physical accessibility was identified in the context of receiving banking services. People with physical disabilities encounter difficulties in accessing JSC Liberty Bank branch office, as the adapted environment created by the bank is still inaccessible to them. It should be noted that persons with disabilities receive their social package through the very Liberty Bank. With this in mind, the Public Defender addressed JSC Liberty Bank with a general proposal.<sup>59</sup>

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<sup>56</sup> Decree No. 732 of the Government of Georgia of December 4, 2020 on the Approval of Technical Regulation - National Accessibility Standards, available at: <https://rb.gy/dzn8zo>

<sup>57</sup> Recommendation of the Public Defender of Georgia of August 6, 2018 to the Chairman of the Tbilisi City Assembly, available at: <https://rb.gy/5uazan>; Recommendation of the Public Defender of Georgia of August 6, 2018 to the Administration of the Government of Georgia, available at: <https://rb.gy/ui1y33>

<sup>58</sup> Georgian Young Lawyers Association, Standards Established by the UN Convention on the Rights of Persons with Disabilities (UNCRPD), 2020, p. 10.

<sup>59</sup> Recommendation of the Public Defender of Georgia of November 19, 2020 to JSC Liberty Bank, available at: <https://rb.gy/ui1y33>

It is essential for the State to correct policies, legislation and practices that prevent persons with disabilities from accessing services offered by the state or private companies. The right to accessibility can be ensured for persons with disabilities only by the strict implementation of accessibility standards.

### 3.3. Denial of reasonable accommodation in the context of the right to education

Enjoyment of access to education on an equal basis with others remains an essential challenge for persons with disabilities. The realization of this right is directly related to the exercise of other fundamental rights by persons with disabilities. As practice shows, the realization of the right to education largely depends on the fulfillment of the obligations of accessibility and reasonable accommodation. It is important to properly implement the obligation of reasonable accommodation in practice.

Over the years, the Public Defender has been pointing out the problem of lack of inclusive education for children with disabilities and hyperactive children in kindergartens<sup>60</sup> and schools,<sup>61</sup> as well as inadequate adaptation of the environment. The cases of discrimination on the ground of disability, in particular, the denial of reasonable accommodation, were again identified in the field of education in this reporting period. Similar cases were reported at both the general education and higher education levels, in public and private sectors.

In one of the cases,<sup>62</sup> no conditions tailored to the needs of persons with hearing problems were ensured during the Unified National Exams, when a persons with hearing problems was passing the English language listening test. The National Assessment and Examinations Center gave additional time to the person concerned and also allowed him to sit close to a sound device, although the measures did not adequately address the needs of that person. As a result, the person was unable to fully realize his abilities. In another case, the lack of adequate communication between the National Examinations Center and a student relating to the latter's special needs (need for an assistant in the writing process) was a problem during the Unified Masters' Exams. According to the student, when passing the Unified National Exams in previous years, he had not encountered a similar problem.

The study of the above cases made it clear that, when determining the measure of reasonable accommodation, it is necessary to specify the procedure of dialogue, individual communication with the person concerned at the normative level, so that to enable the entrant or other person to make adjustments or changes to the relevant measure, if necessary. It is also important to eliminate barriers that limit the

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<sup>60</sup> Recommendation of the Public Defender of Georgia of April 16, 2018 to Wonderland Preschool, available at: <https://rb.gy/ktjffl>

<sup>61</sup> General proposal of the Public Defender of Georgia of January 23, 2016 to the Ministry of Education and Science of Georgia, available at: <https://rb.gy/zsczyr>  
Recommendation of the Public Defender of Georgia of December 7, 2017 to the Ministry of Education and Science of Georgia, available at: <https://rb.gy/esjcnt>

<sup>62</sup> Public Defender's address of December 7, 2020 to the Ministry of Education, Science, Culture and Sports of Georgia and the National Center for Assessment and Examinations, available at: <https://rb.gy/zvthjh>

choice of the form of the accommodation measure. In practice, when determining a measure, it should be borne in mind that reasonable accommodation, for example, for a person with hearing problems, may involve a combination of several components (such as taking hearing-related measures, mobilizing additional means). The denial of reasonable accommodation must be justified in all cases - one of the most important steps in this process is for a particular public or private entity to evaluate its resources objectively. If it is impossible to take measures necessary for persons with disabilities, the party should provide convincing and reasoned justification to the other party.<sup>63</sup>

As for the general education level, in one of the cases, the private school administration did not take into account the special needs of a student with autism, which led to the exclusion of the juvenile from social activities and indirect discrimination<sup>64</sup> against her - the child needed to be accompanied by a family member to participate in an educational, social summer school, as she would find it difficult to be alone in a strange environment. The examination of the case did not prove the argument of the school administration that the consideration of the child's need would create an excessive financial burden.

Provision of reasonable accommodation is essential in terms of protecting the equality of persons with disabilities, as this principle requires that the interests of a particular individual be taken into account rather than the interests of a particular group. Individuals with similar disabilities may not have similar needs and any particular measure may provide an adaptation of the environment for only one person. Hence, it is essential that the environment be tailored to the individual abilities in each case, as otherwise individuals with specific disabilities may be left out of integration into society.

#### 3.4. Problem with simultaneous enjoyment of a social package and a pension

The general regulations in force in Georgia prohibit the simultaneous receipt of two or more social packages, as well as the enjoyment of a state pension (pension package) or a state compensation together with a social package. This rule also establishes exceptions, although they do not apply to persons with disabilities.<sup>65</sup> Thus, according to this general rule, an older person with disability is unable to benefit from the social package and age-related pension at the same time. It is important to consider the financial resources of the State, but at the same time, it is essential for the State to take effective steps to protect the rights of older persons with disabilities.

Persons with disabilities, as well as older people, independently of each other, face significant social and economic vulnerabilities. The State is obliged to make efforts to ensure decent standards of living for both

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<sup>63</sup> The general proposal of the Public Defender of Georgia of February 2, 2021 to the Minister of Education, Science, Culture and Sports of Georgia and the Director of LEPL National Assessment and Examinations Center, available at: [shorturl.at/qwIL4](http://shorturl.at/qwIL4)

<sup>64</sup> Recommendation of the Public Defender of Georgia of July 20, 2020 to the Director of the Newton School of Robotics Ltd., available at: <https://rb.gy/mubxoe>

<sup>65</sup> Decree No. 279 of the Government of Georgia on Social Package, Article 6, paragraph 1, subparagraphs a) and b), Article 5, paragraph 1, subparagraph g (July 23, 2012).

groups. With regard to people belonging to both groups – older persons with disabilities - the State should pursue an adequate policy to respond to their increased needs.

When discussing this issue, it is important to focus on the expenses that persons with disabilities have to incur to overcome the discriminatory environment. These expenses may vary by country and the proportions of the State and persons with disabilities or their families may be different. From this point of view, the costs of persons with disabilities are high in Georgia not only when they reach the retirement age, but even before that. Due to the non-inclusive education system, significant shortcomings in the realization of the right to work, inaccessible environment and other challenges, persons with disabilities cannot save money for their retirement age. Consequently, they and their families are at risk of poverty.

When planning changes in the state policy in this direction, it is crucial to consider the purposes of the social package on the one hand and the age-related pension on the other hand. The purpose of the social package must be provision of financial resources to the person concerned to help him/her overcome the artificial barriers created by the environment and society. Thus, its task is to cover the costs related to a specific disability.

As for the age-related pension, its general purpose is to replace the income the recipient had. In addition, the current pension policy of Georgia is based on the logic that older people need more social guarantees, given their health care costs.<sup>66</sup> For example, according to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, the incidence of new cases of certain diseases, as well as the hospitalization rate, is much higher above the age of 70 than the same rates among persons under 70, per 100 000 persons.<sup>67</sup> Age-related health problems may develop among people with disabilities independently of their needs.

Thus, a pension, on the one hand, and a social package, on the other hand, are intended for different needs (in some cases, they may intersect, although not fully). Given this and the general challenges facing the relevant groups, it is clear that the retirement age of a person with disabilities should not in all cases preclude the possibility of receiving a social package and a pension at the same time. Accordingly, the existing rule should be changed so that the issue of simultaneous receipt of these two financial benefits should be resolved according to the individual needs of persons concerned.<sup>68</sup>

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<sup>66</sup> It should be noted that the Georgian Government introduced an indexation component with regard to social pensions, although it has been applied differently to persons under 70 years of age and persons aged 70 and over. In particular, persons aged 70 and over enjoy better indexation of the pension supplement; See the Amendments to the Law of Georgia on State Pension, 6728-rs, paragraph 2 of Article 7 (2/07/2020); See the explanatory note, available at: <https://rb.gy/lx4zrk>

<sup>67</sup> Letter No. 01/10192 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia (25/08/2020).

<sup>68</sup> Recommendation of the Public Defender of Georgia to the Prime Minister of Georgia of December 28, 2020, available at: <https://rb.gy/9uc3gg>

## 4. Religion

Religious minorities continue to face obstacles in Georgia. Discriminatory treatment on the ground of religion was identified during the Unified National Exams. At the same time, discrimination on the ground of religion by public servants when performing their duties is still a systemic problem, which is largely conditioned by the lack of awareness of religious neutrality and the principle of equality. If in previous years the issue was mainly considered in the context of border crossing by Muslims,<sup>69</sup> in 2020 this challenge was particularly evident in the obstacles encountered by Jehovah's Witnesses in terms of registering land ownership in the public registry.

### 4.1. Neglect of the religious needs of university entrants

University entrants, who were members of the Seventh-day Adventist Church, encountered problems during the Unified National Exams in 2020, as their request to change the date of the English language examination was rejected by the National Assessment and Examinations Center.

The Seventh-day Christian-Adventist Church bans participation in various secular events and activities on Saturdays. The English language exam was scheduled for Saturday, which is why entrants requested to reschedule the exam for another day. However, their request was rejected by LEPL Assessment and Examinations National Center. The Center explained its decision by the fact that the applicants applied to them after the completion of the electronic process of scheduling exams and any change to the schedule would endanger the whole process.

As it was found out during the study of the issue, the legislation regulating the Unified National Exams does not allow entrants to express their religious needs during registration. Consequently, there is no mechanism to take this issue into account even during the process of organizing exams. According to the Public Defender, the entrants, who had to refuse to take an exam on a particular day due to their religious beliefs, found themselves in an unequal position with others, whose religions have different approaches to similar issues. Therefore, in order to prevent unjustified interference with freedom of religion and equality in the future, the Public Defender proposed<sup>70</sup> to the Ministry of Education, Science, Culture and Sports of Georgia to carry out changes so that to take into account religious needs in the process of organizing exams. Importantly, entrants were finally given the opportunity to take an exam on another day.

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<sup>69</sup> See the Public Defender's special report of 2019 on combating and preventing discrimination and the state of quality, pp. 18-21.

<sup>70</sup> Proposal of the Public Defender of Georgia of July 29, 2020 to the Ministry of Education, Science, Culture and Sports of Georgia, available at: <https://rb.gy/dcnpi9>

## 4.2. Problems encountered by the religious organization of Jehovah's Witnesses during registration of land ownership

The proceedings against Jehovah's Witnesses in the public registry during the reporting period were problematic. In particular, a religious organization - LEPL Christian Assembly of Jehovah's Witnesses in Georgia - informed the Public Defender's Office of nine identical cases of obstacles encountered by them during the registration of the land ownership right.<sup>71</sup>

As a result of the examination of the issue, it was established that the regional offices of the National Agency of Public Registry imposed a non-statutory requirement on the religious organization (provision of information on the citizenship of its members)<sup>72</sup> and made decisions to suspend or terminate registration based on non-submission of the relevant documents. It is noteworthy that no case of rejection of a request on the same grounds has been identified during the consideration of applications of other (including religious) organizations registered as legal entities under public law. It should also be noted that in some cases, the organization had to submit information required by the Organic Law of Georgia on Agricultural Land Ownership to register the real property that was not even an agricultural land plot.

Even the National Agency of Public Registry considered that such a practice was an illegal approach, and on the basis of the decisions on the satisfaction of administrative complaints, instructed regional offices to grant the request for registration. As a result, in all nine cases mentioned above, the applicant's claim was finally granted and ownership of the relevant real property was registered. However, LEPL Christian Assembly of Jehovah's Witnesses in Georgia pointed out that registration of each property as a result of an administrative complaint was a very difficult process and took much time and resources.

Thus, the systemic discriminatory treatment of the religious organization of Jehovah's Witnesses puts the latter in a disadvantageous position in terms of exercising its right to property, which is one of the key rights of religious organizations.<sup>73</sup>

The Public Defender reiterates the need for systemic retraining of the employees of agencies, which perform public functions and provide services, on religious freedom and anti-discrimination standards, and calls on all administrative bodies to provide appropriate trainings to ensure the protection of equality and neutrality during performing their powers and equality.

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<sup>71</sup> General proposal of the Public Defender of Georgia of December 21, 2020 to the Chairman of the National Agency of Public Registry, available at: <https://rb.gy/zxcjgr>

<sup>72</sup> The registering authority requested the submission of this information on the basis of the restrictions set forth in Article 4 of the Organic Law of Georgia on Agricultural Land Ownership, whereas the relevant requirements do not apply to the applicant as an organization legally registered as a legal entity under public law.

<sup>73</sup> Judgment of the European Court of Human Rights of 1 October 2009 in KIMLYA AND OTHERS v. RUSSIA, para. 85.

## 5. Nationality

In terms of discrimination on the grounds of nationality and citizenship, no legislative changes were drafted by the National Bank of Georgia and no practice was changed by commercial banks during this reporting period either, as a result of which, citizens of several countries encountered significant obstacles while receiving various banking services.

In addition, as revealed in this reporting period, the property rights of foreign nationals, as legal heirs, are restricted in relation to the property on the balance sheet of the Ministry of Defence of Georgia. In particular, the Ministry applies the norm, according to which, the primary recipient of the mentioned property cannot be a citizen of another country.

### 5.1. Obstacles encountered while receiving banking services

Unfortunately, this reporting period was no exception in terms of discriminatory practices against foreign nationals in the field of banking services. The situation has not changed in this regard even after the publication of a general proposal<sup>74</sup> by the Public Defender.<sup>75</sup> When working on the report, several problematic issues were identified: inability to buy/sell online in dollars and/or euros; refusal to open an account in foreign currency and denial of the Western Union services.

According to the National Bank of Georgia, for the purposes of the Law of Georgia on Facilitating Prevention of Money Laundering and Terrorist Financing, high-risk jurisdictions are countries or territories where the system of prevention of money laundering or terrorist financing is severely flawed. The Financial Action Task Force periodically determines the jurisdictions with significant deficiencies that threaten the international financial system, making residents of those jurisdictions more dangerous. For its part, the National Bank of Georgia approves a list of high-risk jurisdictions based on Georgia's financial monitoring report.<sup>76</sup>

### 5.2. Restrictions on legal heirs' right to property on the grounds of citizenship

The restriction of the right to property of foreign citizens, as legal heirs, in relation to the property on the balance sheet of the Ministry of Defence of Georgia was identified as a problematic issue in the reporting period. In particular, legislation defines the procedure for transferring state-owned residential and non-residential premises on the balance sheet of the Ministry of Defence of Georgia to private ownership. The decree of the Government of Georgia reads that the property shall not be transferred to a person who does

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<sup>74</sup> General proposal of the Public Defender of Georgia of April 4, 2018 to the National Bank of Georgia, available at: <https://bit.ly/3o4VS1d>

<sup>75</sup> Letter No. 2-14/1389 of the National Bank of Georgia of April 27, 2018. According to the letter, *the currently applied legislation in the field of banking services was adopted by the Parliament of Georgia, and the relevant standards - by the Financial Monitoring Service, which are in line with international best practice. The National Bank also noted that certain restrictions may exist to identify and reduce the risks of money laundering and terrorist financing.*

<sup>76</sup> Correspondence No. 2-09/296 of the National Bank of Georgia.



not have Georgian citizenship.<sup>77</sup> In this case, the norm can be interpreted in two ways: 1) The citizenship requirement applies only to the primary recipient (a person whose immediate legal status is a precondition for the acquisition of ownership); 2) The citizenship requirement applies, inter alia, to the heirs to the primary recipient, if the primary recipient had not legally registered the property. Public agencies apply this rule to both groups, therefore, procedurally, the heir to the primary recipient, who is not a citizen of Georgia, cannot receive property, even if the primary recipient was a citizen of Georgia.

Restrictions on citizenship in the field of defence, for security reasons, can be justified in a number of circumstances.<sup>78</sup> However, in the present case, it is not possible to see the purpose of the blanket application of the citizenship requirement to heirs in cases where the primary recipient had not legally registered the relevant property. As is clear from the law and practice, the State treats heirs differently depending on whether the primary recipient had registered the relevant property before his/her death or not. It should be noted that, theoretically, even if a citizen of Georgia had legalized the real property on the balance sheet of the Ministry before his/her death, the legal heir after his/her death would still be a non-citizen, however, legislation would not prevent him/her from inheriting the property.

## 6. Equality of LGBT+ people

The rights of members of the LGBT+ community were violated during this reporting period as well. Given the epidemiological situation in the country, the opportunities of LGBT+ persons to exercise their freedom of expression further decreased in 2020, which had a significant negative impact on the critical situation in this regard. Against the background that activists had been struggling to safely gather in public spaces for years, the International Day Against Homophobia, Transphobia and Biphobia was held online on May 17, 2020.<sup>79</sup>

Amid the massive violations of the social rights of LGBT+ people, the continuous and proper hormonal treatment of transgender people in the penitentiary institutions and the obstacles created in the field of housing were particularly problematic this year.

### 6.1. Offences committed on homophobic grounds

This year, despite the fact that the community was deprived of the opportunity to hold public gatherings due to the epidemiological situation, the aggression and threat coming from certain groups towards the freedom of expression of LGBT+ people and their supporters were still noticeable. Various offences were

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<sup>77</sup> Decree No. 445 of the Government of Georgia on Transferring State-Owned Residential and Non-Residential Property on the Balance Sheet of the Ministry of Defence of Georgia to Ownership, Article 4, paragraph 3 (July 17, 2020). During the examination of the case, the issue was regulated by Presidential Decree No. 219 on Transferring State-Owned Residential and Non-Residential Property on the Balance Sheet of the Ministry of Defence of Georgia to Ownership (April 30, 2008).

<sup>78</sup> The transfer of property on the balance sheet of the Ministry of Defence to the private ownership of only Georgian citizens may be of significant public interest. For example, marking their contribution to the security of Georgia, or improving their social status.

<sup>79</sup> Information is available at: <https://rb.gy/3sxdc5>

systematically committed by far-right groups against the Tbilisi Pride office throughout the year. The process began on June 1, 2020, when participants in a rally held in front of the office building announced daily protests until the LGBT+ community flag would not be removed from the building.<sup>80</sup> There were also cases, when the above groups threw eggs and paints at the building and flag.<sup>81</sup> In addition, according to the information provided by Tbilisi Pride to the Public Defender's Office, there were cases of homophobic shouts at the employees of the organization, including swearing and the use of other obscene and threatening, violent expressions, as well as removal of the LGBT+ community flag from the office balcony. The organization also referred to police inaction and ineffective response, leaving them with no sense of security.

According to the information<sup>82</sup> requested from the Ministry of Internal Affairs of Georgia, on May 26, 2020, an investigation was launched into the theft of a flag from the Tbilisi Pride office; On June 7, 2020, four people were found guilty of administrative offences, namely for throwing eggs and black paint at the flag on the office balcony and walls;<sup>83</sup> On July 21-22, 2020, administrative offence protocols were drawn up in relation to alleged throwing of eggs and paints at the flag flying on the balcony of the office and throwing of eggs in the entrance hall of the building; an administrative offence protocol was also drawn up on August 3, 2020 in relation to alleged throwing of eggs and paints at the flag flying on the balcony of the office; On September 24, 2020, administrative proceedings were launched in connection with throwing of dark paint at the Tbilisi Pride office building; Administrative proceedings are ongoing in relation to throwing of eggs in the direction of the office entrance on September 20, 2020.

According to the Ministry of Internal Affairs, whenever citizens gather in the vicinity of the Tbilisi Pride office to express any kind of protest, police officers step up security measures, through patrolling.<sup>84</sup> Nevertheless, the above cases could not be avoided, which once again indicates the necessity of properly analyzing the reasons for the intensification of anti-democratic movements and the political and social effects of homophobia, as well as the need for a systemic vision relating to the protection of rights.

## 6.2. Access to medical services for transgender prisoners

Determination, as well as satisfaction of the needs of transgender people by state institutions, is problematic. In the reporting period, we were applied relating to the discriminatory practices in the health care services.

A transgender person placed in a facility of the Special Penitentiary Service, who constantly needs to be provided with hormonal medication during the sex transition process, was denied access to the medication

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<sup>80</sup> Information is available at: <https://rb.gy/n2jjyu>

<sup>81</sup> Information is available at: <https://rb.gy/rb1nsk>; <https://rb.gy/1uzn3t>

<sup>82</sup> Letter No. MIA 6 20 02386703 of the Ministry of Internal Affairs of Georgia, October 7, 2020.

<sup>83</sup> The Administrative Cases Panel of the Tbilisi City Court found administrative violations, namely for committing an offence under Article 166 of the Administrative Offences Code of Georgia (petty hooliganism). Three of the persons were verbally reprimanded and exempted from administrative liability, while one person was fined 500 GEL.

<sup>84</sup> Letter MIA 6 20 02386703 of the Ministry of Internal Affairs of Georgia, October 7, 2020.

by the facility. The person was also denied access to the endocrinologist's service. The medical department of the Special Penitentiary Service explained its refusal, on the one hand, by the fact that consultation with an endocrinologist was not necessary based on the clinical condition of the person, and on the other hand, by the fact that no specific medication was named and no medical document confirming the necessity of the hormone therapy was submitted.

Transgender people need different medical care tailored to their needs. According to the Standards of Care for the Health of Transsexual, Transgender and Gender Nonconforming Persons (SOC), health care for transsexual, transgender, and gender nonconforming people living in an institutional environment (including penitentiary) should mirror that which would be available to them if they were living in a non-institutional setting within the same community.<sup>85</sup> Individuals who are already receiving appropriate hormone therapy when placed in the institutions should be able to continue the same or similar therapies.<sup>86</sup> In the present case, the refusal to provide the endocrinologist's service and medication represented the neglect of the specific needs of the applicant. Accordingly, the Public Defender addressed the Special Penitentiary Service with a recommendation<sup>87</sup> to eliminate indirect discrimination on the grounds of gender identity and to take appropriate measures to provide the applicant with the service of a specialized endocrinologist, as well as to ensure smooth and uninterrupted supply of hormonal medicines.

### 6.3. Discrimination against LGBT+ people in the field of housing

The treatment of LGBT+ people in the field of housing was problematic in the reporting period. In a number of cases, individuals refused to rent publicly offered real estate to members of the LGBT+ community.

Discrimination in the field of housing and lack of access to a secure living environment have a particularly negative impact on LGBT+ people, including their personal development. Due to the widespread stereotypes, it is difficult for these people to access economic resources or jobs. The combination of these challenges creates a severe problem for members of the LGBT+ community in the field of housing. For example, international practices indicate<sup>88</sup> that at least one in five transgender people has been discriminated when seeking a home.<sup>89</sup> Notably, an EU-wide study found that 13 per cent of LGBT+ people were discriminated against when buying or renting an apartment. This figure among transgender people

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<sup>85</sup> WPATH, Standards of Care, available at: <https://rb.gy/qdblz>

<sup>86</sup> Kosilek v. Massachusetts Department of Corrections/Maloney, C.A. No. 92-12820-MLW, 2002.

<sup>87</sup> Recommendation of the Public Defender of Georgia to the Special Penitentiary Service, December 7, 2020, available at: <https://rb.gy/y9wwfd>

<sup>88</sup> There are no studies on discrimination in the field of housing on the grounds of sexual orientation or gender identity in Georgia.

<sup>89</sup> Housing and Homelessness, National Center for Transgender Equality, available at: <https://rb.gy/qveipl>

is 17 per cent.<sup>90</sup> In addition, the study shows that LGBT+ people are 120 times more likely to become homeless.<sup>91</sup>

There was a case in the reporting period when a real estate agent refused to rent an apartment to a transgender woman. As the circumstances of the case show, the agent acted on the basis of prejudiced discriminatory considerations and the refusal was not based on rational circumstances.<sup>92</sup>

It is noteworthy that when concluding various types of real estate agreements, the LGBT+ community faced obstacles in previous years as well. For example, in one of the cases, direct discrimination on the grounds of sexual orientation and field of activity was established against an individual who refused to rent an office to an NGO working on LGBT+ issues.<sup>93</sup> In addition, several organizations refused to allocate space for NGOs working on LGBT+ issues for conducting an LGBT+ event, based on formal arguments.<sup>94</sup>

Cases like this, unfortunately, once again demonstrate the widespread stigma-based views. It is important for all members of the society to understand that the law requires that the principle of equality be protected in any field, including pre-contractual relations.

## 7. Discrimination in labour relations

Labour relations were one of the most vulnerable areas to discrimination during this reporting period as well. Cases of discrimination were detected in both public service and private sector. Unequal treatment was often manifested in the creation of a hostile environment for the employee, due to his/her different opinion.

Unfortunately, despite numerous reactions by the Public Defender, discriminatory vacancies on various grounds, including sex and age, were still common this year. Cases of the violation of the labour rights of media representatives for the purpose of interfering with editorial policy were also identified.

### 7.1. Harassment in the workplace

Harassment in the workplace was the most common form of discrimination in labour relations in this reporting year. As in previous years, the most common ground for the creation of a hostile and degrading environment was employee's different opinion. However, in one of the cases, alleged discrimination was identified on the ground of health condition, which was particularly problematic given that the measures

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<sup>90</sup> EU LGBT survey European Union lesbian, gay, bisexual and transgender survey Results at a glance, FRA, 18 (2013), available at: <https://rb.gy/9lq1gj>; Protecting LGBTQI rights in Europe, Submission to the second review of the Council of Europe Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/Rec(2010)5), 106 (2018), available at: <https://rb.gy/shwv9z>

<sup>91</sup> LGBTIQ Homeless Survey Now Open. available at: <https://rb.gy/fl24wt>

<sup>92</sup> Recommendation of the Public Defender of Georgia to L.S., December 21, 2020, available at: <https://rb.gy/ckvq1j>

<sup>93</sup> Recommendation of the Public Defender of Georgia to S.K, available at: <https://rb.gy/3rrbx1>

<sup>94</sup> Recommendation of the Public Defender of Georgia of January 27, 2020 to LEPL Batumi Shota Rustaveli State University, Akaki Tsereteli Batumi Public Library (non-commercial legal entity), Merab Berdzenishvili International Cultural Center Muse, available at: <https://rb.gy/wkv3fr>

to be assessed, for the most part, intensified during the spread of the novel coronavirus.<sup>95</sup> Consequently, the threat of strengthening of inequalities in the society due to the global pandemic has become apparent, including in terms of the creation of difficulties for the employees with chronic illnesses to maintain their jobs.

The cases of harassment were detected in both public institutions<sup>96</sup> and private companies.<sup>97</sup> Discriminatory actions that constituted harassment in the workplace were the following: the use of unethical and abusive forms of communication,<sup>98</sup> non-issuance of cash rewards,<sup>99</sup> creation of artificial obstacles to the exercise of the employee's rights and duties, etc. Most often, employers tried to cover up discriminatory motives for the dismissal of their employees by using formal-legal grounds such as reorganization, disciplinary proceedings and lack of employment obligations. However, examination of the circumstances made it clear that there still existed positions with the same functions after reorganization, or that only the position occupied by the applicant was canceled during the systemic reorganization.

With regard to disciplinary proceedings, it was established that the proceedings relating to the violation of rules for arriving at/leaving office were initiated against a person with a chronic illness during the coronavirus pandemic.<sup>100</sup> As for the cases where institutions referred to the absence of an employment obligation and justified their refusal of employment, including by referring to the legitimate aim of ensuring the proper workload of the existing staff, it was found out in one of the cases that eventually two persons were employed for the position in question,<sup>101</sup> while in another case, the authorized person directly indicated in the electronic correspondence that he did not consider it expedient to employ the applicant due to the public statements made by him/her.<sup>102</sup>

In certain cases, the establishment of harassment is hampered by the difficulties in obtaining evidence by the victim. Discriminatory motives are often revealed during verbal communication. Offensive and

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<sup>95</sup> Amicus curiae brief to the Rustavi City Court on alleged discrimination on the grounds of health condition, available at: <https://rb.gy/qzcowg>

<sup>96</sup> Ivane Javakhishvili Tbilisi State University, National Parliamentary Library of Georgia, Rustavi City Hall.

<sup>97</sup> JSC Telasi. The Public Defender's Office is processing cases relating to alleged harassment against other employers as well.

<sup>98</sup> Recommendation of the Public Defender of Georgia of 31 August 2020 to JSC Telasi, available at: <https://rb.gy/isac9o>

<sup>99</sup> Recommendation of the Public Defender of Georgia to the National Parliamentary Library of Georgia, September 10, 2020, available at: <https://rb.gy/njcxo3>

Recommendation of the Public Defender of Georgia of February 27, 2020 to Ivane Javakhishvili Tbilisi State University, available at: <https://rb.gy/nqx69z>;

<sup>100</sup> Amicus curiae brief to the Rustavi City Court on alleged discrimination on the grounds of health condition, available at: <https://rb.gy/qzcowg>

<sup>101</sup> Recommendation of the Public Defender of Georgia of February 27, 2020 to Ivane Javakhishvili Tbilisi State University, available at: <https://rb.gy/ofdvaa>

<sup>102</sup> Recommendation of the Public Defender of Georgia of February 27, 2020 to Ivane Javakhishvili Tbilisi State University, available at: <https://rb.gy/ofdvaa>

unethical forms of communication are often used during face-to-face conversations. In addition, for fear of encountering problems at work, potential witnesses refrain from confirming or denying the circumstances indicated by the parties. Accordingly, taking into account the practice of the Public Defender's Office, it can be said that the problem is much bigger than the rate of establishment of such cases.

## 7.2. Discrimination against representatives of the media in labour relations

Cases of discrimination against journalists were also detected in the reporting period. Employers interfered with the independent editorial policy of both publicly funded and privately owned broadcasters.

The appointment of a new director of the Public Broadcaster Adjara TV and Radio in November 2019 was followed by mass violations<sup>103</sup> of the rights of journalists and discrimination<sup>104</sup> on the grounds of different opinion or membership of a trade union. The violations included dismissals, restrictions on access to television activities, arbitrary changes in the type of work or functions, and restrictions on freedom of expression. The listed cases further strengthened suspicions about attempts aimed at changing the free and impartial editorial policy of Adjara TV, which emerged after the impeachment of the former director of the TV station, Natia Kapanadze.

The closure of Imedi TV's Business programme (broadcast by Maestro), which was explained by the channel's management by the need for reorganization, was also a problem. According to the journalists, the real reason for the closure of the programme was the censorship imposed by the management of Imedi TV, which was aimed at disseminating information in favor of the Government.<sup>105</sup> It should be noted that the journalists also appealed to the Charter of Ethics for Journalists, which established that the director of Imedi TV had interfered with the editorial independence of journalists.<sup>106</sup> The Public Defender reiterates that free media is an essential precondition for the facilitation of the protection of human rights and good governance in the country and that it is inadmissible to interfere with journalists' editorial independence and/or force a journalist to act and/or express an opinion against his or her conscience.

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<sup>103</sup> On April 24, 2020, the Public Defender found a violation of the labour rights of Shorena Glonti, former Head of the News Service, Maia Merkviladze, Deputy Head of the News Service, and Teona Bakuridze, presenter-reporter of the same service, available at: <https://bit.ly/3788m18>

<sup>104</sup> The examination of the case made it clear that the dismissal of Malkhaz Rekhviashvili, the restrictions on Teona Turmanidze's access to television activities and the changes in the substantive terms of the employment contract of Sophio Zhgenti resulted in the violation of their labour rights. In addition, it is noteworthy that during the interference with the labour rights of Teona Turmanidze and Teona Kharabadze, there was also discrimination on the grounds of different opinions and trade union membership. The recommendation of the Public Defender of August 24, 2020 to the Director of the Public Broadcaster Adjara TV and Radio, Giorgi Kokhreidze, available at: <https://bit.ly/3ff9X1d>

<sup>105</sup> Recommendation of the Public Defender of Georgia of March 19, 2021 to the Director of Imedi TV, available at: <https://bit.ly/2OqJn19>

<sup>106</sup> See details at: <https://bit.ly/2HHHhJz>

### 7.3. Discriminatory vacancies

Despite numerous responses by the Public Defender of Georgia to discriminatory vacancies, posting such job adverts on certain websites is still a topical issue, which contributes to the strengthening of negative stereotypes on the grounds of gender, age, etc. It is problematic that employers use discriminatory criteria and that similar vacancies are spread by various websites.

It is important to note that the legislative amendments made on 19 February 2019,<sup>107</sup> as well as the Labour Code and the Law on the Elimination of All Forms of Discrimination explicitly state that the principle of equal treatment applies to labour and pre-contractual relations, including during posting a vacancy. In accordance with the general principle of non-discrimination in labour relations, employers had been obliged to create an equal environment for applicants in pre-contractual relations even before the enactment of these legislative changes, while the emergence of a special record should have made this obligation even more visible and the changes should have raised the awareness of employers and to prevent discriminatory treatment in pre-contractual relations, although the Public Defender's practice shows that the above remains a significant problem.

The high number of discriminatory adverts proves that the problem of adherence to the principle of equality in the field of employment is one of the most important challenges. The study of discriminatory adverts posted on various employment websites made it clear that employers, for the most part, hire applicants of a specific gender and age, and that one of the employment criterion is often "good-looking". According to the practice of the Public Defender, all the employers failed to provide a legitimate argument to justify the need for such a criterion.

In a country where employment is an acute problem, vicious discriminatory practices in the labour market often deprive job seekers of the opportunity to respond to the vacancies posted by the employers. The gradual equalization of the social roles of women and men reduces the gap between the jobs performed by men and women, which facilitates women's emancipation in labour relations, although employers still have stereotypical views about gender. Sharp approaches to what kind of work should be performed by a "woman", a "man" or someone who is "good-looking" are quite common in the Georgian reality. The discriminatory texts of job vacancies and barriers encountered by certain groups are largely conditioned by the employers' perceptions of gender roles.

In addition, job websites, where anyone can search for a desired vacancy, play an important role in the labour market. The fact that employment websites do not filter vacancies containing discriminatory words, on the one hand, encourages employers to discriminate against applicants at the employment stage, and on the other hand, promotes the circulation of discriminatory practices. It is also problematic that in such

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<sup>107</sup> Law of Georgia of 19 February 2019 on the Amendments to the Law of Georgia on the Elimination of All Forms of Discrimination, available at: <https://rb.gy/itrcbc>; Organic Law of Georgia of February 19, 2019 on the Amendments to the Organic Law of Georgia Labour Code, available at: <https://rb.gy/jxi5fo>

cases, private companies, with few exceptions, do not show readiness to cooperate with the Public Defender.

Given the scale and importance of the issue, the Public Defender decided to develop another general proposal<sup>108</sup> and again call on companies, including employment websites, to adhere to the principle of equality in labour relations. In particular, the Public Defender called on specific companies to refrain from setting discriminatory criteria when posting vacancies, while public employment websites were recommended to develop strict regulations to completely eliminate discriminatory vacancies.

It should be noted that in 2017, the Public Defender addressed the Ministry of Labour, Health and Social Affairs of Georgia with a general proposal<sup>109</sup> on the same issue. In particular, the Public Defender called on the Ministry to raise awareness among its employees by developing a manual that would include recommendations on how to write a job advert, what terms are discriminatory and how to adjust a job advert to the specifics of the job so that to avoid the use of discriminatory restrictions. Before the development of this general proposal, the Public Defender's Office had issued a general proposal<sup>110</sup> to the employment website (www.jobs.ge) and called on it to develop regulations to prevent discriminatory job adverts on its website; the Public Defender's Office had also made a recommendation to the Elite Service Ltd.<sup>111</sup>

## 8. Equality in the realization of social rights

State social and health care programmes were not available for persons with permanent residence permits in 2020 either. Shortcomings similar to the previous reporting period were found in the programmes developed by the municipalities, which, in some cases, set discriminatory criteria on the grounds of gender, disability, marriage status, etc. Some of the programmes are so detailed that they unjustifiably exclude a substantially equal group, while some regulations are worded in a way that encourages discrimination against people with disabilities, drug addicts or other groups, by using a specific term or approach. It should be noted that in this reporting period, the Public Defender assessed the unpaid internship system in public service of Georgia as discriminatory on the grounds of social status. Similar approach puts students and other young people, who are forced to agree to a job that does not contribute to their professional development due to the lack of financial resources and unpaid professional internship, in a disadvantageous situation.

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<sup>108</sup> General Proposal of the Public Defender of Georgia of November 19, 2020 to private companies, available at: <https://rb.gy/3uacng>

<sup>109</sup> General proposal of the Public Defender of May 23, 2017: <https://rb.gy/ibyjp9>

<sup>110</sup> General proposal of the Public Defender of April 7, 2015, available at: <https://rb.gy/jtyc4e>

<sup>111</sup> Recommendation of the Public Defender of March 2, 2016: <https://rb.gy/hburby>



## 8.1. Enjoyment of state social and health care programmes by persons with permanent residence permits in Georgia

The issue of enjoyment of state social and health care programmes by persons with permanent residence permits in Georgia remains a challenge. The Public Defender referred to this issue in previous reports as well, however, unfortunately, no progressive change has been carried out in this direction.

State-funded social and health care programmes that provide benefits to programme beneficiaries are, for the most part, available only to Georgian citizens and they unjustifiably exclude persons with permanent residence permits in Georgia, who, for the purposes of the enjoyment of social and health care programmes, make the same contribution to the Georgian state budget as Georgian citizens.

## 8.2. Compliance of municipal social and health care programmes with the principle of equality

The development of social and health care programmes by self-governing bodies is a progressive measure that, in some cases, provides significant socio-economic assistance to the beneficiaries. However, unfortunately, substantially equal groups with similar needs are often excluded from the programme on the grounds of gender, type of disability, age, citizenship, marital status, etc. In addition, some regulations and terms are formulated in a way that encourages discrimination against certain groups. It should be noted that some of the shortcomings are probably conditioned by the incorrect regulation of a specific issue by the legal acts adopted by the central Government. However, it is important for the self-governing bodies to do their best to conduct their activities in compliance with the principle of equality.

The evaluation of municipal programmes made it clear that some legal acts relating social and health care programmes use terminology inciting discrimination. For example, the Social Assistance Programme of the Tsageri<sup>112</sup> municipality refers to people with sight problems as *blind invalids*; Social programmes of the Tetrtskaro<sup>113</sup> and Akhalkalaki<sup>114</sup> municipalities refer to adolescents with autism spectrum disorders as *sick persons* in a discriminatory manner.

Some social programmes contain discriminatory criteria on the grounds of gender, which is based on and incites stereotypes about women and men. For example, a socially vulnerable person/family registered in the Ambrolauri<sup>115</sup> municipality, is supplied with firewood if no able-bodied man lives in the family and if the family does not have the financial means to purchase firewood for the winter season.

Social and health care programmes tailored to the needs of persons with disabilities are particularly problematic, as they are flawed in many respects - the programmes do not reflect the real needs of persons

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<sup>112</sup> Approval of the rules for issuing social assistance from the 2020 budget of the Tsageri municipality, Article 8.

<sup>113</sup> Tetrtskaro Municipality Assembly Decree No. 292 of December 27, 2019 on the approval of the municipal programme of health care and social security for the population of the Tetrtskaro municipality for 2020, Article 26.

<sup>114</sup> Decree of Akhalkalaki Municipality Assembly No. 29 on the approval of the rule of issuing social assistance from the 2020 budget of the Akhalkalaki municipality, December 17, 2019, Article 12, available at: <https://rb.gy/cofquz>

<sup>115</sup> Decree No. 32 of the Ambrolauri Municipality Assembly, December 25, 2019, on the approval of social protection programme for citizens registered and permanently residing in the Ambrolauri municipality and the rules for issuing benefits, Article 14, available at: <https://rb.gy/vmqxb>

with disabilities and are not based on the social model of the protection of the rights of these people. For the most part, they are tailored only to persons with severe disabilities or persons with specific types of disabilities, while substantially equal people with the same economic needs are left beyond the benefits. For example, the goal of the social assistance programme intended for persons with sight problems registered in the Terjola<sup>116</sup> municipality is to help the first category persons with sight problems pay utility bills. The municipality cannot offer similar assistance to other persons with disabilities. In the Lagodekhi<sup>117</sup> municipality, only one-time funding is provided for students with severe disabilities, while people with other disabilities are left beyond attention. In addition, some social and health care programmes tailored to people with disabilities are discriminatory on the ground of age. Setting an age limit on access to such services – termination of funding for rehabilitation and treatment of children of certain age - may hamper the continuity of treatment and jeopardize the outcome of the programme. In addition, for example, the health care programme available in Batumi<sup>118</sup> provides for the rehabilitation of children with hearing problems, who are aged 2-10 years, as well as children with developmental delay under 7 years of age, who are registered in Batumi. The Khoni municipality<sup>119</sup> offers a programme co-financing one-time seasonal spa and rehabilitation services for people with cerebral palsy under the age of 15 (accommodation included).

Persons with permanent residence permit are unjustifiably excluded from various municipal programmes, which does not allow this group to be full members of the Georgian society or to enjoy all the services that should be available to them, like Georgian citizens. It should be noted that adequate social and health care programmes significantly determine the person's well-being and enhance the degree of his/her full participation in the society. Therefore, both major and basic health care/social programmes, as well as state programmes designed to control certain complex categories of diseases, should be accessible to all groups of individuals who contribute to the country's budget growth and are legally in a similar position as Georgian citizens. For example, in the Akhalkalaki<sup>120</sup> municipality, applicants have to submit copies of their ID cards in order to receive various kinds of social assistance, which leaves persons with residence permits beyond the programme. Submission of an ID card is also required for getting co-funding for medical services in the Akhmeta<sup>121</sup> municipality.

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<sup>116</sup> On the Amendments to Terjola Municipality Assembly Decree No. 27 December 30, 2019 on the approval of the 2020 budget of the Terjola municipality.

<sup>117</sup> Decree No. 26 of the Lagodekhi Municipality Assembly of 27 December 2019 on the approval of the 2020 health care and social protection programme for the population of the Lagodekhi municipality and its budget, available at: <https://rb.gy/fredeu>

<sup>118</sup> Decree of the Batumi City Council No. 35 on the approval of the 2020 budget of the Batumi municipality, December 25, 2019, available at: <https://rb.gy/qkaosq>

<sup>119</sup> Decree No. 88 of the Khoni Municipality Assembly of 7 March 2019 on the approval of Khoni health care and social protection programme.

<sup>120</sup> Decree No. 29 of the Akhalkalaki Municipality Assembly of 17 December 2019 on the approval of the rules for issuing social assistance from the 2020 budget of the Akhalkalaki municipality, available at: <https://rb.gy/cofquz>

<sup>121</sup> Adigeni Municipality Assembly Decree No. 19 of 7 May 2019; Social programme on medical services for the population registered in the territory of the Adigeni municipality.

Age-related discriminatory records, which, for example, do not take into account the economic vulnerability of older people and explicitly exclude them from the benefits of specific health care programmes, are also problematic, which in turn has a direct impact on the lives and health of these persons. There is also a practice of imposing various formal criteria, which often leaves unmarried families, who have the same needs as the married couples, beyond benefits. The evaluation made it clear that the detailed nature of programmes makes them inflexible and excludes people with real needs from the circle of beneficiaries. For example, under a disease screening subprogramme<sup>122</sup> being implemented in the Tbilisi<sup>123</sup> municipality, beneficiaries of the prostate cancer screening component shall be Georgian citizens, the place of registration of which is the city of Tbilisi in the database of LEPL Public Service Development Agency. The subprogramme provides for a PSA test for men aged 50 to 70 years.<sup>124</sup> The Gardabani<sup>125</sup> Municipality Student Assistance Programme determines the conditions and procedures for providing financial assistance to orphaned students under the age of 22 and students from large or socially vulnerable families, who are registered in Gardabani, as well as the list of documents to be submitted by them to the City Hall and the amounts to be provided in the form of assistance.

Apart from highlighting the problematic issues, it is important to praise the purposes of the social programmes developed by some municipalities, for example, the Tetrtskaro municipality<sup>126</sup> programme of assistance to victims of violence and those who have recently left penitentiary institutions and lack family support. In this case, it is worth noting that the amount of assistance cannot substantially improve the situation of these individuals, although it is important to praise the fact that the local governing body sees the needs of these groups. The Sagarejo<sup>127</sup> Municipality Social Assistance Programme, which provides assistance to those who have left the state care system, needs to be underlined in the same context. Beneficiaries of the programme are young people aged 18 to 24 years, who are registered in the municipality and were excluded from the state care system, namely from foster care or family type small group home programmes due to reaching full age. It is also important to mention a programme operating

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<sup>122</sup> The subprogramme also includes: breast cancer screening for women aged 40-70 years; Cervical cancer screening for women aged 25-60 years; Colorectal cancer screening for both sexes aged 50-70; Thyroid cancer management pilot for persons of 25-70 years of age, according to the criteria approved by the implementer, for women facing the relevant risks. Decree No. 52-10 of the Tbilisi City Assembly on the approval of the rules for implementing health care subprogrammes provided for in the budget of the Tbilisi municipality, January 24, 2020.

<sup>123</sup> Decree No. 52-10 of the Tbilisi City Assembly on the approval of the rules for implementing health care subprogrammes provided for in the budget of the Tbilisi municipality, January 24, 2020.

<sup>124</sup> Prostate-specific antigen (PSA) test; in case of detection of PSA in the so-called “gray area”, measurement of free PSA in blood serum and their ratio.

<sup>125</sup> Decree No. 20 of the Gardabani Municipality Assembly, December 25, 2019, on the approval of subprogrammes under the social programme envisaged in the 2020 budget of the Gardabani municipality; (Subprogramme code 06 02 15), available at: <https://rb.gy/d5b0su>

<sup>126</sup> Decree No. 292 of the Tetrtskaro Municipality Assembly, December 27, 2019, on the approval of the municipal programme of health care and social security for the population of the Tetrtskaro municipality for 2020; Article 20; Within the framework of the programme, assistance will be provided to persons, registered in the Tetrtskaro municipality, who have the status of a victim of violence, as well as persons who are left without family support after leaving the penitentiary institution; 2. Assistance is issued once a year, not more than 200 (two hundred) GEL.

<sup>127</sup> Decree No. 19 of the Sagarejo Municipality Assembly, December 27, 2019, on the approval of the 2020 social assistance programme for the population of the Sagarejo municipality.

in the Tkibuli municipality,<sup>128</sup> the aim of which is to promote gender equality, in particular, it aims to: ensure non-discrimination in all areas of public life, create proper conditions for the realization of equal rights, freedoms and opportunities for women and men. The Public Defender considers it important to ensure consideration of the real needs of the local population in the social and health care programmes and accessibility of the programmes to various vulnerable groups.

### 8.3. Discriminatory practice of unpaid internships

People, who are in a socially disadvantageous position, face particular challenges in terms of the realization of their social and economic rights. Consequently, in addition to the state-provided programmes, it is also vital for them to get education and be employed. Paradoxically, in the process of taking necessary steps for career advancement, people face substantial obstacles precisely because of their social status. A clear example of this is the internship system of Georgia.<sup>129</sup>

Internship and professional expertise are one of the most common job requirements today. However, the Public Defender's practice shows that the chances of doing a paid internship in public institutions and gaining work expertise are quite limited. A large proportion of young people, due to the financial challenges they face, cannot afford to do an unpaid internship, which deprives them of the opportunity to gain professional expertise and thus puts them in an unequal position compared to other young people who have no similar financial problems.

Thus, affording an unpaid internship is directly related to financial opportunities, which contributes to the deepening of the already existing social inequality in the future. Therefore, multifaceted improvement in the internship system of Georgia is an unconditional necessity, especially in the programmes offered by the State. This, in turn, requires an in-depth understanding of the challenges in the context of the principle of equality.

## 9. Incitement to discrimination

In terms of effectively combating discrimination, in addition to establishing discrimination in individual cases, no less important is the detection and prevention of cases that contribute to the incitement to discrimination. Moreover, incitement to discrimination may be more detrimental to society than the individual cases of discrimination, since, in most cases, the context of incitement to discrimination goes beyond the specific case and is closely linked to vicious, widespread stereotypes.

Unfortunately, neither this reporting period was an exception in terms of expressions inciting to discrimination. Statements made by politicians or other public figures, which incite discrimination, are an important challenge in terms of the protection of the right to equality. In this respect, some TV stories

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<sup>128</sup> Decree No.18 of the Tkibuli Municipality Assembly on the approval of the 2020 programme budget of the Tkibuli municipality.

<sup>129</sup> General proposal of the Public Defender of Georgia to the Parliament of Georgia, July 20, 2020, available at: <https://rb.gy/jflukw>

were also problematic this year. It is easy to see an environment inciting discrimination against women, ethnic and religious minorities, members of the LGBT+ community and persons with disabilities.

### 9.1. Statements, made by public figures, inciting discrimination

The abundance of sexist, xenophobic and other discriminatory comments made public in the space shows that many politicians and other public figures do not realize the responsibility they have in the process of protecting equality and combating discrimination.

In the context of gender stereotypes, the statement posted by Shalva Natelashvili, Chairman of the Georgian Labour Party, on his Facebook page, in response to the changes made to the criminal law on rape, was particularly harsh.<sup>130</sup> In particular, he noted that victims, in many cases, themselves provoked an offence.<sup>131</sup> The argument used by Shalva Natelashvili to criticize the legislative changes incited discrimination against women in general and had a particularly negative impact on women victims of violence and/or alleged violence.

It is unacceptable to generalize practice and portray a problem as if women victims of rape usually act for personal purposes and, as if in most cases, no crime actually takes place. Naturally, the chairperson of a political party has the right to publicly express his or her views and assessments, including on legislative changes. However, it should be noted that Shalva Natelashvili, as a political and public figure, has a special responsibility to formulate his opinion in a way that does not incite discrimination on any grounds. Given that a part of the society still unreasonably questions cases of violence against women, the statements made by MPs Alexandre Elisashvili<sup>132</sup> and Lado Kakhadze<sup>133</sup> were also problematic, according to which, a successful man would not abuse a woman. A sexist phrase was also used by one of the leaders of European Georgia, Davit Bakradze, towards journalists.<sup>134</sup> Before recording an interview, when several journalists were asking questions simultaneously, Bakradze said he was *happy to be surrounded by excited young girls*, but they needed to calm down.

As in the previous reporting period, the sexist attitude towards women involved in public and political life was particularly evident, which was often used as a tool of political struggle against them. For example, the Chairman of the Gori City Assembly, Davit Razmadze, called the leader of European Georgia, Elene Khoshtaria, *depraved* and noted that she *did no look like a woman! A woman should be shy!*<sup>135</sup> after Elene

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<sup>130</sup> General proposal of the Public Defender of Georgia to the Chairman of the Georgian Labour Party, Shalva Natelashvili, July 20, 2020, available at: <https://rb.gy/x1evqv>

<sup>131</sup> On May 13, 2020, Shalva Natelashvili responded via Facebook to an article posted on the website of the online edition of Radio Liberty: “*This is complete idiocy. In many cases launched under an article pertaining to rape, even during the period when I was an investigator, it was finally established that the so-called victim herself was a provocateur, who aimed to extort any benefit or achieve marriage. Adopting the law with this wording will lead to the fact that any man can be arrested if the so-called "victim" wants the above.*” Available at: <https://rb.gy/lgn4tz>

<sup>132</sup> Available at: <https://bit.ly/39Tg2qh>

<sup>133</sup> Available at: <https://bit.ly/3dHytzg>

<sup>134</sup> Available at: <https://bit.ly/3rcMPh7>

<sup>135</sup> Available at: <https://rb.gy/ocqc2h> ; Video is available at: <https://bit.ly/3mT3W4T>

Khoshtaria and Irma Nadirashvili played a Soviet Union anthem in the Parliament hall, when the Speaker of the Parliament, Archil Talakvadze, was presenting his annual report and speaking about the Russian occupation. The leader of the Victorious Georgia Party, Irakli Okruashvili, posted a sexist statement on his Facebook page, in which he said that *it was expedient to enter the Parliament for the sake of the Dream's fancy women*.<sup>136</sup> In another case, a sexist comment was made by Ozurgeti Mayor Konstantine Sharashenidze towards a representative of the National Democratic Party, Mariam Mekhrishvili. In particular, on October 31, 2020, on the election day, he addressed Mariam Mekhrishvili with the following words: *You should find a husband and get smart*.<sup>137</sup> Zurab Kajrishvili, a Georgian Dream member of the Gori City Assembly, during a discussion in the City Assembly, called Vasilisa Jabakhidze, a representative of the United National Movement, *a little liar girl*.<sup>138</sup> Thus, often women were not opposed within the framework of professional criticism, but were humiliated and insulted on the basis of widespread harmful stereotypes that incite hatred towards them.

The Public Defender's attention was also attracted by xenophobic statements. Zaza Abashidze, Director of the National Center of Manuscripts, responded to the lockdown imposed on Marneuli-Bolnisi, districts populated by Azerbaijani-speaking people, during the first wave of the novel coronavirus, by posting a statement on Facebook, saying that *"They should be locked up in the village and die out к ебённой матери!"*<sup>139</sup> The criticism against the population of Marneuli and Bolnisi municipalities by a large part of the society, emphasizing their ethnic origin or other personal characteristics, was especially alarming. Discussing a problem in the context of the ethnicity of citizens living in the above areas strengthens the existing stigmas towards ethnic minorities, promotes the disintegration process and social exclusion of these persons. It is important for the public to refrain from having an approach inciting intolerance and discrimination against ethnic minorities.<sup>140</sup> It was also problematic that MP Nino Tsilosani referred to the Christian and Muslim communities as *Georgians and Muslims* during the events related to the construction of a mosque in the village of Buknari.<sup>141</sup> At the same time, the delayed response by officials to the anti-Semitic statements made by the clergy was criticized by a part of the society.<sup>142</sup>

In the process of combating the novel coronavirus, stereotypical attitudes towards people with psychosocial needs were also problematic. Maka Sologashvili, Chairwoman of the Supervisory Board of the Vakhtang Bochorishvili Clinic, explained the infection of the medical staff as follows: *"Unfortunately, we had to deal with a few inadequate patients who had mental health problems, they had personal contact with the staff."*<sup>143</sup> By this statement, she referred to people with psychosocial needs in a negative context.

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<sup>136</sup> Available at: <https://rb.gy/fkmbrrq>

<sup>137</sup> The dispute between the parties was preceded by the live transmission of the procedures ongoing at the polling station by the Mayor with his telephone, when the Mayor addressed Mariam Mekhrishvili with the following words - "Find a husband and get smart."

<sup>138</sup> Video is available at: <https://rb.gy/acc0uj>

<sup>139</sup> The comment screen is available at: <https://bit.ly/3ghm0Dj>

<sup>140</sup> Statement of the Public Defender of March 26, 2020, available at: <https://bit.ly/36PAaIG>

<sup>141</sup> Available at: <https://rb.gy/1tkao0>

<sup>142</sup> Public Defender's statement is available at: [shorturl.at/fuxNS](http://shorturl.at/fuxNS)

<sup>143</sup> The comment is available at: <https://rb.gy/hnqlqd>

Such expressions deepen stigma towards persons with psychosocial needs and incite unethical, often cruel attitudes towards people with mental health problems. People with psychosocial needs have been under great pressure and excluded from society for years, which is caused by the approaches that do not respect human dignity or rights, as well as deep-rooted stigmas and stereotypes.

The statement made by Giorgi Andriadze, a member of the Board of Directors of the Patriarchate Foundation, is also worth noting. In particular, he stated that people infected with hepatitis C and HIV could pose a threat to others by sharing a common spoon during communion.<sup>144</sup> Statements with similar content reinforce misconceptions and stereotypes about people infected with hepatitis C and HIV. The author of the statement may not have intended to stigmatize people infected with hepatitis C and HIV, however, the assessment is clearly based on public misconceptions about people infected with hepatitis C and HIV. With this in mind, it is critical for public figures not to strengthen stereotypes or aggressive attitudes towards people infected with hepatitis C and HIV. At the same time, MP Dimitri Samkharadze used a homophobic term towards the General Director of the Main Channel, Nika Gvaramia.<sup>145</sup>

In order to effectively combat discrimination, it is vital for public officials and persons that have some influence on certain groups of society to acknowledge and critically realize the negative consequences of statements inciting discrimination against individual groups or a society as a whole.

## 9.2. Incitement to discrimination in the media

Another important challenge in terms of inciting discrimination is the use of sexist, homophobic and other discriminatory expressions in the media. One of the examples of the above was the TV story aired by the Main Channel during the first wave of the novel coronavirus, which referred to the advantages of a certain group of the society, in relation to the novel coronavirus, according to their ethnic origin.<sup>146</sup>

The Public Defender was also addressed by the Femina Alliance and the Education and Labour Association, which disputed some TV stories and articles. The applicants found the following to be problematic: incidents inciting discrimination on the grounds of gender during the confrontation between Nikoloz Basilashvili and his wife;<sup>147</sup> The story aired by the Profile programme, in which the birth of a girl was portrayed as less desirable;<sup>148</sup> Ia Parulava's programme Hidden Envelope, in which the problems facing the LGBT+ community were portrayed as an entertaining show;<sup>149</sup> In addition, the applicants referred to an

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<sup>144</sup> On April 16, 2020, Giorgi Andriadze spoke about the rule of communion by sharing one spoon on TV Pirveli and said: *Do you know that people with various infectious diseases, not only with coronavirus, have been taking part in communion for centuries? Have you heard of hepatitis C? Do you know that lots of people infected with hepatitis C take part in communion? Do you know that persons infected with HIV take part in communion? Why aren't these diseases transmitted? ..... Why did not people get infected? And most importantly, this [coronavirus] is a common flu, and a large percentage of people infected with it can be cured.* The video is available at: <https://bit.ly/2JoH11v>

<sup>145</sup> Available at: <https://rb.gy/qndiqv>

<sup>146</sup> Available at: <https://rb.gy/3bi2fw>

<sup>147</sup> <https://rb.gy/6fkqcb>

<sup>148</sup> <https://rb.gy/ilriti>

<sup>149</sup> <https://rb.gy/elpzhm>

article published by the Rezonance Daily news agency<sup>150</sup> relating to a girl whose birthday was attended by late Giorgi Shakarashvili, the content of which incited aggression towards the female representative as a provoker of the crime.

The Law of Georgia on Broadcasting bans the transmission of programmes that pose any obvious and direct threat of inciting racial, ethnic, religious or other strife, discrimination or violence against any group. It is also prohibited to broadcast programmes aimed at *insulting or discriminating against a person on the grounds of his/her physical ability, ethnicity, religion, view, sex, sexual orientation or other characteristics or status, or specifically emphasizing any characteristics or status*, unless the above is necessary based on the content of the programme and is intended to expose a feud.<sup>151</sup>

It is noteworthy that the role of the media is immeasurably big in the process of forming a democratic and free society, which is why it is important for the media to pay attention to its role in overcoming stereotypes and stigmas, while journalists, especially when covering sensitive issues, should be more cautious in order to prevent incitement to discrimination against a person or a group of persons.

## 10. Deficiencies in the investigation of alleged hate crimes

As in the previous reporting period, ineffective investigations of alleged hate motivated crimes remains a challenge. This is due, on the one hand, to the negative stereotypes and low level of acceptance of certain vulnerable groups and, on the other hand, to the lack of readiness of law enforcement agencies to assess such cases in the context of alleged violation of equality in order to identify hatred as a motive during the investigation. The Public Defender considers that the identification of alleged hatred during the investigation of a crime is essential not only for the administration of justice in a particular criminal case, but also for the prevention of similar crimes in the future. The cases processed by the Public Defender in this reporting period mostly concerned alleged hate motivated crimes committed on the grounds of religion, ethnicity and homo/transphobia.

The number of applications sent by Jehovah's Witnesses relating to alleged hate crimes is steadily rising. One of such applications concerned a case that occurred on April 10, 2019, although no alleged perpetrator has been identified so far and therefore no criminal proceedings have been launched; the applicants also complained about the protracted investigation. In the given case, the Jehovah's Witnesses, who were going door to door, were verbally and physically abused near one of the houses. After starting to study the case, the Public Defender was informed that as a result of the investigation into the obstruction of worship, the article was changed and the investigation proceeded under parts 1 and 2 of Article 156 of the Criminal Code of Georgia (persecution based on religious intolerance), and that the applicants were recognized as victims. However, no charges have been filed against any particular person so far.

According to one of the applications, Jehovah's Witnesses who arrived in the village of Gandza, Ninotsminda, to talk about the Bible topics with locals, were banned from conducting religious services by

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<sup>150</sup> <https://rb.gy/kynivd>

<sup>151</sup> Article 56 of the Law on Georgia on Broadcasting, available at: <https://bit.ly/2KIOFqN>



a local priest, who verbally and physically abused them. When one of the persons tried to call the patrol police, the priest grabbed his phone, which he later returned through another person. According to the applicants, the above was not the only case of obstruction of religious service by that clergyman. According to the Prosecutor's Office, a criminal investigation was launched into alleged persecution under part 1 of Article 156 of the Criminal Code of Georgia (persecution on the ground of religious intolerance). Witnesses were questioned and the motive is being investigated, however, no person has been identified as a victim or a defendant so far.

In some cases, according to an investigative body, investigative activities are carried out to identify the motive for intolerance during the investigation of alleged hate crimes against members of the LGBT+ community, however, it remains unclear what specific investigative activities are carried out to identify such a motive. One of the cases concerns the killing of a young man and stabbing of a person in the Temka district on November 14, 2020, in which the defendant's lawyer named the *sexual attraction of the deceased person towards the defendant and the offer of a non-traditional sexual contact as a motive for the crime.*<sup>152</sup>

Some of the alleged hate crimes against LGBT+ people include physical and verbal abuse, beating and death threats, as well as assaults on the office of the LGBT+ organization. The applicants also allege that, in a number of cases, certain persons continued to verbally abuse them even after the police arrived, to which law enforcement officers did not respond. In addition, despite the expiration of a reasonable period of time, persons involved in specific incidents have not yet been identified as victims in a number of cases, which restricts their access to criminal case materials. The cases processed by the Public Defender also concern violence against LGBT+ minors, who were verbally abused and threatened with death, as well as physical and verbal abuse of family members of LGBT+ persons.

The Public Defender of Georgia learned from the media about an attack on a man and his juvenile son for wearing shorts in the Pankisi Gorge.<sup>153</sup> According to the reports, the man and his son were attacked by three young men near a cafe in the village of Kvareltskali. Both the man and his 16-year-old son were injured in the attack. The Public Defender was informed that within the framework of the investigation, persons possessing important information for the case had been interrogated and the relevant medical examination had been appointed. Based on the evidence obtained, three persons were charged with intolerance-motivated violence committed on discriminatory grounds. The media also reported that on October 3, 2020, on 116 Agmashenebeli Avenue, Tbilisi, a foreign citizen was stabbed at the Turkish restaurant Ankara Style. However, as the Public Defender was informed by the Ministry of Internal Affairs, the investigation has not identified ethnic or hate motive in the case. The Public Defender continues to closely monitor the investigation.

The Public Defender welcomes that alleged hate crimes, especially crimes committed against Jehovah's Witnesses, in contrast to the practice of previous years, are being investigated under an article of the Criminal Code, which implies hate motive. However, the protracted process prevents the legal

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<sup>152</sup> Information is available at: <https://rb.gy/tokzbi>

<sup>153</sup> Information is available at: <https://rb.gy/53nmmw>

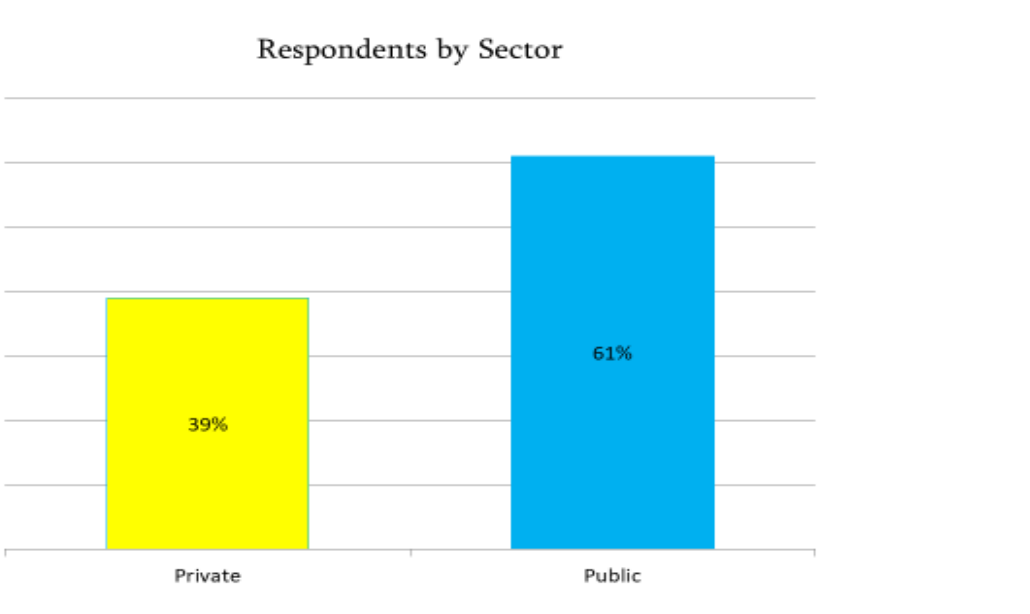
effectiveness of the above. The current practice of untimely investigation of cases creates a sense of injustice and insecurity among alleged victims, which significantly reduces the trust in the law enforcement agencies. In most cases, information received indicates that investigative activities are being conducted to identify alleged hate motives, however, the rates of granting victim's status to certain individuals or identifying perpetrators are drastically low.

### 11. Public Defender's activities in the direction of protection of equality

Since 2014, on the basis of the Law on the Elimination of All Forms of Discrimination, the Public Defender of Georgia has been granted a mandate to combat discrimination, within the framework of which, the Public Defender's Office examines alleged cases of violation of the right to equality and incitement to discrimination and disseminates information on the principle of equality among various groups of the society through educational activities. In case of detecting discrimination or incitement to discrimination, the Public Defender addresses the relevant public agency, natural or legal person with a recommendation or a general proposal.

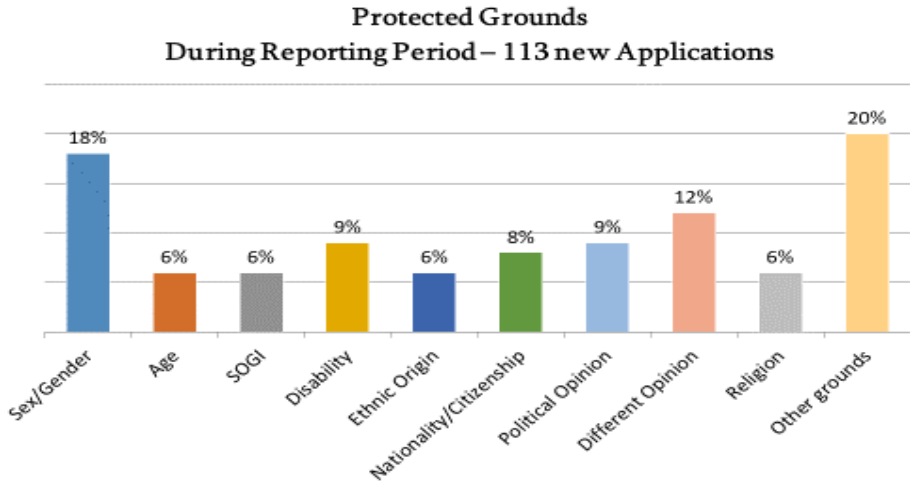
#### 11.1 Examination of cases

In the previous reporting period, the Public Defender reviewed 155 new cases of alleged discrimination, while in 2020, the Public Defender examined a total of 113 new cases on the basis of applications or on her own initiative. In 66% of cases, applicants referred to discrimination by public agencies and in 34% - to unequal treatment by individuals and legal entities under private law. In 2019, these data were more or less similar, with 61% of complaints directed at the public sector and 39% - at the private sector.



As for the grounds, the applicants, in most cases, namely in 18% of the cases, indicated discrimination on the grounds of **sex/gender**; last year, this figure was 16%. In 2019, 14% and 7% of the applications concerned unequal treatment on the grounds of **different opinion** and **political view**, while this year these figures are 12% and 9%, respectively. The number of complaints relating to discrimination on the grounds of **religion** decreased from 14% in the previous reporting period to 6% this year. In contrast, cases of alleged discrimination on the grounds of **ethnic origin** increased from 4% to 6%.

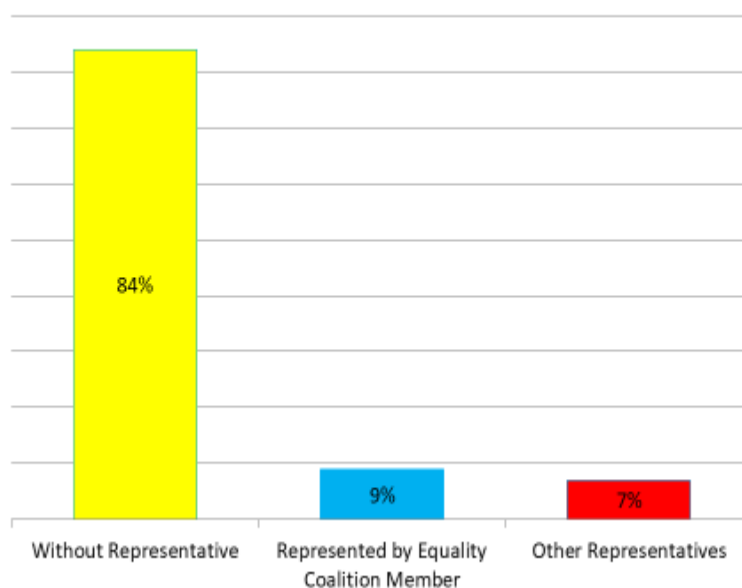
In addition, applications concerning unequal treatment on the grounds of **disability** increased significantly from 3% to 9%. Reports of alleged discrimination on the grounds of **sexual orientation** and **gender identity** dropped from 14% to 6% this year. Discrimination on the grounds of **age** and **nationality/citizenship** was reported by 2% and 7% of applicants in the previous reporting period, while this year the figures increased to 7% and 8%, respectively. The largest part of the applications processed in 2020, namely 20%, again concerned alleged discrimination on **other grounds**; this figure was 21% in the previous period.



In addition, 16% of the applicants applied to the Public Defender's Office through representatives, 9% of which were member organizations of the Coalition for Equality.<sup>154</sup> In 2019, the Public Defender was applied through representatives in 24% of cases, 12% of them were member organizations of the Coalition for Equality.

<sup>154</sup> Members of the Coalition for Equality are: Georgian Young Lawyers Association, Human Rights Education and Monitoring Center, Sapari, Rights Georgia, Identity, Partnership for Human Rights, Women's Initiatives Supportive Group, Equality Movement, Georgian Democratic Initiative, Tolerance and Diversity Institute.

## Representation



### 11.2. Decisions

In 2020, the Public Defender drew up 21 recommendations on the elimination of discrimination and 9 general proposals on the prevention of incitement to discrimination. Of these, the addressees of 16 decisions were public agencies, while the addressees of 14 decisions were private individuals. The Public Defender also submitted two amicus curiae briefs relating to issues of discrimination.

It is important that the rate of endorsing recommendations by private legal entities has increased. For example, after receiving a recommendation<sup>155</sup> on the elimination of discrimination on the grounds of disability in pre-contractual relations, according to Khareba Winery Ltd., by the order of the director of the company, the units responsible for legal and human resource management were instructed to adjust internal documentation to anti-discrimination legislation, if necessary, and to provide additional information to employees about these regulations, as well as to control the observance of the anti-discrimination legal norms and to take appropriate measures in response to violations.

The respondents, who did not allocate space for an organization working on LGBT+ rights, also endorsed the Public Defender's recommendation<sup>156</sup> - the Public Defender was informed by the Batumi Public Library that the management would take the recommendation into account in future activities; According to the Batumi State University, in order to avoid discriminatory treatment, an order was issued on the rules of

<sup>155</sup> Public Defender's recommendation of November 17, 2020 to Winery Khareba Ltd., available at: <https://rb.gy/shauaq>

<sup>156</sup> Public Defender's recommendation of January 27, 2020 to LEPL Batumi Shota Rustaveli State University, Akaki Tsereteli Batumi Public Library (non-commercial legal entity), Merab Berdzenishvili International Cultural Center Muse, available at: <https://rb.gy/wkv3fr>

holding events and the structural units were given relevant instructions. Unfortunately, no information was provided in response to the same recommendation by the third respondent - Muse Ltd.

The response measures taken by employers after receiving recommendations on the cases of sexual harassment are worth noting. For example, the Sheraton Metechi Palace Hotel informed the Public Defender that the company would review its internal regulations to avoid any form of sexual harassment and to respond effectively, while the person, who committed harassment,<sup>157</sup> would no longer work for the company. According to the information provided by Chichuas Medical Center Mzera Ltd, they terminated an employment contract with a doctor who, according to the Public Defender's recommendation, committed sexual harassment.<sup>158</sup>

An effective measure was taken in response to sexual harassment by LEPL Social Service Agency as well, the contracted doctor of which harassed a quarantined woman.<sup>159</sup> According to the agency, they started to work on a sexual harassment prevention policy document and to plan measures for the provision of the relevant information to the employees and service providers.

However, the companies, which were requested not to post discriminatory adverts,<sup>160</sup> the real estate agent, who discriminated against a transgender woman by refusing to rent an apartment to her,<sup>161</sup> and the Newton School of Robotics Ltd, which did not create proper conditions for a child with disabilities in order to allow him to attend summer school,<sup>162</sup> did not consider it necessary to provide information to the Public Defender on the results of the consideration of recommendations.

In addition, the necessity of eliminating cases of harassment in the workplace and other discriminatory restrictions on labour rights, was not shared, for example, by LEPL National Library of Parliament,<sup>163</sup> LEPL Tbilisi State University,<sup>164</sup> LEPL Adjara TV<sup>165</sup> and JSC Telasi.<sup>166</sup>

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<sup>157</sup> Public Defender's recommendation of 13 April 2020 to D.A. and Ras Al Khaimah Investment Authority Georgia Ltd, available at: <https://bit.ly/361kiCI>

<sup>158</sup> Public Defender's recommendation of April 13, 2020 to I.Kh. and LEPL State Agency for Regulation of Medical Activities, available at: <https://bit.ly/3fwhZum>

<sup>159</sup> Public Defender's recommendation of June 29, 2020 to N.B., LEPL Social Service Agency, Georgian Medical Holding (non-commercial legal entity), Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, available at: <https://bit.ly/2J8kJSX>

<sup>160</sup> General Proposal of the Public Defender of Georgia of November 19, 2020 to private companies, available at: <https://rb.gy/3uacng>

<sup>161</sup> Public Defender's recommendation of December 21, 2020 to L.S., available at: <https://rb.gy/ckvq1j>

<sup>162</sup> Public Defender's recommendation of July 20, 2020 to the Director of the Newton School of Robotics Ltd., available at: <https://rb.gy/mubxoe>

<sup>163</sup> Public Defender's recommendation of September 10, 2020 to the National Parliamentary Library of Georgia, available at: <https://rb.gy/njcxo3>

<sup>164</sup> Public Defender's recommendation of February 27, 2020 to Ivane Javakhishvili Tbilisi State University, available at: <https://rb.gy/nqx69z>; Recommendation of the Public Defender of Georgia of February 27, 2020 to Ivane Javakhishvili Tbilisi State University, available at: <https://rb.gy/ofdvaa>

<sup>165</sup> Public Defender's recommendation of August 24, 2020 to Giorgi Kokhreidze, Director of the Public Broadcaster Adjara TV and Radio, available at: <https://bit.ly/3fJ9X1d>.

<sup>166</sup> Public Defender's recommendation to the JSC Telasi, August 31, 2020, available at: <https://rb.gy/isac9o>

It was a positive precedent that, despite a delay,<sup>167</sup> representatives of the Seventh-day Christian-Adventist Church passed the Unified National Exam on the day allowed by their religion; important information was provided by the Ministry of Health, which said that regulations and guidelines were being developed on the rules of conducting forensic psychiatric examination of minors under and over the age of 10 and that the involvement of the Public Defender's Office and non-governmental organizations was important in this process.<sup>168</sup>

Another important information was provided by the Samkharauli National Bureau, according to which, they plan to employ women experts for the examination of women victims of sexual violence to avoid discomfort, and the staff responsible for conducting examinations will be trained in the psychological aspects of communication with victims.<sup>169</sup> The response of the Special Penitentiary Service was also significant, according to which, the transgender prisoner, who had faced an obstacle in receiving appropriate hormonal treatment,<sup>170</sup> was diagnosed and appropriate treatment was prescribed for her.

Unfortunately, public agencies did not express their readiness to implement the recommendations of the Public Defender aimed at eliminating social inequality in this reporting year either. For example, the reply letter of the Parliament of Georgia, according to which, the Committee on Human Rights and Civil Integration is working to re-regulate internship-related issues in the public service, did not say anything about consideration of paid and employment-oriented internships.<sup>171</sup> The response of the Government of Georgia was also negative to the Public Defender's recommendation. In particular, by referring to insufficient financial resources, the Government rejected the Public Defender's recommendation, according to which, the simultaneous enjoyment of a social package and a pension by persons with disabilities should be resolved according to their individual needs.<sup>172</sup>

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<sup>167</sup> Proposal of the Public Defender of Georgia of July 29, 2020 of the Ministry of Education, Science, Culture and Sports of Georgia, available at: <https://rb.gy/dcnpi9>

<sup>168</sup> General proposal of the Public Defender of Georgia of July 19, 2020 to the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs and the Head of the Levan Samkharauli National Forensics Bureau, available at: <https://rb.gy/s6juil>

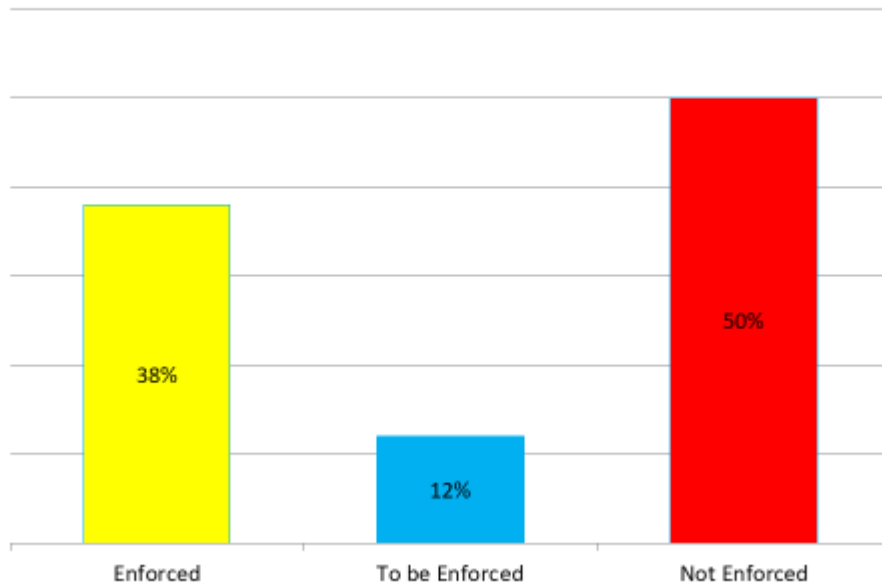
<sup>169</sup> Public Defender's recommendation of December 21, 2020 to the Levan Samkharauli National Forensics Bureau, available at: <https://rb.gy/usm0tk>

<sup>170</sup> Public Defender's recommendation to the Special Penitentiary Service, December 7, 2020, available at: <https://rb.gy/y9wwfd>

<sup>171</sup> General proposal of the Public Defender of Georgia of July 20, 2020 to the Parliament of Georgia, available at: <https://rb.gy/jflukw>

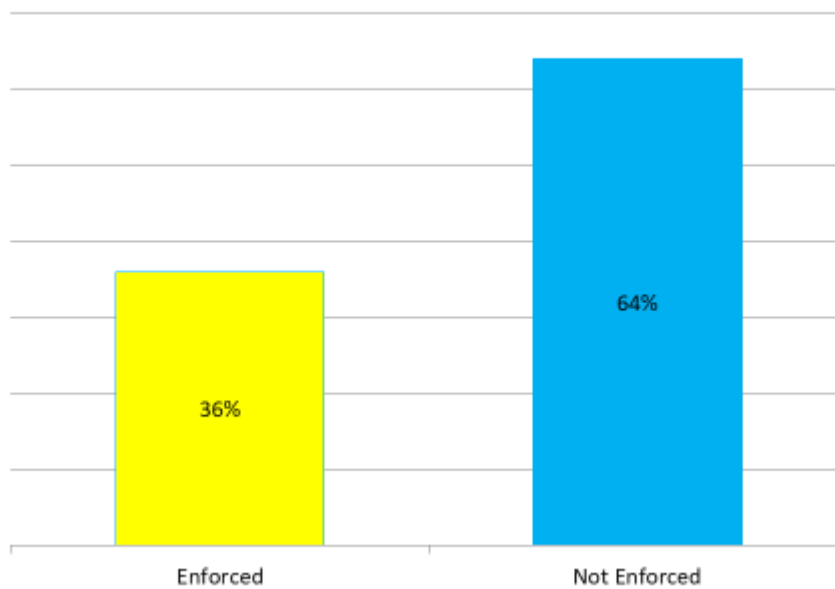
<sup>172</sup> Public Defender's recommendation to the Prime Minister of Georgia, December 28, 2020, available at: <https://rb.gy/9uc3gg>

### Public Sector- 16 Recommendations/General Proposals



In total, public agencies implemented 5 out of 16 proposals (31%), 3 proposals are in the process of implementation (19%), while 8 recommendations/general proposals were not implemented (50%). As for private individuals, 5 out of 14 decisions were implemented (36%), while 9 recommendations/general proposals were not implemented by natural persons or legal entities under private law (64%).

### Private Sector - 14 Recommendations/General Proposals



## Conclusion

The novel coronavirus pandemic has also had a negative impact on the right to equality. Apart from the fact that state authorities did not take appropriate measures to promote the right to equality or to disseminate information, some regulations imposed to prevent the spread of the virus also discriminated against various vulnerable groups.

Importantly, issues related to the principle of equality are increasingly becoming the subject of positive or critical assessments by society. In addition, there is a positive trend in the implementation of the Public Defender's recommendations relating to discrimination by public and private persons. However, without a unified approach by the competent state authorities, achieving tangible results is difficult to imagine. Every year, ineffective responses to violations committed against LGBT+ people and Jehovah's Witnesses, unequal management of the social security system, disregard for the needs of women and people with disabilities in the medical and other services, inadequate implementation of information on the principle of equality in the education system and the spread of stereotypes and stigmas inciting discrimination by officials prove that the steps taken by the State to achieve equality are fragmented and the importance of non-discrimination is not actually realized or planned at the institutional level. This is why, along with focusing on individual circumstances, the Public Defender makes one and the same recommendations relating to the elimination of systemic discrimination in each reporting period.

## Recommendations

### **To the Government of Georgia:**

- Ensure that members of the Georgian Government and crisis management bodies (including the Interagency Coordination Council), when providing information on the novel coronavirus to the public, make clear statements to protect vulnerable groups from practices inciting discrimination;
- Develop any restrictions imposed on the management of the novel coronavirus and the relevant exceptions in a non-discriminatory manner;
- Take into account the needs of members of minority groups when determining special measures, including health care protocols, recommendations and hygiene rules aimed at preventing the spread of the pandemic in the country. Inter alia, provide timely information on the mentioned rules in a language and form understandable to representatives of ethnic minorities;
- When transferring the residential or non-residential area on the balance sheet of the Ministry of Defence of Georgia to a legal heir, do not blanketly exclude all heirs who are not citizens of Georgia from this right;
- Ensure that the retirement age of a person with disability does not always preclude the possibility of receiving a social package and a pension simultaneously. Change the existing rules of social



security so that to resolve the issue of simultaneous receipt of these two financial benefits according to the individual needs of the person concerned;

- Develop a national accessibility plan in a timely manner, with maximum involvement of people with disabilities and organizations working on their issues. In addition, ensure that the plan sets reasonable deadlines for the fulfillment of obligations; ensure monitoring of minimum accessibility standards for persons with disabilities and apply appropriate sanctions in the event of a violation.

**To the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:**

- Make an amendment to Annex No. 5 to the Order 101-74/ N of 2 October 2014 of the Minister of Labour, Health and Social Affairs of Georgia on the Approval of Rules for Carrying out Artificial Termination of Pregnancy so that to make a criminal investigation launched into a case of sexual assault a sufficient precondition for terminating and financing the termination of the pregnancy that resulted from sexual abuse;
- Make existing social, economic and state health care programmes available to persons having residence permits in Georgia on an equal basis with Georgian citizens;
- To raise the awareness of private employers, develop a manual containing recommendations on how to write job adverts, what terms lead to discrimination, and how to adjust an advert to the job specifics without the use of discriminatory restrictions;
- Draft relevant legislative changes to introduce paid and career advancement-oriented internships in public institutions;
- Develop, at the normative level, special guidelines and regulations on the procedure for conducting forensic psychiatric and complex psychiatric-psychological examinations of minors under 10 years of age and over 10 years of age;
- Draft amendments to the Organic Law of Georgia Labour Code of Georgia to bring the amount of assistance/remuneration received by a woman during pregnancy and childbirth leave, parental or child adoption leave substantially closer to the standard established by the Law on Public Service, as well as to define the restrictions, within the framework of which, employers will be empowered to determine preconditions for receiving a remuneration during pregnancy and childbirth, parental or child adoption leave;
- Draft amendments to the Law of Georgia on Public Service to allow surrogate mothers and parents of children born through surrogacy to take a leave due to pregnancy, childbirth or child care.

**To the Ministry of Education, Science, Culture and Sports of Georgia and the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs:**

- Make the existing social and health care benefits and state programmes, including the so-called "student package" provided for in the universal health care programme, accessible to the doctoral

students on an equal basis with other higher education students and adhere to the principle of equality when planning social/health care benefits and developing state programmes in the future.

**To the Ministry of Education, Science, Culture and Sports of Georgia and the National Assessment and Examinations Center:**

- In order to properly fulfill the obligation of reasonable accommodation at the stage of the Unified National Exams, specify at the normative level the procedure for conducting a dialogue and individual communication with persons concerned for the purpose of selecting, determining and changing the measure of reasonable accommodation;
- Amend Order No. 19 of the Minister of Education and Science of Georgia of 18 February 2011 on the Approval of Regulations for Conducting Unified National Exams and Rules for Distributing State Education Grants in order to exempt transgender women from an obligation to submit a military registration document for the enrollment in an educational institution;
- Amend Order No. 19 of the Minister of Education and Science of Georgia of 18 February 2011 on the Approval of Regulations for Conducting Unified National Examinations and Rules for Distributing State Education Grants so that to take into account religious needs in the process of organizing exams.

**To the Ministry of Internal Affairs of Georgia:**

- Take effective preventive and response measures to prevent/respond to offences committed against LGBT+ persons;
- Provide continuous trainings for the employees of the Ministry of Internal Affairs responsible for responding to alleged sexual harassment, by providing comprehensive information on the psychological aspects of communicating with victims of sexual harassment.

**To LEPL Levan Samkharauli National Forensics Bureau:**

- Ensure the employment of female experts in all offices of LEPL Levan Samkharauli Bureau, who will be authorized to conduct an examination of a victim of sexual abuse;
- Take into account the best interests and needs of juveniles in the process of conducting forensic psychiatric and complex psychiatric-psychological examination of persons under the age of 10, and in the process of evaluating the results; each case should be evaluated based on individual and factual circumstances and characteristics.

**To the National Bank of Georgia:**

- Develop easily foreseeable regulations to ensure the provision of commercial banking services to foreign nationals without discrimination, regardless of their nationality.

**To LEPL Public Broadcaster Adjara TV and Radio**

- Adhere to the principle of prohibition of discrimination in labour relations on the grounds of different opinion, membership of a trade union, etc, and protect the principle of equality when conducting activities.

**To the Ministry of Justice of Georgia:**

- Train the staff of the Ministry of Justice system on issues of religious neutrality and anti-discrimination standards.

**To LEPL National Agency of Public Registry:**

For the purpose of providing information to all registration services within the system of the National Agency of Public Registry, develop guidelines relating to the procedure for registering land ownership by religious organizations registered as legal entities under public law, in order to ensure the protection of religious neutrality during the registration of land plots.

**To the Prosecutor's Office:**

- Reflect information on the investigation of hate crimes in the activity report submitted to the Parliament of Georgia on the basis of paragraph 2 of Article 172 of the Rules of Procedure of the Parliament of Georgia.