REPORT ON ACTIVITIES OF THE COALITION FOR EQUALITY

2017 – 2018

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Tbilisi
2019

The Coalition for Equality is an informal alliance established in 2014 with the support of Open Society Georgia Foundation. It unites ten nongovernmental organisations. The members of the Coalition are: Open Society Georgia Foundation; Human Rights Education and Monitoring Centre (EMC); Article 42 of the Constitution; Union Sapari; Georgian Young Lawyers' Association (GYLA); Women's Initiatives Supporting Group (WISG); Partnership for Human Rights (PHR); Georgian Democracy Initiative (GDI); Tolerance and Diversity Institute (TDI) and The Human Rights Center (HRIDC). The essential goal of the Coalition is to enhance the mandate and competences of antidiscrimination mechanisms and to support the effective fight against discrimination.

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CHAPTER I

Introduction

This is the forth of the Coalition For Equality covering the period from 1st January to 31st December 2018. This report outlines the cases taken by the coalition member organisations litigated in the Public Defender's Office and the Common Courts based on the" Law of Georgia on the Elimination of All Forms of Discrimination".

The informal coalition For Equality was created in May 2014 with the aim of participating in the process of adopting the anti-discrimination law. Since its adoption, the coalition member organisations use the basis provided for in the "Law of Georgia on the Elimination of All Forms of Discrimination" for legal proceedings.

Currently the coalition consists of 10 non-governmental organisations, which are the following: Georgian Young Lawyers' Association (GYLA), Human Rights and Monitoring Centre (EMC), Partnership for Human Rights (PHR), Women's Initiatives Supporting Group (WISG), Union Sapari, Article 42 of the Constitution, Georgian Democracy Initiative (GDI), Tolerance and Diversity Institute (TDI), Human Rights Centre(HRIDC) and Open Society Georgia Foundation (OSGF).

In 2018, GYLA was re-elected as the Head of the Coalition for another year. The secretariat functions were undertaken by the Open Society Georgia Foundation. The Coalition has its own regulations, strategy and the rules for granting membership to the Coalition. The financial support was provided by the Open Society Georgia Foundation.

In 2018, the coalition presented an overall shadow report within the framework of the UN Universal Periodic Review (UPR) mechanism.[1]

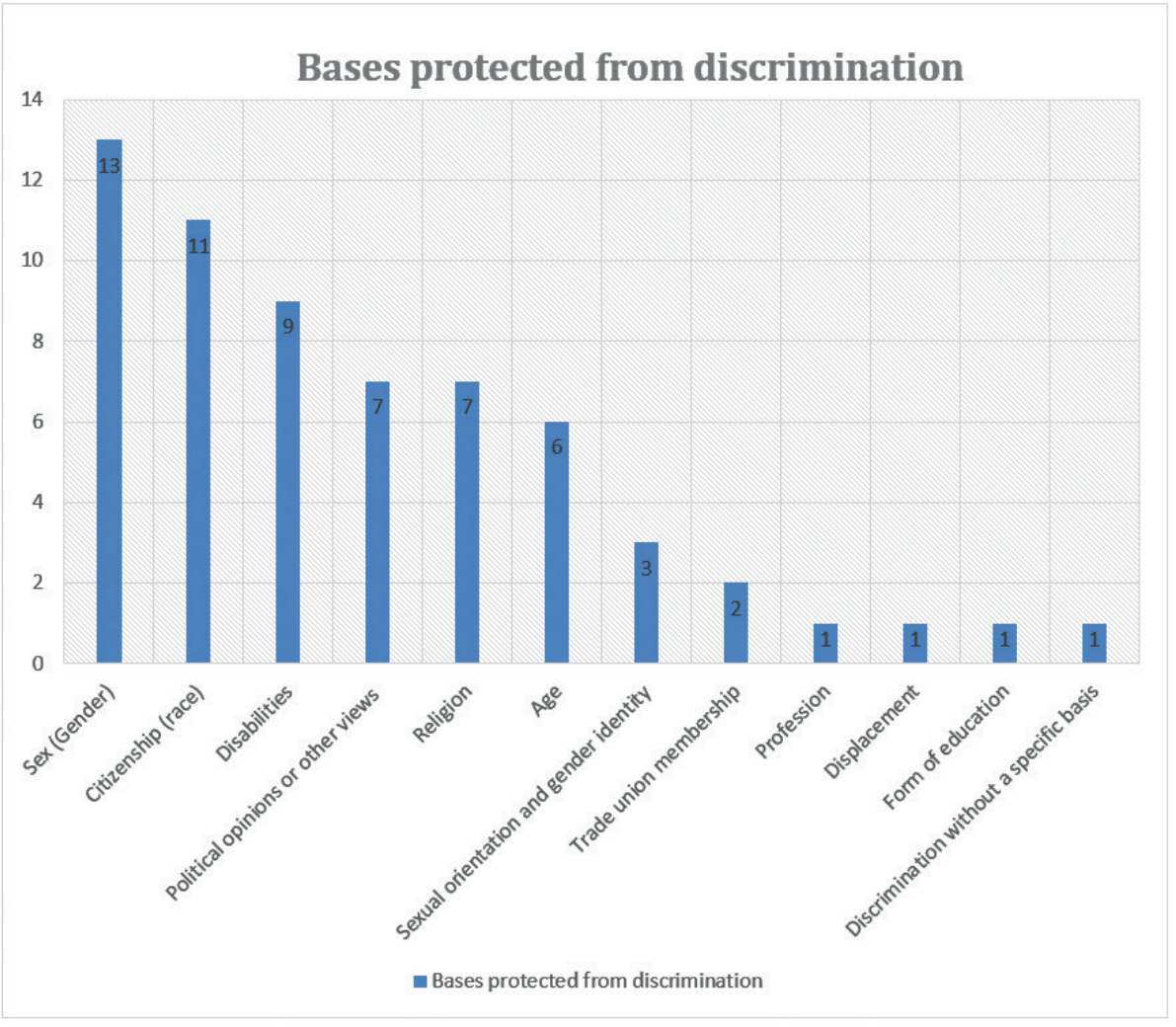
The first chapter of the report sets out the cases litigated by the coalition member organisations. These cases are grouped together according to the basis of discrimination. The second chapter discusses the achievements and challenges of equality within the reporting period. Due to personal data regulations, the parties of discrimination cases are referenced to by their initials, asides those who agreed to waive their anonymity for the purpose of this report or long before, during the court proceedings.[2] Victims of sexual harassment, as well as other persons involved are protected by aliases, to conceal their identify.

Statistics

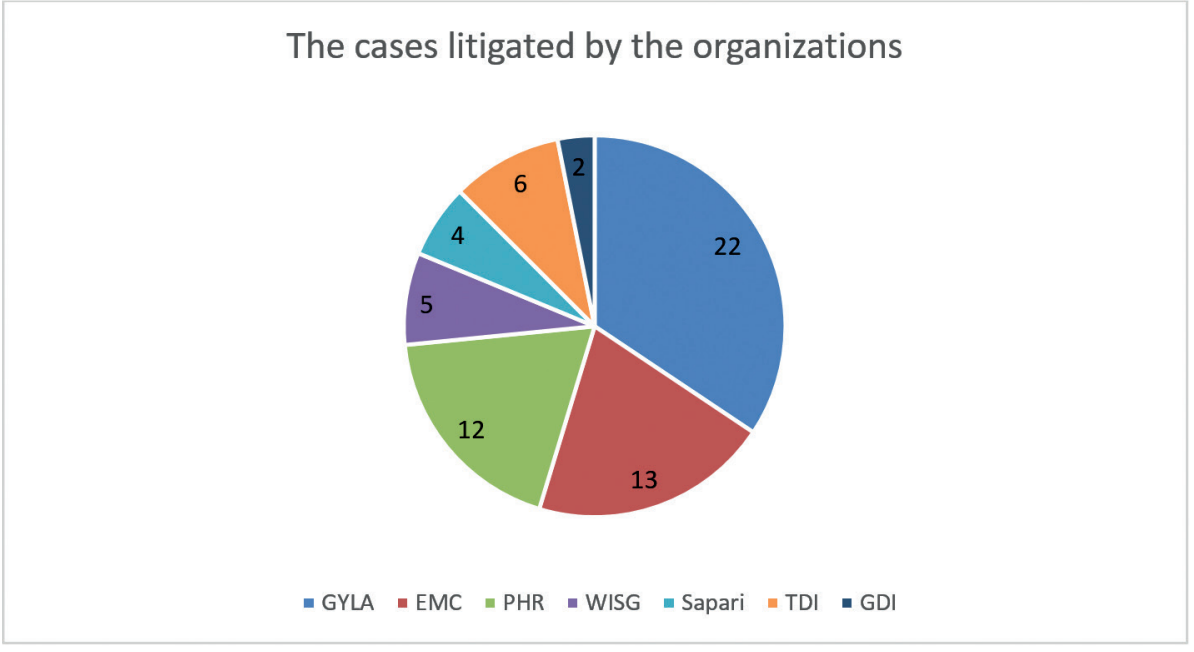
Within the reporting period, the coalition member organisations litigated 62 cases. Discrimination on grounds of gender were the most common, amounting to 13 cases. There were 11 cases on discrimination on racial and citizenship grounds, the second most common followed by discrimination on grounds of disability with nine cases. This is closely followed with seven cases of discrimination due to religion and discrimination based on political or other beliefs representing seven cases and lastly, discrimination on grounds of age (discrimination against children and the elderly) representing six cases. Three cases concern discrimination based on sexual orientation and gender identity, two cases on discrimination trade union membership, and one case concerning discrimination on the right to distance learning, discrimination based on forced displacement, discrimination based on profession. There was one further cases taken connected to oppression in the workplace but the specific basis for discrimination is unclear.

[1] http://equalitycoalition.ge/ge/cat/reports

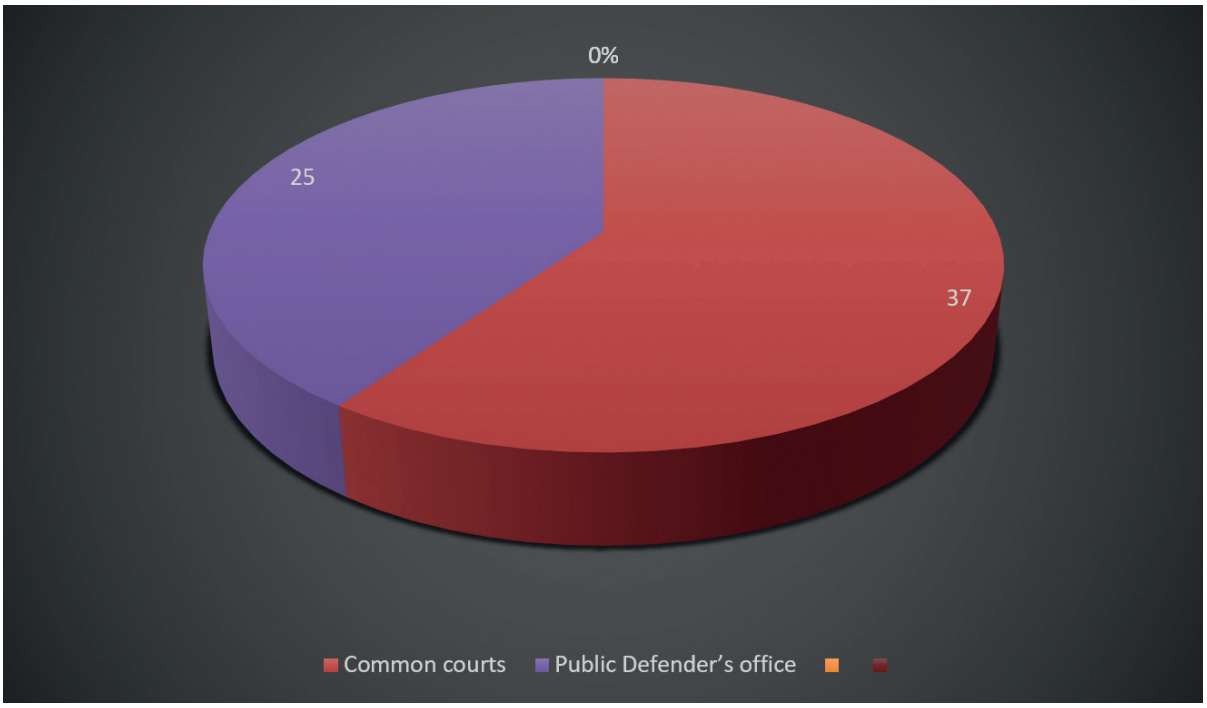
[2] According to Article 5 (f) of the Law of Georgia on Personal Data Protection, processing the data is admissible only if the subject has made them public himself/herself: https://www.radiotavisupleba.ge/a/29290913.html , also https://www.radiotavisupleba.ge/a/29141911.html



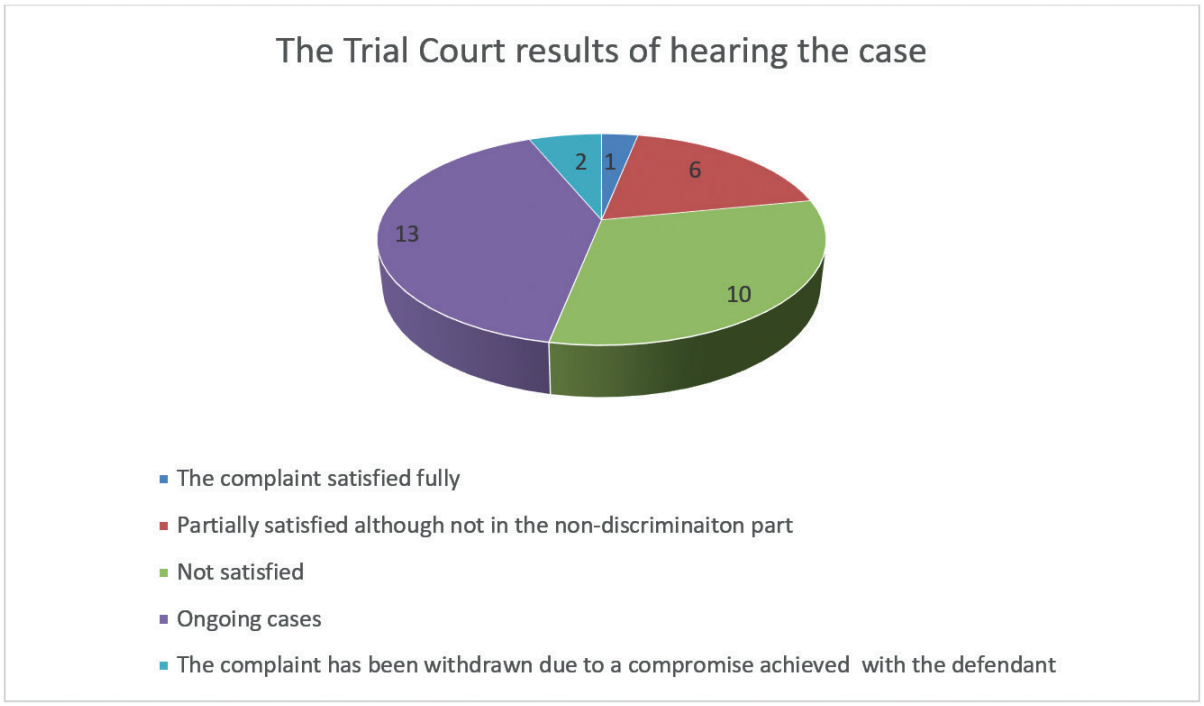
The cases litigated during the reporting period were taken by the following organisations: 22 cases litigated by GYLA, 13 cases by EMC, 12 cases by PHR, five by WISG, six by TDI, four by Union Sapari and two by GDI. The given data contains a case per organisation by each GYLA and EMC, also, a joint case by TDI and EMC.



Differing from previous years, the coalition member organisations have used the court system more, rather than the Public Defender's Office. During this reporting period, 37 cases were brought to the courts compared to 25 cases in the Public Defender's Office.

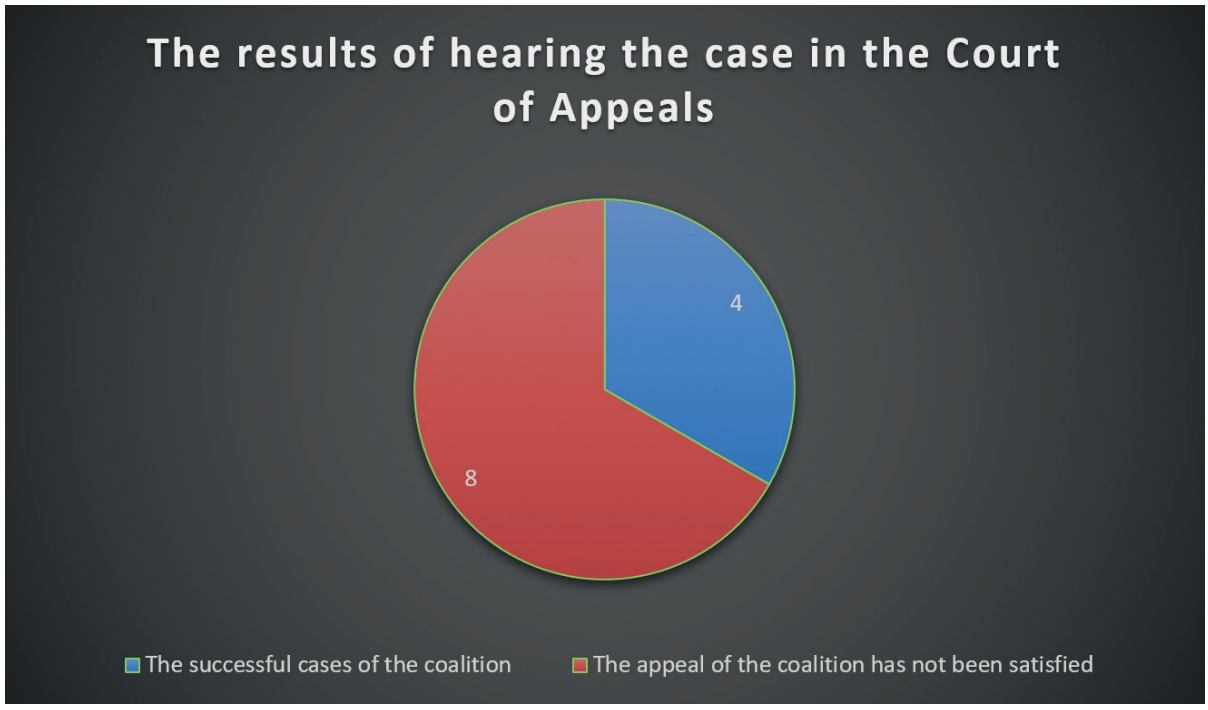


The Trial Court has identified discrimination in only one case during the reporting period. In six cases, the First Instance Court partially satisfied the legal claim, in these cases, the complaint of discrimination was not accepted. In 10 of the cases, the complaint was not satisfied at all. All of the cases have been appealed to the Upper Instances.

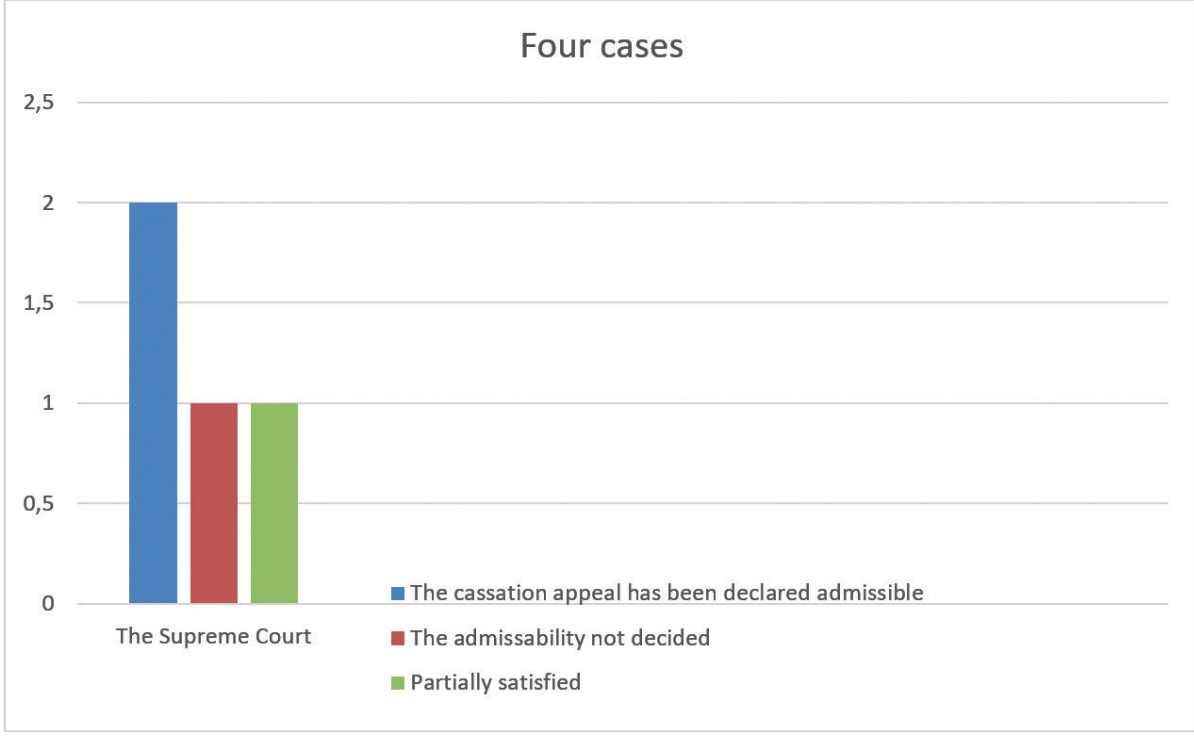


Within the reporting period, 4 cases were appealed successfully in the Court of Appeals. The Court of Appeals quashed the decision of the Trial Court in two of these cases. In one case, the Court of Appeals did not concur with the Trial Court's decision that the dismissal of the deputy head of the educational establishment was based on the Labour Code. However, at the same time, the Court of Appeals concurred with the Trial Court's

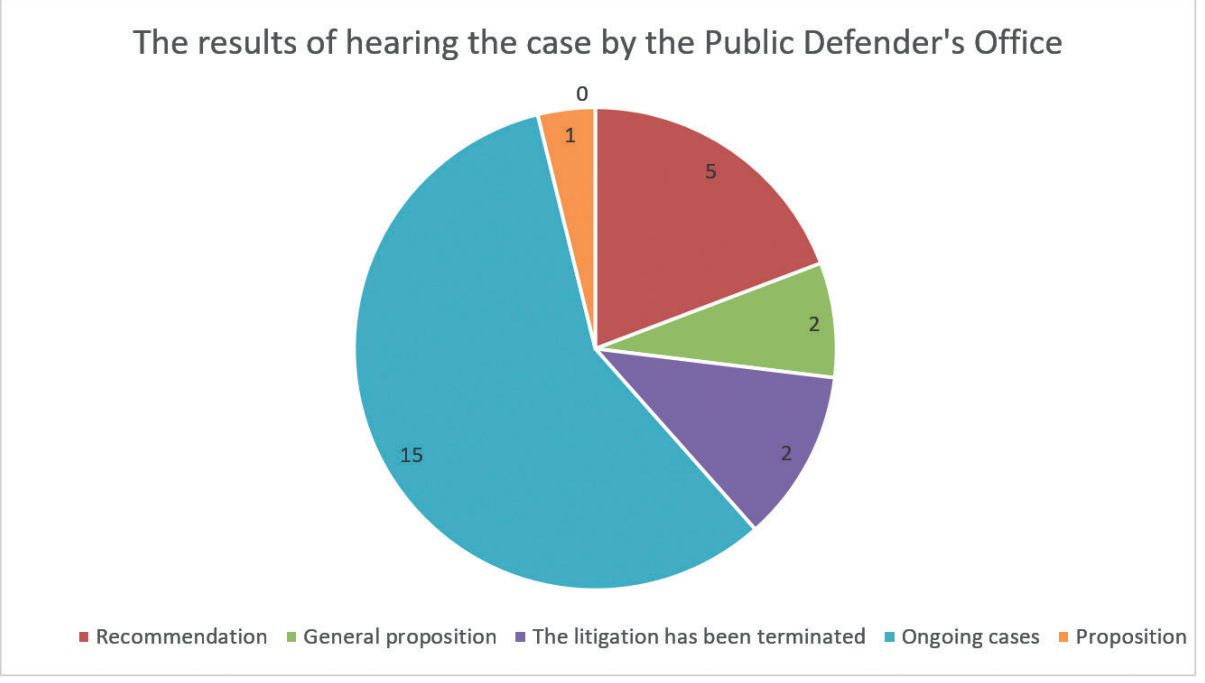
position regarding the non-existence of discrimination (see chapter 2.2 concerning the case of Makvala Javakhia). In the second case, the Court of Appeals returned the case to the Trial Court and requested the issue of discrimination to be discussed. Regarding the determination of discrimination, the decision of the Trial Court has been upheld in one case. In another case, which concerned bullying against a black student, the Court of Appeals annulled the decision of the Trial Court and found discrimination. In a total of eight cases, the Court of Appeals upheld the Trial Court decision, meaning that the appeal of the Coalition member organisations has not been wel-founded.



Four cases led by the coalition have been advanced to the Supreme Court, out of these, two cassation appeals have been declared admissible by the Supreme Court, although, no decision has yet been made. For one case the court has not taken any decision regarding admissibility. One of the appeals has been approved in part concerning neglect of duty by the police but ruled out discrimination.



Within the reporting period, the Public Defender issued five recommendations, one general proposition and one proposition regarding the coalition cases. The Public Defender terminated legal proceedings for three cases. Fifteen cases of the coalition are still in the process of litigation.



1. RACIAL AND CITIZENSHIP DISCRIMINATION

Discrimination based on race and skin colour is outlawed by Article 11 (1) of the Georgian Constitution. Discrimination based on citizenship is not directly provided for in Article 11 (1) although, citizenship is merged to another basis. According to of Article 33 (1), citizens of other states and stateless persons living in Georgia shall have rights and obligations equal to those of citizens of Georgia except in cases prescribed by the Constitution and law.

The Constitutional Court has mentioned the following in one of its decisions: "Citizens of other states living in Georgia are closely related to the state, they represent a part of the Georgian society and play an important role in the country's life, progress and development, just like any other Georgian citizen. The aliens living in Georgia intensively fall under the legal regulations of the country and forming a normative order influences their existence, development and business as much as it influences that of a Georgian citizen.[3] Intersectional discrimination occurs when someone is discriminated against because of the combination of two or more protected bases, where the given bases do not form discrimination separately. During the reporting period, people have become victims of intersectional discrimination on grounds of discrimination on race and foreign citizenship. The Public Service Development Agency, the Border Police of the Ministry of Internal Affairs of Georgia and State Security Service were denying residence permits to foreign citizens coming from Asia and Africa on a wide scale basis. This evidences the case of intersectional discrimination at hand. In order for a person to be denied entry into Georgia and to prolong the refusal of a residence permit, two circumstances must have had intersected: the foreigner should have come from Asian or African countries. This kind of mistreatment is not practiced against European and North American foreigners. Georgian citizens of Asian and African descent shall not be subjugated to such treatment. Therefore, this chapter unites two protected bases of discrimination – race and citizenship. Here we also see cases, in which the person has been discriminated only because he/she did not possess Georgian citizenship. The status of a foreigner also intersects with the journalistic activity of the person placed in an unfavorable position.

1.1. The citizen of Bangladesh, Ahsan Habib Galib against the Ministry of internal Affairs (the case is prepared by GDI)

Factual circumstances: On April 2018, Ahsan Habib Galib, with his wife, Sabine Pust came to Georgia from Latvia with the aim of getting to know the country, its culture and to spend a vacation. After the plane had landed, Ahsan's wife went through the immigration control first. Ms Sabine, who is white, faced no problems going through the control based on her passport, without any need for additional documents. She left the passport control zone and continued through the barrier, where the immigration officer had asked her to wait.

Mr Ahsan presented all requested documents to the immigration officers and despite this, the officers delayed him and disrespectfully requested him to wait in the corner. The petitioner noted, there were many persons of colour in front of the booth, in the corner. As soon as one of them tried to speak to the police officer, they answered offensively: "Wait in the corner". After a long wait, the police officer approached Mr Ahsan and spoke to him, asking the reason of his arrival in Georgia. Mr Ahsan answered the police officer in detail and provided necessary documents. The police officer was also interested in Mr Ahsan's marital status. Afterwards, he was again pointed at the corner and asked to wait. Approximately 20 minutes later, the applicant was moved to another room full of persons of colour. His bag was then searched and passed Mr Ahsan's documents on to another officer. The police officer joked in Georgian, he and the other officer laughed and he left the area.

Mr Ahsan was then told that he was refused entry and thus being deported. After addressing the MIA, they explained to the applicant that he was deported based on article 11 ("I") of the Law of Georgia on the Legal Status of Aliens and Stateless Persons. The given law lists the cases, in which an alien may be refused a Georgian visa or entry into Georgia. As of the paragraph "I", it does not limit the given list and notes an alien can be refused entry into Georgia in other cases as well provided for by the legislation of Georgia**.**

Case importance: The discriminative policy practiced by the corresponding bodies at the Georgian border is observed frequently. A plethora of foreigners have been denied entry into Georgia recently based on article 11 ("I") of the "Law of Georgia on the Legal Status of Aliens and Stateless Persons". This law lists the grounds, on which a foreigner may be refused entry into Georgia, as of the paragraph "I", it is of a general character

[3] The decisionNo.3/1/512 of the Constitutional Court made on June 26th 2012 regarding the case of Heike Kronkvist against the Georgina Parliament.

and determines the possibilities of refusal in other cases provided for by the legislation of Georgia. This rule is explained as a self-sufficient legal basis, which gives wide discretion for the relevant authorities.

Legal reasoning: According to the Constitution of Georgia, all persons are born free and are equal before the law notwithstanding their race and skin colour. Moreover, since 2014, Georgia has adopted the Law of Georgia on the Elimination of All Forms of Discrimination. According to Article 2 (2) of this law, direct discrimination based on race and skin colour is strictly prohibited.

The applicant was prevented from using his right to freedom of movement because of the discrimination policy practiced by the airport immigration and the law-enforcement officers. The state has a high threshold of review for the aliens crossing the state border. The access of aliens and stateless persons in Georgia is regulated by the Law of Georgia on the Legal Status of Aliens and Stateless Persons. According to Article 3 of this law, the entry, stay, transit, and departure of aliens into/in/through/from Georgia shall be regulated based on the principle of non-discrimination. Therefore, the state is obliged to control entry into Georgia by respecting the principle of non-discrimination. In the given case, the applicant's right to freedom of movement was limited, since he was refused entry into Georgia, moreover, according to the applicant, this limitation was of discriminative character. In this case at hand, we can compare two persons – one coloured and another whom is white, both wishing to cross into the Georgian border. Since the airport workers and the law-enforcement officers are freely allowing white persons entry into the country more, than persons of colour, who are subjected to different treatment, by being made to wait for hours in the immigration department. The factual circumstances make it clear that the airport workers and the law-enforcement officers acted discriminatively towards Ahsan Habib Galib based on his skin colour. It is unclear on which legitimate reason they delayed his entry into the country.

Case proceedings: Ahsan Habib Galib addressed the Public Defender with an announcement on June 23, 2018. On August 8, 2018, the Public Defender sent a letter to the Border Police of the Ministry of Internal Affairs, requesting substantiated reasoning regarding the circumstances provided in Ahsan Habib Galib's announcement.

By the letter dated back on August 24, 2018, from the Patrol Police Department of the Ministry of Internal Affairs, it is ascertained that Ahsan Habib Galib was refused entry into the country based on article 11 (1) ("I"), of the "Law of Georgia on the Legal Status of Aliens and Stateless Persons".

Based on article 9 (2) ("B") of the "Law of Georgia on the Elimination of All Forms of Discrimination", the Public Defender terminated the case proceedings. The Public Defender terminates the proceedings according to this article if the fact of discrimination has not been identified and substantiated. The Public Defender did not confirm the fact of discrimination based on the announcement. In his decision, the Public Defender indicated on the proposition of November 15, 2017, which was addressed from him/her to the Ministry of Internal Affairs, concerning the practice of refusal to enter the country based on "the other cases" provided for by the legislation. The proposition indicates that the violation of human rights caused by refusal of entry into Georgia is of systemic character. The proposition is based on the need to prevent the violation of aliens' rights in the future and it includes six cases, in which the foreigners have been refused entry into Georgia by the above mentioned basis, as it had been done in the case of Mr Ahsan Habib Galib. Also, the proposition requests the unsubstantiated decisions of refusal to entry into Georgia to be annulled, the facts to be re-established, disciplinary legal proceedings commenced and every measure provided for by the law to be undertaken. Moreover, the proposition requests changes to the established practice of the use of Article 11 (1) ("I"), which considers the mentioned rule as self-sufficient.

It must be mentioned that the case has been further studied by the Public Defender's Department of Protection of Civil, Political, Economic, Social and Cultural Rights. The letter N04-4/4546 sent by the department on April 19, 2019, notes, that the Public Defender has also underlined the incorrect practices established by MIA concerning the above mentioned legal basis in the 2018 Parliamentary Report and that the Public Defender plans to undertake the needed measures within their jurisdiction. Although, the Public Defender's Office is devoid of other possibilities to legally assist the applicant. Therefore, the mentioned department also terminated the case proceedings in the end.

1.2. P.S. against the LEPL "Public Service Development Agency" and State Security Service of Georgia (case prepared by TDI)

Factual circumstances: A citizen of Nigeria, P.S, who has been living in Georgia since May 20, 2012, applied to the LEPL "Public Service Development Agency" on September 27, 2017 requesting a work permit. By October 9 of the same year the application was refused, stating that the applicant's activities in Georgia endanger the public order and the country's security. The mentioned factual circumstance is based on the State Security Service conclusion.

The citizen of Nigeria, P.S, finished Georgian university studies successfully in 2017. From 2012 to 2017, the applicant was able to renew the study permit four times without any obstruction. He/she is also doing religious work, is a pastor and organises religious services in one of the Christian churches.

Case importance: Discriminative approach towards African and Asian migrants.

Legal reasoning: The allegation of discrimination in this case is strengthened by the fact, that P.S. was able to freely gain a study permit, but when requesting a work permit, suddenly the applicant was seen as "dangerous" for the public and state interests. The information and evidence, which became the basis for the refusal from the State Security Service regarded P.S.'s life in Georgia inexpedient, was not made available to the plaintiff as it is marked confidential. Under circumstances which make it impossible for the plaintiff to check against the information and evidence which the conclusion of the State Security Service is based on, the assumption of discriminative treatment is reinforced.

Case proceedings: P.S. submitted a claim in the Tbilisi Civil Court on October 30, 2017, requesting that th unsubstantiated decision of the LEPL "Public Service Development Agency" be annulled, for an act to be issued to provide the work permit, end the discrimination, its results to be eradicated and a reimbursement of 100 GEL to be issued for the moral damage caused by racial/national discrimination.

By the decision dated April 23, 2018, the Administrative Cases Panel of Tbilisi City Court did not satisfy the complaint. The court ascertained that the plaintiff is a pastor and preaches in a church in Georgia. The plaintiff has a work contract with the mentioned church and receives the corresponding income. Also, it was also found that the plaintiff had been granted a study permit several times since 2012. On the executive session without parties present, the court studied state secret information provided by the State Security Service and the evidence indicating that the plaintiff's life in Georgia was unsuitable. The court has concluded that the administrative body, in the given case, has not overstepped its discretionary authority. As of the discriminative treatment, the court stated that the letter provided by the State Security Service, the state secret documents and the corresponding evidence did not contain direct or indirect indications of discrimination against the plaintiff.

The decision of the Trial Court was appealed on July 7, 2018. The Court of Appeals has thoroughly concurred with the factual circumstances and the legal argumentation ascertained by the Trial Court. By the decision of November 29, 2018, the Court of Appeals rejected the appeal and has upheld the Tbilisi City Court decision to refuse the plaintiff's residence permit application. The decision made by the Court of Appeals in the case against Public Service Development Agency has been appealed in the Supreme Court of Georgia.

1.3. I.N.A against the LPEL "Public Service Development Agency" and State Security Service of Georgia (case prepared by TDI)

Factual circumstances: The citizen of Cameroon, I.N.A married a Georgian citizen on August 9, 2017 and a child has resulted from this marriage. He/she addressed the Public Service Development Agency on April 5, 2018, requesting a residence permit and received the refusal on April 24 of the same year. The refusal was based on the reason that his/her activities in Georgia endanger the public order and the country's security. Based on this conclusion, the Public Service Development Agency decided not to approve of this person's residence permit.

Case importance: This case is important, since it is connected with alleged discriminative practice against citizens of Asia and Africa, which is of systemic character.

Legal circumstances: Under circumstances which make it impossible for the plaintiff to check against the information and evidence which the conclusion of State Security Service is based on and which has a high risk of subjective reasoning, the assumption of discriminative treatment is heightened. I.N.A has not broken any law and has not been convicted. It is assumed, that he/she has been refused to the permanent residence permit without any substantiation and the decision of the State Security Service is connected to the hardened policy of

the state against Asian and African citizens. Moreover, the refusal from the Public Service Development Agency is against the principle of family unity.

The Tbilisi City Court, which did not satisfy the claim, did not discuss it accordingly and did not take into account the principle of family unity (stated by the Law of Georgia on the Legal Status of Aliens and Stateless Persons). On the executive session without parties present, the court examined classified state secret information provided by the State Security Service and the evidence indicating that the plaintiff's life in Georgia is inadvisable. The court has concluded that the administrative body, in the given case, has not overstepped its discretionary authority. As of the discriminative treatment, the court has stated that the letter provided by the State Security Service, the state secret documents and the corresponding evidence did not contain direct or indirect indications of discrimination against the plaintiff.

Case proceedings: On May 22, 2018 I.N.A submitted a claim in the Tbilisi City Court, requesting the unsubstantiated decision of the LEPL "Public Service Development Agency" to be annulled, for an act to be issued on providing the permanent residence permit, for the discrimination to terminate and its results to be eradicated, also a reimbursement of 100 GEL to be issued for the moral damage caused by racial/national discrimination.

By the decision dated July 3, 2018, the Administrative Cases Panel of Tbilisi City Court did not satisfy the complaint.

The decision of the Trial Court was appealed in the Court of Appeals.

1.4. Sh.A. against the LEPL "Public Service Development Agency" and State Security Service of Georgia (case prepared by TDI)

Factual circumstances: A citizen of Nigeria, Sh.A. married a Georgian citizen on January 15, 2018 and had a child in this marriage on November 11, 2018. He/she addressed the Public Service Development Agency on February 20, 2018, requesting a permanent residence permit and received the refusal on April 17 of the same year. The refusal was based on the reason that his/her activities in Georgia endanger the public order and the country's security. Based on this conclusion, the Public Service Development Agency decided not to approve this person's request for a permanent residence permit.

Case importance: This case is important since it is connected with alleged discriminative practice against the citizens of Asia and Africa, which is of systemic character.

Legal circumstances: Discrimination means different treatment of persons in similar or in the same circumstances without objective or reasonable substantiation (justification). In this case, the statement that the plaintiff's residence in Georgia is dangerous, is not substantiated.

The defendant State Security Service has considered the plaintiff's activities to endanger the country's security and/or the public order. Although, no evidence confirms this statement. The plaintiff considers that the State Security Service has discriminated against him/her based on race, language and citizenship.

Case proceedings: ON July 6, 2018 decision, the Administrative Cases Panel of the Tbilisi City Court partially satisfied the claim. The decision of the Trial Court has not been appealed by the parties and it has been enacted. The LEPL "Public Service Development Agency", according to the court's decision, has been given the task to study the case circumstances thoroughly and issue a new individual legal-administrative act in one month with regards to Sh. A.'s permanent residence permit.

On October 15, 2018 the Juridical person "Public Service Development Agency" issued a new act, refusing Sh. A. the permanent residence permit on the same reason. On November 9, 2018, Sh. A. appealed the above mentioned decision again in the Administrative Cases Panel of the City Court of Tbilisi. He/she requested for the unsubstantiated decision of the LEPL Public Service Development Agency to be annulled, for an act to be issued on providing the permanent residence permit, for the discrimination to terminate and its results be eradicated, and financial compensation of 100 GEL to be issued for moral damage caused by racial/national discrimination. The court has not made any decision within the reporting period regarding this issue.

1.5. Z.M. against The Ministry of Internal Affairs of Georgia (case prepared by EMC)

Factual circumstances: Z.M. is an ethnic Azerbaijani, citizen of the Republic of Russia, living in Georgia since 2014 with her husband and young children. She is Muslim and wears a hijab. On October 16, 2017, Z.M. crossed the Georgian border to visit her sister's family in Azerbaijan. On return on October 24, only her husband was

allowed to cross the border on the Red Bridge. After almost half an hour wait, the police explained to her that she would not be able to enter Georgia and that only her husband was allowed to cross the border. The police representatives did not explain the reason for refusing Z.M.'s entrance into the country and they gave general directions for the party to get more information from the Georgian embassy. Although, Z.M. was unable to get any explanation for the refusal neither from the Georgian embassy in Azerbaijan, nor from the Russian embassy.

Z.M. tried to enter the country again after several days, but was refused again. The reasons for this were not provided, she was required to sign for the document written in Georgian language and when she asked for a translator, the police officers answered with an insult and did not provide the copy of the document.

It must be noted that Z.M. is a housewife, she has never been involved in the public sphere, neither her, nor her family members have done anything illegal on the territory of Georgia or anywhere else.

Case importance: Since 2016, the practice of discrimination against members of the Muslim community and civic activists has been observed at the Georgian state border. Particularly, they are often hindered from entering Georgia and the MIA provides only abstract and arbitrary justifications about this (the other bases provided for by the Georgian legislation).

Legal reasoning: The plaintiff indicates, that the only "other" basis provided for by the legislation is article 3 ("K") of the "Law on the Legal Status of Aliens and Stateless Persons", according to which an alien against whom criminal proceedings are pending for international crimes of terrorism, drug trafficking, or human trafficking may be denied entry into Georgia. But using this norm against the plaintiff is totally unfounded as she has never committed any crime, moreover an international crime. Therefore, in such unsubstantiated conditions, it is unclear for the plaintiff which legal and factual circumstances the administrative body relies on while issuing the disputed acts.

It must be underlined that according to Article 11 (1) of the "Law on the Legal Status of Aliens and Stateless Persons", the right to refuse an alien of the Georgian visa or entry into Georgia depends on the discretional jurisdiction of the relevant administrative body, since the legislator does not oblige the administrative body directly, but provides the possibility to make the decision based on discretional jurisdiction to deny visa/entry into Georgia to aliens in case the criteria given in this rule are at hand. And the decision made under discretional jurisdiction needs reasoned substantiation. Whereas in the discussed case MIA has not provided the minimal substantiation for the plaintiff, which would make it possible for her to understand why she was denied entry into the country. Therefore, the treatment of MIA is arbitrary and discriminative.

In addition to this, Z.M.'s right to personal and family life has been violated. According to article 3 ("B") of the "Law of Georgia on the Legal Status of Aliens and Stateless Persons", the entry, stay, transit, and departure of aliens into/in/through/from Georgia shall be regulated based on the principle of family unity. In this case the defendant ignored the given principle and the plaintiff without being provided any substantiation or reason, is devoid of the possibility to return with her family and live with them, which violates the rights provided for by Article 8 of the European Convention on Human Rights.

The plaintiff is the citizen of the Russian Federation, and citizens of Russia, according to the note 1 of the decree #255 provided by the Georgian government on June 5, 2015 - on "Approval of the List of Countries Whose Citizens May Enter Georgia without a Visa", have the right to enter and stay in Georgia without visa for one full year.

Case proceedings: After having been refused entry into Georgia without any acts of verbal communication, EMC addressed MIA with an announcement, which was answered two months later, stating the reason for refusal was Article 11 ("I") (1) of the "Law of Georgia on the Legal Status of Aliens and Stateless Persons". According to this article, an alien may be refused a Georgian visa or entry into Georgia in other cases provided for by the legislation of Georgia. Neither the given act, nor the letter of MIA explains this other norm, which has become the reason for refusal to Z.M. Therefore, EMC addressed MIA with an administrative appeal, which was left unprocessed due to the appeal time already being time barred.

Due to the above mentioned circumstances, EMC submitted an appeal to the Administrative Cases Panel of the City Court of Tbilisi and requested that the three refusals preventing Z.M. from entering Georgia to be annulled as well as the decision of MIA leaving the complaint without consideration. Also, requesting that the patrol police department take action and assure Z.M.'s entrance into Georgia.

The given appeal was processed by the Tbilisi City Court, which it was not satisfied by the decision of July 26, 2018, the reason being that the appeal time-frames had already lapsed. The court indicated on the ruling No.3

of the Ministry of Internal Affairs and noted, that the given situation was under the action of the ruling provided, hence having the 10-day appeal time-frame and not the time-frame set by General Administrative Code of Georgia.

This decision has been appealed in the Tbilisi Court of Appeals, although no court hearing has taken place up to this point.

1.6. Jamal Ali against the Ministry of Internal Affairs of Georgia (case prepared by EMC)

Factual circumstances: On April 19, 2017, Jamal Ali, who is a journalist for Meydan.Tv, arrived at Tbilisi international airport to attend organised work visits. Although, he was prevented from entering Georgian territory, the official base for the decision was stated as "other cases provided for by the legislation". The given basis does not explain the decision of the Ministry of Internal Affairs, due to which makes it almost impossible to check the factual and legal base of the decision. Meydan.Tv is a German-based Azerbaijani online media-platform. Meydan.TV publishes news of Azerbaijan, as well as the whole region in Azerbaijani, English, and Russian. The channel is critical towards the Aliyev government and actively covers issues of corruption in the Azerbaijani state. Because of this, most of the employees of this media-platform and among them Jamal Ali are oppressed by the Azerbaijani government due to their work, political and other different views and are made to live in other countries. Jamal Ali had to visit Georgia due to his work on numerous occasions. He has entered the country numerous times without any problem, until April 19, 2017. A substantiated assumption exists stating that Jamal Ali was refused entry into the country because of his journalistic work is connected to the fact that in January 2017 he prepared a critical journalistic work on the State Oil Company of Azerbaijan Republic SOCAR.

On January 16, 2017 Meydan.Tv published Jamal Ali's piece, which aimed to show different politics of SOCAR in Georgia and in Azerbaijan. The provision of gas is delayed in the villages of Azerbaijan and in the adjacent regions of Baku, due to which causes the population to have problems with heating in winter. The piece aimed to show that the State Oil Company of Azerbaijan Republic SOCAR, instead of solving the existing issues in Azerbaijan by using its resources, provides free gas for a number of cult buildings in Georgia. After the piece was published, on March 29, 2017, certain people in Georgia held a rally in protest, requesting a ban on Meydan.Tv's and Jamal Ali's work in the Georgian territory. It was exactly after this protest that Jamal Ali received an unsubstantiated refusal entering the country at Tbilisi international airport.

Case importance: Since 2016 the practice of discrimination against members of the Muslim community and civic activists has been observed at the Georgian state border. Particularly, they are often hindered from entering Georgia and the MIA provides only abstract and arbitrary justifications about this (the other bases provided for by the Georgian legislation). The mentioned practice gives us reason to assume that the state expresses political loyalty towards certain states (Azerbaijan) or discriminatively limits a person entry into Georgia due to his/her critical views.

Legal reasoning: Tbilisi City Court provided the main reason for refusal, indicating on Article 11 (8) of the Ordinance No.386 of the Georgian government on Approval of the State Border Regime and Protection Rule, according to which a person is checked by the list provided from the law enforcement agencies. The court explained that based on such inspection and on Article 11("I") of the "Law of Georgia on the Legal Status of Aliens and Stateless Persons", MIA has denied Jamal Ali from entering Georgia. Moreover, the court has noted that the reason for the refusal was based on the information obtained by the counter-intelligence. According to Article 6 (1) and (2) On Counter-Intelligence Activities, the documents obtained by such kind of activities is secret and is not used for law-enforcement purposes, therefore the court deemed the MIA decision legal.

It must be mentioned, that according to the information provided by MIA, the Ministry of Internal Affairs only checks the person when some information exists about the sentenced/accused persons, who abscond from justice and sentencing or other coercive measures and therefore are persecuted according to the Criminal Procedure Code of Georgia. Thus, the given norm is totally irrelevant in the case of Jamal Ali.

We must also discuss that the basis used for refusing Jamal Ali from entering Georgia and the main evidence supporting the case are evaluated as information obtained by the counter-intelligence activity, which is classified of information. According to Article 1 of the law On Counter-Intelligence Activities, counter-intelligence activities are specialised activities in the field of state security, the objectives of which are to detect and prevent threats directed against the state interests of Georgia and arising from intelligence and/or terrorist activities of special services and organisations, groups of people and individuals of foreign states. Considering the fact that Jamal Ali, by the disputed decision, has not been assessed as a person of danger for the Georgian state

security and/or public order, for the health, rights and legal interests of Georgian citizens and other persons living in Georgia and therefore, he has been denied not according to Article 11 (1) (”E”) of the law, but according to other basis, it remains totally unclear and controversial why the information obtained concerning him is information obtained by the counter-intelligence activities.

Case proceedings: The decision of May 2017 over the refusal hindering Jamal Ali`s entry into the country was appealed by EMC through the administrative rule in the Ministry of Internal Affairs. The main request of the appeal was to annul the decision prohibiting the journalist from the country, since it was not substantiated and there was no reason to deny him entry into Georgia based on the “Law of Georgia on the Legal Status of Aliens and Stateless Persons”. At the same time, the factual circumstances of the case provide a solid assumption that the state is being discriminative, which resulted in the violation of the following rights: Right to respect for private and family life – Article 8, Freedom of expression – Article 10, Prohibition of discrimination – Article 14 of the European Convention on Human Rights.

On May 10, 2017, by the decision of the chairman of the Ministry of Internal Affairs Patrol Police Department, Jamal Ali’s administrative appeal has not been successful. Just as appealed decision, the decision not satisfy the appeal does not contain any justification. As a blanket rule, without indicating to any concrete evidence, the decision defines that Jamal Ali did not suit the requirements set by the Georgian law, which was a sufficient reason for denying him entrance into the country. Therefore, the appealed decision is lawful and no grounds to annul it exist. Taking this into account, EMC addressed the Tbilisi City Court, which, by the decision of February 28, 2018, did not satisfy the appeal.

EMC appealed to the Trial Court, although, no court hearing has been held within the reporting period.

1.7. Aslanbek dadaev against The Ministry of Internal Affairs of Georgia (case prepared by EMC)

Factual circumstances: The journalist of the Radio Freedom’s European and Northern Caucasian centre, a citizen of the Republic of Russia, Aslanbek Akhmet Dadaev, son of Akhmet Dadaev was denied to entry into the territory of Georgia on October 21, 2018.

Since the introduction of visa-free entrance for the North Caucasian country citizens, Dadaev had spent several months in Georgia. He was working as a journalist during this time. The main themes of his work were social problems, analysis of the ethnic Kist population integration issues (inclusion in cultural events and in social life) and the issue of challenging deeply rooted stereotypes society.

In summer of 2018 the plaintiff spent several months on the territory of Georgia, pursuing his work. In this period, he set about to make a documentary about the law-enforcement officers of Pankisi, encompassing the Kist population’s integration into the Georgian state, although he was unable to do this as the press service of the Ministry of Internal Affairs did not grant permission to film.

In autumn 2018 Aslanbek Dadaev left the territory of Georgia to visit his family in Chechnya. He did face any problems on exiting the country, although, on October 21, 2018, when Aslanbek Dadaev returned to Georgia to continue his business trip and professional work, he was refused to entry into the country.

On November 7, 2018 Aslanbek Dadaev tried to enter Georgia once again. The Border Police of the Ministry of Internal Affairs of Georgia said the decision of November 7, 2018, according to which the denial to enter the country was based on other requirements provided for by the legislation not being satisfied.

Case importance: Since 2016 the practice of discrimination against members of Muslim community, civic activists and journalists of different countries has been observed at the Georgian state border. Particularly, they are often prevented from entering Georgia and the MIA provides abstract and arbitrary justifications for the decisions (the other bases provided for by the Georgian legislation). The mentioned practice, is thus reasonable to assume, that the state expresses political loyalty towards certain states or discriminatively limits a person`s entry into Georgia due to his/her critical views.

Legal reasoning: The plaintiff indicated that he was denied because of abstract and arbitrary justifications, which is amounts to discriminative treatment and violates the freedom of expression. Article 11 (1) of the “Law of Georgia on the Legal Status of Aliens and Stateless Persons” and Article 28 on Approval of the Procedures for Issuing, Extending, and Terminating Georgian Visas (issued by the decree No.280 of July 23, 2015 by the Georgian government), defines the grounds for refusal to issue a visa, from which in Aslanbek Dadaev’s case Article 11 (“l”) of the “Law of Georgia on the Legal Status of Aliens and Stateless Persons” is marked, according

to which an alien can be refused entry into Georgia "in other cases as well provided for by the legislation of Georgia".

Neither in the decision of November 7, 2018, nor in the decision N MIA 9 18 02898495 of November 30, 2018 regarding the refusal of satisfying the administrative complaint do not specify the factual circumstances, which became the reason why the plaintiff was not legally allowed to enter the country. Taking into account these circumstances, the argumentation and substantiation, the plaintiff is not awarded the possibility to present evidence and counter evidence to challenge the state's position.

Considering the fact that the plaintiff, is still not aware of the specific circumstances, which became the reason for refusal into the country. It is important to define by legislation, specifying the legal circumstances in which a person can be denied entrance into the country for caselaw.

The only "other" case provided for by the Georgian legislation for denying entrance into Georgia, which was not indicated in the disputed decision of November 7, 2018, is provided in Article 3 ("K") of the "Law of Georgian on the Legal Status of Aliens and Stateless Persons". According to this paragraph, an alien against whom criminal proceedings are pending for international crimes of terrorism, drug trafficking, or human trafficking may be denied entry into Georgia.

According to Article 4 (8) of the Ordinance N386 of the "Georgian Government on Approval of State Border Regime and Protection Rule", a person is checked at the Georgian border based on lists provided by the law-enforcement bodies. This is a procedural norm and according to the information provided directly by MIA, the Ministry of Internal Affairs checks the person only if there is existing information about the concerned persons absconding from justice, sentencing or from other coercive measures and therefore are prosecuted according to the Criminal Procedure Code of Georgia.

Using the given norm against the plaintiff is unfounded, since he has not committed any kind of domestic or international crime. Taking the mentioned argument into account, the given norm is irrelevant in the case of Aslanbek Dadaev. It must also be mentioned here that according to the Article 11 (1) of the "Law of Georgian on the Legal Status of Aliens and Stateless Persons", the right to refuse an alien a Georgian visa or entry into Georgia depends on the discretional jurisdiction of the relevant administrative body, since the legislator does not oblige the administrative body directly, but provides possibility to take the decision itself based on discretional jurisdiction to deny visa/entry into Georgia to aliens in case the criteria given in this rule are applicable. Although, the state is obliged to substantiate the specific decisions made under discretional jurisdiction, which was not done in the case of Aslanbek Dadaev and therefore, we must consider the decision arbitrary. Acknowledging the fact that the decisions taken by the defender do not contain any substantiation, the plaintiff has a solid reason to believe that the arbitrary decision is connected to his journalistic work, and this is against Article 10 of the European Convention on Human Rights protecting the right of freedom of expression.

An important aspect of freedom of expression is media freedom and creating safe and free environment for journalistic work. Any kind of hindrance of the journalistic work is violating the right of not only the journalist, as an agent of democracy, but also damages the principles of a democratic, pluralistic and open society. Limiting the journalist's freedom arbitrarily might have a "freezing effect" on other journalists and for other people, essentially damaging and limiting the possibilities of public discussion.

In the given case there is a high risk that denying the plaintiff entry into Georgia was actually based on his professional work, the main themes of which are on social problems, analysis of the ethnic Kist population and integration issues (inclusion in cultural events and in social life) and the issue of challenging deep rooted stereotypes in society. This is unacceptable behaviour on the part of state bodies and the freedom of expression of different views has been suppressed by denying the subject entrance into Georgia.

It must also be mentioned that, in the given case, none of the disputed documents indicate the factual and legal substantiations, which make it possible for the plaintiff to identify the legitimate reason for the violation of his rights. This makes it possible to prove that the plaintiff has directly been discriminated based on his different views.

Case proceedings: The decision of the border police has been appealed in the Ministry of Internal Affairs of Georgia. The appeal has not been satisfied and it has been stated that A. Dadaev was denied entrance into Georgia based on Article 11, ("I") of the "Law of Georgia on the Legal Status of Aliens and Stateless Persons" (the other cases provided for by the legislation). However, the MIA did not specify what these "other cases" were. The decision of the MIA was appealed by EMC in the Tbilisi City Court, requesting it to be annulled and for MIA to be given the task to ensure A. Dadaev's free entry into the country. Within the reporting period this case was at the preparatory stage in the Tbilisi City Court.

1.8. N.T. against the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia and the Georgian government (case prepared by GYLA)

Factual circumstances: N.T is a citizen of Ukraine**.** On August 04, 2007, she married a Georgian citizen. On February 13, 2015, she was granted a permanent residence permit of Georgia. On February 08, 2018, the plaintiff gave birth to her third child. The plaintiff addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia via the Public Defender's Office, requesting reimbursement of the childbirth/caesarean section and antenatal screening. In February 2018 her request was refused, stating that she was a citizen of a foreign country and could not take advantage of the antenatal voucher. Also, she was refused free childbirth care, which is taken into provided for by the state program.

Case importance: This case shows the signs of intersectional discrimination – on the one hand – a woman, and on the other hand – a foreigner. The discrimination would not have taken place without those two bases.

Legal reasoning: According to Article 12 of the United Nations International Covenant on Economic, Social and Cultural Rights (further mentioned as Covenant), the States Parties to the present Covenant recognises the right of all persons to the enjoyment of the highest attainable standard of physical and mental health. The United Nations Committee of Economic, Social and Cultural Rights (further mentioned as committee) defines the right of health mentioned in this article as an inclusive right, which includes not only timely and proper medical care, but also it underlines the determinative factors of health.

According to Article 12 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, States Parties shall ensure women with appropriate services during pregnancy, and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 8 of the European Convention on Human Rights (Right to respect for private and family life) includes a person's right to have his/her physical, moral and psychological unity protected. The European Court of Human Rights has cast doubts on the legitimacy of denying the extension of social programs to persons with permanent residence status and has found the violation of right to equality.

Case proceedings: The plaintiff addressed the Public Defender on February 12, 2018. On 04 April 2018, the Public Defender identified direct discrimination against the plaintiff based on her citizenship and recommended the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia to make the state social, economic and health programs available to people with permanent residence permits in Georgia. On June 6, 2018, the plaintiff addressed the court with the request to have the disputed normative act annulled and moral damage reimbursed. The conclusive decision on the given case has not been made within the reporting period.

1.9. PHR against the Georgian government

Factual circumstances: According to the ordinance N638 of the "Government of Georgia on Approval of State Health Programs", the persons benefiting from this program should be citizens of Georgia[4]. The ordinance also provides that in case of involuntary health service needs, aliens living in Georgia and aliens without a permanent Georgian residence permit have the right to benefit from this service. [5] As of the voluntary treatment, only Georgian citizens have the right to benefit from state funded in-patient treatment excluding citizens of other countries.

Case importance: This case concerns access to vital services such as voluntary psychiatric services.

Legal reasoning: According to Article 25 of the "Law of Georgia on the Legal Status of Aliens and Stateless Persons", aliens in Georgia shall enjoy equal access to treatment as citizens of Georgia in relation to rights, freedoms and obligations, unless otherwise provided for by the legislation of Georgia. According to Article 30 of the same law, aliens in Georgia shall be entitled to healthcare under the legislation of Georgia.

In the given case, if the alien realises the need for psychiatric accommodation, he/she is obliged to pay for it himself/herself. Therefore, this person is preventing from receiving the relating services from the state, hence it can be classified as discrimination based on citizenship.

[4] Ordinance of the Government of Georgia N638, appendix 12, Article 2 (1)

[5] Ordinance of the Government of Georgia N638, appendix 12, Article 2 (2)

Case proceedings: PHR addressed the Public Defender on February 26, 2018, with an appeal. The Public Defender requested a reply from the defendant Ministry on April 18, 2018, which was received on July 2, 2018. The Public Defender has not made a decision regarding this case within the reporting period.

1.10. S. A. O, M. D, H. R. Ch. and M.I.N.K against the National Bank of Georgia (case prepared by TDI)

Factual circumstances: In various periods of 2016, citizens of Federal Republic of Nigeria, Islamic Republic of Iran and Syrian Arab Republic petitioned the Public Defender with an announcement stating that they are facing challenges while opening accounts in foreign currencies in Georgia and accessing bank services. For example, one of the petitioners, who is a foreigner and studies in one of the accredited higher education establishments, addressed the Bank of Georgia, requesting the renewal of a student card. The bank asked him/her to present a recommendation letter from a bank registered in the European Union, Northern America (USA and Canada) or Australia. Doing this was not possible for the plaintiff, since he/she had never had any kind of connection with the banks operating in the listed countries.

The other petitioners have also come across the similar problems concerning different bank services – getting records of transactions from employer companies, opening up accounts in US dollar and Euro. In order to get those services, "VTB" and "TBC" banks request recommendation letters from at least one bank registered in the European Union, Northern America (USA and Canada) and Australia. Although, in these cases also, the petitioners did not have any kind of business connections with the banks operating in the listed countries and would not have been able to present the requested recommendations.

In response to the Public Defender's letter, the Bank of Georgia referred to Article 6 (13) of the "Law of Georgia on Facilitation of Prevention of Illicit Income Legalisation", which states the following: A monitoring entity shall be obliged to have an appropriate risk management system in place to identify clients whose activities may pose a high risk of illicit income legalization or terrorist financing, and to carry out enhanced identification, verification and monitoring procedures against such clients. Concerning the denial to provide a student card to the citizen of Nigeria, the Bank of Georgia stated that they consider such students as high risk clients, since multiple frauds have been recorded by persons from Nigeria. There have also been recorded cases of Nigerian citizens being arrested for importing illegal drug and selling accusations in Georgia. Taking these circumstances into account, the bank is obliged to carry out enhanced identification and verification procedures against natural persons holding citizenship of Nigeria.

The Public Defender addressed the National Bank of Georgia regarding this. By the letter sent by this bank, the Nigerian student was allowed to receive a student card from the Bank of Georgia. Also, they were able to open an account with the student card but only in the national currency.

The letter sent from VTB Bank to the Public Defender states that, in spite of the residence, the bank itself decides if the specific client is acceptable for its commercial goals and if an account should be opened for this person.

According to TBC bank, they do not aim to discriminate against certain groups of clients, but are careful no to legalise the illegal income and facilitate the growing risks of terrorism financing.

Before making a final decision, VTB Bank provided the company records of the petitioner foreigner to him/her. In spite of this, the citizens of Nigeria, Iran and Syria continue to face problems in opening an account with US dollar and Euro in banks registered in Georgia. It was only possible to open an account in Georgian Lari.

Case importance: Foreigners accessibility to domestic bank services.

Legal reasoning: The Public Defender believes that the circumstances indicated in the announcement could encourage discrimination towards the citizens of specific countries in the banking service field. This conclusion, above all, is based on the information provided by the commercial banks themselves, according to which they treat certain kinds of foreigners differently due to a danger of illicit income legalisation.

According to Article 211(2) of the Law of Georgia on "Commercial Bank Activities", it is the bank who must be aware of the identity and activity of business relations with its service consumer and when verifying a transaction carried out by the consumer and the level of risk of the activity with regard to legalisation of illicit income and financing of terrorism.

According to Article 211(3) of the "Law of Georgia on Commercial Bank Activities", commercial banks operating in Georgia shall have the right to decide and require further additional information from a client. Also, accord-

ing to paragraph 4 of the same article, commercial banks operating in Georgia shall have the right to refuse without any justification the opening of an account or provision of services.

According to the active legislation, commercial banks, using the risk-based approach, shall identify such clients whose activities could create a danger of illicit income legalisation and the financing of terrorism. Moreover, the procedure of identification and verification of the consumer of financial services (client) must be undertaken by taking into account the type and character of the client.

The internationally acknowledged rules of financial client identification and business relationship monitoring are set by 40 recommendations of the Financial Action Task Force (FATF), further mentioned as the special force. According to the recommendation N1 of the special force, using the risk-based approach, financial organisations should identify and assess the money laundering and terrorist financing risks, taking into account the financial clients, states and geographic regions. The financial clients are monitored due to this reason.

According to the recommendation N10, when the above mentioned requirements (among those, in the case of correcting them on risk-based approach) cannot be satisfied, the bank shall be obliged to deny the opening the account or terminate business relations with the client. Therefore, the bank shall be obliged to refuse opening the account and/or terminate business relations with the client in case: (a) it is not possible to identify the customer and verify the customer's identity using reliable, independent source documents, data or information, (b) it is not possible to identify the beneficial owner of the client, and to verify the identity of the beneficial owner, (c) it is impossible to ascertain the purpose and intended nature of the business relationship and (d) when the bank is unable to analyse the arrangements in the frames of the business relationships, which would help it possess constant updates on the client and the future, potential danger of the client's activities.

One of the petitioners requested an extension of the already established business relationship. The explanatory note of recommendation N10 states that the procedure of customer due diligence (CDD) does not require rechecking the existing customers every time they enter into new agreements. Therefore, it is unclear for the Public Defender, on what basis the bank requested additional information in the form of recommendation from the corresponding banks.

According to the recommendation N17, in order to fulfil the customer due diligence requirements set out in recommendation 10 "a-d"19, it permits the states to allow the financial institutions to rely on third party information during the CDD, so long as this third party is in line with the mechanisms against money laundering and terrorist financing. It must be mentioned, that recommendation N17, above all, refers to financial institutions of foreign countries as 'third parties'. As the announcement states, commercial banks requested a recommendation letter from the third party, specifically from a bank registered in the European Union, the USA, Canada and Australia from some of the petitioners, which was not possible for the plaintiffs, as they never had any kind of business with the banks operating in the listed countries. Therefore, the non-fulfilment of this specific request was considered as non- fulfilment of the customer due diligence and therefore, the reason for refusing the opening of the bank account and provision of services.

According to the recommendation N17 concerning the customer due diligence procedure, when the financial institution is relying on information provided by the so called third party, final responsibility remains upon the later. Therefore, when a customer is unable to present such documents or information provided from third parties, these circumstances cannot be the basis for denying bank services to customers, which assumes a connection to money laundering and/or terrorism financing, or due to non-fulfilment of pints "a-d" of the N10 recommendation.

For the petitioners, who undertake their entrepreneurial work in Georgia, it must be less problematic for the Georgian banks to check their activities. It must also be taken into account, that the citizen on Syria, M.D.I, did not request to open a bank account, his/her request concerned the access to bank records of the Turkish company "A.K.I.M.E.T.T", for which he/she had a legal right to and to which, due to unknown reasons, he/she was denied. The bank's unsubstantiated denial for providing the bank records underscores the fact that citizens of certain countries face obstacles when using bank services, which requires more clear and foreseeable rules.

Case proceedings: Although the case has been submitted to the Public Defender's office in 2016, the general proposition was issued by the Public Defender on April 4, 2018 – within the reporting period. By this general proposition, the Public Defender asked the Nation Bank of Georgia to:

- Provide the possibility for foreigners to present alternative documents in case he/she has not had relations with banks registered in the European Union, Northern America and Australia. This possibility will help prevent the risk of money-laundering.

- Request from the joint-stock company Bank of Georgia, based on corresponding clarifications, to provide an opportunity for foreign students to open accounts to send/receive money from their family members. These accounts will be accordingly monitored to prevent money laundering and terrorism financing.
- Have foreseeable regulations, which will ensure the provision of proper bank service for aliens without discrimination on any base.

1.11. M.U.Ch. against the LEPL – N130 Tbilisi Public School (case prepared by the Non-entrepreneurial (Non-commercial) Legal Entity "Sapari")

Factual circumstances: M.U.Ch. (further mentioned as Mimi) by November 9, 2014, was a 11th grader in the Public School N130 in Tbilisi. In the presence of the Georgian language teacher, M.D., and almost the whole class of 24 students, S.K insulted Mimi because of her skin colour. Children, among them Mimi, were talking loudly during the lesson. On S.K.`s remark "What do you want at all", Mimi answered "Who are with at all, am not talking to you", S.K then retorted "What are you doing here at all, why don't you go back to Africa", "Go to the African wild people"; "You do not have a place in the society". Mimi asked S.S. to sit next to her and explain what S.M. meant by saying "Go to Africa". In spite of the fact that the teacher could clearly hear S.S. shouting at Mimi to "go to Africa", she/he did not rebuke S.K. Moreover, she/he sent only Mimi out of the class and when Mimi asked "why only me?" both of the students were dismissed from the class. The relevant people were not made aware of this dismissal fact. Several minutes later, the class tutor showed up in the corridor and Mimi told the teacher about the previous events, Ts. T. told S.S. that "acting like this is shameful", also "what exactly is going on in this school", but no other comments have been made except this. Later on she/he asked Mimi, if she was sure that S. S's words had racist connotation.

Mimi had several times experienced insults from the students and teachers because of her skin colour. One of the students called Mimi "a negro" and she reported it to the class tutor. Afterwards they reconciled, the teacher T.Ts. also confirmed this, although she reacted to the fact of racism in the following way: "I remember that I brought a book for the class about 100 Famous Georgians and told the children story of Chabua Amirejibi's life, so that they could better get acquainted to Mimi's predecessors (Mimi is a great-grandchild of Chabua Amirejibi)". When Mimi entered the sports hall, the sport teacher said "wow, a negro in our school". This last event has especially hurt Mimi. On the next lesson she called her mom and asked her to come over to the school. Mimi's mother had an intense talk with S.K., after which the class tutor deemed it necessary to make the school principal aware of the situation. But the principal addressed Mimi's disciplinary infringements instead of reacting to the fact of racism.

Case importance: This case concerns racial discrimination of a child, also the school's ineffectiveness in tackling racism.

Legal reasoning: The Tbilisi Court of Appeals has announced that the words addressed at M. U. Ch. – "You belong in Africa, not in the society", or by the other version – "Go to the African wild people, you do not belong in the society", "Go to Africa, you do not belong in civilization" – from the viewpoint of the victim, and any unbiased and reasonable person regarded the event as harassment based on skin colour. Also, the Chamber ascertained that the school did not take immediate measures by its own initiative –neither informative, nor educational or disciplinary. All the above mentioned measures were only undertaken after the school was sent the ordinance by the Ministry of Education, which obliged the school to react to the violations indicated by the Ministry Internal Audit department. The Appeal Chamber addressed Article 14 of the Constitution of Georgia, Articles 2 and 10 of the "Law of Georgia on the Elimination of All Forms of Discrimination", Articles 13 and 20 of the "Law of Georgia on General Education", Article 413 of the Civil Code of Georgia.

Case proceedings: According to the decision of the Tbilisi City Court Civil Cases Panel dated December 20, 2016, the complaint has not been satisfied. The decision has been appealed by the plaintiff/appellant – Mimi. According to the decision of the Tbilisi Court of Appeals, Chamber of Civil Cases, dated June 14, 2018, the appeal has partially been satisfied, the Trial Court decision has been annulled, a new decision has been made regarding the case, which obliged the defender to compensate the moral damage for the plaintiff in the amount of 1000 GEL.

The decision of June 14, 2018, made by the Tbilisi Court of Appeals, Chamber of Civil Cases, has been appealed in the Court of Cassation by the defendant (N130 Public School); The Court of Cassation received the appeal for processing, although the Supreme Court has not made any decision within the reporting period.

2. DISCRIMINATION BASED ON EXPRESSION, POLITICAL OR OTHER BELIEFS

According to Article 11 (1) of the Constitution of Georgia and according to Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination", discrimination based on political or other beliefs is prohibited. Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination" additionally provides the protected bases. Within the reporting period, we came across discrimination on grounds of expression, political or other beliefs in the work environment. Refusing to hire or conversely, fire a person due to his/her political affiliation or for expressing critical views still remains a problem. We further came across discrimination based on the freedom not to express a belief or exercise membership to a political party.

2.1. Badri Oniani against the Tskaltubo Municipal Board (case prepared by GYLA)

Factual circumstances of the case: On August 29, 2016, by the ordinance of the Tskaltubo Municipality Office Head, Badri Oniani was dismissed from the position of the Head of Health and Social Services Department. The dismissal ordinance did not contain any indications or substantiations explaining the reasons for dismissal. The reason for firing Badri Oniani was that he had been named as the majority deputy candidate by the political union "National Forum" in the 57th majority Election District of Tskaltubo N58 district. It must be mentioned that two days before dismissal, the political union "National Forum" decided to choose Badri Oniani as the majority deputy candidate and two days later, the dismissal ordinance was issued.

Case importance: The case is important since it concerns discrimination of a citizen in the public sphere based on his political beliefs.

Legal reasoning: Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination" prohibits discrimination based on political beliefs. Badri Oniani was discriminated against as he was named as a representative of the oppositional political party "National Forum" in the parliamentary elections. Because of his political beliefs, Badri Oniani has been placed in an unfavourable position compared to other persons.

Case proceedings: The Magistrate judge of Tskaltubo partially satisfied the complaint by the April 10, 2017, decision. The judge annulled the appealed individual administrative-legal act, as the Municipal Border did not research the factual circumstances of the case which was essential to make the decision. Concerning the motives for taking the decision, the Magistrate judge did not respond to the arguments presented by the plaintiff on discrimination. Both parties appealed this decision in the Kutaisi Court of Appeals. The plaintiff complained about discrimination. On July 6, 2017, the Kutaisi Court of Appeals annulled the decision of Tskaltubo Magistrate and made a new decision. The Kutaisi Court of Appeals based its judgment on the code of local self-government which was active at that time, according to which, the Municipality Office Head and the Mayor were not obliged to substantiate the dismissal of the structural unit head. The Kutaisi Court of Appeals has not replied to the arguments presented in the appeal by the appellant. On February 22, 2018, the Supreme Court allowed Badri Oniani's cassation appeal. The Supreme Court has not made any decision regarding the cassation appeal within the reporting period.

2.2. Makvala Javakhia against the Non-entrepreneurial (Non-commercial) Legal Entity Tbilisi N77 Kindergarten (case prepared by GDI)

Factual circumstances: Makvala Javakhia was working as the deputy head in the Tbilisi N77 Kindergarten. Throughout the course of her work, she has never been the subject of disciplinary measures. Since 2006, Makvala Javakhia has been an active member of the political party United National Movement. In December 2015, a close relative died and she was subsequently unable to attend work, as she had to travel to the region. She wrote a statement regarding these circumstances. On December 2, 2015, an inspection was conducted at the kindergarten, Makvala Javakhia was still absent, the cook assistants informed the inspectors that she left the kindergarten willfully, without any warning and travelled outside the city without informing the head and the HR of Tbilisi kindergarten management agency of her departure. The given conclusion recommended that Makvala Javakhia be dismissed. She was dismissed from work on December 16, 2015.

Other circumstances of the case indicate to the fact that Makvala Javakhia was dismissed due to her political beliefs. Moreover, in the first part of 2016, thousands of kindergarten heads and deputy heads throughout Tbilisi had been dismissed. Makvala Javakhia's work contract was terminated without any preliminary warning or research, which strengthened the above mentioned doubts about discrimination.

Case importance: This case is a part of a large-scale problem dismissing workers based on their political beliefs in organisations.

Legal reasoning: According to the plaintiff, she had been directly discriminated based on her political beliefs, which is directly forbidden by the Law of Georgia on the Elimination of All Forms of Discrimination. Discriminative treatment was one of the reasons for the plaintiff to request annulment of dismissal, reinstatement, full reimbursement of the salary and of enforced unemployment, to the amount of 600 GEL per month.

Case proceedings: On September 28, 2017**,** the Trial Court ascertained the undisputable factual circumstances: Makvala Javakhia had a work relationship with the (Non-commercial) Legal Entity Tbilisi N77 Kindergarten. The work contract defined the rights and obligations of the employee; since November 24, 2015 up until and including December 10 she was assigned temporarily to the head's duties. On December 16, 2015, due to the flagrant violation of internal regulations, she has been dismissed from work. At the same time, she had never violated rules in the period of 2015-2018. Makvala Javakhia had been a coordinator of the political party United National Movement Isani district organisation since 2006.

The Tbilisi City Court found that Makvala Javakhia had blatantly violated the contract since she had not properly warned her employer accordingly about her absence from work, moreover, she had failed to fulfil her duty of supervising the cooks.

Regarding the discrimination, the Tbilisi City Court reasoned that due to the work contract being terminated on objective reasons, no discrimination was found. The complaint was not satisfied due to these circumstances.

In the decision of May 25, 2018, the Tbilisi Court of Appeals states: As a result of inspection carried out on December 2, 2015, it has been found out that the kitchen workers had hidden several products, the workers had confessed that they hid those items to take them home as they were unmonitored, Makvala Javakhia was not present at work and she wilfully, without any warning left the kindergarten. The agency service recommended the head of the kindergarten to dismiss Makvala Javakhia; on December 15, 2015, the counsel of N77 kindergarten discussed the information provided by the head, according to which a close relative of Makvala Javakhia died on Novermber 28, on December 1 she wrote a statement regarding this, although it does not mention the number of absence days ; due to the flagrant violation of internal regulations, Makvala Javakhia has been dismissed from work.

The Court of Appeals did not concur with the argument of the appellant that the work relationship had been terminated on discriminative basis, although, this position has not been followed by any reasoning. Moreover, the chamber considered that Makvala Javakhia did not violate her obligations in a flagrant way, therefore, no prerequisites of Article 37 ("G") of Labour Code were applicable. The chamber assessed the reason of Makvala Javakhia's absence – her relative's death, as an excusable reason. The chamber also stated that the cooks' misdemeanor of hiding the food cannot be attributed to Makvala Javakhia. The court mentioned, that the fact of violating employment obligations by Makvala Javakhia was depicted as failure to turn up at work without preliminary warning. The court has made the decision based on Ultima Ratio – the principle of labour justice, which means that the employee should be dismissed only in case if, due to the character and weight of the violation, assigning a lighter sanction would be unreasonable. The court has considered Makvala Javakhia's absence from work to be "usual" and not a "flagrant" violation, therefore, her dismissal was unlawful considering Article 37 ("G") of Labour Code. The court therefore annulled the decision regarding Makvala Javakhia's dismissal, also, it satisfied her request regarding reinstatement.

The decision of the Court of Appeals was appealed in the Supreme Court, which allowed the cassation appeal. The Supreme Court has not made a conclusive decision regarding this case.

2.3. Natia Tukhashvili against the National Bureau of Enforcement (case prepared by GYLA)

Factual circumstances: Natia Tukhashvili worked in the National Bureau of Enforcement in various top positions throughout the years. As a result of the 2014 competition, she was appointed to the position of head as services in the same institution. Natia Tukhashvili was first appointed when the National Movement was a ruling party. After the government changed in 2012, Natia Tukhashvili continued to support the National Movement and its leaders. Specifically, she openly expressed her political views and actively attending the protest rallies organised by the party.

In March 2017, Natia Tukhashvili, along with other workers from the office, were warned about the reorganisa-

tion and possible dismissal. Even though the new position was identical to the position Natia Tukhashvili was appointed to beforehand, however, after the reorganisation she was not appointed outside competition, the act of which was unsubstantiated and based on political discrimination.

In April 2017, having received approval from the Minister of Justice, Natia Tukhashvili was dismissed from her position as the service head of the National Bureau of Enforcement.

Case importance: Demonstrating political discrimination in public institutions.

Legal reasoning: The plaintiff had been directly discriminated against based on her political affiliation, which is prohibited by the Law of Georgia on the Elimination of All Forms of Discrimination.

Case proceedings: During the report period, specifically on May 1, 2018, a preparatory session was held on the given case. The plaintiff requests termination of the discriminative treatment, eradication of its results and compensation for moral damage.

2.4. Ekaterine Mishveladze against Georgian Public Broadcasting (case prepared by GYLA)

Factual circumstances of the case: In the beginning of 2015 (before the new television season) the counselor of the Georgian Public Broadcasting Basa Janikashvili publicly announced the following: "I would like to congratulate Mrs Mishveladze for creating her own family. We were in the process of creating the promo and were waiting for Eka to arrive. She brought good news with her – she had married one of the political leaders, the future head of the parliament, which, by the way, was something that I predicted. The broadcaster, as well as the regulating commission, has its code, where the conflict of interests might be public. I can send you this to your email. This is a problem." Basa Janikashvili addressed Ekaterine Mishveladze by the following phrase: "Dear Eka, I would like to congratulate on your wedding, although, I would like to mention that, according to the Public Broadcasting Code, it is awkward that a journalist, who is a spouse of a political leader, hosts a political show." After the show "First Studio" was no longer broadcasting, the Public Broadcasting introduced four new social-political shows with new workers being hired to host them. From six workers involved in "First Studio", only one contract was terminate, that of Ekaterine Mishveladze.

Case importance: The case concerns discrimination based on political association. The plaintiff was placed in an unfavourable position due to her husband's political views.

Legal reasoning: The plaintiff requesting to have direct discrimination established based on political association. She also argued a violation of the corresponding norms of Labour Code.

Case proceedings: In March 2017, Civil Cases Panel of Tbilisi City Court partially satisfied Ekaterine Mishveladze's complaint. The court considered her dismissal illegal and ordered the defendant to compensate the plaintiff. Discrimination was not been determined.

Tbilisi City Court decision reads: "In procedural and civil law there is a standard of sharing the burden of proof fairly and objectively. According to this standard, the burden of proof is shared so that the plaintiff and the defender shall be obliged to prove those facts, which are easier and objectively more possible for them to prove. When the employee indicates on the discriminative basis of terminating the work contract, the assertion burden lies on the defendant… Moreover, such division of burden does not mean that the plaintiff is totally free from the burden of proof: he/she must name those facts, which create the assumption of discrimination and present the corresponding evidence, name the comparator – indicate to the person who is in a similar situation, for whom another kind of decision has been made and so on."

In this case, the court concurs with the defender's note that the above mentioned interview with Basa Janikashvili represented a personal viewpoint and that she did not make an announcement on behalf of the Public Broadcasting on the matter. The court stated that Basa Janikashvili did not hold a leading position in the LEPL Public Broadcasting, she was not authorised to enact or terminate work contracts. The Public Broadcasting is represented by the CEO to the public and third parties. The court also takes into account the fact that during 2015 the LEPL Public Broadcasting ended several shows on the First Channel and part of the shows which were broadcasted since autumn had an updated format or name which is also proved by the statement provided by the defendant and not disputed by the plaintiff.

The Tbilisi Court of Appeals handled the case within the reporting period. The appeal has not been satisfied and the Trial Court decision has been upheld. The Court of Appeals has also explained that the request of an-

nulling the dismissal had been satisfied, therefore, the plaintiff will not be able to appeal the decision made in her favour, since a decision of the first instance court decision can only be appealed if it has been made against the plaintiff, or concerns her legal interests in any way.

The decision of the Court of Appeals has been appealed to the Supreme Court by the defender. Ekaterine Mishveladze did not appeal the Court of Appeals' ordinance. The Supreme Court has not made any decision regarding this case within the reporting period.

2.5. I.P. against Gori Municipality City Hall (case prepared by GYLA)

Factual circumstances of the case: I.P. had been the head of the Gori Community Municipality Office HR department since 2016. During the municipality bodies' elections held October 21, 2017, I.P. was the majority deputy candidate of the "Building Movement". On September 21, 2017, I.P. left the "Georgian Dream" and went to become a member of the "Building Movement".[6]

After the local self-government elections of 2017, the municipalities of the Gori Community and the city of Gori were merged, a Gori Municipality Mayor's Office was created as a result, hitherto the public officials working in the Gori Municipality Office were supposed to be transferred by the mobility rule. Since I.P. was a member of the "Building Movement", he/she was not transferred to the equal or lower position in the Gori Municipality Mayor's Office.

Case importance: The case concerns discrimination on grounds of political affiliation in the public sphere.

Legal circumstances: I.P. has been directly discriminated because of his/her political beliefs.

Case proceedings: On January 12, 2018, I.P. addressed the Gori district court. I.P. asked the court to identify discrimination, to be appointed to the position of head of Gori Municipality Mayor's Office HR department by the mobility rule and to be compensated 1000 GEL from November 2017 until the decision is enacted.

2.6. Luiza Laperadze against Tbilisi State Academy of Arts (case is prepared by WISG)

Factual circumstances: Luiza Laperadze participated in the open competition commenced in July 2018 by the LEPL Apolon Kutateladze Tbilisi State Academy of Arts for the position of assistant professor. The plaintiff Laperadze submitted an application for the position of assistant professor of Painting. According to the session dated August 12, 2018, ordinance #3 of the Fine Arts Faculty vacant positions' sector commission of Apolon Kutateladze Tbilisi State Academy of Arts, the applications of Luiza Laperadze and other two candidates corresponded to the qualification requirements. Although, the commission has discussed only the applications of E.G. and T. M. The ordinance of the commission does not explain why Luiza Laperadze was not considered for the position.

The plaintiff considers that she was refused of the academic position based on discrimination, which is connected to her past work in the Academy. Specifically, Luiza Laperadze had been working in the Academy for many years and was distinguished for her working methods, which, in spite of being in accordance with the teaching standards, is very individual and customised for the individual needs of students. This, during different time-frames, caused conflict with the administration, which finally resulted in the Academy administration prosecuting her. For several years, Luiza Laperadze had been trying to be appointed to an academic position to work with students, but has been refused without justification from every competition. Luiza Laperadze has, now for the third time, been refused the academic position based on discriminative motives.

In 2014, Luiza Laperadze was trying to participate in the competition for an academic position. According to the decision of the session's ordinance N6 dated August 19, 2014, "The application of Luiza Laperadze, in fact, does correspond with the qualification requirements, although, before making the decision, some of the commission members working on academic positions mentioned that Luiza Laperadze had been working at the Fine Arts Faculty for years as a visiting lecturer and therefore they were acquainted with her work. Luiza Laperadze was often characterised with non-collegial behaviour, which was negatively affecting the educational process."

Luiza Laperadze considers that the reason of refusal of employment is due to her political and other beliefs.

[6] https://www.youtube.com/watch?v=94r1mKY1J_w and http://www.qartli.ge/ge/akhali-ambebi/article/6538-dedashenebispartiashishviliqarthulocnebashi

Case importance: Discrimination faced in employment opportunities due to political and other beliefs.

Legal reasoning: Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination" prohibits discrimination based on political and other beliefs. Articles 2 and 3 of the same law prohibits direct discrimination. The plaintiff satisfies the qualification requirements in the fields of education, professional experience and professional skills equally to her competitors. In spite of this, she was placed in an unfavourable position because of her political and other beliefs which is prohibited by the law.

Choosing candidates is at the discretional authority of the administrative body. Discretional authority gives the administrative body or an official the right to choose the most acceptable candidate from several candidates based on protection of public and private interests; the prerequisite in using discretional authority in the framework of law is to maintain the balance between public and private interests. The decision taken violates the principle of equality and exceeded the discretional authority.

Case proceedings: Within the reporting period Luiza Laperadze petitioned the Tbilisi City Court, but the final decision is awaited. Luiza Laperadze requests the court task the administrative body to issue an administrative-legal act, awarding her the academic position. The plaintiff also requests the identification of discrimination and compensation of moral damage in the amount of 3000 GEL.

2.7. N.N and M.K. against the Mestia Municipality City Hall (case prepared by EMC)

Factual circumstances: The plaintiff party consists of "Svaneti Youth Movement" leaders, who actively resist the planned constructions of 57 hydroelectric power plants in Svaneti. They often organised rallies in protest, speak at these rallies and present the movement's position in media. Besides this and representing the locals, they attend meetings with the state, company representatives and other persons and hold public meetings or co-organise them. Simultaneously, the plaintiffs were working in the Mestia Municipality Non-entrepreneurial (Non-commercial) Legal Entity.

The Mayor of the Mestia Municipality, Kapiton Jorjoliani considers the construction of hydroelectric power plants in the region to be "of vital importance" and openly supports these projects. Moreover, he identifies the Svaneti Youth Movement and among them the plaintiffs as the representatives of the political party opposing him and considers them as opponents too.

During one of the periods of active protesting against the constructions of hydroelectric power plants, the Mayor of the Mestia Municipality made the decision to reorganise the Non-entrepreneurial (Non-commercial) Legal Entities of the municipality, dismissing the persons protesting against the construction of hydroelectric power plants as a result.

Case importance: This case concerns discrimination in the working environment for expressing critical views against the state politics.

Legal circumstances: In the given case, the plaintiff relies on the national and international legislation on the prohibition of discrimination. The plaintiffs consider that the reorganisation initiated by the Mestia Municipality resulting in their dismissal was conducted based on a discriminative motive, since only the plaintiffs were dismissed. Further, having founded the new Non-entrepreneurial (Non-commercial) Legal Entities, the leaders, in agreement with the Mayor, dismissed other activists protesting against hydroelectric power plants.

In spite of the fact that the municipality Non-entrepreneurial (Non-commercial) Legal Entities were united in order to facilitate management and maximize economies, the evidence presented in the case prove that in fact the budget attributed to salaries grew and only protesters were fired which proves that the reasons for reorganisation did not exist in the first place.

Case proceedings: A complaint has been submitted to the Zugdidi District Court within the reporting period. At the same time, the main session in the Trial Court has ended. No decision has been announced within the reporting period about this case.

3. RELIGION

According to Article 11 (1) of the Constitution and to the Law of "Georgia on the Elimination of All Forms of Discrimination", religion is a direct, classic basis of discrimination. Within the reporting period we came across the challenges of the minority religious groups in building premises and in the restitution of the property confiscated during the Soviet times.

3.1. NNLE "Fund of Construction of New Mosque in Batumi" against Batumi Municipality City Hall (case prepared by EMC and TDI)

Factual circumstances of the case: the organisation NNLE "Fund of Construction of New Mosque in Batumi" was registered with self-organisation and representation of the Muslim community. When the state did not transfer land to the Muslim community required to construct a mosque, on September 7, 2016, with the help of parish contributions, the Muslim community itself purchased land located in Batumi to build the new Mosque. On February 8, 2017, NNLE "Fund of Construction of New Mosque in Batumi" filed an application to the Batumi Municipality City Hall requesting the issuance of the first stage permit for construction on the land plot registered as fund property and determination of the conditions for the use of the land plot as it was intended to construct a religious building. On May 4, 2017, after several months of administrative proceedings, Batumi Municipality City Hall issued a decree of refusal of the special (zonal) agreement on the construction land plot. Hence, according to the decree of May 5, 2017 issued by the Mayor of Batumi Municipality and, on the basis of the mentioned act, the plaintiff's requirement for the approval of the conditions for the use of the land plot for construction were rejected.

Case importance: There is only one mosque located within the Batumi Municipality - the historical Orta Jame Mosque. As the Mosque is not sufficient for all the worshippers, several hundred people (from 500 to 1000 worshippers) are forced to pray on the streets in unsuitable conditions during Juma Prayers every Friday. During Bayram, the holiday prayers, from 3000 up to 5000 people gather to pray in the Mosque. On such days, the majority of the parish in their thousands are forced to pray outside on the streets in rain, snow and wind. Such overcrowded conditions and external factors largely hinder Muslim women from participating in the prayers. Therefore, constructing a new Mosque in the city of Batumi bears great importance for the Muslim community.

Legal reasoning: two basic arguments were provided by the City Hall about the issuance of the first stage permit for construction: 1. the land plot is located within the residential zone 6 (RZ6) which is a high intensity residential zone and the dominant type of construction is residential houses. Therefore, religious buildings should not be constructed here. 2. The religious building requires special infrastructure with respect to movement, traffic, stops and many others, the development of which is quite difficult.

The plaintiff considers Batumi Municipality Mayor's Office's argument for refusing the building permit to be clearly unsubstantiated and illegal. Specifically, the local self-government illegally used the discretional authority for refusing to issue the permit on building a religious building in a residential area. The local self-government opposed the urgent social need for building a mosque in the city with the abstract interests of city's development, thus ignoring the superior public interest of freedom of worship. Despite that the area is in a high intensity residential zone, the existence of a building of public use is also admissible. It must be mentioned that according to this statement and in agreement with the law, building "ecclesiastical objects" in the city of Batumi, living area 6 is permissible. We must define "ecclesiastical objects" in a non-discriminative and neutral manner, considering not only churches, but other religious buildings too. Receiving a special zonal agreement is needed in order to build this kind of object.

Case proceedings: A court hearing was held in 2018 regarding the Batumi mosque proceedings. At this hearing, the representative of the Batumi Municipality Mayor's Office, Vakhtang Gedenidze announced that the new Mayor of Batumi Municipality, Lasha Komakhidze was willing to conduct negotiations with the plaintiff party regarding the disputed issue. The court hearing was postponed due to this reason and the parties were given a one-month timeframe to negotiate the disputed issue. The parties met on the initiative of the Batumi Municipality Mayor's Office on April 3, 2018. The members of the board of the Fund Building the New Mosque, as well as the lawyers representing the fund's interests, representatives of Batumi Municipality Mayor's Office and the Mayor of the Batumi Municipality – Lasha Komakhidze were present at the meeting.

According to the Mayor's offer, in order for the mosque's building to be plausible, 1) the Non-entrepreneurial (Non-commercial) Legal Entity the Fund of Building the New Mosque must withdraw the complaint from the

court; 2) The Fund must hand over the land purchased for building the mosque to the LEPL Administration of Muslims of all Georgia, who will then address the city Mayor's Office to receive the mosque building permission. According to the Mayor, the Administration of Muslims of all Georgia is a subject receiving different benefits from the state. The state finances it, gives mosques and madrasas to it and therefore, only this organisation can form relationships with the state.

The fund shared the united writ dated February 18, 2018 of the Initiative Group for Building a New Mosque to the Mayor's Office. The writ clearly states that the ownership on the land purchased for building the mosque belongs to unconditionally to the Muslim parish and the sole representative to third parties will be the Fund of Building the New Mosque in Batumi. At the meeting, the Fund underlined the fact that the Muslim parish strongly desires that the construction of the mosque be dealt with by the Fund founded by them, and therefore accountable before them, since the society trusts the Administration of Muslims of all Georgia less as it used as a tool by the state. Therefore, in the framework of the meeting, the Fund explained to the Mayor's Office, that the offer excluding the Fund totally from this process was originally unacceptable for them. The Batumi City Court was informed about the negative outcomes of the negotiations, and has been requested to schedule new court hearings several times, although no new date has been set within the reporting period.

3.2. Non-registered union "Shura (council) of the Imam Ali Mosque" against the National Agency of State Property (case prepared by EMC)

Factual circumstances of the case: The Imam Ali mosque, constructed in 1739, is located in the city of Marneuli. During the Soviet period, the Mosque was used for various purposes and eventually, became dilapidated until 1998, when the building was restored with the initiative and funding of the local population. The financial provision for restoration work, as well as all decisions related to the Mosque, including the selection of religious leaders, was decided by the local population,the parish of the Mosque independently.

In 2004, an independent governing body, Shura (council) of the mosque, was established in the Imam Ali Mosque. Since then, the body, independently from other religious organisations and political institutions, as well as on the basis of goodwill of the parish, has been governing the Mosque and administering religious affairs democratically. As the then current legislation of 2004 did not require registration of religious organisations, the council implemented its activity as a non-registered union. Even after 2011, the council has not registered in the Public Registry since there was no need.

On the basis of the application N05/18464 issued by the Ministry of Economy and Sustainable Development of Georgia on August 19, 2011, the Imam Ali Mosque was registered as state property. Later, on December 31, 2014, on the basis of the letter N5/51681 of LEPL "the National Agency of State Property", which in its turn was based on the letter N1/746 issued by LEPL "State Agency for Religious Issues" on December 23, 2014, 22 mosques, including the Imam Ali Mosque were transferred to LEPL "Administration of Muslims of all Georgia" with the right of use. The non-registered union which had been dealing with all the Mosque-related issues until present day, was completely unaware of the mentioned process.

Case importance: This case demonstrates the less favourable attitude of the state towards the Administration of Muslims of all Georgia.

Legal reasoning: The legal interest of the non-registered union towards the disputable act of LEPL "The National Agency of State Property" is caused by the fact that LEPL "The National Agency of State Property" assigned the Imam Ali Mosque to the religious organisation (LEPL "Administration of Muslims of all Georgia") which does not have a direct relations with the Imam Ali Mosque. At the same time, the non-registered union ''Imam Ali Mosque'', in the appendices of the administrative complaint, provided ample evidence to the Ministry of Economy and Sustainable Development of Georgia proving that the plaintiff has a historical and confessional relation to the building. However, despite the evidence, on July 7, 2017 the Ministry of Economy and Sustainable Development of Georgia issued an order №1-1/290 which left the presented administrative complaint without consideration due to the inability of the author of the complaint to submit the document that would enable to confirm the lawful right to the mosque.

The case of assigning the Imam Ali Mosque to the religious organisation pertains to the policy which aims at returning confessional property deprived during Soviet period to the religious organisations. In contrast with the European countries this policy has not been legally regulated in Georgia. Therefore, the return of religious buildings, deprived during Soviet period to the religious organisations by the state is exercised without legal

regulations. According to the established practice, a functioning religious building where the respective religious rituals are performed is registered as state property on the basis of an application by the Ministry of Economy and Sustainable Development of Georgia (LEPL the National Agency of State Property). After that, LEPL the National Agency of State Property assigns the cult building to a relevant religious organisation with the right to use on the basis of a recommendation provided by LEPL "State Agency for Religious Issues".

It is noteworthy that LEPL "State Agency for Religious Issues" is a state body which conducts research and determines policy in the religious sphere, as well as examines and develops recommendations on the determination of historical right to buildings for religious purposes. It is necessary to study the factual circumstances after which the agency drafts a recommendation (an interim act) directing the LEPL "The National Agency of State Property" acting as an administering body of state property, which then issues final individual administrative-legal acts concerning the administration of buildings for religious purposes based on the recommendation.

According to Article 96 (1) of General Administrative Code of Georgia, an administrative body shall be obliged to investigate circumstances of substantial significance to a case during the course of administrative proceedings and then take a decision having evaluated and compared the circumstances. According to Article 96 (2), the issuing of an individual administrative act on the basis of circumstances or fact which was not investigated by the administrative body in the manner determined by law shall not be permitted. According to Article 13 (1) of the same Code, an administrative body may review and resolve a question only after the interested party, whose rights or legal interests are limited by an administrative act, have been given the opportunity to present an opinion. Exceptions shall be determined by law. According to Article 13 (2), the person specified in the first paragraph of this article must be notified of the administrative proceedings and his/her participation in the case must be ensured.

In this specific case, LEPL "The National Agency of State Property" breached the obligations required by the given norms as the Agency never investigated the sustainably significant factual circumstances of the case relating to the question of the confessional/historical ownership of the Imam Ali Mosque. The investigation of the circumstances mentioned in this case began to possess a twofold meaning as the state is well aware of the fact that there was no direct and absolute legal successor of the organisation of the Muslim Community existing during the Soviet period. According to the data provided by the Public Registry, there are only four registered religious organisations with the status of legal entities under public law. In addition, there are several non-entrepreneurial legal entities and non-registered unions carrying out activities as religious activities.

It should be noted that alone on August 19, 2011 on the basis of an application №05-18464 provided by the Ministry of Economy and Sustainable Development of Georgia, 191 mosques were registered as state property. By December 31, 2016 on the basis of recommendation of LEPL ''State Agency for Religious Issues'' 83 mosques f these mosques were transferred to LEPL Administration of Muslims of all Georgia. However, similar to the recommendation assigning the Imam Ali Mosque, the claimant party is unaware of the criteria on which the organisation had been entrusted with the building.

Respectively, transferring all Islamic religious buildings to LEPL "Administration of Muslims of all Georgia" by the National Agency of State Property since 2014 until today on the basis of recommendations provided by LEPL ''State Agency for Religious Issues'' as well as granting this organisation the unequivocal privilege is an attempt by the State to enhance its capital and powers and casts serious doubts on safeguarding neutrality in the religious sphere.

The European Court of Human Rights highlights that religious communities traditionally exist in certain forms of organisations. They obey the rules which are often perceived as of divine origin. To be Article 9 compliant, believers have the right to religious freedom and can expect their environment to function peacefully free from wilful interference from the state. The autonomous existence of religious communities creates pluralism in society relating to the protection ensured by Article 9 of the Convention.[7] In a democratic society the state shall take any measures to bring religious communities under its sole governance.[8]

The reason for carrying out the above-mentioned action and interference on behalf of the state cannot prevent possible tension among religious communities. The European Court of Human Rights declared that the division of religious or any other community can cause tension but defines it as the necessary result of pluralism. In

[7] ECHR CASE OF HASAN AND CHAUSH v. BULGARIA A. no.30985/96; 26/10/2000; P-62 available at: http://hudoc.echr.coe.int/eng?i=001-58921

[8] .for provision (ECHR SERIF v. GREECE A. no. 38178/97; 14/12/1999; P-52 available at: http://hudoc.echr.coe.int/eng?i=001-58518)

such a situation the role of the state must be to ensure tolerance among opposing groups, and not by trying to defuse tension by eliminating pluralism.[9]

Apart from formal-legal interest, it is significant to emphasise the enjoyment of religious freedom by the union. As it has already been noted, the non-registered union ''Imam Ali Mosque'' has been carrying out religious service in the Imam Ali Mosque for years. This mosque is the only religious institution with religious activity. Consequently, in the circumstances where the owner of this mosque is the state which, by the disputable act of LEPL The National Agency of State Property, assigned the building to the LEPL Administration of Muslims of all Georgia with the right to use, it remains possible for the owner of an immovable item to legally prohibit the non-registered union to carry out religious service in the mosque. Such a prohibition may be a real risk for blatant interference with the plaintiff`s religious freedom.

Case proceedings: Tbilisi City Court did not satisfy the claim of the non-registered ''Imam Ali Mosque'' with reference to Article 35 of Law of Georgia on State Property explaining that "the non-registered union does not represent the authorised entity for transferring the title to state property free of charge. Accordingly, based on its organisational and legal form, the plaintiff is not entitled to register as an entity using state property. At the same time the activities and aims of LEPL Administration of Muslims of all Georgia do not provide a possibility of limiting the use of the specified mosque. Also the letter №5/51681 presented by LEPL the National Agency of State Property on December 31, 2014, cannot be regarded as an act stipulating direct harm to the plaintiff. Therefore, the plaintiff's interest in having the specified letter made null is unsubstantiated and excludes the possibility of nullification of the letter itself as well as of the order №1-1/290 (leaving the presented complaint without consideration) which was issued on July 7, 2017 by the Minister of Economy and Sustainable Development of Georgia''. The mentioned court decision was appealed in Tbilisi Court of Appeals, a decision is awaited.

3.3. Diocese of the Armenian Apostolic Orthodox Holy Church in Georgia against the National Agency of Public Registry and the National Agency of State Property of Georgia (case prepared by EMC and TDI)

Factual circumstances of the case: The building located at Aghmashenebeli av. N38 has undisputed Armenian origins and was previously entrusted to the Armenian Orthodox church before Soviet occupation.. The following Armenian inscription found at Aghmashenebeli av. N38 reads: "This school is built with own funds, by the Tbilisian widow Kekel Grigorian-Tandoyants, in origin Babasiani, with support of her brother Alexandre Grigorian-Babasiani and in remembrance of the souls of builders of this church, that are buried in this temple – Saak Tandoyants church ... 1883". The information on the origins of the church can be found in other sources including the survey published by the art critic Sophio Tchanishvili who makes the reference to the notice of Leon Melikset-Beg regarding the Church: "The Holy Virgin Mary Church was supposedly built by Sahak Tandoyants in 1860. The plan of Tbilisi of 1867 clearly shows the church existing here. [...]The building of the former school is located on the nearby territories [...] A tile with Armenian inscription still remains on the building. According to the inscription, the mentioned school was built in 1883 with the contribution of Tbilisian widow Kekela Tandoyants and her brother Alexander Babanasyants". In her summary, the art critic Lali Andronikashvili points to the inscription on the building next to the church at Aghmashenebeli av. N38 and other decorative elements remaining on the territory which confirm the existence of Armenian temple in 1883.

On February 10, 2016 the Tandoyants church located at Aghmashenebeli av. N38 was registered as state property on the basis of an application by "The National Agency of State Property". On April 28, 2017, the Diocesan Bishop of the Catholicos-Patriarch of All Georgia Iakob Iakobishvili, with the aim t register the church as property of the Patriarchate of the Orthodox Church, addressed the Minister of Economy and Sustainable Development and requested to abolish the state property registration on the church. According to the application, on the basis of "historical sources and maps", the remaining ruins of the church located at Aghmashenebeli av. N38 were known as the village Kukia. Based on the same sources "the fortified temple with bastion fortress with darkened towers and private garden was depicted on the plan of 1800-1802". According to the archived materials, the mentioned church is the Holy Cross Apparition Church built in 1814-1816 under the leadership of priest Petre Imnadze.

On July 10, 2017, on the basis of improper administrative proceedings, LEPL "The National Agency of State Property" abolished the state property registration on the church with the Order N1/1-1600 based on the let-

[9] (ECHR SERIF v. GREECE A. no. 38178/97; 14/12/1999; P-53 available at: http://hudoc.echr.coe.int/eng?i=001-58518).

ter 28.04.2017 of Diocesan Bishop of Catholicos-Patriarch of All Georgia and made it possible for the orthodox church to register its own property rights on the church. After abolishing the state property registration on the Tandoyants church, despite the fact that LEPL "National Agency of Public Registry" did not inspect the substantial significant factual circumstances of the case, the church proceeded to be registered as the property of the Orthodox church. In its decision on terminating the administrative proceedings, the public registry requested to submit a document for the property rights approval. However, contrary to the request, the only document that the public registry took into consideration as sufficient for the property rights approval was the application of the claimant (application N 700 of June 23, 2016 made by Archpriest Michael Botkoveli, secretary of Catholicos-Patriarch).

Case importance: This case refers to the problem arising from the lack of legal base for religious minorities to be returned property through restitution that was deprived during Soviet times. The property relinquished during Soviet period was returned to the Georgian Orthodox church by the state based on a constitutional agreement. Such an activity has never been arranged with other religious (minority) organisations. This case also highlights the importance of protecting the historical heritage of ethnic Armenians in Georgia.

The mentioned monuments are the artefacts of peaceful and friendly coexistence of the Georgian and Armenian people which reflect cultural diversity, an bear social value. The current owner's wish to rebuild the Tandoyants church in the form of a Georgian orthodox church, poses a real risk to preserving the historical and cultural characteristics of the land.

Legal reasoning: It is noteworthy that there is no international agreement which imposes a direct obligation on the state to compensate the damage that has been inflicted as a result of the Soviet totalitarian regime or to return the property deprived in this period.

Article 1 of the additional Protocol No. 1 (the right to property) cannot be explained in such a way that the contracting parties of the Convention are obliged to return the property they had been given to before ratification of the convention. However, according to the practice of the European Court of Human Rights, once a state ratifies the Convention with the additional Protocol No. 1 and adopts the legislation considering the entire or partial restitution of the property deprived during the preceding regime, such legislation is considered as a new right to the property within the aims of Article 1 (1) in favour of the persons satisfying the necessary preconditions for this right. (see EctHR app. 76943/11 Case of Lupeni Greek Catholic Parish and Others v. Romania 19/05/2015 #157).

Unfortunately and similar to other previous socialist countries, Georgia has never adopted a restitution law but still recognises the obligation to return religious buildings deprived during the Soviet totalitarian regime to the rightful religious organisations owing to the administrative practices and various Human Rights Action Plans.

For years the Georgian government has not been legally returning the iconic buildings to any of the religious organisations with the exception of Patriarchate of Georgia. After the creation of LEPL State Agency for Religious Issues in 2014 the mentioned practice has been partially changed and the state has begun the registration process of the buildings with the right to use them for the religious organisations. Despite the fact that the mentioned process is fragmented and undertaken without legal regulations, the mentioning of this process in action plans and the introduction of a mechanism of Property Management and Finance-Budget Commission by the State Agency for Religious Issues created a reasonable and legitimate expectation on the behalf of the religious minority groups to be returned the properties deprived during the Soviet period.

Respectively, based on the decree issued by the government which forseen the return of religious buildings to religious organisations who possess historical ties to cult buildings. In recent years, the relationship and activities were strengthened with the established practices towards minority religious organisations, the Armenian Eparchy, thus, had a legitimate expectation that the government would return the building at Agmashenebeli av. N38 to them.

Apart from archived sources, the Armenian origin of the monument is proved by the architectural façade of the monument with Armenian inscription. Considering the circumstances that none of the parties have disputed the Armenian heritage, the plaintiff had had a reasonable expectation that restitution process of the Tandoyants church by the state would have been carried out simply, without dispute. Therefore, the plaintiff's reasonable expectation falls with the scope protected by the Article 1 of the additional Protocol No. 1 of the European Convention.

The registration of the Tandoyants church as property of the Orthodox Church on the basis of the Article 7 (1)

of the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia was implemented by the defendant LEPL "National Agency of Public Registry" and the LEPL "National Agency of State Property" only on the basis of the application 23.06.2016 by Archpriest Michael Botkoveli, secretary of Catholicos-Patriarch.

According to the mentioned norm, the state recognises the orthodox churches, monasteries (operational and non-operational), ruins and land plots where they are located as property of the church.

This norm is not a self-implementing norm and thus, it means that general application requesting ownership of the church by the Patriarchate does not serve as a valid legal basis for registering the right to ownership. To register the ownership right on an immovable item, an appropriate document determining this right is required. To return a building, the relevant state services need to conduct comprehensive research to confirm ownership which was never done in this case. Despite these rules, the Public Registry, without a comprehensive study of the factual circumstances, entirely relied only on the claimant's general application which was not strengthened by any valid evidence. Further, such evidence was not requested by the Public Registry itself.

It was put forward that the Tandoyants church may be built upon the ruins of an old Georgian orthodox church; this is not substantiated by supporting research.Further, a claim based on foundational archaeological layer will undermine the protection of monuments of cultural heritage. In such a situation, many buildings' origin could be disputed and case of ownership conflict. In addition, according to the interest of protection of cultural heritage, the subject of protection is not the basal archaeological material but the protection of existing building as culturally and historically valued monument. The analysis of restitution policy of other countries shows that deprived property is returned to the proprietor who owned the property at the time of deprivation.

When discussing the significant factual circumstances of the case, it is important to highlight the fact that the public registry does not possess the expertise which can independently determine a building's origin and subsequently, take a decision concerning the registration of ownership right based on it, thus cooperation between the public registry and other administrative bodies is crucial. In this case it should be noted that according to the Action Plan on the Protection of Human Rights (2016-2017) approved by the decree N1138 of the Government of Georgia on June 13, 2016, the responsibility of "the determination of historical ownership of religious buildings'' is attributed to LEPL "State Agency for Religious Issues", Ministry of Economy and Sustainable Development of Georgia and the Ministry of Culture and Monument Protection of Georgia (Action Plan 11.1.3.4).

After LEPL "National Agency of Public Registry" became aware of the religious function of the immovable item, it should have examined and liaised with

with the above-mentioned administrative bodies. If this had successfully done, the evidence supporting the Armenian's church claim to the building would have been clear thus eliminating the possibility of making such a decision.

According to Article 96 (1) of General Administrative Code of Georgia, an administrative body shall be obliged to investigate all significant facts of the case during the course of the administrative proceedings and take a decision having evaluated and compared the circumstances. According to the Article 53 (5) of the same Code, an administrative body may not base its decision on non examined circumstances, facts, evidence or arguments or researched during the course of its administrative proceedings.

In this case, during the course of issuing the disputable acts, the above-mentioned obligations were disregarded by the defendant administrative bodies which led to taking an illegal decision.

Case proceedings: Two independent case proceedings are being litigated in the Tbilisi City court concerning: 1. an action for annulment of the judgment of the National Agency of Public Registry and 2. an action for annulment of the judgment of the National Agency of State Property. In 2018, several court hearings were heard on both cases; the essential motions for ruling on inadmissibility of the claim, terminating the case proceedings and consolidating the cases were reviewed. In the first legal proceedings, the plaintiff's request for consolidating the cases as well as the defendants' request for a declaration of inadmissibility of the claim were not satisfied by the court - the claim was declared admissible. Concurrently, the court decided to suspend the case hearing before the completion of the second proceedings. Concerning the dispute requesting the annulment of the judgment of the National Agency of State Property, request of inadmissibility of the claim and the termination of the case proceedings were again raised by the defendants. In January 2019, the court delivered the ruling declaring the inadmissibility of the claim. However, the plaintiff has not been provided with the substantiated findings to the present day.

3.4. N.M. against Tsalka Municipality City Hall. (case prepared by EMC)

Factual circumstances of the case: N.M. owns a land plot registered as his/her property in the village Akhalsheni (Kiariaki), Tsalka Municipality. In 2009, his/her only dwelling house located in Khulo Municipality burned down which forced him/her to move to the Akhalsheni village living in a house registered as the property of another person. On receiving compensation, he/she decided to build an individual dwelling house on his/her own land plot. N.M. is an internally displaced Muslim Khoja from Adjara. Internally displaced migrants from Adjara do not have a good relations with Tsalka Municipality. It is noteworthy that the local Muslim community in Tsalka do not have access to a local Jame Mosque), therefore, as a rule, the community use dwelling houses for gatherings and prayers or attend the mosque located in the centre of Tsalka for the Friday Prayer Service (Jum'ah). Despite the necessity of having a Jame, the local Muslim community says that while their being in the village as environmental migrants is still disputed and unless their presence is recognised and legally documented, they will not consider building the Jame.

For the purpose of obtaining permission to construct a house on the land plot registered as his/her property in the village, N.M. submitted an application to the local administrative body of Tsalka Municipality, followed by the definition of the construction conditions on the land plot (the order N1105 30.06.2017 of the Head of Tsalka Municipality). Then, after the issue of the construction permit (first stage), the architectural project of the house was agreed (second stage) and the construction permit and the permit certificate were issued (the order N1222 11.07.2017 of the Head of Tsalka Municipality, the permit certificate of construction N000055). On the basis of the issued permit of construction N.M. began carrying out construction work, built the foundation of the house and purchased building materials.

On April 17, 2018 the plaintiff filed an application to Tsalka Municipality City Hall and requested an agreement of the adjusted architectural project of the house which was different from the previously agreed plans.

In response to the mentioned application, N.M. was notified with the letter N19/1485 27.04.2018 of the National Agency for Cultural Heritage Preservation of Georgia, that the City hall received information that the construction is in protection protected area of cultural heritage and thus, the construction was considered illegal according to the Article 29 of the Ordinance N57 24.04.2009 issued by the Georgian government ("on the rules on issuance of construction permission and permit conditions"). Based on this information the construction had to be suspended until the National Agency for Cultural Heritage Preservation of Georgia presented a position concerning the legality of the construction. According to the order N402 23.05.2018 of the Mayor of Tsalka Municipality and the order N1222 11.07.2017 of the Head of Tsalka Municipality issuing the construction permit an certificate were annulled on the basis of this order.

N.M. alledges that the real reason of the annulled construction decision was a letter 10.04.2018 from the Orthodox population of the village Akhalsheni. The letter, referring to unsubstantiated stating the plantiff's intention is to build a mosque not a house, thus demanded the suspension of the construction. It should be noted that a letter with the same content was sent to the National Agency for Cultural Heritage Preservation of Georgia on April 16, 2018. N.M. asserts that his/her right to constructing a house on the land was stalled due to the incorrect presumption of building a mosque, he/she then became a victim of perceptive discrimination on the grounds of religion.

Case importance: This case presents perceptive discrimination on behalf of an administrative body against a citizen. According to the Article 2 (5) of the "Law of Georgia on the Elimination of All Forms of Discrimination" in the circumstances foreseen by this article, discrimination can take place whether the person actually substantiate one of the grounds determined by Article 1 of the present law. In the referred case N.M. did not plan to construct a mosque but the administrative body discriminated against the Applicant due to a perceived idea which was covertly religiously motivated.

Legal reasoning: The National Agency for Cultural Heritage Preservation of Georgia inaccurately evaluated the construction of N.M.' house as illegal. The Church of St. George, which is located in the village of Akhalsheni has the status of cultural heritage, is 195 meters away from the land plot registered as N. M.'s property.

According to the Article 3 (''j'') of the Law of Georgia on Cultural Heritage, a buffer zone for the protection of cultural heritage is the area surrounding an immovable object of cultural heritage and/or the area within the extension or influence zone of the object of immovable cultural heritage determined in accordance with the procedures established by this law, within which there is a special exploitation regime and which is designed to protect cultural heritage within its area from adverse impacts; according to the Article 36 (1) of the same law,

the territory surrounding a cultural property is defined as a primary buffer zone of the cultural property which consists of the perimeters of physical and visual security and is identified for the purposes of the physical and visual protection of the cultural property. A perimeter of physical security of a cultural property is the territory surrounding the immovable cultural property in which any activity may physically damage the cultural property or its vicinity. The perimeter of physical security is defined by the following distance: the height of the cultural property multiplied by two, but with no less than 50 meters of radius. (Article 36 (2)).

The perimeter of visual security of a cultural property is the territory beyond the perimeter of physical security, changes to which may influence the historically evolved environment of the cultural property and/or the full perception of the cultural property. The perimeter of visual security shall be defined: a) for a cultural property, within a radius of 300 meters; b) for a cultural property of national importance, within a radius of 500 meters; c) for cultural properties included in the World Heritage List, within a radius of 1000 meters.

On the basis of the fact that the building protected with the status of cultural property is 195 meters far from the mentioned construction, the specified land plot does therefore not fall within the zones of protection of the cultural property. According to the Article 36 (6), any activity which may damage the historically evolved environment of a cultural property, or hinder optimum visibility and full perception of the cultural property and diminish its value, shall not be permitted within the perimeter of visual security. In this case, as it was noted, considering the location and configuration of the land plot and the cultural property, the construction of the plaintiff's dwelling house cannot make any physical impact on the cultural property or hinder visibility and diminish its value; but even so, the disputed act declared the permission null and void in which the plaintiff had reasonable expectation to be maintained, so the annulment is inadmissible. The administrative body did not evaluate or define the impact of the construction project on the visibility of the cultural property.

Case proceedings: On September 27, 2018 Tetritskharo District Court delivered a judgment to partially satisfy N. M.'s claim. During the announcement of the operative part of the judgment, the court provided verbal pleading sharing the plaintiff's position about the violation of the required administrative obligations on issuing limiting acts.. Within the reporting period EMC has not received the court's substantiated judgement.

3.5. Supreme Religious Administration of Muslims of all Georgia against Marneuli City Hall. (Case prepared by GYLA)

Factual circumstances of the case: LEPL "Supreme Religious Administration of Muslims of all Georgia" is a Shiite religious organization, which is registered in the Public Registry. According to Article 2 (1) of the Charter registered in the Public Registry: ''Supreme Religious Administration of Muslims of all Georgia is a local independent supreme religious organisation uniting all the religious institutions such as mosques, Hussains, secondary and higher educational centres, madrassas, buildings for religious purposes and Islamic religious organisations that belong to the Shiite Muslims living in Georgia''. According to Article 2 (1) of the same Charter ''the Administration aims at supporting the activities of Shiite Islamic unions, centres, educational institutions and madrassas''. According to the Article 2 (2) of the same Charter the goal of the Administration is: ''to advocate and provide the representatives of the Islamic Shiite wing living on the territories of Georgia with the protection of their interests''. According to Article 2 (3), the Administration, based on the laws and doctrines of the Koran and the deeds of the Holy Prophet and 12 Imams, intends to resolve the organizational questions of the Sharia, as well as of religious organisations that are within their jurisdiction.

Accordingly, the plaintiff organisation expresses the interests of the Muslim Shiite community. There are a lot of Christian symbols located near the Muslim cemeteries and on the territories of Marneuli municipality _ in the city of Marneuli, as well as in the various villages which are mostly inhabited by the Muslim population.

In 2017 the chairperson of LEPL Supreme Religious Administration of Muslims of all Georgia filed an application to the Marneuli City Hall and to the LEPL" State Agency for Religious Issues "providing them with the information of positions of Christian symbols on the territories of Marneuli municipality and asked the addressees to clarify what could be the legal basis for positioning symbols there. With the letter #1/1105 13.09.2017of LEPL „State Agency for Religious Issues'' the claimant was notified that, according to the legislation of Georgia, there is not a special rule for erecting a religious symbol.

On February 26, 2018 the chairperson of LEPL Supreme Religious Administration of Muslims of all Georgia once again applied to the Marneuli City Hall, notifying that he wished to erect a Muslim religious symbol in the city of Marneuli and asked for the list of the places on the territories of Marneuli Municipality where the erection

of such symbol could have been possible. The claimant also expressed readiness to follow every necessary procedure indicated by the City Hall.

With the letter 20.04.2019 of Marneuli City Hall the claimant organisation was notified with the following: ''Marneuli City Hall has inspected the issue about positioning the religious symbols on the territories of the Municipality and allocating the places for religious symbols on the territories of the Municipality''. With the letter the claimant was notified that Marneuli City Hall does not have feasibility to allocate the places for the purpose of erecting religious symbols on the territories of the Municipality.

Case importance: At the present moment the Christian symbols are the only symbols positioned in the public places; in addition to this, there are no state-owned land plots where the religious symbols of other confessions are positioned. The principle of separation between the state and the religion in this manner has a selective characteristic.

Legal circumstances: According to Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination" the objective of the law is to eliminate any form of discrimination and to ensure equal enjoyment of the rights set forth by the legislation of Georgia for all natural and legal persons regardless of religion or faith''.

According to Article 2 of the present law, any form of discrimination shall be prohibited in Georgia. According to the same article, paragraph 2, direct discrimination shall be any treatment or creation of any conditions putting a person in a disadvantaged position in the enjoyment of the rights determined by the legislation of Georgia based on any of the grounds listed in Article 1 of the present law, as compared to other persons in similar conditions.

For determining discrimination, it should be confirmed a) if a person/group of persons has been treated differentially on the prohibited basis as compared to other persons in similar conditions and b) if there is not objective and reasonable justification for differential treatment. Two categories of the persons can be differentiated in this case: 1. Persons with Christian faith who freely erected their religious symbols (crosses) on the Municipality-owned properties; 2. Persons with Islamic faith who were not given a possibility to erect their religious symbols on the territories of the Municipality.

Marneuli Municipality City Hall, as well as its Mayor does not give explanation why a person with Christian faith is granted the right to erect his/her own religious symbol e.g. cross and why it has been impossible to allocate the place to position a Muslim religious symbol on the territories of the Municipality. If the defendant brings the principle of secularism as an absolutory argument, it is to be confusing why the same principle did not become the hindering factor for positioning the Christian religious symbols. If the defendant`s argument is that the Christian symbols have been erected without their consent, the defendant's inactivity to disassemble the symbols erected without following the procedures indicates that the defendant's policy is discriminatory.

Case proceedings: On May 17, 2018 the Supreme Religious Administration of Muslims of all Georgia applied to the Public Defender and asked for the determination of discrimination on the grounds of religion, as well as delivering the recommendation to the Mayor of the city of Marneuli in order to allow positioning the Muslim religious symbols in the public places.

3.6. R.N. against LEPL Customs Department of Revenue Service of Georgia (case prepared by EMC)

Factual circumstances of the case: R. N. is a Georgian Citizen of Iranian ethnicity. He/she was born and raised in a Muslim family in Iran. Later he/she converted to Christianity and due to the religious persecution in Iran, he/she was forced to practice religion in private churches in dwelling houses. In 2011, in Iran R.N. was detained for his/her religious activity after which he/she became a victim of inhuman treatment during his/her being in detention. Due to the mentioned circumstances he/she was forced to leave the territory of Iran and live in a different country where he/she freely express and practice his/her religion without fear and persecution.

Since 2011 and leaving Iran, the claimant has been living on the territory of Georgia. In 2013, the claimant founded a religious organisation aiming to spread the words of Jesus Christ, preaching peace, love and freedom. Further, the mentioned organisation helps the church-houses based in Iran from Georgia. The organisation also cooperates with similar religious organisations functioning on the territories of Turkey.

In February 2018, the claimant visited one of the church-houses in Turkey. On February 7, 2018, after the visit, he/she was returning to the Georgian territory with a friend. While crossing the border the representatives of

the customs service checked his/her luggage where the claimant kept his/her own Bible written in Persian. The representatives of the customs services asked the claimant questions about the contents of the book which he/she answered with the explanation that the book was his/her own Bible in the Persian Language. The claimant also pointed out the English introduction on the first page which gave the contents of the book. At the same time the claimant explained to the representatives of the Customs that he had officially imported the mentioned books on behalf of his/her own religious organisation and the information about the mentioned fact could have been checked on the web-page of the Revenue Service.

Notwithstanding the claimant's explanations, the customs representatives reiterated that the book was in Persian and they were not able to understand the contents. They inquired whether these books were similar to the Orthodox Bible. Despite the substantiated answers to all the questions, the claimant and his/her friend were asked to show the crosses hung on their necks in order to prove that this book was the Bible and they, Christians. To this request the claimant explained that Christianity was in their hearts and they do not need to externalise their Christianity by wearing the crosses. The customs representatives began arguing with the claimant intending to confiscate the Bible.

Eventually, one of the customs representatives asked the claimant to follow him/her. The claimant assumed that he/she was going to be requested to sign a document or follow some legal procedures. The representative led the claimant to a dark room where, with the use of hand gestures where he/she once again demanded that the claimant show a cross to prove his/her Christianity. The mentioned treatment especially offended the honour of the claimant and made him/her recall the traumas he/she suffered from the inhuman treatment experienced in Iran as a result of his/her religious identity. It was further humiliating and insulting for the claimant that after the inhuman treatment received for his/her religion in Iran, he/she was still forced to display a cross hung on the neck to prove his/her Christianity. The claimant did not expect this treatment in Georgia where the freedom of faith and equal treatment shall be guaranteed.

After the mentioned request, the claimant left the room and was allowed to leave the territory of the Sarpi border crossing point after the dispute. Assessing the situation, the claimant asserts that in delaying him/her while crossing the Georgian border, taking interest in the contents of his/her book, forcing to reveal his/her religion and requesting to exhibit a cross in order to confirm his/her religious identity were obviously related to his/her national belonging and to a religious perception as a result of his/her national identity. Notably, despite the facts that the claimant is a citizen of Georgia and has taken the Georgian surname of his/her spouse, it was easy to identify his/her national identity by the birthplace indicated in his/her ID card, by the Persian bible found in his/her luggage and by the claimant's inability to speak fluent Georgian.

As the claimant is of Iranian origins and noting that the majority of the Iranian population Muslim, the claimant states that he/she has been targeted and labelled as Muslim due to his/her national identity. Additionally, as the book found in his/her luggage was written in Persian it must have been therefore intrinsically related to the teachings of Islam. Respectively, the claimant maintains that he was delayed by the representatives of the customs because this perception which, along with the intensive attempts to reveal the contents of the book and the claimant's religious belonging, is direct and serious form of discrimination on the grounds of nationality and religion.

Case importance: The case is significant as the public officials purposely target individuals crossing the border based on a perceived religious belief. Further, this case is a clear demonstration of the negative policy in operation against Islam by the Georgian public officials..

Legal reasoning: Ethnic and racial profiling violates the right to prohibition of discrimination. ECRI,, defines racial profiling based on the approach developed by the European Court of Human Rights in relation to discrimination and suggests that racial profiling shall mean "the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities". Ethnic/racial profiling can encompass situations when neutral policy or practice of law-enforcement agencies exerts disproportional influence on separate groups of population characterised by such grounds.

In one of the cases of ethic "profiling" reviewed by the European Court called Timishev v. Russia, the claimant alleged that he was faced with obstacles when he could not conceal his ethnic origin because, a person accompanying him was speaking with a Chechnyan accent and their car had the Chechnyan number plate. Five days later he concealed his origin and crossed the border without difficulties. The European Court found a violation of Article 14 of the Convention taken with liberty of movement. The Court noted that the differentiation which

is based exclusively on or to a decisive extent on a person's ethnic origin cannot be justified in a contemporary society built on the principles of pluralism and respect for different cultures. According to the Court, ethnicity has its origin in the idea of societal groups unified by nationality, tribal affiliation, religious faith or cultural and traditional origins and backgrounds. At the same time the Court recognises discrimination on grounds of actual or perceived ethnicity as one of the forms of racial discrimination assessing it as of particular seriousness.

In numerous cases the European Court of Human Rights has repeated that the freedom of religion also includes the right not to believe or manifest one's religion. A person shall not be forced to perform or refrain from such activities which reveal an individual's faith.

Inherently, ethnic/racial profiling at borders contradicts the norms and principles of the rule of law because refusing permission to access the territory should be based on an individual's actions not his/her belonging or perceived belonging to an ethnic, racial, national or religious group. This kind of profiling may occur when authorities have discretional authority and may, at the same time, be the result of policy of the state bodies or established practices. It is not necessary for such practices to directly target specific groups but they may have a disproportional negative impact on them. The systemic problems created as a result of the use of discretional authority with discriminatory motives by state officials, indicate the inability of the state to fulfil positive obligations and the necessity to develop the state policy in order to avoid such practices.

According to Article 2 (6) of the "Law of Georgia on the Elimination of All Forms of Discrimination", discrimination takes place regardless of whether the person actually possesses one of the grounds determined by Article 1 of the same law, because of which discriminatory treatment has been applied.

In the given case, despite the fact that the claimant is not a Muslim, due to his/her national identity, he/she was automatically perceived as a Muslim and, it was this perceptive identity related to his/her national belonging that caused his/her ethnic profiling and discriminatory harassment in the course of crossing of the border. Respectively, despite the fact that the claimant was not an immediate addressee of the discriminatory practice established against Muslims in the course of crossing the border, he/she became a victim of the mentioned practice because of perception of such grounds by the representatives of the state bodies.

Case proceedings: On April 25, 2018 R.N. applied to the Public Defender asking the office determine discrimination. The Public Defender applied to the LEPL Customs Department of Revenue Service the additional evidence and information. The Public Defender did not make a decision related to this claim during the reporting period.

3.7. K.K., B.I. and T.KH. against Ministry of Internal Affairs and N.K., D.K., Zh. K. and Z.K. (case prepared by EMC)

Factual circumstances of the case: The plaintiff party claimed that the defendant (private persons) carried out discriminatory activity which was induced by religious hatred and intolerance aimed at hindering the opening and functioning of a boarding house. During several months the members of the mentioned group took turns to control the movement of the workers and beneficiaries of the boarding house and essentially, limited the possibility of entering the building. In addition, they butchered a pig in front of the boarding house and attached the head of the killed pig on the door of the boarding house. These activities, carried out against members of the Muslim community, were visible to the police officers who were present on the scene but showed indifference to the offences committed based on motives of religious hatred by the defendant private persons and the group organised by them. None of the offences were prevented from occurring.

Case importance: Strengthening the legal protection mechanisms, the given precedent will enhance the process of securing equitable civil rights for the Muslim community.

Legal circumstances: The claim demanded the freedom of use of the property in lawful possession and included bring to an end the discriminatory treatment so as to provide the opening and functioning of the boarding house set up for the Muslim students in the mentioned building. In addition, the claim requested reimbursement of moral damage (with symbolic amount of 1 GEL) caused due to the direct discrimination on grounds of religion. According to the plaintiff's indications, as a result of interruptive actions implemented by the defendants and the inactivity of the Ministry of Internal Affairs, the rights guaranteed by Article 3 (prohibition of inhuman or degrading treatment), paragraph 1 of the 1st additional Protocol (right to property), paragraph 2 of the 1st additional Protocol (right to education) and Article 14 (prohibition of discrimination) of the European Convention of Human Rights have been violated.

Case proceedings: On September 19, 2016, the City Court of Batumi announced the final judgement according to which the claim was partly satisfied by the court of first instance only in relation to the defendant natural persons. They became obliged to prevent the continuous discrimination and reimburse the moral damage with symbolic 1 GEL. Batumi City Court did not take into consideration the plaintiff's position about the discriminatory treatment carried out by the Ministry of Internal Affairs and accordingly, and did not satisfy this part of the claim.

On December 28, 2016, Chamber for Civil Cases of Kutaisi Court of Appeals did not satisfy an appeal of the defendant natural persons and the judgment of Batumi City Court satisfying the claim of the Muslim community was upheld. On the other hand, Kutaisi Court of Appeals sent the part of plaintiff's appeal (part of the claim against the Ministry of Internal Affairs that was refused to be satisfied) to the Chamber for Administrative Cases of Kutaisi Court of Appeals. According to the Court's assessment, the dispute against the Ministry of Internal Affairs must be substantially dealt with within the jurisdiction of Chamber for Administrative Cases. On April 18, 2017 Chamber for Administrative Cases of Kutaisi Court of Appeals did not satisfy the mentioned appeal.

The Supreme Court recognised the defendants' appeal inadmissible in the part of natural persons and, a cassation appeal of the representatives of the Muslim community regarding the discrimination exercised by the inactivity of the Ministry of Internal Affairs recognised admissible. On March 15, 2018 the Supreme Court of Georgia partly satisfied the cassation appeal, specifically, in relation to the motives and activities carried out by the Ministry of Internal Affairs, the Court noted that "the inappropriateness of preventive measures which are generally vested within the discretional scope of the police, was present, however the mentioned fact did not confirm discriminatory approach of the police against the appellants''. The court pointed out that "even in the conditions where the police did not appropriately execute the imposed positive obligations, failure to perform the obligations because of discriminatory motives was not confirmed''.

As for the second requirement of the claim about imposing obligations on the Ministry of Internal Affairs (to protect the appellants' right from violation with the use of commensurate and proportional measures of governance), it was returned to the Kutaisi Court of Appeals by the Supreme Court indicating that during the process of rehearing the claim, the Kutaisi Court of Appeals must pay attention to the actuality of the impossibility of using the boarding house at present and to the necessity of imposing obligations on the Ministry of Internal Affairs. At present, the matter is being reviewed by the Kutaisi Court of Appeals which is discussing the imposition of obligations on the Ministry of Internal Affairs.

4. DISCRIMINATION ON THE GROUNDS OF SEX

Any discrimination on the grounds of sex is directly prohibited according to Article 11 (1) of the Constitution of Georgia. According to Article 11 (3) of the Constitution of Georgia, the State shall provide equal rights and opportunities for men and women. The State shall take special measures to ensure the essential equality of men and women and to eliminate inequality. This ground is also taken into consideration in the Law of Georgia on the Elimination of All Forms of Discrimination. Within the reporting period women were discriminated against mainly because of pregnancy, demand for maternity leave and childcare. There have been cases of sexual harassment against women as well.

4.1. Kh. T. against JSC ''Medical Corporation EVEX'' (case prepared by the union ''Sapari'')

Factual circumstances of the case: Kh. T. has been working in JSC ''Medical Corporation EVEX'' since April 1, 2014. On July 24, 2015 Kh. gave birth to her first child; on August 12, 2017, her second child. On January 8, 2018, the plaintiff and the employer, JSC ''Medical Corporation EVEX'' made an agreement about the termination of the labour contract. The contract was terminated on January 8, 2018 in compliance with Article 37 (1) ("E") of Labour Code of Georgia. At the moment of signing the agreement on January 8, 2018, the plaintiff was notified that the post she had been holding was terminated.

The termination of the contract was preceded by the following facts: according to the rules of employment, Kh.'s working hours began at 10:00 and finished at 18:00. After returning from maternity leave (November 1, 2017), Kh. arrived at work at 12 a.m. as the plaintiff breastfed her younger child (born on August 12, 2017), she used an additional one-hour break determined by Article 19 of Labour Code of Georgia along with one-hour break determined by the law for every person employed and arrived at work 2 hours late at 12:00, the plaintiff did not use break hours during the working day. On January 8, 2018, a lawyer of the organisation told Kh.T. to sign the agreement on terminating the labour contract as there was no other way out of the situation as her post had been terminated and she would be fired anyway which would "ruin'' her curriculum vitae.

In addition to this, at the end of 2017, in December (approximately between the period of December 15 to December 20), the director of the clinic summoned Kh. to the office where they had the conversation with the following contents: the director told Kh that she was a smart young mother and a useful employee but the director did not approve the fact that she arrived at work at 12:00. The director noted that the people would talk critically about this matter. At the same time the director offered her a pen and a sheet of paper and write down what kind of domestic activities she spent her time on to decide how to save time so as to leave the house sooner. The director demanded from Kh. to arrive at work at 10:00 in the morning on a daily basis.

Case importance: The case pertains discriminatory treatment of an employee in labour relations on two grounds: on the grounds of sex and marital status.

Legal reasoning: The plaintiff believes that she has been a subject of direct discrimination. Therefore, from the court she requests the nullification of the decision made by ''EVEX" on terminating her professional post, nullification of the decision made about termination of labour contract, restoration to the post, reimbursement of material damage since January 8, 2018 to the day of restoration, as well as reimbursement of moral damage with 3 000 GEL.

Case proceedings: On February 20, 2018 the claim was presented to the court. Within the reporting period the court did not deliver a judgement related to this claim.

4.2. Lela Mitaishvili (the name has been changed in order to protect confidentiality of the victim) against Zviad Devdariani (case prepared by GYLA)

Factual circumstances of the case: Lela Mitaishvili was around 20 years old when she began searching for a job. She found announced vacancy advertised by CiDA, a non-governmental organisation. When she found out that the head of this organisation was Zviad Devdariani, Lela Mitaishvili contacted him about the vacancy. Zviad Devdariani asked her to come for a job interview. It was evening time when Lela Mitaishvili arrived at the office. Zviad Devdariani, himself, opened the door and then proceeded to lock it; they were alone in the office. Zviad Devdariani offered Lela Mitaishvili a cup of tea and asked her general questions which were answered by Lela Mitaishvili sincerely. After that, when Zviad Devdariani and Lela Mitaishvili were going upstairs, Zviad

Devdariani touched Lela Mitaishvili. They went into the study, the door of which was also locked by Zviad Devdariani. Zviad Devdariani began talking what would happen if Lela Mitaishvili started to work there. Zviad Devdariani made promises that he would give her a lift to the office in the mornings and back home and invite her somewhere. Lela Mitaishvili's responsibility would be making coffee, for which he would pay her a salary. Zviad Devdariani spoke a lot about women and relationships and what they meant for him. Zviad Devdariani said that he liked Lela Mitaishvili to such an extent that he might divorce his wife. After that Zviad Devdariani began to touch Lela Mitaishvili physically and asked for a kiss. Lela Mitaishvili said that she felt sick and wanted to leave. Zviad Devdariani answered that she could not leave until he was sure everything was all right, to which Lela Mitaishvili agreed. Zviad Devdariani said that he was crazy about woman's feet and asked Lela Mitaishvili to fulfil his wish which was to take off the shoes and show him her feet. Lela Mitaishvili wanted to leave to such an extent that she took her shoes off. Zviad Devdariani began to kiss her feet. Lela Mitaishvili asked Zviad Devdariani to take her home and promised to return there to the office the following day. On the way home, Zviad Devdariani talked about his book and promised to give Lela Matiashvili a copy as a present. On the following day, Lela Matiashvili did not appear in the office of CiDA.

Case importance: The standard of assertion of sexual harassment has been determined in this case.

Legal reasoning: To determine harassment (as a form of discrimination), a test different from that of discrimination test is used. The major difference here is that in order to determine harassment, there is identification of comparator, that is, the group in equal conditions and assertion of differential treatment is not necessary: "comparator is not needed to prove harassment. This stems from the fact that harassment itself is evil because of its forms and effects it may possess (derogation of a person)."

According to Article 2 (2) ("A") and Article 2 (6) of the European Union's updated directive 2006/54/EC on gender equality, harassment on the grounds of sex and sexual harassment constitute discrimination on the grounds of sex. Article 6 of Law of Georgia on Gender Equality prohibits any unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, or offensive environment. According to "Convention on the Elimination of All Forms of Discrimination against Women" the United Nations Committee considers sexual harassment as one of the forms of violence against women and notes that equality is put in real jeopardy when a woman is subordinated to such form of violence as sexual harassment.

Case proceedings: On April 16, 2018, Lela Mitaishvili applied to the Public Defender and required determination of sexual harassment and discrimination on the grounds of sex committed by Zviad Devdariani.

On November 1, 2018, the Public Defender satisfied the application and applied to Zviad Devdariani with recommendation to refrain from discriminatory behaviour. According to the explanation of the Public Defender, even in the conditions where no direct evidence is present, analysing Zviad Devdariani's behaviour towards all three claimants and examining common characteristics of the circumstances, the Public Defender assumed the fact of sexual harassment. Argumentations and evidence presented by the defendant party were not sufficient to extinguish the assumption of sexual harassment. As a result, the Public Defender determined that Zviad Devdariani demonstrated physical and verbal behaviour of sexual nature, which created an offensive and degrading environment for the victim women. The Public Defender applied to Zviad Devdariani with recommendation indicating not to commit sexual harassment or create offensive, degrading or diminishing environment for individuals in professional or other kinds of relationships in the future.

4.3. N.M against NNLE Agency of Pre-school Education of Gori Municipality City Hall (case prepared by GYLA)

Factual circumstances of the case: Since October 1, 2018, N.M. was appointed as a caregiver with one month probationary period in a public institution of pre-school education on the village Lower Khviti, which is a structural entity of Agency of Pre-school Education of Gori Municipality City Hall. As a result of pregnancy, labour and childcare, the plaintiff was given a paid leave from October 18, 2018 to November 1, 2018. On October 19, 2018 N.M. notified Agency of Pre-school Education of Gori Municipality City Hall about the paid maternity leave and submitted a relevant medical note. Based on the order 2.11.2018 the labour agreement with N.M. was terminated.

Case importance: The case refers to the discrimination against women on the grounds of pregnancy.

Legal reasoning: The plaintiff party claims that she was a subject to discriminatory treatment on grounds of sex and maternity in the workplace. The plaintiff argues this was direct discrimination. The plaintiff was in compliance with the regulation of suspension of labour agreement according to "g" sub-paragraph of the second part Article 36 of Labour Code of Georgia (Grounds for suspending labour relations shall be maternity, new born adoption leave of absence and child care additional leave of absence).

Case proceedings: On December 25, 2018 the plaintiff applied to Gori District Court with the claim. The Court did not deliver a judgement regarding this case within the reporting period.

4.5. Maka Gogitchaishvili against Giorgi Menteshashvili and Ltd. "Jurists" (names, surnames and name of a legal person have been changed in order to avoid identification of the victim) (case prepared by GYLA)

Factual circumstances of the case: Maka Gogitchaishvili started working as an intern in LTD. "Jurists". As agreed, her obligation was to work in the corporative client company of the employer from 10:00 to 18:00. Her responsibilities were provision of legal assistance, preparation of agreements, provision of consultation and arrangement of various legal matters. As Maka Gogitchaishvili had a good knowledge of the English language, she was required to attend the employer's every meeting where she undertook responsibility of a translator. It is noteworthy that often the meetings continued after working hours and lasted until late. At one of those meetings, a decision was made that Maka Gogitchaishvili and Giorgi Menteshashvili, a lawyer and one of the co-partners of the company, had to prepare a document for corporate client company on Saturday. As one of Maka's relatives was ill, she had to go to the hospital and therefore returned to the office at 6 o'clock in the evening in order to continue her work with one of the co-partners of the legal company who was waiting for her at the office. The co-partner was alone at the office. He forced Maka Gogitchaishvili to drink and as Maka trusted him as a co-worker, she consumed alcohol, which was then followed with the co-partner locking the door. The co-partner took advantage of Maka's drunkenness and grabbed her forcefully and kissed Maka Gogitchaishvili against her will. In response to the behaviour of the co-partner, Maka Gogitchaishvili resisted and ordered him to stop.behaviour His response was that no one would find out so there is no reason to be afraid. Maka did not feel well so the co-partner suggested for her to lie down on the sofa. Maka, being under the influence of alcohol, was unable to resist any longer and thought that he would not go further, she sat down on the sofa. The co-partner then took advantage of Maka's physical weakness and dizziness caused by the alcohol and advanced behabviour of a sexual nature. Maka resisted verbally, saying that she was feeling very unwell after which the co-partner ceased the above-mentioned treatment and took Maka Gogitchaishvili home. It was unbearable for Maka Gogitchaishvili to work in such an environment, therefore on the following working day, she told the director of the company the details of what had happened, wrote a resignation letter and left her job. Maka Gogitchaishvili suffered from severe psychological trauma, which was confirmed in a report provided by a psychologist.

Case importance: The case pertains to an extremely severe case of sexual harassment in the workplace.

Legal reasoning: Article 6 of Law of Georgia on Gender Equality prohibits any unwanted verbal, non-verbal or physical behaviour of a sexual nature with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, or offensive environment. According to the "Convention on the Elimination of All Forms of Discrimination against Women" the United Nations Committee considers sexual harassment one of the forms of violence against women and notes that equality is put in real jeopardy when a woman is subordinated to such form of violence as sexual harassment.

Case proceedings: On April 24, 2018 Maka Gogitchaishvili applied to the Public Defender. Maka Gogitchaishvili requires determination of discrimination as well as provision of a recommendation for the company to ensure prevention of sexual harassment in the workplace.

4.6. N. Sh. and Sh. L. against JSC "Bank of Georgia".

Factual circumstances of the case: The plaintiffs worked in the department service centre of JSC "Bank of Georgia". N. Sh. was a service centre manager and Sh. L. - a universal banker. None of the disciplinary sanctions was imposed on the plaintiffs in the course of discharging their official duties as they carried out their official duties properly and in good faith. Notwithstanding the above-mentioned facts, on the basis of orders issued of February 15, 2018, their labour agreements with the employer were terminated.

The results of the plaintiffs' tests were excellent. It is noteworthy that the service centre, where the plaintiffs worked, was abolished and the personnel working there were transferred to the various service centres of JSC "Bank of Georgia" in the autonomous republic of Adjara. During the staff reduction, the employer should have relied on performance of official duties, test results, experience, competency and a number of other professional components of employees.

N.Sh.'s dismissal from the job coincided with the period when she requested maternal leave as provided by law. Sh. L. was dismissed right after she returned from her maternal leave. Because of an infant, Sh. L. had demanded additional leave and an additional hours' break a day.. These circumstances generate reasonable doubt that differential treatment towards the plaintiffs was performed as a result of pregnancy and maternity.

Case importance: The case pertains to discrimination against women on the grounds of pregnancy and maternity leave. The case is significant regarding the distribution of the burden of proof of discrimination as well.

Legal reasoning: The claim includes reference to the judgement №ar-792-757-2014 of the Tbilisi Court of Appeals where the following is noted: "prohibition of any type of discrimination in labour relationships on the grounds of race, colour, language, ethnic or social belonging, nationality, origin, property or title, place of residence, age, sex, sexual orientation, disability, belonging to religious or other unions, marital status, political or other beliefs… the employer bears the burden of proof in this case, in particular, if an employee believes that the termination of a labour agreement was discriminatory treatment, then it is the employer who has to prove lawfulness of exhibiting his/her own will and existence of non-discriminatory grounds". Respectively, the court should treat discrimination-related claims with the presumption of discriminatory treatment and assign the the obligation to prove otherwise.

According to Article 37 (3) of Labour Code of Georgia, terminating labour relations shall be inadmissible in the case when a female employee notifies the employer about her pregnancy. Rejecting a pregnant woman by reason of her pregnancy is unjustified and represents direct discrimination. According to court practice, a comparator is not needed to determine the discrimination against a pregnant woman. The essence of the mentioned is that pregnancy itself is a different/unique state and a man or a non-pregnant woman cannot be a comparably equal person.[10]

Differential treatment against pregnant women in labour relations is regarded as discrimination as it can only have an impact women. Quite frequently discriminatory treatment leads to job dismissal. In its recommendations, the International Organisation of Labour emphasises that it is very significant that women be given opportunity to have children, without marginalisation from society.

According to the explanation provided by the Supreme Court of Georgia, the "cassation court considers that inclusion pregnant women and their rights into a specially protected legal framework by the international acts are caused by an objective condition. The life, health and psyche of a pregnant woman are subjects to a special care. Pregnancy _ (medical term is gestation or gravidity) is a physiological process taking place in the body of a woman that lasts for 40 weeks. This period is special not only for the woman, but also for the entire family as changes that occur in the life of a pregnant woman reflects on the life of a family as well. Every trimester of pregnancy is accompanied by the changes characteristic of the body and psycho-emotional sphere. The specific medical literature and scientific researches, dedicated to the special status of pregnant women, confirm that a specific treatment system for a pregnant woman, as a woman in a special condition, should necessarily exist in every aspect of life, including a legal sphere. (see the case br-463-451(g-13) of 18.02.2014 of The Supreme Court).

Respectively, the decision made about dismissal, served as the inability of the employee to benefit from the benefits foreseen for by legislation. The decision of the employer in this case has no objective and reasonable justification. It needs to be highlighted that, as a result of the so called reduction of the staff, such two employees were dismissed who, in fact, needed were pregnant or just recently gave birth required special care and were members of a vulnerable group.

Case proceeding: On July 7, 2018 N. Sh. and Sh. L. applied to the Batumi City Court. The plaintiffs claimed nullification of the decisions taken concerning their dismissal, determining and prevention of discriminatory treatment, restoration to their jobs, reimbursement for non-attendance by paying penalty with the amount of 0.07%

[10] See recommendation of the Public Defender versus LTD microfinance organization "Credo"

for every day overdue and reimbursement of moral damage caused by the discriminatory treatment with the amount of 1000 GEL for each of the plaintiffs.

The City Court of Batumi did not satisfy the claim within the reporting period, the representative of the plaintiff party did not receive a substantiated part of the decision.

4.7. E.G. against the Ministry of Internal Affairs and Prosecutor's Office. (case prepared by Union "Sapari")

Factual circumstances: On June 12, 2015 E.G. was physically abused by her spouse T. Tsk. On the following day the victim applied to the Kobuleti police with a complaint. The police commenced investigation on the later date of June 27, 2015. On June 30, 2015, T. Tsk. was detained. Until then, T. Tsk. and his relatives threatened E.G. and forced her to withdraw the complaint. E.G notified the police about the threats which, however, were left undealt. After leaving the detention centre T. Tsk. once again assaulted E.G on October 7-8, 2016. Despite the complaint, the head of Kutaisi police department required E.G to allow her attacker and spouse in the house. On June 2, 2017, T. Tsk. once again abused E.G. physically and attempted to kill her. A restraining order has been issued later, on June 8, 2017. On July 11, 2017 T. Tsk. violated the instructions of restraining order: he came to the victim and verbally assaulted her. Despite the complaint, the police officers did not react to the fact that the restraining order was violated.

Case importance: This case is significant from the angle of inadequate reaction relating to gender-based violence on women.

Legal reasoning: According to Article 208 (1) of the General Administrative Code of Georgia, the state shall be liable for damages inflicted by a state administrative body, and by its officials or other state employees or public servants in the course of discharging their official duties. According to Article 1005 (1) of Civil Code of Georgia, if an official breaches his/her official duty in relation to other persons intentionally or by gross negligence, then the state or the body in which the official works, shall pay the damages caused.

The inactivity of the police and the bodies of Prosecutor's Office towards the facts of violence inflicted on E. G by T. Tsk., as well as towards the facts of lodging complaints to the police/bodies of Prosecutor's Office by E.G., is a breach of their official duties which caused violence against a victim woman and caused moral and material damage to E.G.

Case proceedings: On June 5, 2018 the claim was filed at the court. The plaintiff requests reimbursement of material damage with the amount of 1800 GEL from the Ministry of Internal Affairs and the Prosecutor's Office along with reimbursement of moral damage with the amount of 2500 GEL. This case has not been examined within the reporting period.

4.8. Tamar Samkharadze against Shalva Ramishvili (case prepared by union "Sapari")

Factual circumstances: Shalva Ramishvili has been Tamar Samkharadze's direct supervisor since 2013. Since 2014, Tamar Samkharadze had been working in LTD. "Zeniti" where Shalva Ramishvili worked as an art director and respectively, several TV-programs for "Imedi" broadcasting company featuring Tamar were broadcasted under his supervision. Shalva Ramishvili sexually harassed Tamar verbally, as well as physically. On February 5, 2016, instead of getting promotion at work, Shalva Ramishvili offered Tamar Samkharadze sexual contact, which was rejected by Tamar Samkharadze. During the following period Shalva Ramishvili kept commenting that in rejecting his offer, Tamar fell out of favour with Shalva's. On March 30, 2016 Tamar left the job.

Case importance: This was the first case which the victim of sexual harassment won in court.

Legal circumstances: The City Court of Tbilisi determined the instance of sexual harassment in the mentioned case with the help of text correspondence between Tamar Samkharadze and Shalva Ramishvili and with the help of testimony of N. Kh., the director of LTD. "Zeniti". The basis for the termination of the agreement between LTD. "TV-Imedi" and LTD. "Zeniti" became the statements of the plaintiff about the sexual harassment exercised by the defendant.

During the legal reasoning of the prohibition of sexual harassment, the Tbilisi City Court relied on Article 6 (1) ("B") of the Law on Gender Equality which states: "The following shall be inadmissible in labour relations: any

unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, or offensive environment".

Case proceedings: Tamar Samkharadze filed a claim to the court on June 20, 2016. The judgment about the case was delivered within the reporting period and the claim was partly satisfied. The defendant party appealed against the judgement of Tbilisi City Court. However, the Court of Appeals upheld Tbilisi City Court's decision.

4.9. T.J. against the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia. (case prepared by WISG)

Factual circumstances: T.J. is a female victim of domestic violence and lives in the shelter of NNLE "Anti-Violence Network of Georgia". The City Court of Tbilisi is reviewing the criminal case against the claimant's father who committed the crime against the claimant. T.J. is a student and studies at the faculty of Physical Medicine and Rehabilitation at the Tbilisi State Medical University. Her tuition fees were paid by her family but when the claimant reported the violence by her family members, they stopped T.J.'s financial support. As a result of her grave social and economic conditions, she is unable to continue her studies and needs partial or full tuition funding.

The claimant was notified that the Ministry of Education, Science, Culture and Sport of Georgia has a financing mechanism for students within the framework of the social program. On July 5, 2018, she applied to the Social Service Agency with the aim of being evaluated under the social and economic conditions of socially vulnerable households. She was informed that she would be able to receive funding according to the order N745 issued by the Minister of Education and Science of Georgia, if she submitted the extract from the unified database of socially vulnerable households.

A social agent filled in the termination protocol of evaluation of the plaintiff's social-economic conditions with the motive that she lived in the shelter for domestic violence victims.

Case importance: Education provision for women and girls who are victims of violence.

Legal reasoning: The plaintiff considers that she became a subject to the direct discrimination because of the fact that she lives in the shelter. A woman is placed in a shelter due to domestic violence which amounts to discrimination on grounds of gender. Accordingly, the direct discrimination that was demonstrated by the refusal to register her in the unified database of socially vulnerable households is discriminatory on grounds of gender. The social agent's refusal to register her in the unified database of socially vulnerable households on the grounds of living in the shelter for domestic violence victims, hindered the use of right of education guaranteed by the constitution of Georgia.

The plaintiff also refers to the Order №01-36/ნ issued on August 9, 2016 by the Minister of Labour, Health and Social Protection of Georgia which states: the termination protocol of evaluation of social-economic conditions is filled in when: a) a household is artificially united; b) a household is artificially divided; c) a household does not continually live at the indicated address; d) a household does not permit an authorised person from the agency to inspect property/documents; e) a household refuses to fill in the declaration form or to register in the database; v) meeting with household members or with an authorised person cannot be managed; z) not every member of a household has documents required by legislation for filling in declaration; t) any other reasons e.g. if an authorised person cannot evaluate social-economic conditions during visit due to some circumstances or if the identification of a household is impossible (for example, the indicated address in the application does not exist or no building is located at the indicated address). This list does not refer to the situation of the following basis: "an indicated household is a shelter. A household lives in the shelter". However, it occurred in the case of T.J.

Case proceedings: The plaintiff applied to the public defender on August 25, 2018. Within the reporting period the public defender has not taken a final decision about the case.

4.10. N.K. against Tetritskaro District Court (case prepared by EMC)

Factual circumstances: N.K. was employed in Tetritskaro District Court. No disciplinary sanctions were imposed on the plaintiff during the course of discharging her of her official duties. Moreover, the plaintiff was given monetary rewards several times as a means of motivation. The employer was dismissed from the job during

pregnancy. The job dismissal was preceded by the plaintiff's complicated pregnancy which made her use almost one-month-length leave, which the plaintiff believes is the motive for her dismissal.

Due to her long-term leave, the plaintiff was no longer an attractive employee for the employer. Thus, there was expectancy that she would voluntarily leave her job on the basis a resignation letter. The plaintiff noted that the manager of Tetritskaro District Court made a reference ("friendly advice") to her voluntarily resignation and directed her to resign by February 2, 2018. On the same day of receiving refusal from the plaintiff, the court made a decision to suspend her official powers (without any substantiation) before the end of the first disciplinary proceedings (finished on February 27, 2018). On the following day after the end of the first disciplinary proceedings, the chairperson of the court again made the decision to suspend N.K.'s official powers up until her final dismissal from the work.

It is important to note that the basis of the order of N.K.'s dismissal from the work became a disciplinary violation, that is, the loss of an application of some public information by the claimant. The plaintiff indicated that the mentioned breach was not committed by her and moreover, documents proving her culpability in the specified case did not exist. Besides, the plaintiff party noted that in the same period a different person was employed on the same post whose explanation involved in the information that excluded the plaintiff's responsibility.

Case importance: The case refers to the discriminatory treatment against women on the grounds of pregnancy in labour relations.

Legal circumstances: In the given case the plaintiff based her claim on the national and international legislation. The plaintiff stated that the decision about her dismissal from the work was discriminatory and if it was not for her pregnancy, the defendant party would not have made such a decision. The official correspondence regarding this issue in the given case demonstrated the fact that no one was dismissed from the work due to a disciplinary breach in the Tetritskaro District Court during the recent years.

The results of disciplinary proceedings were especially severe on her as the employer used far lighter penalties on the other person involved together with her in the disciplinary proceedings.

Case proceedings: Within the reporting period, the Tbilisi City Court upheld the decision of Bolnisi District Court. According to the decision of Bolinisi District Court, the plaintiff's claim was not entirely satisfied. The important evidence which reverses the burden of proof on to the employer.

4.11. N.G. against Ltd. "Studio Maestro" (case prepared by PHR)

Factual circumstances: N.G. has been working as a director/producer/journalist of one of the TV-programmes in LTD. "Studio Maesto" since July 1, 2016. The basis for this labour relation was a labour agreement for a 3-month period.

The employer and the employee made a verbal agreement to automatically continue their labour agreement after the end of 3 month-term. However, as the broadcasting company became aware of the fact that N.G. was having temporary health problems as a result of pregnancy, the employer refused to continue the labour agreement with her. It is noteworthy that N.G. was informed about the refusal of continuing the agreement not at the moment when the agreement term ended, but only 11 days later when she was suddenly faced with some health problems on post-operational bed rest After the end of the agreement term, N.G. usually continued her work which was accepted by the employer. This situation only changed after she was admitted to hospital.

After 11 days from the end of the labour agreement, the company informed N.G. that they did not plan to continue the labour contract with her. However, they would reimburse all the days she worked after the end of the agreement term. According to the director of the company, the reasons why they did not wish to continue the labour agreement were due to the low ratings of the programme and lack of a sponsor. The plaintiff believes these reasons to be illogical as by that time only three programmes had been broadcasted. The plaintiff had a reasonable suspicion that the reason for the termination of labour agreement was caused due to her poor health linked with her pregnancy. This is proved by the words of the channel's general producer who during a private conversation told N.G. that because of her health condition it would be better for her to rest at home.

Case importance: The case refers to the discrimination against women in labourthe workplace due to pregnancy.

Legal circumstances: The plaintiff was discriminated against by the employer due to temporary poor health and operational treatment due to pregnancy. The employer did not continue the labour agreement with N.G. on receiving this information. Further, if the employer wished to cease the labour relations with N.G., she must have been informed about this decision one month earlier, which did not happen in this case.

Differential treatment against pregnant women in labour relations is regarded as discrimination because it can only have an impact on women. Quite frequently discriminatory treatment leads to the dismissal from a job.

According to the explanation from the supreme court of Georgia, despite the fact that "Code of Labour" does not define norms that are discriminatory in nature against women, because of the flaw and ambiguity of the norm, the employer is given the theoretical opportunity to discriminatorily use the law. Specifically, the realisation of the rights of employed persons tends to be entirely dependent on the goodwill and decision of an employer. The court thinks that the norms which define the usage of maternity leave of employed women are not in line with the international standards and therefore, the proper realisation of one of the fundamental rights of women, that is maternity, is extremely problematic.

Taking into account all of the above mentioned, N.G has become a victim of a discriminative treatment from Ltd. "Studio Maestro". The refusal to extend the contract as verbally agreed was labourlabourdiscrimination on grounds of pregnancy.

Case proceedings: With the help of PHR, N.G. applied to the Tbilisi City Court with the following claims: to prevent the discriminatory treatment against the plaintiff and to eliminate the results of this treatment, as well as to continue the labour agreement, reimburse compulsory overtime and moral damage. The City Court of Tbilisi did not satisfy the claim in the section of the determination of discriminatory treatment within the reporting period. The plaintiff, further did not receive a substantiated decision about the case within the reporting period.

4.12. PHR against the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking

Factual circumstances: A resident of a care home for persons with disabilities said that more male nurses were required to help male residents to help with hygiene related activities. PHR filed an application to the Ministry of Labour, Health and Social Protection of Georgia requested the Ministry to take urgent action to bring to an end the discrimination against the male residents with special needs so that their honour and dignity will not be violated.. The Ministry of Labour, Health and Social Protection of Georgia sent the case to LEPL "State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking" which then stated that the Fund carries out the selection process of workers for vacant posts from competitions under the current legislation. As the male applicants rarely apply, the Fund lacks the possibility to artificially increase the number of male nurses in the care home without violating the regulation of the competition.

Case importance: The case refers to the availability of gender sensitive services to persons with disabilities.

Legal reasoning: "The State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking" is operates a neutral selection process and does base decisions on sex. Mostly women apply for the nursing positions and thus, mostly women get an offer of employment. This circumstance negatively reflects on the male residents of the care home as their hygiene tasks are performed with the help of the opposite sex. The neutral personnel policy of the selection process disproportionality affects the male residents. According to the above mentioned facts, indirect discrimination exercised by "The State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking" is evident.

Case proceedings: Within the reporting period PHR applied to the Public Defender with the request of determining the violation of right of equality by "State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking" and providing it with a recommendation.

During the course of studying the case, the Public Defender held a meeting where the representatives of the Trafficking Fund planned several activities. Afterwards, the Public Defender applied to the fund with a letter requesting information about the implemented activities. However, at the moment the organisation is unaware how the fund reacted to the mentioned letter.

4.13. Mari Adamashvili against the Parliament of Georgia (the name and surname has been changed for the protection of the plaintiff's confidentiality) (case prepared by GYLA)

Factual circumstances: Mari Adamashvili is a sex worker. On a daily basis she faces the danger of administrative liability as a result of being employed in prostitution which is prohibited under the code of administrative offences.

Case importance: The case refers to the group of women that are, sex workers, who are vulnerable to abuse.

Legal circumstances: According to the Code of Administrative Offences of Georgia, prostitution is an administrative offence. The mentioned legislation is discriminatory against women because sex work disproportionately pertains to them as many more women are employed in sex industry around the whole world than men. The Code of Administrative Offences only holds a sex worker, that is, a seller of sex service, usually a woman, liable for the offence whereas a client, that is, a buyer of sex service, usually a man is not held liable for the same offence. The mentioned legislation hinders the sex worker from accessing justice because in cases of abuse, sex workers abstain from informing the law-enforcement agencies due to a fear of harassment.

In addition, the discriminatory harassment that sex wokers face is extremely problematic. According to society's mainstream opinion, the sex worker women are not performing their gender function faithfully or properly and their work is unacceptable for the society. This viewpoint is why the sex workers conceal their work from their family members and relatives. The sex workers subdue to the stigma as they do not act in line with the established 'traditions and values' and their behaviour does not conform to society;s perceived gender-related requirements of "morality".

Case proceedings: On June 8, 2018, Mari Adamashvili applied to the Public Defender. The plaintiff claims that the Public Defender should present a recommendation to the Parliament of Georgia in order to remove the prostitution from the Code of Administrative offences by means of legislative changes. The Public Prosecutor has not made a final decision within the reporting period.

5. DISCRIMINATION ON THE GROUNDS OF DISABILITY

Disability is not referred to directly in the first paragraph of Article 11 of the Georgian Constitution. In the case of "Irakli Kemoklidze and Davit Kharadze against the Parliament of Georgia" the Constitutional Court of Georgia noted that the persons with disabilities may represent a "social group" which in turn, serves as a classic ground according to Article 11 (1) of the Constitution.

According to Article 11 (4) of the Georgian Constitution, the state shall create special conditions for persons with disabilities to exercise their rights and interests. Disability, as a ground for discrimination is directly prohibited in the first Article of the Law of Georgia on the Elimination of All Forms of Discrimination. The most acute problem within the reporting period was the provision of reasonable accommodation of persons with disabilities.

5.1. Z.G. against the Ministry of Defence of Georgia. (case prepared by GYLA)

Factual circumstances: Z.G. had been serving in the Georgian armed forces since December 5, 2007. In 2008, during the August War, together with the other military servants he was dispatched to the Tskhinvali region where he participated in the hostilities;he is a veteran of war.

Before signing new contracts, he had a medical examination performed and was considered suitable for military service after all examinations.. For example, after the examination on August 20, 2013, he was considered suitable and therefore, he performed military duties outlined by the contract faithfully and properly. In September, 2015, before agreeing the next contract, Z.G. was diagnosed with left kidney agenesisfrom the results of the medical examination. Accordingly, on the basis of the medical card and the Sub-paragraph "b" of Paragraph 80 of the order N360 of the ailment list issued by the Minister of Defence of Georgia on December 24, 1996, Z.G. was considered partially suitable for military service. According to the mentioned paragraph of the order N48 issued on January 22, 2011 by the Minister of Defence of Georgia, the Sub-paragraph "b" includes: "inherited anomalies of kidneys without functional derangement…"

Z.G. was dismissed from his post on the basis of the mentioned medical report by the order 9.11.2015 issued by the Chief of the General Staff of the Georgian Armed Forces. Therefore, his dismissal took place due to having a defect at birth which has not had when, in any impact on his health,proved by being in the military service for several years.

Case importance: The case refers to discrimination in the work place due to minor health conditions not impacting work.

Legal circumstances: According to Article 3 of the "Law of Georgia on the Elimination of All Forms of Discrimination", the requirements under this law shall apply to all public agencies, including the Ministry of Defence of Georgia. In spite of the fact, whether or not the public relations are regulated by a special law, the requirements of Article 2 (2) of the "Law of Georgia on the Elimination of All Forms of Discrimination" should be fulfilled according to Article 3 of the same law.

Sub-paragraph "b" of Paragraph 80 of the order N360 of the ailment list issued by the Minister of Defence of Georgia on December 24, 1996 and the mentioned paragraph of the order N48 issued on January 22, 2011, by the Minister of Defence of Georgia stating that Sub-paragraph "b" includes "inherited anomalies of kidneys without functional derangement…" represent direct discrimination.

Case proceedings: Within the reporting period the plaintiff applied to the Public Defender and requested the determmination of of discrimination on the grounds of disability against Z.G., as well as to deliver a recommendation for the Ministry of Defence of Georgia to nullify the words "inherited anomalies of kidneys without functional derangement" mentioned in the Sub-paragraph "b" of Paragraph 80 of the order N360 of the ailment list issued by the Minister of Defence of Georgia on December 24, 1996. In order to receive additional information, on March 19, 2018, the Public Defender applied to the Ministry of Defence of Georgia with a letter, which was answered by a letter dated March 30, 2018, of the Ministry of Defence. The final decision was not taken within the reporting period.

5.2. R.Ch. against the MIA`s Service Agency (case prepared by GYLA)

Factual circumstances of the case: R.Ch. was born in 1987. At the age of 14, as a result of malignant cancer, his/her right leg was entirely amputated. He/she now uses limb prosthesis. R.Ch. has a strong desire to get a driving licence, so with the purpose of that, he/she successfully completed one of the auto-schools in the city of Batumi where he/she succeeded in the theoretical, as well as the practical part of training courses.

R.Ch. repeatedly applied verbally to the LEPL "Service Agency" to allow him/her to take the exam of driving licence but the Service Agency requested the plaintiff to deliver an adapted vehicle. Due to the social condition of his/her family, R.Ch. cannot afford to purchase the adapted vehicle. However, he/she has a strong desire to get a driving licence in order to be able to move independently and not be reliant on others.

R.Ch. applied to the LEPL "Service Agency of the Ministry of Internal Affairs of Georgia" and claimed that he/she should be allowed to take a theoretical, as well as a practical exam to obtain a driving licence. According to the written answer of August 27, 2016, the Service Agency did not possess the adapted vehicle for the persons with disabilities, thus, the vehicle had to be delivered by a driver.

According to the order N598 of the Minister of Internal Affairs issued on August 1, 2012, in the cases when the adapted vehicle is not necessary, the vehicle is provided to the applicant by the Service Agency but, in the cases of the persons with disabilities, LEPL "Service Agency of the Ministry of Internal Affairs of Georgia" requires the driver candidates to provide the vehicle.

Case importance: The case is important as it concerns the right of persons with disabilities to live an independent life.

Legal reasoning: According to Article 3 of the Convention on the Rights of Persons with Disabilities of the United Nations, the principles of the Convention shall be respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; respectively, the Convention determines that state and society are liable to respect the specific needs of persons with disabilities and provide the relevant environment so that the persons with disabilities could achieve realisation of their rights and freedoms in the conditions equal to those of other persons.

Case proceedings: On September 9, 2016 R.Ch. applied to the Public Defender and requested the determination of discrimination on grounds of disabilities, as well as delivering the recommendation to the LEPL "Service Agency of the Ministry of Internal Affairs of Georgia".

On August 9, 2018, with the purpose to reconcile the parties, the Department of Anti-Discrimination Mechanism of the Public Defender Office held a verbal hearing, which was attended by the representative of Service Agency of the Ministry of Internal Affairs. After the parties provided explanations, the representative of Service Agency of the Ministry of Internal Affairs was assigned to present additional information to the Office of the Public Defender. It is noteworthy that after R.Ch. applied to the Public Defender with the claim, Rustavi Service-centre of Service Agency of the Ministry of Internal Affairs purchased an adapted vehicle. The Service Agency of the Ministry of Internal Affairs expressed readiness and stated that the purchase of the adapted vehicles for Kutaisi and Batumi service-centres was planned until the end of the current year, which would enable the persons with disabilities to take the practical exam of driving licence along with the theoretical one. Persons with disabilities did not have the ability to do so at the moment of filing the application (September of 2016) in any of the service-centres of Service Agency of the Ministry of Internal Affairs.

5.3. V.K against Ministry of Labour, Health and Social Affairs of Georgia (case prepared by GYLA)

Factual circumstances of the case: V.K. is blind, thus he/she was given the status of a person with disability. In 2011 the plaintiff applied to the LEPL Social Service Agency and requested to be registered in the unified database of socially vulnerable households. After examining the social-economic conditions of his/her family, the claimant was registered in the database and was granted the status of socially vulnerable person, thus, V.K. enjoyed the social benefits attached to such status. An authorised person from the agency evaluated the social-economic conditions of the claimant several times. In the course of each of these examinations, the claimant provided an agent with accurate information. However, in the course of one of these examinations, the agent incorrectly filled out the declaration, omitting information about the pension assigned to the claimant by the pension fund of Russian Federation in the city of Kislovodski of Stavropoli region. As a result, considering that he/she provided the authorised person from the agency with inaccurate data, V.K.'s registration in the "unified

database of socially vulnerable households" was nullified by the order of July 10, 2017 by the head of Social Service Agency.

The claimant signed the declaration because he/she trusted the agent. V.K. could not read the declaration due to blindness. The order N141/ნ of May 20, 2010 of the Minister of Labour, Health and Social Affairs of Georgia determines the process of evaluating the social-economic conditions of socially vulnerable households and requires a specific and detailed way of filling in the declaration. The application notes that this order does not provide how the declaration should be presented to persons, who cannot independently read the declaration due to some objective reasons. Because of the absence of special regulations, persons with special needs lack the possibility to check to what extent the information provided by them is relevant to the information recorded in the declaration by the social agents and by signing the document confirm the accuracy of the data recorded in the declaration.

According to the information provided by LEPL Social Service Agency to the Public Defender on October 6, 2017, the fact that the legislation does not foresee the necessity in having a declaration form with the Braille alphabet, is not discriminatory against persons with vision impairment.

Case importance: The case refers to the accessibility of official documentation, the adaptation of the environment for persons with disabilities as well as their ability to independently make decisions in the course of public administration.

Legal reasoning: According to the "Law of Georgia on the Elimination of All Forms of Discrimination", indirect discrimination is present when a provision, criterion or practice of a conditionally neutral and essentially discriminatory content exists, or those persons, who are in essentially unequal positions are put in equal conditions, or when there is no legitimate reason, or when the differential treatment has no objective and reasonable justification and is disproportional to the intended goal.

According to Article 9 of the Convention on the Rights of Persons with Disabilities, to enable persons with disabilities to live independently and participate fully in all aspects of life, the state shall take all measures to ensure access to information and communications, including information and communications technologies and systems on an equal basis with others.

According to Article 2 of the Convention "communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including information and communication technologies.

According to Article 28 (2), States Parties recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right.

On the case of V.K., the Public Defender explained that even in the conditions where there is an absence of the Braille alphabet and other alternative means, any person who has low or fully impaired vision, lacks the possibility to agree to significant information about the social-economic condition of his/her household which is recorded in the declaration. In the given case the claimant is treated equally to persons without vision impairment. Therefore, the claimant is essentially in an unequal position compared to persons who do not have special needs. The Public Defender considers that the legitimate reason that would justify the equal treatment of blind personsto full-sighted was not provided in the information given by the defendant party. In the conditions where there is an absence of legitimate reasoning, unequal treatment and its probable negative results do not have objective and reasonable justification.

Case proceedings: On August 9, 2017, V.K. applied to the Public Defender. The Public Defender fully endorsed the application and applied the recommendation to the Ministry of Labour, Health and Social Affairs of Georgia on May 4, 2018. With the purpose of registration in the unified database of socially vulnerable households, the recommendation calls on the Ministry of Labour, Health and Social Affairs to make available the declaration of social conditions of households in the Braille alphabet or in any other alternative means as needed. To do so the Minister needs to make the relevant change in the order N141/m issued on May 20, 2010. The Ministry of Labour, Health and Social Affairs of Georgia did not reply to the recommendation of the Public Defender within the reporting period.

5.4. Z.K. against Tbilisi City Municipal Assembly (case prepared by GYLA)

Factual circumstances: Z.K. is a person with significant disabilities. According to the application he/she has problems related to vision, has had a stroke, uses insulin and has one of his/her sides paralysed which makes walking extremely difficult. While driving his/her car, Z.K., as a person with significant disabilities, uses a special disabled permit, a recognizsable sign distributed to him/her on the basis of a relevant decree issued by the Assembly. This sign enables him/her to park the car in the parking spaces allotted for the persons with disabilities. However, the decree N33-99 of December 27, 2016 "on determining the regulation rules of parking of transports and fees of parking in the administrative borders of the city of Tbilisi" issued by the Tbilisi City Municipal Assembly, annulled this benefit for persons with significant disabilities, so only the persons with significant disabilities and persons with amputated lower limbs could use the mentioned benefit.

The chair of the legal issues commission of Tbilisi Assembly sent a letter to the office of the Public Defender and made an attempt to explain the reasoning for the differentiation between persons with disabilities. According to words of the Chairperson of the Segal Issues Commission, the current legislation itself separates and differentiates the status of disability on the basis of the extent of severity. According to the words of the Chairperson of the Legal Issues Commission, the fact that persons with significant disabilities are allocated the permit for parking is caused by the clear disability of capacity (for instance, the third and the highest degree of disability of self-service and movement capacities). As a result, the persons from these categories cannot be regarded as essentially equal to the persons with moderate disabilities because of their anatomical and mental conditions. According to the opinion of the Chairperson of the Legal Issues Commission, the persons with significant disabilities need more care.

Case importance: The case refers to the possibility to live independently for many of the persons with disabilities and descrimination on grounds of disability.

Legal reasoning: The recommendation of the Public Defender issued to the Tbilisi assembly points out Article 9 of the Convention of the persons with disabilities, which ensures the right of accessibility to the persons with disabilities. Specifically, according to this norm, "to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to transportation both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers, shall apply to transportation". Therefore, parking vehicles in the allotted spaces is the right of the persons with disabilities guaranteed by the instrument of international obligations undertaken by Georgia.

The Public Defender of Georgia did not compare persons with moderate disability to persond with significant disability in relation to the accessibility of parking spaces. Instead, in the recommendation, the Public Defender stated that persons with moderate disability can be seen as essentially equal to persons who has his/her limbs amputated but does not possess the status of the person with significant disability. Persons with amputated lower limbs may not have the status of persons with significant disability but still may be in need of allocation of parking spaces so as to facilitate their day-to-day life. This was the reason why persons with amputated limbs were granted parking permits by the decree of the Assembly. Similar to these persons, the claimant also needs the allocation of the parking space as he/she is paralszed and finds it difficult to walk.

The issue of the comparator of persons in equal conditions has not been resolved by the Public Defender according to the extent of the disability of persons or medical diagnosis, but according to the fact whether or not they need transportation to eliminate obstacles in their relationship with their surroundings. The Public Defender stated: "The Public Defender considers that the issue of the need of usage of the special parking space shall be resolved individually and according to the above-mentioned approach. It can be said that such approach much more corresponds to the social model of evaluation of disability and, according to this model disability, too much extent, represents socially stipulated challenge than medical challenge. This challenge must be answered with implementation of relevant social policy and various positive measures".

After the Public Defender determined that the person with moderate disability is in an equal condition to persons who has his/her lower limbs amputated, the public Defender moved on to examine the issue of the legitimate intention for the differentiation and of usefulness of this method for achieving the legitimate intention. The letter sent from the Assembly outlined that the usage of the special parking spaces by the persons with minor health problems can prevent persons with significant disabilities from using these spaces. The Public Defender considered that the differentiation was an adequate method for achieving this legitimate intention.

In spite of the above-mentioned, in the opinion of the Public Defender, the differentiation did not however the requirements of proportionality. The first reason why was the Public Defender reckoned that the differentiation was disproportional was that the Assembly did not carry out empirical research: if giving the benefit to persons with moderate disabilities increased the number of parking space users to such extent, that there would not remain enough car parking spaces allotted for the persons with significant disabilities.

The second reason why the Public Defender reckoned that the differentiating treatment was discriminatory was that the Assembly did not have competence to determine that only the persons with significant disabilities or persons with amputated lower limbs and no other persons were in need of the use of special parking spaces. The Public Defender made the reference to the law on "medical-social expertise" according to which the needs of social protection shall be determined by a relevant medical institution on the basis of evaluation of abilities. As stated by the Public Defender, the fact whether or not the person with disability is in need of individual parking spaces shall be determined individually and according to the needs that are required to eliminate the particular obstacles: "The Public Defender believes that granting the right to the usage of special parking space to the persons with disabilities shall be determined individually in every specific case by the persons of relevant expert competency with the anticipation of above-mentioned methods". Thus, the Tbilisi Assembly did not hold such competence.

Therefore the decree of the Assembly according to which the car parking spaces could be assigned to persons with amputated lower limbs and could not be used by the persons with moderate disabilities, was discriminatory as reported in the recommendation provided by the Public Defender.

Case proceedings: The plaintiff applied to the Public Defender on August 21, 2017. On August 6, 2018, the Public Defender provided a recommendation to the Tbilisi Assembly. In the recommendation, the Public Defender claims the regulation on the rules of parking in the administrative borders of the city of Tbilisi shall be determined in such a way that the opportunity of getting the special permits must be related to the individual need of the special parking space of the person with disability and not to the status. Within the reporting period the Tbilisi Assembly has not shared the recommendation of the Public Defender.

5.5. N.M. against the Ministry of Education and Science (case prepared by PHR)

Factual circumstances: N.M. is 14 years old disabled wheelchair user who had been a student at one of the Public schools of city of Telavi since 2009. Due to refurbishment, the school moved its location far away from N.M's house, atthe beginning of the academic year of 2017-2018.Therefore, without transport, N.M.'s parent is unable to take the child to the school.

The school provided a vehicle to enable the schoolchildren to go the school, however the vehicle is not adapted to N.M's needs. N.M.'s mother, who is his/her legal representative, filed the application to the school with the purpose of requesting an adapted vehicle as so the child's right to education would not be limited. Likewise, on November 1, 2017, she applied to the Ministry of Education and Science of Georgia with the same request. Regardless of this, neither the school nor the Ministry has done any of the activities for the provision of the vehicle.

Case importance: The case refers to the reasonable accommodation of children with disabilities and the right to receive and education.

Legal reasoning: According to the explanation of Committee on the Rights of Persons with Disabilities of the United Nations, when a person has special needs and the accessibility standard is not sufficient to meet his/her requirements, than the principle of reasonable accommodation must be applied. Implementation of the mentioned principle is a direct obligation of the states, if it does not impose undue burden or hardship.

Notwithstanding the fact, that accessibility to the school building for schoolchildren has been provided through the means of allocating a vehicle, such service was unsuitable for N.M. because of his/her disability. Hence, therefusal of reasonable accommodation is present. Otherwise, the school should have offered an alternative service to the plaintiff that would be relevant and adjusted to his/her need (e.g. provision with the adapted vehicle), as by simply allocating the vehicle, N.M.'s special needs were not fulfilled. Therefore, N.M. has been put in an unequal position in comparison to the other schoolchildren.

Case proceedings: N.M. applied to the Telavi District Court within the reporting period. The decision regarding this case was not taken within the reporting period.

5.6. D.K. against the Notary (case prepared by PHR)

Factual circumstances: D.K. is a person with a disability, under State care and is a member of a community organisation. It is noteworthy, that he/she has never been recognised as a person disabled person. As D.K. needed help with the use of his/her social allowance, he/she decided to give authority to one of the employees of the community organisation for administering his/her pension affairs and relations with a bank.

On May 19, 2017, with the purpose of certifying the power of proxy, D.K. applied to a notary. The attendants of D.K. were also present in the notary bureau. The attendants explained to the notary, that D.K. was a person with disability and was unable to read or write. When the notary became aware of the fact that D.K. was a person with disability, he/she decided to assess D.K.'s functional capacity by means of asking the questions.The notary refused to fulfil a notary act after having posed the questionas because, owing to the wrong answers he/she received after inquiring D.K., the notary became suspicious about D.K.'s functional capacity. It is noteworthy that the notary asked D.K. the questions in such a manner that D.K.'s individual needs were not anticipated, for instance, a simple communicative language that would help D.K. to adapt with the environment was not used. Besides, the questions which the notary asked D.K., were mainly about D.K.'s place and date of birth. In fact, the notary did not ask any of the questions that would ensure authenticity of D.K.'s will.

Case importance: The ability of persons with disabilities to conclude a transaction.

Legal circumstances: In the referred case the indirect discrimination on the grounds of disability is present, because the notary did not consider D.K.'s individual needs and did not ask the questions anticipating D.K.'s intellectual capacity. The notary asked D.K. such standard questions, that he/she would ask any other person who does not have intellectual disability. This disputable case revealed that notaries have one general approach and practice during notary acts with persons with disabilities. Such approach and practice excludes the possibility to impart and receive information in an adapted format.

It should be underlined that in such cases, when a person of psycho-social needs is not recognised as a support receiver by court, he/she is able to conclude transactions independently and shall enjoy the right to enter into contracts, and become a participant of a private legal relations equally to others and in line with law. Determining the real intention in the case when a person is aware of the intention of achieving any legal results and communicates this will in an understandable way for other persons, is not connected to the mental capacity status because such approach would be discriminatory in relation to the persons of psycho-social needs and would become a blatant breach of the established policy by the Convention "on the Rights of Persons with Disabilities" that is shared by the Georgian legislation.

Hence, according to the established standard of the Convention "on the Rights of Persons with Disabilities", legal status of the capacity to act that granted to the persons with psycho-social needs within the scopes of supporting reform, implying that they can be recognised as persons capable of concluding transactions; being capable of concluding transactions means communicating such intention which serves to generate, change or terminate legal relations. Therefore, the intention that the persons with psycho-social needs in entering civil and legal relations, is legitimate, inasmuch as their legal status of complete capacity (capacity to act) is legitimate and recognised by legislation.

Case proceedings: The Tbilisi City Court did not satisfy the claim within the reporting period. The party has not provided with the substantiated judgment.

5.7. N.T. against LTD "Wonderland Preschool" (case prepared by PHR)

Factual circumstances: With the purpose of receiving preschool education, N.T. was enlisted in a group of preschool children aged 2 in LTD "Wonderland Preschool". In January 2018, owing to the reasons that he/she was aggressive, hyper-active and was unable to work in the group, N.T. was expelled from the institution by the preschool administration. The document expelling the child referred to complaints about N.T's behaviour from other parents.behaviour

According to the explanation provided by LTD "Wonderland Preschool", during group activities the child manifested aggressive behaviour which materialised with hitting the other children with toys, shaking a chair back and forth, scratching, biting, pulling hair and knocking the other children down. Frequency of such behaviour was 3-4 incidents per 10 minutes.

In November 2017, before the expulsion from the preschool, the head and the psychologist of the preschool held a meeting with N.T.'s parents and explained, that according to the recommendation of the psychologist, the child should have temporarily left the preschool for a month or two. Later, they changed their position and suggested the parents that the child attended the preschool part-time which the parents did not agree to as they assumed that the child should attend the preschool full-time.

Case importance: The case refers to perceptive discrimination which violated the right of the child to preschool education.

Legal evaluation: In this case the child was not a person with a disability. Notwithstanding, the perceptive discrimination had been practiced against the child on ground of disability. The recommendation of the Public Defender notes: according to Article 2 (6) of the Law of Georgia on the Elimination of All Forms of Discrimination, discrimination takes place regardless of whether the person actually possesses one of the grounds determined by Article 1 of the Law, because of which discriminatory treatment has been applied. The indicated norm involves perceptive discrimination. Perceptive discrimination takes place when a person is treated differently because, as the discriminator perceives, he/she may possess a protected characteristic of discrimination. However, at the same time, it is not important whether this person really has such protected characteristic. In the given case hyperactive behaviour was not characteristic of the child but, he/she was still put in an unfavourable condition because of this ground.

"According to the fifth standard of Early and Preschool Education and Care, a caregiver-pedagogue and a caregiver shall take an individual approach with each of the child". Although N.T.'s aggressive behaviour towards other children was not credibly determined, the board of the pre-school did not carry out individual work with him/her.

"The Public Defender notes, that the pre-school did not take relevant and necessary measures in order to eliminate the problems they themselves presented. Instead, the pre-school administration made a sole decision about the child's exclusion, which cannot be justified. The defendant party did not present legitimate reason which could extinguish the speculation about discriminatory treatment which arose on the basis of the information provided by the claimant party.

According to the assessment of the Public Defender, the defendant party did not act in the child's best interests. A child's exclusion from a pre-school cannot be regarded as his/her best interest because the exclusion may inflict a major trauma upon a child's psyche. In addition to this, a child's exclusion from the pre-school on the basis of his/her hyperactivity is alarming as the children, whose behaviour management may require more resources compared to other children, may be an additional burden and creates a big risk of making sole and discriminatory decisions by a pre-school."

Case proceedings: On April 16, 2018, in his/her recommendation, the Public Defender determined that N.T. was a victim of perceptive discrimination on the grounds of behaviour by "Wonderland Preschool". The Public Defender provided the defendant party with the recommendation indicating that the preschool shall manage the process of providing educational service in line with the protection of equality principle.

5.8. N.N. and M.A. against the Notary (case prepared by PHR)

Factual circumstances: N.N and M.A., are persons with disabilities and wards of state as well as members of community organisation and have not been recognised as people with disabilities. As they required some assistance in specific spheres, they decided to grant representative powers in court to specific persons.

On September 11, 2017, with the purpose of engaging a notary service, they applied to one of the notaries and required the authorisation of the representatives to conduct business on their behalf. The attendant attorney informed the notary's that the plaintiffs had disabilities and were unable to read or write. Therefore, two witnesses were brought for the completion of the notary service. After the assistant informed the notary about the status of the citizens, the notary, visually examining N.N. and M.A. only for seconds, instantly explained to the attendant attorney of N.N. and M.A. that, as a result of visual assessment he/she was categorically refusing to notarise a power of attorney.

Case importance: The ability of the persons with disabilities to conclude a transaction.

Legal reasoning: As full-fledged members of civil society, persons with disabilities possess the right to unlimited

access to notary services. However, contrary to this, the notary wilfully limited the right of the plaintiffs to grant their representative powers to others. In addition to this, it is noteworthy that the plaintiffs, as assessed by the notary, were "persons with clear visual, physical and mental disorder and were characteristic of involuntary body movements, as they were not able to control mimic muscles and were inadequate''.

Limiting the rights of the plaintiffs by the notary on the mentioned basis can be assessed as refusal to recognise the plaintiffs as subjects of law, which is not in line with international standards and is a gross violation of right to equality.

In terms of examining capacity (capacity to act), it should be noted that examining the capacity (capacity to act) shall be based on the requirements and opinion of the Georgian legislation about expressing a person's intention. It cannot be based only on a person's subjective perception and multiple practices. In the referred case the notary did not ask any questions and confirmed only with a visual examination which can be regarded as a wilful limitation of implementing a notary act.

Case proceedings: The plaintiff applied to the Tbilisi City Court. The court did not make a decision within the reporting period.

5.9. PHR against the State Fund for Protection and Assistance of Victims of Human Trafficking

Factual circumstances: Persons living in institutions, whose status of the support receiver is acknowledged through court procedures, do not have access to their pension. In contrast, other individuals with disabilities who are not placed in the institution thus require a change of the status, with the help of effective legal assistance, can straightforwardly enjoy their social allowance.

Case importance: Vulnerable group representative`s access to the monetary allowance;

Legal evaluation: This approach puts the people with identical psycho-social needs in unequal condition. Persons with psycho-social needs, whose status has not been decided by the court, utilise the social allowance. However, those persons in the psycho-social institutions are deprived of such an opportunity. Hereby, we are dealing with distinctive treatment on the grounds of dwelling and disabilities. Both groups have the same interest of receiving the social allowance. Such treatment does not have adequate or objective justification.

Case proceeding: PHR addressed the Public Defender on January 17, 2018. On February 2, 2018, the Public Defender applied to the State Fund for Protection and assistance of Victims of Human Trafficking with the purpose of requesting information. The Fund replied to the request on March 15, 2018. On August 6, 2018, the Public Defender additionally addressed the Fund through the written request. This letter was responded on August 9, 2018. Within the reporting period the Public Defender did not take any presumptive decision.

6. DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY

Sexual orientation and gender identity are directly reflected in Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination". During the reporting period, WISG, a Coalition member organisation, advanced two cases concerning gender identity discrimination. During the reporting period, the Public Defender received one general proposal based on a single case of GYLA and EMC in connection with discrimination on the basis of sexual orientation and gender identity. Transgender people still face problems for example in trying to rent a residence. Further, the state does not provide state funded trans-specific medical services.

6.1. N.M. against L.M. (case prepared by WISG)

Factual circumstances: On February 8, 2018, N.M. and L.M. came to a verbal agreement on the use of L.M.`s real estate (located in Batumi). According to the agreement, N.M. was given real estate owned by L.M., where N.M. was supposed to live together with a partner and two transgender friends, in return, they were charged to pay 550 GEL per month. A few days after the agreement was concluded, L.M. learned that N.M. was a transgender woman, and on February 16, 2018, L.M. together with a son Z.M. insulted them verbally and demanded that they leave the residence immediately. N.M. assumes that L.M.`s requirement was motivated by transphobic hatred and intolerance towards their gender identity and expression.

On February 16, 2018, N.M. called the police in order to avoid physical confrontation with L.M. and Z.M., which could have become a threat to him/her and his/her friends lives and heath. On February 21, 2018, Z.M. threatened to kill N.M.`s transgender friends. On February 23, 2018, the second Division of the Police Department of the Autonomous Republic of Adjara (located in Batumi, on Gorgiladze Street), under the Ministry of Internal Affairs of Georgia, initiated criminal proceedings on the malicious events. The effort and assistance of the police resulted in mediation with the owners of the abovementioned residence. As a consequence of the mediation, N.M. and his/her friends were given the possibility to stay in the space owned by L.M. before finding new housing. On March 7, 2018, the women managed to find the new residence and left the accommodation.

Case importance: The right of transgender people to have access to residential properties available on the market;

Legal reasoning: The applicant believes that Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination'", which prohibits discrimination on the basis of gender identity, has been breached. Further, the direct discrimination that also took place, is prohibited by Article 2 (2) of the same law.

With Article 531 of the Civil Code of Georgia, a rental contract obliges the lender to transfer the item to the tenant for the specified period of time. The tenant in turn, is obliged to pay the rent. By Article 69 (1) of the same Code, a contract can be concluded either verbally or in a written form. According N.M., he/she and L.M. agreed that the verbal form of contract was acceptable for both parties.

In accordance with Article 561 of the Civil Code of Georgia, the time set for terminating a rental contact is three months, except when the circumstances of the case or the agreement provide for a longer period. Article 562 of the same Code defines the grounds for discontinuing the rental agreement of habitation, and points out that the lender can terminate the rental tenancy contract only with reasonable arguments (paragraph 1). Paragraph 2 of the same Article lists the worthy reasons: a) if the tenant violated their contractual obligations substantially; b) the lender needs habitation for themselves or close relatives; c) if the tenant refuses to pay the increased rental fee, which corresponds the market fare; d) the renter has committed an illegal or immoral action against the tenant that makes it impossible to continue further relations between them.

N.M. estimates that none of the above listed basis were present when the lender demanded to terminate the contract. Therefore, he/she considers that the lender has to explain why they have taken the decision to prematurely terminate the contract moreover, failing to meet the law requirements.

Case proceeding: The Public Defender, aiming to request information, has addressed the Police Department of the Autonomous Republic of Adjara, under the Ministry of Internal Affairs of Georgia. According to the letter of May 14, 2018, the second Division of the Batumi City Police Department was investigating the criminal case involving threatening danger against N.M.`s transgender friend A.M.. The letter said that the police had conducted a series of measures, witnesses were interviewed as well, however, by that time,a discriminatory motive was not revealed, the criminal prosecution was terminated and no one was granted the status of a victim or an accused, thus, the investigation was still ongoing.

In the decision of September 28, 2018, the Public Defender pointed out that they had requested information twice from the defendant L.M., however, did not receive any written answer. During the oral interview with the lender, L.N. stated that he/she did not know N.M. and that they signed one-month rental contract with another person.

The public Defender referred to subparagraph "b" of Article 9 (2) of the "Law of Georgia on the Elimination of All Forms of Discrimination" and clarified in the report that, taking into account the absence of evidences, discrimination had not been revealed in the case.

6.2. R.F. G.M, V.M., D.Ch. against the Georgian Government (case prepared by WISG)

Factual circumstances: This case includes five transgender women applicants. The State Program of the Universal Health Care does not provide state funding for medical procedures essential for the applicants. All the applicants are temporarily unemployed and they are unable to pay for the medical procedures themselves, considering their socio-economic condition. In an attempt to obtain funding for trans-specific procedures (which had to be conducted in LTD National Endocrinology Institute), they applied to the Commission that had been established on November 3, 2010, by No.331 Decree of the Georgian Government, which was supposed to take decisions on providing medical assistance to patients "within referral services". The applicants were denied funding without any justification.

Case importance: Transgender people living in Georgia do not have access to quality health care services.

Legal reasoning: Anyone, regardless the type of state insurance persons possess or whether they benefit from such insurance, has the right to apply to the Interagency Commission that was established by No.331 Resolution of the Georgian Government on November 3, 2010 to "set the rule of activity to the commission that was to take decision concerning the proper medical assistance provision within referral services." These cited programs are real alternatives or the same category of people, such as the plaintiff, moreover, the funding received from the IA Commission may, in some cases, exceed the benefit of the state health-care program. Besides, the Commission considers all applications taking into consideration individual circumstances and takes decision based on the feasibility criteria.

However, there is a practice which may determine what type of medical operations are funded most frequently. The Commission finances the health services of vulnerable groups, including socially vulnerable families, individuals effected by natural disasters, catastrophes, emergencies, or people suffering from congenital heart disease. Inspection/satisfaction of such individuals` requests depends on how much their expenses are covered by the insurance or any other types of state programme, and the financing method, within certain limits, imposes a co-payment obligation to beneficiaries.

According to Article 2 (1), subparagraph "g", other citizens of Georgia eligible to submit the application include those individuals, whose medical services might be paid due to the necessary public and/or state interests, those who have the mediation form the administration of the governor or local self-government bodies of the administrative territorial units of Georgia.

With paragraph 21 of the same Article, despite the presence of the list of beneficiaries enjoying the medical assistance component that is defined by the first and second paragraphs, the exception may be allowed by the decision of the Commission. Thus, anyone has the right to address the Commission, regardless if they are using a basic insurance package or whether they are fully or partially banned from utilising such a package. Furthermore, as it becomes clear from Article 4 (3) of the same Resolution and the appellants' positions, while directing the funding to its seekers, the Commission is driven by the feasibility standard and focuses on the unity of circumstances of each particular case. At the substantial hearing of the case, the defendant party confirmed that there are no found preliminary criteria that would enable the funding seeker applicants to determine their chances in advance, before the due date. There are only mere statistics on decisions taken by the Commission, which may generate a general picture of such criteria.

The Inter-Agency Commission that was established by No.331 Resolution of the Georgian Government on November 3, 2010 to "set the rule of activity to the commission that was due to take decision concerning the proper medical assistance provision within referral services", was under the obligation to consider the individual circumstances and socio-economic status of submitted applications. Also, the Commission was due to recognise the needs of transgender people and their status in the country.

Article 2 of the "Law of Georgia on the Elimination of All Forms of Discrimination" prohibits indirect discrimination. The content of the cited Article leads to a conclusion that we are dealing with indirect discrimination when the existing rule or practice is neutral – and does not constitute any form of restriction to any group while exercising the right, however, it indirectly excludes the use of the right by any individual or group of individuals, since the late cannot meet any criteria. Besides, with such approaches, the person is prevented from enjoying the right envisaged by the Georgian legislation, there are no legitimate aims or distinctive approaches that are disproportionate means to achieve such a goal.

While considering the plaintiff`s application, the Commission had to examine the applicants' individual situation and answer the question on whether the applicant had had the opportunity to obtain the medical funding for the above noted medical procedures. In addition, the Commission was due to recognise the legal status of transgender people in Georgia and substantiate the denial as prescribed by law.

Case proceeding: During the reporting period, five transgender individuals applied to the Public Defender requesting the identification ofindirect discrimination, as well as addressing the Commission with a recommendation in order to obtain the funding for trans-specific medical services - namely, diagnostic procedures. During the reporting period, the Public Defender is still considering the case.

6.3. L.B., T.K. and others against the Ministry of Internal Affairs of Georgia (case prepared by GYLA and EMC)

Factual circumstances: On August 25, 2017, at dawn on Batumi Boulevard, members of the "Equity Movement", two transgender women together with L.B. and T.K., who are working on LGBTI theme and identify themselves as members of the gay community, were attacked by strangers. The applicants asked for help from the police officers, who being present at that time, just observed the incident. Later on, the police officers arrested only T.K. and L.B. by means of force. According to L.B. and T.K., the police officers abused them verbally and physically on the basis of homophobia. Based on the information provided by the detainees at the police station, where they had to stay for a few hours, they had also been physically and verbally assaulted and then they were taken to the temporary detention facility, they were stripped and forced to do squats.

Case importance: The case concerns the investigation of the crime committed on the grounds of transphobic and homophobic hatred.

Legal reasoning: A general proposal of the Public Defender reads: In 2015-2017, the Public Defender of Georgia, on the basis of their own initiative or applications, examined over 30 facts of shortcomings, all related to the process of investigation of crimes committed on the grounds of alleged religious, ethnic, sexual orientation or identity hatred.

According to the investigative body, regardless their attempt, no discriminatory motives have been identified. Further, in the absence of signs of crime, no investigations were initiated. While inspecting the alleged hatred motivated facts committed against the LGBT+ community, the forms of investigation that had been used to identify such motives, remain vague.

The general proposal states: The Public Defender has a number of applications proceeding in which the applicants outline the physical and verbal abuse inflicted by the law enforcers. Such facts are mainly revealed against the LGBT+ community – police officers tend to use homophobic expressions, running parallel to treating transgender women as men.

It is noteworthy that, in consonance with the information provided by the Prosecutor's Office of Georgia, the tendency of investigating alleged hatred motivated crimes is improved. More precisely, in 2017, hatred motive was examined in 86 cases, 12 out of 86 revealed the sexual orientation signs, whereas gender identity was determined on 37 occasions.

In the general proposal, the Public Defender has brought up the manual of the Organization for Security and Co-operation in Europe (OSCE)on "Investigation of Hate Crimes", which defines the notion of hate-motivated crime:

- Action prohibited by criminal law (so-called major offence)
- Action/inaction, which is motivated by the so called hate motive – the motivation, the pre-established sentiments towards the victim on the grounds of their characteristic (including sexual orientation and gender identity)

The general proposal of the Public Defender also states that the obligation of effective investigation is dictated by Article 2 (right to life) and Article 3 (protection from ill-treatment) of the European Convention on Human Rights. The investigation is considered to be effective if it identifies the facts regarding the case and makes it possible to identify and punish the responsible parties. The goal is not to have a result but to conduct the investigation, which implies that, authorities should conduct all investigative actions to effectively direct the process. In the course of identifying shortcomings regarding the issue reported, the European Court for instance, has taken into account the length of time it took to commence investigations and interviewing individuals.

If there is the reasonable suspicion that the crime was committed on any discriminatory basis, Article 14 of the European Convention imposes additional obligation on the state – more precisely, the investigation is only considered to be effective, if investigative authorities take all essential investigative measures to disclose the alleged hate motive and do not leave such motives beyond the legal sphere. The authorities should not cover up such suspicious circumstances demonstrating hate motives. In this respect, the Public Defender refers to the decision of the European Court of Human Rights regarding the case of Nachova and others against Bulgaria, where it is noted that Articles 2 and 14 of the Convention obliges the state that when the alleged assailant makes discriminatory statements against the victim, this should become an indicator for the criminal persecution bodies to presupose that they are dealing with a probable hate-motivated crime.

States, should ensure the effective, prompt and impartial investigation of cases of probable offence committed against LGBT+ persons due to their sexual orientation or gender identity. Any homophobic and transphobic motives must be identified and recorded by the law enforcement bodies. Maintaining statistical data on discriminatory actions is very important to identify the core problems and thus formulate a policy of combating discriminatory attacks.

The mere launching of an investigation does not meet the requirements of the ECHR, it must also be followed by immediate and effective investigative action. Given that, the obligation of conducting an investigation is only linked to applicable means and there is no unrestricted right of achieving the criminal prosecution or conviction, any deficiencies in the investigation that significantly complicate the process of determining the truth regarding the case, contradicts the commitment of effective investigation.

According to the Public Defender, the following steps should be taken against the hate-motivated offence:

- Data on hate-motivated crime should be collected and disclosed;
- The victim and the witness should be encouraged to appeal to investigative bodies regarding hate-motivated crimes;
- Quick and effective investigations should be conducted concerning hate-motivated crime

Case proceeding: On November 22, 2017, GYLA appealed to the Public Defender regarding the physical abuse of L.B. and T. K.. On his/her initiation, the Public Defender examined the case. EMC was involved in the case as well. On August 15, 2018, the Public Defender issued a general proposal on this specific case and other similar hate-motivated cases.

The general proposal contained recommendations addressed to the Chief Prosecutor's Office on:

- Retrain employees in the Prosecutor's Office regarding hate-motivated crime issues
- Collect statistics on hate-motivated crimes

The same general proposal contained recommendations for the Ministry of Internal Affairs (MIA) on:

- Establish a specialised institution in the MIA to investigate hate-motivated crimes (the Public Defender considered that, the Human Rights Department, which oversees the investigation, is not enough to fight against hate-motivated crimes)
- Retrain employees of MIA regarding the themes of hate-motivated crime
- Collect statistics on hate-motivated crimes with the identification of grounds for discrimination.

7. AGE DISCRIMINATION

In its decision taken on the case of Gucha Kvaratskhelia and others against the Georgian Parliament, the Constitutional Court of Georgia said that: "Age is not a sign of differentiation indicated in Article 14 of the Georgian Constitution".[11] Nevertheless, it was the very first case where the Constitutional Court had identified age-motivated discrimination. The Constitutional Court has stated that following the case: "It should be noted that, along with promoting effective functioning of any institution, it is also crucial to protect the vulnerable groups of society from discrimination and stigmatisation, including elderly people. In general, the fact that the physical endurance of people weakens and certain skills deteriorate as they age cannot become a self-sufficient ground for any blanket age-related restrictions. Such approaches would leave anunjustifiably vast space for age-related differentiation, which, on certain occasions, might not be conditioned by rational and objective necessity and, consequently, could lead to discrimination[12] of people who had reached certain level of limiting age".

Age related discrimination is directly mentioned in the "Law of Georgia on the Elimination of All Forms of Discrimination". This chapter describes age-related discrimination of elderly people in labour relations, as well as discrimination of children in the field of education and justice, where age discrimination is also a problem.

7.1. K. Sh. against LTD "MODUS"

Factual circumstances of the case: In 2014, on the basis of a labour agreement, the plaintiff K. Sh. began working in LTD "MODUS" as a maid. K. Sh. had always preformed the duties duly and honestly. No one complained about her work done by K. Sh After almost three years of working at LTD "MODUS", owing to the perfectly done work, K. Sh.'s salary was increased by 50 GEL.

On July 29, 2017, the manager of LTD "MODUS" issued a service card on behalf of the enterprise director, the card reportedly read as if K. Sh. either did not perform official duties properly or avoided them. On August 1, 2017, on the basis of the service card and an order (No.190) K. Sh. was fired. K. Sh. has never breached the contract or labour regulations. The case does not include a reference confirming that K. Sh. had been imposed with measures of responsibility. In a private conversation with K. Sh., the manager openly pointed out that the reason for dismissal was K. Sh.'s age, since K. Sh. was 59. In September 2017, K. Sh. would turn 60. According to the manager, for the position noted, they no longer needed employees of K. Sh.`s age and it was time to leave the position and retire. The later is confirmed by a witness who personally heard the conversation between the parties. Consequently, it is quite obvious that the circumstances cited in the K. Sh.'s dismissal order were pre-fabricated by the manager and director in order to hide discriminatory (age-related dismissal) intentions. Furthermore, the employer intentionally fired K. Sh. a few months earlier before he/she would turn 60, to remove doubts of discriminatory motives. K. Sh. is healthy thus, is not the reason of dismissal. The plaintiff's health condition is confirmed by the reference submitted to the court.

Case importance: The case concerns the possibility of a particularly vulnerable group, elderly people to the right to work and to earn a livelihood.

Legal reasoning: Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination" prohibits age discrimination. According to Article 2 (3) of the Labour Code of Georgia, age discrimination is restricted in labour and pre-contractual relations. In the present case, the plaintiff claims that they had been dismissed from the service due to their age.

Case proceeding: On August 7, 2018, K. Sh. applied to the City Court of Tbilisi. The plaintiff requests the annulment of the dismissal order that terminated the employment agreement, to be restored to the service, including compensation for enforced idleness, discrimination identification and moral damage compensation in the amount of 4 000 GEL. Within the reporting period the court has not yet taken any decision on the case.

7.2. N.B. against LTD "MODUS" (case prepared by GYLA)

Since December 1, 2013, N.B. had been working as the cleaner in LTD "MODUS". N.B.`s monthly salary was 535.50 GEL (including income tax). On August 1, 2017, by the order No.191, the plaintiff was dismissed from service. Subparagraph "f" labourof Article 37 of the Labour Code of Georgia, and Subparagraph "n" (other ob-

[11] Decision No. 2/2/863 of the Constitutional Court of Georgia, February 22, 2018 – Gucha Kvaratskhelia, Givi Tsintsadze, Giorgi Tavadze, Elizbar Javelidze and others (17 applicants in total) against the Georgian Parliament, chapter 2, paragraph 13

[12] Decision No. 2/2/863 of the Constitutional Court of Georgia, February 22, 2018 – Gucha Kvaratskhelia, Givi Tsintsadze, Giorgi Tavadze, Elizbar Javelidze and others (17 applicants in total) against the Georgian Parliament, chapter 2, paragraph 23

jective circumstances that justify the termination of the labour agreement) of the same Code had been set as the basis for dismissal.

The service card issued by the LTD "MODUS" manager said that N.B. fulfilled duties improperly and was irresponsible. N.B. used to leave the job arbitrarily and took lengthy breaks, so N.B.`s duties were performed by other cleaners. Because of N.B.'s frequent pressure and other health related problem excuses, other employers had to fulfil N.B.`s duties.

At the moment of dismissal N.B. was 56 years old. Another maid K. Sh. was also dismissed in the same period (see the case above – K. Sh. against LTD "MODUS"). A cleaner who was 50 years old who then maintained the position.

According to a testimony K. Sh. has given to the Court of Tbilisi, K. Sh. worked in LTD "MODUS" with the plaintiff. Neither K. Sh. nor the others had never performed N.B.`s labour obligations due to illness or inactiveness. The witness showed that on July 28, 2017, on Sunday, they addressed the manager N. Tevzadze, requesting vacation leave, after that meeting, the manager summoned the cleaners and demanded them to sign a statement quitting the job, as they needed younger cleaners. The attempt to clarify the issue with the director was unsuccessful as they were left without a response, and soon after that both maids were dismissed.

Case importance: The case concerns the possibility of a particularly vulnerable group, elderly people to the right to work and to earn a livelihood.

Legal reasoning: Tbilisi City Court (Judge Zaal Maruashvili) took a decision on March 16, 2018 and fully satisfied the suit, including the part of discrimination. First of all, the Civil Court referred to the 02/12/2015 ruling of the Supreme Court (case#776-733-2015), which says: "Labour legal disputes are characterized by certain peculiarities, which is stipulated by unequal conditions of the employee and the employer in terms of submitting evidences. The plaintiff who claims on illegal dismissal, cannot confirm the lawlessness of the late. Correspondingly, the plaintiff`s claim that he/she was illegally dismissed from the job, returns the burden of proof to the employer`s side, and the late is imposed the commitment to prove the dismissal reasonability".

In the pending case, the court believes that the defendant's order issued to terminate the employment contract with the plaintiff contradicts the cited norms and as being lawless, should be annulled according to Article 54 of the Civil Code of Georgia, since the case consideration has not confirmed the existence of circumstances (arbitrary leaving of the workplace, failure to meet labour obligations by frequent complaints of health and personal problems) that, as if, had led to the termination of the employment contract.

The defendant failed to prove the fact that the other employees had ever to perform the plaintiff`s duties because of illness or other personal reasons of the late. Besides, it is ambiguous why the qualification and skills of N.B. had been counted as irrelevant for the position, especially considering the fact that, N.B. had been working in a company since 2013 and there has never been disciplinary hearings.

Tbilisi City Court also noted that: Paragraph 1, together with paragraph 2 of Article 2 of the "Law of Georgia on the Elimination of All Forms of Discrimination" prohibits any forms of discrimination in Georgia. Direct discrimination is a treatment or condition in which, a person while enjoying the rights prescribed by the Georgian legislation, due to any of the signs envisaged by Article 1 of the law cited, is put in an unequal situation in comparison with other persons under similar conditions, or when persons who are in completely uneven situations are placed at the level state, except when such treatment or conditions are to serve the purpose of law to protect public order and morality, has an objective and reasonable justification and is essential in a democratic society, and the measures utilised are proportionate to achieve such goal. In addition, with paragraph 8, any distinction, inadmissibility and advantage in relation to a particular job, activity or field that are built on specific circumstances, are not observed as to be discriminatory.

The claimant should not only determine the comparator, but also to substantiate the inequality between these persons. The determination of a comparator, as well as the identification of the comparator`s compatibility is the subject of the claimant's allegation. In labour relations, distinctive treatments might be common, thus that should be conditioned by work specifics, skills of employees, qualification, quality of work done etc. Consequently, in such case, the employee is obliged to point out the facts demonstrating to an uneven treatment towards them (in relation with whom) along with explaining why that attitude was considered to be discriminatory.

In this pending case, the defendant failed to confirm why the plaintiff's qualification and professional skills had been considered to be incompatible with the workplace, as well as the objective basis that could have led to the suspension of the employment contract with the plaintiff. The defendant also does not appeal the base

for distinctive treatment, which, if confirmed, according to Article 2 (8) of the "Law of Georgia on the Elimination of All the Forms of Discrimination" cannot be considered as discrimination. In turn, since the plaintiff had cited discrimination as the basis for the labour agreement suspension, this created the presumption that the discrimination fact exists.

In the course of case hearing**, the plaintiff, confirmed that, except for the willingness of the company to take on younger employees, there were no legitimate grounds of dismissal. Correspondingly, the court considers that the plaintiff was subjected to unequal treatment – direct discrimination, as had been expressed in the termination of the labour agreement on the age basis.**

The court considered that distinctive treatment taken against the plaintiff by the defendant enterprise, in the circumstances, when there is no objective need and reasonable justification for such treatment to achieve the objective goal of the law, at least in this part, is the basis for satisfying the claim.

Case Proceeding: On March 16, 2018, the City Court of Tbilisi satisfied the following requirements of the plaintiff: the order appealed by the director of LTD "MODUS" was annulled, N.B. was restored to the previous position occupied; LTD "MODUS" was imposed to pay N.B.`s enforced unemployment in the amount of 600 GEL August 1, 2017 to September 1, 2017 (including income tax), whereas from September 1, 2017, 537.50 GEL. Importantly, the court identified discrimination against N.B on grounds of age.

The defendant party has appealed the decision of the court in the Court of Appeal of Tbilisi. Within the reporting period, the Court of Appeal has not discuss the appeal complaint.

7.3. PHR against the Ministry of Internally Displaced Persons (IDPS) from the Occupied Territories, Labour, Health and Social Affairs of Georgia

Fuctual sircumstanses: According to the No.308/M Decree[13] of August 16, 2001, issued by the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia, every level of general education establishments should have toilets with closable doors for boys and girls.

As set by a general, common standard, in all other public institutions, toilets that are used by adults, have a stutter and also, detached toilets for every single public school that are utilised by academic personnel, has a shutter. The existence of a shutter is essential as it is linked to the personal life of a human being, since it is important while enjoying the right to private life, to provide rudimental physiological needs of individuals with high standards of security and personality/privacy protection.

Case importance: Distinctive treatment concerning the particularly vulnerable group of people – children while exercising the right to their private life.

Legal reasoning: The appealed norm prescribes different treatment on the basis of age. The common standard for adult toilets is to have a shutter. This stands as a safeguard for the personal sphere of adults. However, schoolchildren toilets are not supposed to have shutters and this leaves children's private lives unprotected.

The United Nations Children's Fund on the Protection of Sanitary Rules sets standards and states that privacy and safety should be guaranteed in school toilets. The World Health Organisation (WHO) refers to this as well and recommends that the location of toilets should be carefully selected in order to reduce the risks of violence (including sexual violence) and provide sufficient privacy. In the publication prepared by the World Health Organisation, it reads– "The toilet should be locked from inside (to ensure the security of its user)."

The provision of physiological needs is such category of the enjoyment of the right to private life that should not envisage the classification of people on the basis of age, since people of all ages need equally to have their safety and personal space protected while in toilet. The present regulation presents an intensive interference of schoolchildren's right to private life. In the case given, the aim of the regulation is to ensure the safety of school students, which is of utter importance, however, even with the legitimate aim of the state, this interference will fail to meet the objectivity and necessity test, since we believe that the legitimate purpose cited can be ensured without infringing private lives of school students.

Case proceeding: PHR applied to the Public Defender on March 26, 2018 and requested to identify age-related discrimination running parallel to addressing the Minister of IDDPs from the Occupied Territories of Georgia,

[13] Resolution No.3018/M – "Hygienic Requirements in Various Types of Modern General Education Institutions for Student Learning Conditions, Sanitary Rules and Norma", Article 5 (40)

Labour, Health and Social Affairs in order to amend a relevant normative act and equip schoolchildren toilets with shutters. In the reporting period, the Public Defender has not take any decision.

7.4. N.B. against the State Fund for Protection and Assistance of (statutory) Victims of Human Trafficking, the Notary Chamber of Georgia and the Social Service Agency

On September 17, 2017, a 17-year-old juvenile N.B. contacted PHR and requested legal assistance. The minor had been in a Domestic Violence Service Centre since September 18, 2017, as he/she was a victim of domestic violence, confirmed by the restraining order issued against their abuser mother. On September 19, 2017, the organisation's lawyers personally met the minor as well as the facility lawyer. Within the framework of the meeting, N.B. and the lawyers of the organisation came to an agreement that they would provide legal assistance and, while carrying out various legal procedures, would act in defence of the minor's interests. Considering that N.B. is a minor, the consent of the legal representative was essential to sign a letter of attorney, however, N.B. had no designated legal representative.

The organisation (PHR) addressed the Social Service Agency and requested an immediate appointment of the representative, however, the Agency left the request without any response. Simultaneously to the request cited, the minor himself/herself applied to a notary, explained the actual situation and expressed desire of having a letter giving power of attorney to the organisation, however, the notary denied to carry out this notarial act. Considering the circumstance that the shelter address is confidential, the rejection letter was not delivered to the minor, which in turn made it impossible to appeal the notary's written rejection. According to Georgian legislation, when the child's interests are not protected by the parents, their interests are protected by guardianship and curatorship authorities, which, in turn, stay inactive and do not allow the child to choose the representative at their discretion.

While the child disputes that his/her parents and the guardianship or curatorship body do not fulfil the obligation imposed to it and fail to represent the minor in Court, the only solution the minor is left with is to lodge a suit themselves and submit it to Court. The minor is not in a position to do so. The minor is incapable of obtaining evidence or gather necessary documentation crucial to the case. Based on the circumstances cited, the organisation considered that they were dealing with indirect, age-related discrimination. Neutral legislation unanimously requested from both an adult and the minor to draw up and collect evidence, while the representative of these two groups was in the same condition.

Case importance: Children`s access to justice.

Legal reasoning: The Public Defender, in his/her recommendation, distinguished the procedural efficiency of 14-year-old and 18-year-old minors. The Public Defender has given different recommendations to the Parliament in relations to the minors in these two categories.

In terms of minors under 14, the Public Defender stated: According to Article 93 of the Code of Civil Procedure, parties may proceed cases in court through representatives, which implies the representation of the child's interests by parents, guardians, curators and/or social workers. For young children under 14, unlike adults, children require a representative, it is the only method of appealing in court. Conversely, if the representative – a parent, curator or state fails to act in accordance with the child's best interest, the child is left with no access to the court.

Restriction of indirect discrimination obliges the state to refrain from using a blanket approach utilising distinctive measures while treating similar individuals with different status. Although the legislator has tried to prevent the blanket approach and set special regulation for children under 14, in some cases however, it is less effective as cited above. In an attempt to protect the child, the legislator has over-restricted and narrowed the child's right to choose the procedural representative. The presumptive legitimate aim of the legislator whilst adopting the regulation was to ensure the effective protection of children's rights through the court and reduce the risk of right abuse by their procedural representatives. However, parents may not apply to courts to protect the child's rights, their rights are left unprotected. Although the legislator attempts to avoid the threat of the minor`s interests being infringed by engaging the agency, in practice, this mechanism is ineffective for a number of reasons. More precisely, lawyers are not involved in the case and the agency representative might lack in characteristic skills needed for procedural representatives, which, in turn, results in procedural mistakes that can no longer be rectified in follow-up instances. Further, the rights of children under state care might be breached by the state itself, which means that the Agency cannot be considered as an objective and impartial representative.

Finally, the Public Defender provided the following recommendations regarding children under the age of 14: for the purpose of protecting the child`s realisation of rights, the law must be flexible – and consider the child's representation by relatives, other close people, or lawyers, who might not be the legal representatives of the child. In addition, the status of children, who have no close individuals and l without any state care, is particularly acute. On such occasions, it is vital that the NGOs operating in the field of human rights, similar to the practice of the European Court, have the right to represent the child.

The Public Defender has devoted a separate space to the right of minors under14 and over 14 while exercising the right to access the court. The minor from the age of 14 to 18, unlike the 14-year-old child, has the right to apply to the court independently from their legal representatives. Once over 14, the minor can appeal to the court, the later appoints the procedural representative.

The Public Defender has stated in the cases of the minors being over 14: that the procedural representative is appointed later on, so the juvenile is obliged to apply to the court independently. At the stage of lawsuit filing, the law treats the juvenile in the same way as the adult, and imposes the responsibility to fulfil quite complicated procedures – like filling in the lawsuit form, describing factual circumstances comprehensively and obtaining relevant evidence.

Fourteen-18-year-olds juvenile are individuals who are in substantially different positions as opposed to adults, and the state has an obligation to treat them differently. The legislative regulation gives the right to juveniles as well as the adult, to appeal to the court, but also imposes obligation to obtain evidence in the preparation of the lawsuit, unlike the adult, however, the juvenile has no right to have a lawyer based on an independent decision. The court appoints the juvenile representative at a later stage.

The present regulation obliges 14-18-year-children to undertake a complex responsibility – namely, to prepare the lawsuit and obtain appropriate evidence. At the initial stage of executing these functions, the juvenile is not aided by anyone, as they have no right for a representative. Correspondingly, this regulation prevents the juvenile from effectively carrying out legal proceedings and puts them in uneven conditions in comparison with the defendant. Although the lawmaker allows for the appointment of a procedural representative, this measure is ineffective since the involvement of the later is delayed, which, in turn, cannot rectify mistakes made by the juvenile at the initial stages of appealing. Therefore, the juvenile needs to be assisted by a lawyer at the stage of lawsuit filing, which, in accordance with the positive obligation, should be ensured by the state.

The recommendation of the Public Defender includes one of decisions of the European Convention on Human Rights, where the lawyer advocated for the interests of three juveniles whose interests were violated by their parents. The recommendation mentions: "Whether there had been another or even more appropriate representative; a tie between the representative and the child; the purpose and volume of the complaint filed by the lawyer on behalf of the child and whether there was the conflict of interests between them. In the course of assessing the possibility of alternative representation, the Court considered that parents were not demonstrating any interests towards their children, and the state's involvement, through the social workers' representation, has become the matter of criticism before the Court. Consequently, the Court concluded that there were not left any other possibilities for the children representation."

With the Public Defender's recommendation: The court should consider the representation of the child under 14 through his/her relative, other close people, or a lawyer, who could be the child`s legal representatives. The court shall also have the authority to appoint procedural representatives for 14-18-year-old minors when the application is submitted to the court. Specifically, in order to enable the child to apply directly to the court (in the events if his/her rights are being abused) in the form of the simple statement, there should be allowed a mechanism that, in turn, would enable the court to appoint the procedural representative, who would prepare the lawsuit and obtain evidence.

Case proceeding: PHR applied to the Public Defender on October 24, 2017. The Public Defender produced a recommendation on March 5, 2018.

7.5. PHR against the Georgian Parliament

Factual circumstances of the case: "Article 175 of the Criminal Code of Georgia determines an issue of the criminal liability for disclosing the adoption secrecy. According to the Article mentioned, the secrecy disclosure without the will of the adoptive parent – is punished by the fine or correctional work for up to six months. As it can be seen from the definition of the norm, the absence of the adoptive parent`s contest and the complete

ignorance of an adoptee`s interest whether they want to disclose their personal information to other people are enough for the criminal liability."

Case importance: Protecting the child from the dissemination of information about their personal life without their consent;

Legal circumstances: The fact that the issue of revealing adoption is the right of the adoptive parent and thus, the right to know of the adopted individual is neglected. This is discriminatory as only a single party of the adoption relationship is entrusted to decide the issue, whereas there is another party involved, whose interests are directly related to an unilateral decision made by the adoptive parent. It should also be taken into account that the norm cited does not contain a record on the obligation to consider the adoptee`s interests in the decision-making process.

Case proceeding: PHR applied the Public Defender on March 14, 2018. During the reporting period the Public Defender has not taken any final decision regarding the case.

7.6. L. G. against the kindergarten No.170 of Tbilisi Municipality (case prepared by PHR)

Factual circumstances: L. G. attended No.170 nursery of Tbilisi Municipality and was placed in the under 3 group. Attending the kindergarten has appeared to be harmful to the child, as L. G developed logo-neurosis as a result of stress. Consequently, L.G.`s mother was forced to take the child out of nursery, treat his/her child and move the child to a group of older children, in order to prevent such an accident. It is noteworthy that this change was not arbitrary and the nursery staff had been informed about it. Joining the group of older children has positively reflected on the child.

After that, the director of the kindergarten Q. D. summoned L.G.`s mother to her office, the meeting was held in the presence of N.K. as well; the director requested S.G. to move the child to another group, since, as Q.D. explained, there was a child in the present group with whom L.G. should not have any contact. Dissatisfaction and the request of transferring the child to another group were based on the fact that S.G. was a single mother and she gave birth to the child out of marriage. In addition, N.K., who attended the meeting who initiated the transfer turned out to be the .` biological father`s wife, whereas the child named by the director – her family member. S.G. did not agree with the director`s request and asked for a specific explanation of, which caused irritation. The director and N.K. verbally insulted S.G., and her personal life became a subject of criticism. It is also noteworthy that the incident noted was witnessed by the nursery staff.

As a result of the accident, S.G. was forced to take L.G. back to the group of children under the age of 3, where the child still struggled to adopt the environment. L.G. was so afraid to rejoin the group that he/she refused even to enter the nursery building and demanded to be taken home. As far as the child`s stay in the nursery turned out to be still stressful, the mother took him/her to avoid the health exacerbation.

Case importance: Normal development of a minor;

Legal reasoning: The director`s request to transfer the child to another group was on the demand of another child's family, contains the signs of direct, marital status-related discrimination, since, S.G. is the single mother and she had given the birth out of marriage was likely to be the ground of such treatment. Whereas, N.K.`s action is incitement of discrimination, as N.K. was the one who complained against L.G. and S.G.

It is noteworthy L.G.`s unlawful enlistment in the group of older children had not been arbitrary and was agreed with the personnel beforehand. Besides, the director was aware that being with the same age group of children led L.G. to logo-neurosis that had been developed on the basis of the environment and needed medical care. The best interests of the child demanded to provide tailored services, for L. G.`s development – namely, admission to the upper class, since the company of the same age group of children was harmful for L.G.

Case proceeding: S.G. applied to the Public Defender on June 21, 2018. The Public Defender terminated the case proceeding within the reporting period. It was conditioned by the fact that evidence in the case do not undoubtedly confirm the applicant`s opinion that L.G. could not get along with the identical aged group of children that provoked logo-neurosis. Furthermore, there is no evidence regarding the measures that were taken by the applicant and the defendant to make L.G.`s attendance in the nursery less stressful. The Public Defender considered that the lawfulness of L.G.`s enrolment in the older age group was not confirmed, however, it was clear that S.G and N.K. had a personal disagreement, which could not be assessed in the context of discrimination by the Public Defender.

8. DISCRIMINATION ON THE BASIS OF PROFESSION

Discrimination on the basis of profession is not mentioned in Article 11 (1) of the Constitution of Georgia, and the same is true of age-related discrimination. This however can be found in the Article first of the "Law of Georgia on the Elimination of All Forms of Discrimination," instead. In contrast to signs such as racial and sexual orientation, various treatment on the grounds of profession can be justified in most of events when it is required by specific work. This is directly pointed out in Article 8 (2) of the "Law of Georgia on Elimination of All Forms of Discrimination", which says: "Any distinction, inadmissibility and predominance in relation to a particular work, activity or filed, which is built on specific requirements, is not considered to be discrimination." Thereby, to count distinctive treatment in relation to the specific work is discriminatory, it is necessary to prove that certain jobs do not require skills based on specific professional knowledge. Only after that, it is possible to identify discrimination on the basis of profession.

8.1. E. P. against the Parliament of Georgia, the Head of the Parliamentary Office and the Chairperson of the Human Rights Committee (case prepared by GYLA)

E.P. is a journalist by profession; on February 27, 2017, Sophio Kiladze, Chairperson of the Human Rights Committee of the Parliament, summoned three employees: E.P., T.M and R. Ts. and demanded them to write a resignation letter; Sophio Kiladze explained the request upon dismissal by the circumstance that they were not lawyers by profession. E.P. refused to write the resignation letter, Sophio Kiladze told E.P. that if not willingly, he/she would be dismissed on the basis of disciplinary proceedings. More precisely, Sophio Kiladze told E.P. that she would give him/her an assignment that E.P. as non-lawyer failed to fulfil; E.P. did not comply with the request on a voluntary basis. On May 4, 2017, Sophio Kiladze requested for disciplinary proceedings to be started against E.P., as if he/she had denied to fulfil her assignment; as a result of Sophio Kiladze`s appeal (May 4), disciplinary misconduct was not confirmed; on July 25, 2017, Sophio Kiladze repeatedly requested to commence disciplinary proceedings (including the study of the facts that had already been the subject of judgment and which did not identify disciplinary misconduct); with the decree of September 22, 2017, E.P. was sentenced to reprimand as the disciplinary measure.

Case importance: The case concerns discrimination on the basis of profession, which corresponds to the other basis that is not explicitly prescribed by the law.

Legal reasoning: According to Article 2 (8) of the "Law of Georgia on the Elimination of All Forms of Discrimination", any distinction, inadmissibility and predominance in relation to a particular work, activity or filed, which is built on specific requirements, is not considered to be discrimination. It is noteworthy that a citizen is not required to have a qualification of a lawyer to occupy the position noted. In other Committees of the Parliament, there were other non-lawyers found who occupy similar functional significant positions. E.P. had been subjected to profession-based oppression. The Chairperson of the Committee attacks E.P.`s normal working environment, the plaintiff was given a task and a short period of time which was insufficient for completion, despite the hostile, stressful situation, at the expense of non-working hours, E.P. fulfils tasks, however, the chairperson is constantly undermining their quality.

Case proceeding: The City Court of Kutaisi did not satisfy the claim. The applicant requested the discontinuation of discriminatory treatment. The burden of proving that the grade of quality of the work done was wrongly imposed on the claimant by the Court, when the defendant party confirmed that there are not any unified instructions for preparing conclusions on the draft law. In the documents submitted, there are no mistakes, so it is vogue how the court can rely on subjective assessments, while considering the disciplinary violation is confirmed; to exclude discrimination, the court uses comparators, however, when the claim is filed to identify harassment as the form of discrimination, it is not necessary to use a comparator.

In the case of discrimination, the judge distributed the burden of proof disproportionally. The factual circumstance of substantive significance (Sophio Kiladze`s request, obliging non-lawyer employees to quit the job) is not considered confirmed even on the grounds of testimonies of those witnesses who have been long-standing friends of Sophio Kiladze, running parallel to being under her subordination up to the time being. In addition, the judge hastened to examine the case so that he/she did not take all the measures necessary for neutral witnesses to appear and to hear testimony before the court. Also, for an incomprehensible reason, the court did not attach the written evidence to the case, which would have determined that Sophio Kiladze demanded E.P. to quit the job, otherwise, she threatened to dismiss him/her by means of disciplinary proceedings.

During the reporting period, the Court of Appeals of Kutaisi did not satisfy the appeal complaint and agreed with the decision of the First Instance Court; in the same period the cassation claim was considered to be inadmissible by the Supreme Court.

9. DISCRIMINATION ON THE OTHER GROUNDS

On December 16, 2018, a new addition of the Constitution was enacted with the list of discriminatory basis, which, on the basis of Article 11 (2), is incomprehensive. Discrimination on the basis of "the other signs" is also prohibited by Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination". In the progress of the reporting period, the Coalition for Equality was conducting cases linked to receiving education, internal displacement and trade union membership, which are directly mentioned neither in the Constitution nor in the Law on All Forms of Discrimination, however, they apparently belong to the 'other protected grounds' that are not explicitly prescribed up by the law.

9.1. Discrimination on the basis of internal displacement

9.1.1. I. M. against Zugdidi Municipality City Council (cased prepared by GYLA)

Factual circumstances: I.M. is an internally displaced person with disabilities, and a veteran of the Second World War. In February 2018, I.M. applied to the non-entrepreneurial (non-commercial) Legal Entity "Union of Veterans of War, Labour and Military Forces of Zugdidi" and asked for a monthly pension supplement in the amount of 200 GEL that is provided by the budget of Zugdidi Municipality City Hall for veterans of the World War II. The Union of Veterans stated in a letter that since I.M. is an IDP from Abkhazia, he was not entitled to the supplement envisaged for the "local" (Zugdidian) veterans.

Case importance: This case concerns the integration of Internally Displaced Persons (IDPs) into the community.

Legal reasoning: The appealed budget of Zugdidi Municipality allows distinctive treatments on the basis of forced displacement. The plaintiff lives in Zugdidi Municipality, however, I.M. `s legal address is in the Autonomous Republic of Abkhazia, from which he/she was displaced as a result of 1992-1993 war. The impugned norm puts the World War II veteran IDPs, permanent residents of Zugdidi, in disadvantageous posistion in relation to those veterans who have their legal address in Zugdidi. The norm cited establishes direct discrimination on the basis of origin and IDP status.

Case proceeding: On April 24, 2018, I.M. applied to the District Court of Zugdidi. The plaintiff requested the annulment of the record "local" in the budget, as well as material and moral damage compensation. Prior to the scheduling of the preparatory session, the City Council of Zugdidi made amendments to the municipality budget and all World War II veterans living in the Municipality of Zugdidi were granted the right to receive the supplement in the amount of 200 GEL.The case is continiuing as the part of material and moral damage compensation are outstanding.

9.2. The form of education

9.2.1. B.K. against LEPL National Centre for Education Quality Enhancement

Factual circumstances of the case: A beneficiary enrolled in the Kyiv Slavonic University and a graduate of "Interregional Academy of Personal Management" - the claimant received the higher basic education course in law specialty. By the decision of the State Examination Commission of March 20, 2011, he was granted the Bachelor`s qualification. On March 6, 2017, the beneficiary addressed LEPL - the National Centre for Education Quality Enhancement and requested the recognition of the foreign education.

On March 7, 2017, the National Centre for Education Quality Enhancement addressed the Ministry of Internal Affairs of Georgia (MIA) and requested information whether or not the beneficiary crossed the border in 2007-2012. According to the response of MIA of March 10, 2017, LEPL – the National Centre for Education Quality Enhancement was informed that beneficiary did not cross the state border of Georgia through the BCPs from January 01, 2007 to January 01, 2013. Regardless of the submitted documentation along with the response of LEPL - the National Centre for Education Quality Enhancement of April 12, 2017, did not recognise the beneficiary`s foreign education. The motive of the denial is that, during the period of the beneficiary`s studies in Ukraine, he/she did not cross the border.

Case importance: The case is important as it is related to the right of education;

Legal reasoning: According to Article 2 (1) of the Law of Georgia on the Elimination of All Forms of Discrimination "Any forms of discrimination are prohibited in Georgia". Paragraph 2 of the same Article = "Direct discrimi-

nation is a treatment or conditions in which a person enjoying the rights prescribed by the Georgian legislation, due to any of the signs envisaged by Article 1 of the law cited, is put in unequal situation in comparison with other persons under similar conditions, or when persons who are in completely uneven situation are placed in the level state, except when such treatment or conditions are to serve the purpose of law to protect public order and morality, has an objective and reasonable justification and is essential in a democratic society, and the measures utilized are proportionate for achieving such goal". The present case demonstrates direct discrimination, in particular, the Minister`s Decree straightforwardly indicates not to recognise the education obtained through distance learning. The decree permits the recognition of foreign education, if at the time of one`s studies they were present in the territory of that country, even at least once. However, the diploma obtained through such education is not distinctive from the diploma pursued by the beneficiary. The diploma is issued by the same university, that is, in both cases, a document certifying education issued by accredited university, however, since the beneficiary did not cross the state border and followed the programme remotely, without leaving Georgia, his/her education is not recognised. Therefore, we are dealing with two who are in the same position – a person who spent some time in the territory of the university, and the beneficiary who failed to be present abroad in the course of his/her studies, however, both groups had received principally similar services and have identical diplomas.

Case proceeding: The Court of the First Instance has annulled the decree of the Minister, although, did not satisfy the claim in the part of discrimination. In the progression of the reporting period, the Court of Appeal left the decision of the First Instance in force.

9.3. Discrimination on the basis of trade union membership

During the reporting period, the Coalition for "Equality" proceeded two cases of discrimination on grounds of trade union membership. Although this base is not directly mentioned in Article 11 (1) of the Constitution neither in Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination", Article 26 (2) of the Constitution remarkably recognises the right to establish trade unions and free participation in its activities. In 2019, the "Law of Georgia on the Elimination of All Forms of Discrimination" was also amended, which specifically banned discrimination due to membership of a trade union. Namely, according to subparagraph "b" of Article 2 (10), of the "Law of Georgia on the Elimination of All Forms of Discrimination", the principle of equal treatment also applies to membership and activity of workers` organisation, employers` organisation or other such organisations whose members belong to a specific professional group, including the benefit received from these organisations; thereby, although the Article does not explicitly prohibit discrimination on the basis of trade union membership, the "Law of Georgia on the Elimination of All Forms of Discrimination" contains the special record on protecting the principle of equal treatment in connection with trade union membership. The Labour Code is also the part of the Equality Legislation that is used in practice together with "Law of Georgia on the Elimination of All forms of Discrimination" and perfects it to some extent. According to Article 2 (3) of the Labour Code: "In the labour and pre-contractual relations, including vacancy announcement and the selection stage, any form of discrimination is prohibited… due to the fellowship of public, political or other unions, including trade unions …"

9.3.1. V.P. against "BP Exploration (Caspian Sea) Limited Branch of Georgia (case prepared by WISG)

Factual circumstances of the case: In May 2016, "BP Exploration (Caspian Sea) Limited Branch of Georgia announced a vacancy for the position of construction manager. V.P. fully met the qualification requirements, besides, E.P. had been working at the company since 2010 and had three years' experience as working as a construction manager.

In 2015, due to the employer`s failure to solve some social issues, part of the company's employees established a primary trade union 'Pipeline Union' and joined the association of Georgian Trade Unions. V.P. had been chosen as the Deputy Chairperson of the Primary Trade Union. Yet, at the end of 2015, the manager of "BP Exploration (Caspian Sea) Limited Georgia Branch of Tbilisi expressed his/her unfavourable attitude towards the trade union establishment. "BP welcomed if the company employees restrained themselves from joining the trade union, although they would respect the legal right of employees."

Later on, the company acknowledged the position noted in the commentary such as the newspaper "Georgia Today", as well TV coverage. V.P. addressed the company through writing in an attempt to seek an explanation

over the refusal, thus in vain. Shortly afterwards, V.P. learned that the position of the construction manager was taken by an employee who was not a member of the trade union. Based on this, V.P. believes that he was refused the position as construction manager due to the fact that he was a member of the trade union – Pipeline Union. The exemplary dismissal of the Deputy Chairperson of the Primary Trade Union led to the massive withdrawal of members and eventually, the union was disassembled.

The importance of the case: The case concerns discriminatory action against a person (in the course of labour rights protection) on the basis of trade union membership.

Legal reasoning: Article 2 of the Organic Law of Georgia "Labour Code of Georgia" prohibits any form of discrimination in labour so with in pre-contractual relations … due to belonging to the trade union. Also, the Georgian "Law on the Elimination of All Forms of Discrimination" bans any kind of discrimination. According to Article 2 (2) of the same law, direct discrimination is prohibited.

Pre-contractual relations takes up a significant place in labour-law relations, as far as, it is an immediate prerequisite for concluding a contract between the parties. Regardless of the fact that any legislative act regulating labour relations in Georgia failed to provide an unambiguous definition of "pre-contractual relations", Article 50 of the Civil Code of Georgia puts such relations under legal regulation and points out that expression of intention also represents a bargain that might be unilateral, bilateral or multilateral aiming at originating, changing or terminating the legal relations. Regulation of contractual relations would not be comprehensive without regulating work accessibility, and correspondingly the pre-contractual relationship, as the prerequisite for concluding labour agreements and rising certain obligations defined under this agreement. Therefore, liabilities built on trust and the principle of good faith between the parties (potential employer and employee) exist even in the pre-contractual stage. Pre-contractual obligations are regulated by Articles 316 and 317 of the Civil Code of Georgia through which both parties are obliged to have special attentiveness regarding rights and property, the obligation cited may arise even on the basis of the contract preparation (Article 117 of the Civil Code of Georgia).

In this case, the right the person is prevented from enjoying is the freedom of labour, guaranteed by the Constitution. In the case given, on the one hand, the applicant is in unfavourable position compared to all other persons who won the contest and took the position, since the winning candidate was not a member of the trade union.

The applicant party considers that there is no legitimate aim to justify the differential treatment towards persons who are in similar conditions. The refusal of employment in V.P.`s case had been preconditioned by the fact that the office manager of "BP" Georgia had a negative predisposition towards the trade union. The plaintiff pointed out the different treatment, (the refusal of the position), the discrimination feature (the trade union membership),comparator (the competitor, who was hired as a result of the contest and who was not a member of the trade union). With this in mind, the burden of proof should be shifted to the defendant party, the later should identify the legitimate aim that led to different treatment.

Case proceeding: V.P. addressed the Public Defender on April 16, 2018. The applicant asked for the identification of discrimination on the basis of trade union membership. The Public Defender applied to BP Exploration – Caspian Sea Ltd, Georgia twice and requested information. The company only provided information in part during the reporting period. Also, on January 18, 2019, an oral hearing was held with the parties. During the reporting period, the public defender did not receive an decision regarding this case.

9.3.2. S.B. T.N. T.Q. and others against the Central Election Commission (CEC) (case prepared by GYLA)

The applicants, in total 18 persons, have been elected since February 16, 2011, for a 5-year-term. On August 5, 2015, the applicants, together with other persons, founded a non-entrepreneurial (non-commercial) legal entity "Trade Union of the Election Administration of Georgia." According to data of the Public Registry, Nino Dautashvili was appointed as the authorised head and representative of the organisation, whereas, Ivane Burduli, Ioseb Tatarashvili and Akaki Khuskivadze were determined to be board members.

Nino Dautashvili sent the trade union foundation documents to the CEC Chairperson Tamar Zhvania and according to the Law of Georgia on "Trade Unions", requested space and inventory distribution. At the CEC session, Tamar Zhvania has informed the other members of CEC about the foundation of the trade union mentioned.

In relation to two members of the trade union, the Central Election Commission used admonition as a measure of disciplinary liability, since, at that time, the individuals were occupying positions of the District Election Commission (DEC) Chairpersons. The above report was preconditioned by the press conference of the "Trade Union of the Election Administration of Georgia", where they had made allegations against the CEC as the composition of the election administration is being made on friendship. The individuals were present at the press conference reported. They did not make the disputed statements. Nevertheless, CEC considers that they had to avoid damaging the CEC`s reputation.

The City Court of Tbilisi voided the individual administrative legal act imposing disciplinary sanctions against the two persons mentioned. This decision was also upheld by the courts of upper instances. On November 13, 2015, CEC refused to provide the "Trade Union of the Election Administration of Georgia" with space and inventory, since the documentation submitted failed to meet the requirements of "Trade Unions".

At the end of 2015, the plaintiffs` positions were put on the vacant announcement aiming at filling the vacancy due to expiry of the term of authority. The applicants took part in the contest announced. Nevertheless, none of them was elected for the vacant position owing to insufficient number of votes of the CEC members. It is noteworthy that the person who had left the trade union was elected to the position.

Case proceeding: The case concerns the possibility of equal and fair access to positions available in election administration. It is also crucial to demonstrate the negative attitude of the CEC`s management towards the trade unions' activity.

Legal reasoning: The Administrative Board of the City Court of Tbilisi stated in regards to the following case: "The sign of the union membership is not directly mentioned in the Article first of Law of Georgia on "All Forms of Discrimination", however, the list of prohibited features is not exhaustive and includes any other discriminatory sign, the strike example of the late is the open end of the list, namely – the formulation: "or regardless of any other sign".

The Court also said: "One of the most commonly banned signs that constitutes a possible threat of discriminatory treatment is the union membership … No.87 Convention of the International Labour Organisation on the "Freedom of Association and Organization Protection" that was ratified by the parliament of Georgia on June 23, 1999, through the Decree No.2144, has an immediate power of action for Georgia. It has the predominant legal force in relation to domestic normative acts.

Article 2 of the Convection guarantees the right to establish or join the union of workers without any distinction or prior permission. The Convention mentioned applies to civil servants as well, since Article 9 of the Convention sets out exceptions concerning the armed forces and police, when it comes to enforcement of the guarantees prescribed by the Convection therefore, the plaintiffs are guaranteed by the right to establish and join trade unions and their discrimination on the basis noted is inadmissible.

It should be noted that the discriminatory treatment is always accompanied with a specific motive of an action – harassment or unequal treatment on the grounds of the particular discriminatory feature characterising the particular person or the group. Correspondingly, the person who committed the discriminatory act should be aware of the existence of such a sign. The discriminatory sign should be recognisable. Otherwise, the discussion over such a motive is considered to be unreasonable.

The court clarifies that, unlike the classical rule regarding the burden of proof, the law establishes a different regulation while determining the fact of discrimination. In particular, taking into consideration the specifics of discriminatory treatment, the only obligation the plaintiff is imposed to create reasonable assumption, and the burden of disregarding this assumption is shifted to the defendant party. Such distribution of the burden of proof is caused by the fact that the discriminatory treatment, on most occasions, happens unknowingly, in the field under the defendant`s competency, and the plaintiff is left without access to the evidence available for the defendant party. The later, in contrary, has access to the assertion that, if no discrimination is established, then what was the ground for the specific action taken. Consequently, the defendant has to prove the legitimacy of his/her action and if the veracity of the legitimacy cannot be confirmed, in such case, the assumption made by the plaintiff that the action was carried out on the bases of discrimination, will be considered valid.

The City Court of Tbilisi has ruled that the defendant should prove: "a) the absence of different treatment; b) justify different treatment with objective and reasonable arguments that will overweight different treatment and be warranted by democratic values."

Therein, the Court also points out circumstances that, in cases of discrimination, the applicant party is obliged to prove: "The plaintiff must establish that the discriminatory action against him/her had a specific sign, the sign characterising them, and the existence of this sign should also be confirmed (for instance, he/she is the member of the specific organisation).

In the present case the plaintiff has proven the reasonable assumption of discriminatory treatment: by means of the fact that none of the 24 members of the trade union was elected to the vacant position. Only one member, who had left the trade union, was elected by CEC as the member of DEC. In addition, the CEC members demonstrated the negative attitude towards the trade union. They imposed disciplinary measures on the two members of the trade union, over the implementation of the trade union activity (these two members were not applicants in the case noted). The court, after approving these circumstances, shifted the burden of proof to the defendant party.

The court interrogated those members of the Central Election Commission who had voted against the plaintiffs. They stated that they knew about the existence of the "Trade union of the Election Administration of Georgia", however, they were not aware of the fact that those plaintiffs they had voted against were members of this trade union. The members of the CEC Commission, who were interrogated as witnesses, note that they did not go over the correspondence filed, which contained information regarding the plaintiff`s membership.

The City Court of Tbilisi ruled out the existence of discrimination in the case mentioned, since most of the CEC members did not know that the plaintiffs were characterised by the discriminatory, union membership sign. According to the Court, the only person who had been informed that the applicants were trade union members was Tamar Zhvania, the Chairperson of CEC, to whom a head of the trade union sent documentation demonstrating that the plaintiffs were participating in the establishment of the trade union. Simultaneously, Tamar Zhvania herself voted in favour of the majority of the plaintiffs. The Court also failed to establish the fact that, at the meeting, Tamar Zhvania talked to her colleagues regarding the plaintiffs and informed them that they had joined the trade union. Most of the members of CEC did not familiarise themselves with the correspondence that the chairperson of the trade union sent to Tamar Zhvania.

Based on these circumstances, the City Court of Tbilisi considered that the majority of the CEC members, who voted against the applicants, did not know that they were members of the trade union. The court therefore failed to identify discrimination and did not satisfy the claim.

Case proceeding: On July 20, 2018, the Court came to the decision not to satisfy the claim. The plaintiffs have not appealed this decision cited by the appellate procedure.

CHAPTER II

The present chapter reviews the general problematic issues that have been identified in the cases advanced by the Coalition. The chapter also discusses the recent amendments made to the "Law of Georgia on the Elimination of All Forms of Discrimination". The final section outlines recommendations for the Parliament of Georgia, Common Courts, Ministries of Justice and Internal Affairs to solve the problems that the Coalition members were facing in the course of the case proceedings.

1.HARASSMENT

In the reporting period, the Coalition members were advancing workplace harassment cases. The case of GYLA regarding the Chairperson of the Human Rights Committee who expected employees to fulfil an unreasonably huge volume of job in a very short period of time, during which, E.F., one of the employees of the committee cited, was subjected to reprimand, since they failed to carry on the assignment. It is also worthwhile mentioning the case of EMC, which is not included in the first chapter as far as a discrimination basis was not identified. During the reporting period, EMC advocated for the interests of two persons – T.A. and R.R. against their employer "Company Black Sea Group".

Communication with the Deputy Director of "Black Sea Group" LLC is characterised with a humiliating attitude towards employees, including shouting and using insulting words - often incompatible with human dignity. The Deputy Director frequently addresses the company`s employees, including the applicants, with words like: "stupid", "imbecile", "badger" etc and other humiliating and degrading words. In addition, the Deputy Director of the company creates a stressful environment for workers: For instance, on the initiative of the Deputy Director, there are rules and penalties for speaking too loudly, amounting to 20 GEL. Lateness is also a penalty and also leaving the kettle empty for example.

The immediate harassment of the plaintiff is related to an episode which took place in November 2018 when the Deputy Director of "Black Sea Group" unethically criticised ("he/she has drilled the brain") the business communication form of one of the employees and through e-correspondence, composed of the company staff, as well as a third party – the company contractors, ordered to start disciplinary proceedings. After the second applicant T.A. supported the first applicant R.R., by an immediate order of the Deputy Director, both of them were banned from the access to official server, e-mails and despites numerous requests of the applicants, the Deputy Director has not responded to the incident reported. The company has initiated disciplinary proceeding against both applicants, and one of them – T.A. was sanctioned disciplinary liability. In addition, the employer terminated the labour relations with both applicants.

The case of "Black Sea Group" does not demonstrate discrimination on the basis of any sign. On this line, it should be underlined that, the harassment itself is a form of discrimination and, in contrast to direct or indirect discrimination, it does not require any indication in regard to protected signal or a comparator. According to Article 2 (4) of the Labour Code of Georgia (acting during the reporting period as of today): "Discrimination is direct or indirect harassment that intends to create or cause intimidating, hostile, humiliating, degrading or offensive environment, or creating such conditions that directly or indirectly worsen person`s condition compared with another person in similar status."

Hereby, Article 2 (4) of the Labour Code is composed of rules separated with two alternative "or" conjunctions. According to the first rule, direct or indirect harassment should trigger the creation of a terrifying, hostile, humiliating, degrading or offensive environment for a person. With the second alternative rule, harassment is an action that creates conditions worsening the situation of the employee in comparison to another person who is in the same position, however, this treatment should not create a hostile, humiliating and insulting environment for the employee.

The analysis of the norm reported leads to the following conclusion: when the employer creates the terrifying, hostile, degrading and humiliating environment for the employer, then the employee will no longer be required to indicate the comparator, more precisely, to prove that they had been created the hostile or terrifying environment compared to other people. Pointing out the comparator is necessary, when the employee has not created a hostile, degrading, humiliating and insulting environment, but they had otherwise been put in a disadvantageous position. For example, unlike the employee with similar status, one has not been given a bonus or supplement which does not demonstrate the creation of hostile or offensive environment, but it apparently worsens the situation of the employee in comparison to the other person in the same situation.

Giving an unreasonably large number of tasks in a short period of time unambiguously creates a stressful, hostile environment. Just like expressions "stupid", "imbecile", "badger" are insulting and degrading. On this occa-

sion, according to the Labour Code, the employee, who had been addressed that way, should not be required to indicate the comparator or any specific protected ground. Such behaviour is already discrimination.

It should be noted that the hostile, terrifying, degrading environment can be created towards some employees who are not characterised by any common features. For instance, the employer can call male employees "stupid", "imbecile" "badger", as well as female. The addressee of such wording might become the representative of various ethnic groups. It is therefore not necessary to specify the comparator, furthermore, it is out of place to identify the grounds the employer has chosen and relied on while using the above cited language against the employee.

The circumstance that it is not essential to point out the basis of discrimination while disputing the case of harassment is derived from the comparative analysis of Article 2 (3 / 4) of the Labour Code. Article 2 (3) of the Labour Code prohibits discrimination in labour and pre-contractual relations, and prescribes specific protected fundamentals (race, skin colour, sexual orientation, etc.), banning such discrimination. Paragraph 4 of the same Article also additionally speaks of harassment as a separate form of discrimination that can be confirmed by identifying the fact that a person created a terrifying, humiliating, insulting, hostile and degrading environment. Article 2 (4) of the Labour Code, in contrast to the third paragraph of the same article, does not point out that the existence of any protected sign is essential, that is, it does not say that the hostile and degrading environment should necessarily be created on the basis of features characterising the victim. The creation of such environment is absolutely sufficient for harassment and discrimination to be considered completed by the legislator without revealing any specific features.

Naturally, it is not excluded that the hostile and humiliating environment can be created on the grounds of the victim`s religious affiliation, sexual orientation or gender identity. The legislator canJ free the plaintiff from the obligation of the burden of proof and not leave the cases of harassment without any response, which is not based on the victim`s group affiliation.

It is complementary that on February 19, 2019, the "Law of Georgia on the Elimination of All Forms of Discrimination" was amended. Paragraph 3^1 was added to Article 2 of the law mentioned that defines the notion of harassment as: "Any kind of persecution or compulsion or/and unwelcome behaviour against the person that aims or causes the creation of degrading, terrifying, hostile, humiliating or insulting environment."

The reported norm demonstrates that the "Law of Georgia on the Elimination of All Forms of Discrimination", in case of harassment, does not require the confirmation of the existence of any features.

2. MIGRATION

The reporting period was accompanied with the discriminatory policy against foreign nationals expressed by the refusal of entering the country as well as continuing the residence permit. The state addresses such measures by breaching the principle of family unity. As it can be observed from the cases proceeded by the Coalition, a citizen of the Republic of Cameroon, I.N.A. was denied the right to permanent residence, whereas at the time the Service Development Agency was addressed by the applicant, the later was married to a Georgian citizen and had a minor child,[14] a Georgian citizen as well. Z.M., an ethnical Azerbaijani and citizen of Russia, whose husband and child have the Georgian citizenship, has been returned[15] from the state border of Georgia. In most of the cases the basis for the denial of the residence permit continuation are subparagraph "a" and "c" of Article 18 (1) of the "Law of Georgia on the Legal Status of Aliens and Stateless Persons". According to these norms reported, the foreign national may be denied a residence permit of Georgia, if: "In the name of protecting the state or/and public interests, there is the conclusion of the authorised body regarding the inappropriateness caused by the person`s presence in Georgia; paragraph 2 of the same Article explains the type of cases, according to which, the foreign national is considered to be the threat to the state and public. These are occasions when the presence of the person in Georgia poses a threat to the relations with other states or/and international organisations; there is information that highlights the probability of the person`s connection with the armed forces of the country/organisation hostile to the defence and security of Georgia; intelligence services of another country; terrorist and/or extremist organisations; illicit turnover of drugs, armaments, weapons of mass destruction or their components, human trafficking and/or other criminal organisations (including transnational criminal organisations).

The conclusion is that the presence of the alien in Georgia is incompatible with the state and public safety, is

[14] See the chapter first, subparagraph 1.3

[15] See the chapter first, subparagraph 1.5.

issued by the State Security Service (SSSG), while the final decision on issuing the residence permit of Georgia is taken by the Service Development Agency of the Ministry of Justice of Georgia. Since the decision of SSSG, which identifies the threat the alien poses to the state and public security of Georgia, is not an individual-administrative legal act, therefore, the refusal of the Service Development Agency issuing the residence permit is appealed in court through an administrative procedure. Evidence, which has the status of state secrect and which exist on the basis of SSSG conclusions, are examined at closed court sessions, in the absence of the parties.

The fact that the person is deprived the possibility of familiarising with and inspecting the authenticity, credibility, and lawfulness of evidence that had preconditioned the decision taken to restrict the person`s rights, contradicts the principle of adversarial justice. The principle of adversarial justice is a part of the right to a fair trial. Competitiveness is tightly linked to the principle[16] of equal opportunities of the parties in the court. The right to the adversarial process means the party has the right to be aware of all the evidence presented to the court in the course of criminal as well as the civil cases and make comments regarding them in order to influence the final judgment[17] of the court.

In the present case, when foreign national is not aware of the main evidence that restricts them from obtaining a residence permit, it is impossible to say that the trial over rejection is consistent with the principles of fair trial, especially when such a refusal is directly impacting the family life of the alien and Georgian citizens.

The Service Development Agency, while taking the decision over the issuance of residence permit is guided by its discretionary authority. The Common Courts state in the cases litigated by the Coalition Member Organisations that the Service Development Agency has not exceeded the scope of its discretion. When discretionary decisions are taken to protect the interests of public and state security, neither the Service Development Agency nor the Common Courts balance this interest with the private interest of the foreign national`s family life. According to Article 7 (1) of the General Administrative Code, the administrative-legal act cannot be issued while exercising discretionary power, if the damage to the rights and interests protected by the law substantially exceeds the benefit, for which it had been released. The Common Courts do not generally examine whether the interest of the foreign national`s family life overweighs the interest of avoiding the damage to the state and public security, as reported by SSSG.

It is unknown how much the Service Development Agency and the Court themselves have access to the information which identifies the alien is the threat to the state and public security. According to Article 7 (2) of the General Administrative Code, the administrative body should not gratuitously limit the legitimate rights of the person within the scope of discretionary authority. Refusing the issue of residence permit does not meet any standards of substantiation, even if, it limits the right to family life.

The principle of family unity is guaranteed by Article 3 (“b”) of the “Law of Georgie on the Legal Status of Aliens and Stateless Persons”. In relation to granting foreign nationals the right to reside in the county in respect to the right to family life, there is a decision of the European Court of Human Rights on the case of Rodriguez de Silva and Hugcommer v.[18] the Netherlands. In accordance with the factual circumstances in the case, the Brazilian citizen legally arrived in Holland and began to live with the Dutch citizen Hugcommer. During the time span they were living together, the applicant could not obtain a residence permit in the Netherlands because the Dutch partner had no documents evidencing a sufficient income to keep[19] the foreign partner. Two years later, the applicant gave a birth to Rachel, who was granted Dutch nationality after the partner of the applicant, Rachel`s father recognised[20] her. When the applicant broke up with the partner, the Dutch Courts awarded the custody of the child to her father,[21] and the plaintiff was refused[22] a residence permit.

The Dutch Courts ruled that Article 8 of the European Convention does not ban the state from leaving the child with her father or mother. Rachel`s family life would be uniformly protected, if she remained in Holland with father or left for Brazil[23] with mother.

[16] Decision of the European Court of Human Rights, September 19, 2017, **REGNER v. THE CZECH REPUBLIC paragraph 146http://hudoc.echr.coe.int/eng?i=001-177299**

[17] Decision of the European Court of Human Rights, June 23, 1993, **RUIZ-MATEOS v. SPAIN paragraph 63 http://hudoc.echr.coe.int/eng?i=001-57838**

[18] http://hudoc.echr.coe.int/eng?i=001-72205

[19] Rodrigues de Silva and Hugcommer v. the Netherlands, Decision, paragraph 9

[20] Rodrigues de Silva and Hugcommer v. the Netherlands, Decision, paragraph 11

[21] Rodrigues de Silva and Hugcommer v. the Netherlands, Decision, paragraph 12

[22] Rodrigues de Silva and Hugcommer v. the Netherlands, Decision, paragraph 16

[23] Rodrigues de Silva and Hugcommer v. the Netherlands, Decision, paragraph 20

The European Court of Human Rights has said: The state should maintain the balance between individual and public interests while exercising its positive and negative obligations. In this respect the state has certain discretion. Article 8 of the Convention does not envisage the general obligation of the state to respect a choice of a migrant to live in the state territory. Article 8 of the Convention does not protect the right to alien`s family unification in the territory of the state either. Nevertheless, when it comes to migration and family life simultaneously, prior to allowing the person`s entry into the state where his/her relatives are living, all the circumstances concerning the person and the public interest should be taken into consideration. Factors that should be foreseen are: if the foreign national is expelled, will it destroy family life, how important is the tie with the state, would it lead family life to insurmountable obstacle, if the alien alone or their relatives are sent to the alien`s county of origin, are there found stories of violation of immigration law or interests of protecting the public order, which justify the expulsion of the foreign national. [24]

The European Court has taken into account the circumstance that the Dutch Courts had assigned custody of Rachel to her father. Rodrigues de Silva needed a father`s consent to take Rachel to Brazil, which she could not[25] obtain. Rachel had a close tie with her mother. The rejection over the residence permit and the expulsion of the first applicant would lead to the discontinuation of the family connection. Rachel and her mother would not have constant contact with each other. This circumstance would have a grave consequence for a three-year-old child who needed care[26] from her mother (paragraph 42 of the decision).

The interest of the alien`s family life – the interest of taking care of the child living in Georgia – this is what should be taken into account by the Georgian authority while refusing the foreign national to be given a residence permit or returning them from the state border. However, the circumstance reported is not a matter of discussion for the Service Development Agency or Courts. And in light of this, the authorities are obliged to balance the interests of the state and public security with the private interests of the foreign national and their children with Georgian citizenship or other family members. Obviously, in certain cases, security might outweigh the private interest of family life, although factual circumstances of the cases proceeded by the Coalition do not give any grounds for such a conclusion.

According to the cases advanced by the Coalition, the foreign nationals have lived in Georgia for a long time. During this period, they did not break the requirements of the Georgian legislation. Prior to requesting a residence permit, they were not the threat to the state and public safety. This threat is pointed out in the information provided by SSSG and there is no procedural means for the foreign national, who is being expelled, to verify the credibility of the information noted. In addition, creating a threat to the state and public interests is associated with committing a very serious crime: terrorism, drug trafficking, human trafficking. Nevertheless, the state`s response to such allegations is limited with refusing only to issue a residence permit. In any single case, the state goes no further and does not use any criminal proceedings to prove or debunk the information regarding terrorism, trafficking or drug trade. In other words, the state is likely to allow the person, who allegedly committed serious crimes to leave the country free of charge. This circumstance additionally challenges the credibility of the SSSG`s conclusion and leaves the interest of protecting the foreign national`s family life in the foreground.

To restrict the right to family life guaranteed by Article 8 of the European Convection on the grounds of subparagraph "i" of Article 11 (1) of the "Law of Georgia on Legal Status of Aliens and Stateless Persons", is also inadmissible. According to the latter, the foreign national might be refused a visa or permission to enter Georgia in other cases, envisaged by the Georgian legislation. The Public Defender`s proposal of November 15, 2017 points out that, in practice, the Border Police of the Ministry of Internal Affairs uses "other cases envisaged by the legislation" as an independent, self-sufficient basis for rejecting entry into the country, and while restricting the right, does not apply to any additional circumstance specified in the legislation. This approach contradicts the law, since the norm reported is indicative by its nature. "Other cases envisaged by the legislation" does not imply the possibility of its utilisation without any proper regulation and therefore, separately taken, it does not generate legal consequences".[27]

In the given case, the alien is not aware of the reason they were denied to enter the country. As the alien does not know the reason preventing him from entering the country, they are unable to challenge these reasons and thus meet the requirements of the Georgian legislation. This gives rise to the threat of interference in private and family life with unclear norms.

[24] Rodrigues de Silva and Hugcommer v. the Netherlands, Decision, paragraph 39

[25] Rodrigues de Silva and Hugcommer v. the Netherlands, Decision, paragraph 41

[26] Rodrigues de Silva and Hugcommer v. the Netherlands, Decision, paragraph 42

[27] http://ombudsman.ge/geo/tsinadadebebi/saxalxo-damcveli-saqartveloshi-shemosvlaze-uaris-tqmis-praqtikis-shecvlas-itxovs

3. DETERMINATION OF DISCRIMINATION IN THE COURT APPEARS TO BE PROBLEMATIC

As statistics demonstrate, in 6 cases out of 37 advanced by the Coalition for "Equality", the court has partly satisfied claims, however, they have been satisfied with other legal grounds, not purely on the basis of the "Law of Georgia on the Elimination of All Forms of Discrimination". This chapter cover the several such cases.

Regarding the case of Badri Oniani`s dismissal, the Head of the Health and Social Service Department of Tskaltubo Municipal Board, the plaintiff party demanded from the Magistrate judge of Tsklatubo to annul the appealed individual-administrative legal act, restore the plaintiff to the position, remunerate the forced unemployment, identify discrimination, and in case of the latter, the applicant party demanded compensation in amount of 500 GEL. Badri Oniani was dismissed by the order of the Tskaltubo Municipal Governor on August 29, 2016. The Magistrate judge concluded that the order had not been preceded by the inspection of internal audit and monitoring service of the Health and Social Service Department of the Board, and therefore, the reason Badri Oniani had been considered failing to fulfi his credentials, has remained uncertain for the court.

In the case reported, the Magistrate judge identified the violation of Article 96 of the General Administrative Code, since Badri Oniani was dismissed without a proper examination of causes. Furthermore, the Judge found that Article 95 of the General Administrative Code had been also breached, as Badri Oniani was not given the opportunity to submit his own opinion regarding those reasons that had pre-conditioned his dismissal. The Magistrate judge has annulled the appealed individual-administrative legal act and commissioned Tskaltubo Municipal Board to conduct new administrative proceedings aimed at investigating and evaluating important circumstances about the case.

In the present case, the judge did not respond to the plaintiff`s arguments submitted regarding discrimination. The applicant claimed that he had been dismissed on the basis of political discrimination and he filed the evidence demonstrating that he was participating in the elections of October 8, 2016, as a majoritarian candidate of the "National Forum". In the motivational part of the decision, the Magistrate judge failed to respond to the applicant`s question of why did the court consider that discrimination against Badri Oniani had not taken place, while the court has already established that the applicant had been fired through violating the procedure set by the General Administrative Code.

Another case where discrimination was not identified is the case of Kobuleti boarding house. In the case reported, the applicant claimed that the police failed to fulfil its positive obligation to prevent the actions of private individuals, and as a result, the Muslim Community was hindered from using the boarding house on Lermontov Street. This case regarded the incidents that took place in the city of Kobuleti, more precisely, the protest of the opening of the Muslim Boarding House, representatives of the dominant religious group nailed a head of a pig on the building and erected a cross in the surrounding area. Christians took turns and patrolled the vicinity of the boarding house and Muslims were not allowed to enter the boarding building. The applicant disputed the fact that the police did not prevent the violent acts of representatives of the majority religious group. The City Court of Batumi ruled that the actions of the orthodox population had a discriminatory nature, however, the action of the police was not deemed to be discriminatory. The decision was upheld by the Kutaisi Appeal Court. The plaintiff appealed the decision in the Supreme Court. The applicant claimed that the action of the police was discriminatory, owing to their inertness, the Muslim Community was deprived the opportunity of using the boarding house reported. In its verdict of March 15, 2018, the Supreme Court of Georgia failed to see any discriminatory nature in the inertness of the police.

The motivational part of the ruling cited reads: *"In the present case, the appellants cannot confirm that **religious hatred let to ill-treatment of the police toward them (Muslims).** The factual circumstances in the case prove that the applicants' inability to use the boarding hose was due to the resistance of private individuals. Although the circumstances mentioned by the appellants demonstrate the inadequacy of the police actions, they do not confirm the discriminatory approach of the police towards the appellants.*

On the contrary, the circumstance established regarding the case points out that the police officers were patrolling for the whole 24-hour (neither the claimants deny the late). In addition, the fact that the local authorities, as well as the central authorities were involved in the process of reconciliation of opposing parties`, also the circumstance that another this type of boarding house is smoothly functioning in Kobuleti (at Rustaveli Av.) excludes discriminatory treatment from the Ministry of Internal Affairs.

Besides, unlike number of well-known facts of violence carried out against the Witnesses of Jehovah … Georgian Muslims have been living in Adjara region for many years, where dozens of mosques were built, which also excludes the discriminatory approach towards the Georgian Muslims.

Considering all the above reported, the Court of Cassation notes that, even in the absence of proper enforce-

ment of positive obligations imposed to the police, the present case does not prove that the police had failed to enforce their obligation on the grounds of discrimination, which eliminates the possibility of satisfying the claim in the given part.

The Court of Cassation does not impart the appellants` position pointing to the decision of the European Court as well … which had regarded radically different factual circumstances that resulted in the corresponding estimates of the European Court. One of the cases mentioned (identity against Georgia) has revealed the complete inertness of the police, whereas in another case (Begeluri and others v. Georgia) the police officers themselves were breaching the applicants' rights. The cases reported demonstrated that the police authorities had not taken any measures to protect the interests of applicants, however, this did not take place[28] in the pending case."

In the present case, the Supreme Court states that, essential prerequisite for identifying the fact of discrimination is the obligation of the plaintiff to prove that the inertness of the police to protect one`s freedom of belief from being impinged by certain individuals, is conditioned by the intolerance of the police and state themselves. It is noteworthy that confirmation of the discriminatory motive for identifying discrimination itself is required neither by constitutional nor by European standards of the right to equality.

In its decision of February 4, 2014, the Constitutional Court stated: "Discrimination is not just the case where the action of the public authority directly aimed at discrimination of a group of individuals or curtain individuals, but such action that resulted in their de facto discrimination."[29]Although the fact of hatred towards Muslims is not condoned, the Supreme Court returned the case to the Court of Appeals of Kutaisi to find out whether, as of today, did the police provide the elimination of the hinder banning Muslims from using the boarding house. If it is confirmed that the police had failed to remove the prevention of Muslims from using the boarding house of Kobuleti, in terms of the result, the Muslim Community are left in the state of disadvantage, despite the fact that the police did not have this intention.

The decision of the European Court of Human Rights over the case - Identoa and others v. Georgia, is also worth mentioning. In this case, the European Court of Human Rights has established the connection of Article 14 (prohibition of discrimination) of the Convention with Article 3 (ill-treatment) of the same convention. The decision reported reads: "The European Court takes into account the circumstance that the local authorities and the police were informed in advance of the LGBT community's intention to hold a march in the centre of Tbilisi, on March 17, 2012. Organisers of the march demanded from the police to provide protection from an anticipated counter protest of people with homophobic and transphobic sentiments. Furthermore, allowing for the history of hostility towards LGBT community in Georgia, the national authority knew or had to know about the risks that are typical for the public event regarding the vulnerable community. That is why the state was obliged to provide[30] enhanced protection."

Instead of meeting positive obligations and protecting peaceful protestors from attacks through the highest measures, the defendant state distributed a small number of police officers at the scene of the attack just as it stated. Thus, the police allowed the tension to rise to the stage of physical violence. When the police decided to intervene, the plaintiffs and other participants of the march were[31] humiliated, insulted and beaten.

Relying on these circumstances, the court considers that the national authority had failed to protect 13 applicants from hate-motivated attacks on May[32] 17, 2012.

Unlike the Supreme Court, the European Court of Human Rights did not request the applicants to prove that the police had a discriminatory motive when it failed to act promptly and in a timely manner to protect the demonstration from the counter-demonstrators with discriminatory sentiments. The European Court does not consider it necessary to establish the violation of Article 14 of the Convention in conjunction with the rights recognised by the Convention or its Additional Protocol. To identify discrimination by the state it is absolutely sufficient to prove that the state did not act adequately and failed to protect the human being from the attack driven by the discriminatory motive.

The circumstance that the private individuals had discriminated the Muslim community, is already established in the present case. The Supreme Court assigned the Court of Appeal of Kutaisi to determine the factual circum-

[28] The ruling of the Supreme Court of Georgia, March 15, 2018, No.br-864-860 (g-17)

[29] The decision of the Constitutional Court, February 4, 2014, No.2/1/536, the citizens of Georgia – Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze v. the Minister of Labour, Health and Social Affairs of Georgia, chapter II, paragraph 23

[30] Identity v. Georgia, decision, paragraph 72 http://hudoc.echr.coe.int/eng?i=001-154400

[31] Identity v. Georgia, decision, paragraph 74 http://hudoc.echr.coe.int/eng?i=001-154400

[32] Identity v. Georgia, decision, paragraph 75 http://hudoc.echr.coe.int/eng?i=001-154400

stances whether the interference to use the boarding house is continuous, and also does the police keep on its inertness against lawless action of the private persons. If it is confirmed that the lawful owner of the boarding house is hindered from use and the police is inactive in this respect, to exclude discrimination only because the applicant fails to deliver that the inaction of the police is conditioned by the discriminatory prejudice, does not come in conformity with the case-law of the European Court of Human Rights.

Another case was related to the recognition of education that had been received remotely in one of the highest educational institutions of Ukraine, in 2011. In the case cited, the National Centre for Educational Quality Recognition requested the document confirming that the plaintiff crossed the state border of Georgia. The plaintiff was refused recognition the diploma, since, according to the decree of the Minister of Education of 2016, diplomas obtained from foreign educational institution will only be recognised, if the person has direct contact with teachers and students of the higher education institution.

In this case, the applicant claimed that the normative act appealed was favourable to those who crossed the border and were physically involved in the educational process compared with those who had been educated remotely, without crossing the state border. The Court of the First Instance did not respond to the question whether these two comparable groups are in the same condition. Without answering this question, the City Court of Tbilisi declares that: "The Court considers that the applicant failed to present real facts confirming discriminatory treatment. The court reiterates that any distinction, inadmissibility and advantage in respect to a specific work, activity or field that is based on specific requirements is not considered to be discrimination. The only circumstance that, the statutory administrative-legal act prescribes curtain restrictions to meet the legislative ordain, cannot be deemed as any form of discrimination. As for the individual administrative-legal act, the lawfulness of the late is the matter of the court hearing, the plaintiff party has not pointed out any facts demonstrating that the administrative order had been used otherwise in relation to other individuals. Correspondingly, the court considers that the plaintiff was not objected to the discriminatory treatment with regard to the particular disputed act. "This decision was upheld by the Court of Appeal of Tbilisi as well as the Supreme Court of Georgia by the ruling of September 18, 2018.

Thereby, the problems of the Common Courts in determining discrimination are the following:

- In curtain cases, they do not respond to the corroborative evidence of discrimination indicated in the claim
- The Court does not satisfy the claim in the part of discrimination and fails to respond to the applicant`s argument whether the comparable groups are in the same position or not
- If the police fail to act in case of hate-motivated crime or offence, the court demands from the applicant to determine that the inertness revealed by the police had a discriminatory basis.

Running parallel to this there is a successful case regarding the 56-year-old cleaner`s dismissal. The defendant party failed to substantiate the positon to show the plaintiff had not fulfilled duties properly. Afterwards, the court supposed that the only reason for the dismissal of the plaintiff could have been the age of the applicant, since the defendant had not any other objective reasons to justify the dismissal. For the reason reported, the court established discrimination.

4. SEXUAL HARASSMENT

In the reporting period, the facts of harassment against women in the workplace still remain as an acute problem. Women have begun to talk about unwelcome sexual behaviours of their employers or other workplace employees. Simultaneously to disclosing new facts of sexual harassment, significant steps have been taken to combat the challenge: legislative amendments were made, the Public Defender has identified discrimination in cases of sexual harassment, also, the standards for asserting such harassment; the first case has been won in the Common Court[33] regarding sexual harassment.

During the reporting period, the only available internal-legal framework regulating sexual harassment, was the "Law on Gender Equality." In labour relations, Article 6 (1) (b) of the law cited, without mentioning the term "sexual harassment", prohibited: "Any unwelcome and inappropriate verbal, non-verbal remarks, or physical advances of sexual nature that intend or cause the formation of the humiliating, hostile or insulting environment." Although this law does not contain an institutional mechanism for enforcing this prohibition, this record had been used by the Common Courts against Shalva Ramishvili to determine sexual harassment in labour relations.

[33] See the Chapter 4.9

On February 19, 2019, the amendments were made to the "Law on the Elimination of All Forms of Discrimination" and Article 2 (3^2) defines the notion of sexual harassment, as any unwelcome verbal, non-verbal or physical behaviour of sexual nature, which targets or triggers the formation of terrifying, hostile, humiliation, degrading or insulting environment to the person. Despite the fact that the Public Defender was considering sexual harassment as one of the basis of discrimination prior the amendment and was issuing recommendations at the legislative level, this amendment enhanced the mandate of the Public Defender – to combat sexual harassment as a form of discrimination distinctive from direct or indirect discrimination.

The decisive step towards combating sexual harassment was the legislative amendment to the Code of Administrative Offenses adopted on May 3, 2019, which established that sexual harassment of a person in public spaces must be punishable. Unitary sexual harassment leads to a fine in amount of 300 GEL. If, in the course of one year, sexual harassment is committed repeatedly, that will result in the fine of 500 GEL or correctional work up to 1 month. If sexual harassment is committed against a juvenile, a pregnant woman, a disabled person or sexual harassment against any other persons is witnessed by the minor, the offender is fined in the amount of 500 to 800 GEL. In the course of one year, repeated sexual harassment against representatives of these vulnerable groups will result in the fine in amount of 800 to 1000 GEL, correctional work up to 1 month or administrative imprisonment for up to 10 days.

The Ministry of Internal Affairs of Georgia established the protocol of offenses on the basis of Article 239 (60^1) of the Code of Administrative Offenses of Georgia. Whereas, on the grounds of Article 208 of the Code of Administrative Offences, the court takes the final decision over the issue reported.

These legislative amendments were preceded by the recommendation of November 1, 2018, issued by the Public Defender on sexual harassment that determined the standard for identifying sexual harassment. The recommendation of the Public Defender reads: *The Public Defender believes that the consideration of the present case should be proceeded through employing the reasonable standard of woman's perception (reasonable woman standard), which takes into account the distinctive perceptions of woman and man when it comes to sexual harassment. The standard cited discusses the fact of sexual harassment from a woman`s perspective and represents the gender-sensitive approach. The reasonable standard of woman`s perception (reasonable women standard) of sexual harassment excludes the possibility of defining sexual harassment by means of the universally adopted regulation and evaluating it as any other action. While reasoning the alleged sexual harassment case, it is essential to take into consideration the social contexts in which the behaviour occurs, since right the appropriate attitude towards this social context gives the opportunity to assess how sensible the victim[34]was while perceiving the sexual behaviour.*

The use of general approaches in the community characterised with socially defined gender norms may have the discriminatory effect. As noted in the Parliamentary Report of the Public Defender, sexual harassment against women is one of the most common and at the same time undisclosed problems that diminishes the importance of gender equality. Georgia is still the country with negative gender stereotypes and it is believed that undesired treatment in the workplace or in other institutions is provoked by women themselves, that is why, in case if the man is oppressor, women have expectations that their families, society or colleagues might blame them in behaviour incompatible with moral principles established in society. Therefore, the quality of woman`s vulnerability increases and the problem remains hidden, since the victims of harassment have fear of victimisation. As mentioned above, occasions of sexual harassment, as a rule, are distinguished by secrecy, and thus it is complicated to obtain[35] witnesses or/and material evidences.

In similar cases, while determining the fact, it is common to take into account those subjective evidences, which are filed by the parties. When the issue of credibility of alleged victims of sexual harassment is being considered, it is possible to estimate the likelihood of different concrete factors, for instance, the general characteristic of behaviour. Such evidence is especially useful and supportive, if tangible direct evidence cannot be found. Thus, the Public Defender considers that it is necessary to take into account the social context that encourages discrimination against women. Consequently, pending cases will be assessed[36] on the grounds of women`s reasonable perception (reasonable women standard).

[34] Recommendation No. 13/13158 of the Public Defender of November 1, 2018

[35] Recommendation No. 13/13158 of the Public Defender of November 1, 2018

[36] Recommendation No. 13/13158 of the Public Defender of November 1, 2018

5. STRENGTHENING THE ANTI-DISCRIMINATION MANDATE OF THE PUBLIC DEFENDER

In its report of previous years, the Coalition for "Equality" insisted on expanding the mandate of the Public Defender. The very first report of the Coalition for "Equality" reads: "In order to ensure the effectiveness of mechanisms supervising the protection of the right to equality in private sector, it is expedient to apply the regime of a public institution in relation to the natural person: and make information submission mandatory. The failure to comply with the request of the Public Defender might become the ground for drawing up the protocol of administrative offences by the Public Defender and the court in turn – may fine[37] such natural person."

May 3, 2019, was significant progress in this regard. The amendment had been adopted to the Organic Law of Georgia on the Public Defender. The subparagraph "b" of Article 18 of the law cited was formulated as follows: the public Defender of Georgia, while inspecting, has the right: to demand from the body of state authority, local self-government body, public institution or a public official to immediately or no later than 10 days submit any reference, document or other materials essential for inspection, **and in case of discrimination – the same is true of natural person, legal entity, other organisational formation, association of persons without the legal entity formation or entrepreneurial entity;** thereby, in the course of case examination, any non-state, natural person or institution are obliged to submit the information that the Public Defender requests.

According to the legislative amendments adopted on May 3, 2019, private persons or legal entities are obliged to cooperate with the Public Defender not only on the stage of case examination, but also to respond to the final decision – recommendation taken by the Public Defender. According to Article 24 of the Organic Law of Georgia on the Public Defender, "the body of state authority, local self-government body, public institution, an official, **natural person, legal entity, other organisational formation, unifications of individuals beyond the legal entity or entrepreneurial subject** that receive recommendations or proposals from the Public Defender, **are obliged** to consider them and keep the Public Defender informed regarding the results in written form within 20 days."

Thus, private individuals are obliged to provide the Public Defender`s Office with the information requested within 10 days. Although private individuals, as well as public institutions and officials are not required to accept the Ombudsmen`s recommendations on determination of discrimination, however, within 20 days, they are due to respond to the Public Defender, whether they share the recommendation as public institutions do. What may happen if the private natural person or legal entities will fail to submit the information requested within 10 days, or what if, within 20 days, they do not respond to the recommendation regarding discrimination identification? Such action will be deemed to be inconsistent with the lawful request of the Public Defender, which is in violation of the prescribed by paragraph 173 [4] of the Code of Administrative Offences. The commitment of this action above-reported envisages penalty, labour remuneration twenty to fifty to the minimum amount (800 GEL to 2000 GEL).[38]

An additional mechanism has been introduced into to the law to enforce the decision taken by the Public Defender. "According to a prima paragraph "h" that was added to the prima Article 14 of the Organic Law of Georgia on the Public Defender on May 3, 2019, the Public Defender, in case of discrimination, is empowered by the Civil Procedure Code of Georgia to appeal to the Court as the plaintiff, if the legal entity, other organisational formation, the association of individuals beyond the legal entity or entrepreneurial subject failed to respond the recommendation or did not accept it and when there are sufficient evidences to prove discrimination;

Through the civil procedure, the Public Defender can complain to the court against non-entrepreneurial (non-commercial) legal entities, individual entrepreneurs and commercial legal entities, unregistered unions, if they do not fulfil the recommendation of the Ombudsman. The Public Defender is deprived of the opportunity to compel (through the court procedure) the natural person, who is not the individual entrepreneur, to carry out recommendations. Consequently, when it comes to such individuals, the impact of remedies of the Public Defender remain weak. The Ombudsman can fine such a natural person if they do not provide the information within 10 days, or fail to respond to the recommendation within 20 days, however, the Public Defender is deprived of the possibility of forcing the natural person through court to fulfil the recommendation to eliminate discrimination. Obviously, these are shortcomings of te legislative amendments and in short, they should be eradicated in the future.

[37] Execution of anti-discrimination legislation, results of one year, p.48 https://www.osgf.ge/files/2015/Publication/EU-Geirgia%20Association%20/Report_210x270mm.pdf

[38] According to the Decree No. 351 (3) of June 4, 1999, of the President of Georgia, the minimum amount of wages for the fine purposes is 40 GEL

6. TERMS TO ADDRESS THE COURT

The first report of 2014-2015 of the Coalition for "Equality" reads that a three-month deadline might not be enough to appeal to the court. **One of the ways to solve this problem is to prolong the term by up to one year.** Three months is a very short period of time for the victim to realise that they are victims of discrimination. Even if the victim promptly analyses the fact of discrimination and decides to protect their rights, it is necessary to obtain various evidence to prove this. The discriminatory party may create obstacles and fail to timely provide the victim of discrimination with the proof [39] required.

According to the amendments of May 3, 2019, made to Article 363 [2] (2) of the Civil Procedure Code, the court can be appealed within a year after the person realised or had to realise the circumstance that they deem to be discriminatory. It is complementary that the Parliament of Georgia approved the recommendation made by the Coalition for "Equality" years ago. However, it should be noted that the prohibition of simultaneously addressing the Public Defender's Office and the Common Courts still continues to be a problem. It is true that, the increase of the period of time up to one year brings more opportunity to the victim to get recommendations from the Public Defender and then apply to the Court, however, we cannot exclude the possibility that the Public Defender may not take a decision regarding the case for more than a year and the person may face the statute of limitation in appealing to court. A potential way-out from the situation might be: to end the flow of one-year-term before the final decision of the Public Defender.

The Coalition for "Equality" welcomes that their recommendations have been taken into consideration, which resulted in the prolonging of the term required to address the court up to a year.

7. PROHIBITION OF DISCRIMINATION ON PUBLICLY AVAILABLE GOODS AND SERVICES

The report of the Coalition for "Equality" covering 2016-2017 states that the legislation should directly foresee the possibility of protecting persons who, on the basis of the protected ground, have been refused the purchase[40] of publicly available goods and services.

On February 19, 2019, the amendment was introduced into the "Law of Georgia on The Elimination of All Forms of Discrimination" and subparagraph "c.d" was added to Article 2 (10), which reads that: "The principle of equal treatment also applies to: having access to publicly available goods and services (including housing). Hereby, the Parliament of Georgia considered another recommendation of the Coalition for "Equality".

Before the reported amendment, discrimination had been prohibited in all fields. The obligation of protecting the "Law on the Elimination of All Forms of Discrimination" was imposed on both public institutions and private persons. Nevertheless, it is very important that the law explicitly says that discrimination is banned while delivering publicly available goods and services.

The record of the anti-discrimination law states that a person has the right not to be refused (on the basis of the protected ground) to purchase publicly available goods and services, including rental, far-forth restricts the principle of contractual freedom recognised by the Civil Code, which also implies the right to freely enter into a contract. There is no right to a free choice of the contract when the person could become a participant of a particular private-legal relation, if they were not characterised by the specific protected features like – race, skin colour, gender, religion, sexual orientation, gender identity etc. This is how the decision of the legislator looks while providing the principle of equality in delivering goods, services, including housing.

In this regard, the recommendation of the Public Defender of January 9, 2018 reads that private persons who deny to rent their residential space to an LGBT organisation, however, they agreed to rent the space reported to the non-LGBT organisation. Although this recommendation had been made before these legislative amendments were adopted, the Public Defender, however, determined discrimination on the basis of sexual orientation and scope of activity related to gender identity. The recommendation of the Public Defender says:

"Article 319 of the Civil Code of Georgia outlines one of the fundamental principles of the civil law – the freedom of contract. Private law subjects can freely conclude contracts within the law and define the content of these agreements. In accordance with this law, civil law knows freedom of choice when comes it to the contract … Although freedom of contract is one of the fundamental principles of the civil law, it can be restricted on the grounds of imperative standards. These restrictions might apply to various elements of the contract. With Article 3 of the "Law of Georgia on the Elimination of All Forms of Discrimination", the requirements of this law

[39] Execution of anti-discrimination legislation, one-year results, p. 60 https://www.osgf.ge/files/2015/Publication/EU-Geirgia%20Association%20/Report_210x270mm.pdf

[40] Coalition for "Equality" Activity Report, 2016-2017, p. 80 https://www.osgf.ge/files/2018/Publications/CE_report_geo.pdf

apply to the activities of public institutions, organisations, individuals and legal entities in all areas. Correspondingly, in the anti-discrimination law, the legislator took into account an exceptional case, which imperatively prohibits discrimination in all areas, including the pre-contractual relationship."

Thus, the "Law on the Elimination of All Forms of Discrimination" has once again specified that civil circulation participants cannot be denied making deals regarding publicly available goods, services, including housing, due to the fact that it is prohibited by Article 1 of the "Law of Georgia on the Elimination of All Forms of Discrimination" (race, skin, language, gender, sexual orientation, gender identity, etc.).

CONCLUSION

Thereby, during the reporting period, establishing discrimination in the Common Courts still continued to be a problem. Preventing the entry of foreign nationals and granting residence permits to third country nationals is discriminatory and remains a serious challenge.. Herein, there were taken number of positive steps taken including legislative amendments on harassment and the prohibition of sexual harassment, strengthening the mandate of the Public Defender in relation to the legal entities of private law, as well as the expansion of statute of limitation on accessing the court, as well as the possibility of marginalised groups to acquire public available goods and services. Despite this, there remains a lot to be doneto appropriately implement these progressive amendments into the practice of the Common Courts.

RECOMMENDATIONS

To the Parliament of Georgia

- Make amendments to the Georgian legislation, which will enable the individual to simultaneously apply to the Public Defender`s Office, as well as the Common Courts in cases of discrimination;
- Equip the Public Defender with the authority to enforce the recommendation issued to natural persons through civil disputes;
- Provide foreign nationals denied residence permits based on the conclusion issued by SSSG, with adequate legislative safeguards aimed at determining the credibility of the conclusion reported.

To the Common Courts

- Amend the practice which binds the plaintiff with obligation to prove that the police had acted with discriminatory sentiments while failing to adequately respond to the actions committed by the private person on the grounds of discrimination;
- In final decisions, answer the substantive arguments of lawsuits regarding discrimination in cases where the identification of alleged discrimination against the defendant;
- Amend the practice of obliging the plaintiff to identify the comparator to determine discrimination in the case of harassment which creates a hostile, insulting, terrifying and degrading environment at the workplace;
- In cases dealing with foreign nationals, who have been denied residence permits or the entry into the country, pay due attention to the right to family unity;
- Provide individuals, who have given statements about sexual harassment before the Public Defender, with the privilege guaranteed under the law on protecting against defamation.

To the Border Police of the Ministry of Internal Affairs

- Employ sub-paragraph "i" (the denial over allowing the alien`s entry into the country on the basis of other cases prescribed by the Georgian legislation) of Article 11 (1) of the "Law of Georgia on the Legal Status of Aliens and Stateless Persons" only together with another norm, which clearly determines the grounds of the refusal banning the foreign nationals from entering the country.

Service Development Agency of the Ministry of Justice of Georgia

- Properly substantiate the grounds for the prevailing public interests of the state and public security over the private interests of the alien`s family life, whilst exercising the discretionary authority concerning the refusals of granting residence permits to foreign nationals.

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