



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

SPECIAL REPORT

ON THE FIGHT AGAINST DISCRIMINATION,
ITS PREVENTION, AND THE SITUATION
OF EQUALITY

SEPTEMBER, 2017



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THE DOCUMENT IS PREPARED IN ACCORDANCE WITH ARTICLE 7 OF THE LAW OF GEORGIA
ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION



ევროკავშირი
საქართველოსთვის
The European Union for Georgia



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

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CHAPTER I. INTRODUCTION

This special report is prepared in accordance with Article 7 of the Law of Georgia on the Elimination of All Forms of Discrimination (hereinafter referred to as the “Non-Discrimination Law”). The special report contains the assessment of the situation of equality in Georgia **from 1 September 2016 until 31 August 2017**. The assessment is carried out by the Public Defender of Georgia in his capacity of being the institution supervising the elimination of discrimination and ensuring equality.

In 2014, based on the Association Agenda between the European Union and Georgia, the Georgian authorities undertook the commitment to set up an institutional mechanism for fighting discrimination. On 2 May 2014, the Parliament of Georgia adopted the Law of Georgia on the Elimination of Forms of Discrimination. This law offers every natural and legal person a legal remedy against public and private persons for safeguarding the right to equality.

Based on the Non-Discrimination Law, the Public Defender of Georgia was vested with the function of supervising the elimination of discrimination and ensuring equality. As a part of exercising this authority, on 22 August 2014, based on Order no. 140 of the Public Defender of Georgia, the Department of Equality was set up within the Public Defender’s Office. The department started functioning on 20 November 2014.

Since October 2016, the Office of the Public Defender has carried out the European Union project - Elimination of All Forms of Discrimination in Georgia. This project extends substantial support to the Public Defender in his capacity as the mechanism of fighting discrimination, both in terms of awareness-raising as well as capacity building of the staff.

Since the enforcement of the Non-Discrimination Law, the Public Defender has considered more than 400 discrimination-related cases, which are diverse in terms of both discrimination grounds as well as the spheres in which the incidents of alleged discrimination / enabling discrimination took place.

Three years later from the enforcement of the law, it is possible to highlight the problematic issues that exist in the country in terms of equality. Unfortunately, at this stage, it can be said that substantive equality is not guaranteed in Georgia; neither state policy nor the environment accommodates the special needs of various vulnerable groups. Furthermore, the situation of equality of certain vulnerable groups in the country is still critical. There are no statements made by state authorities in support of equality. In addition, as mentioned by the Public Defender of Georgia in his special reports of 2015 and 2016, there still are statutory shortcomings, which obstruct comprehensive protection of the right to equality. During this period, there has been no progress in terms of the proposal made by the Public Defender to the Parliament of Georgia in 2015, initiated by the parliament in the same year.

According to the Public Defender’s practice, women, disabled persons (*inter alia*, children), LGBT community and representatives of religious minorities remain among the most vulnerable groups. Furthermore, incidents of discrimination and enabling discrimination mainly take place in the spheres of education, employment and services.

To date, adequate response of law-enforcement authorities to the incidents of violence against women remains a challenge. Sexual harassment has also been identified as a serious problem. Furthermore, the refusal to continue pregnant women's contracts was relevant in the reporting period as well.

As regards persons with disabilities, they are one of the most vulnerable groups whose specific needs are not comprehensively accommodated in almost all of the spheres of social life. Among others, the process of inclusive education and public transport does not accommodate the needs of children with disabilities. The practice of the courts of general jurisdiction and the Bureau of National Forensics related to appointment of a support person is also discriminatory.

Incidents of violation of the right to equality also take place with regard to religious minorities. As the Public Defender's practice shows, there are incidents of indoctrination of Muslim schoolchildren in some public schools. Muslim community also faces obstacles when crossing border where they are delayed and forced to give up religious publications.

Applicants, who allege discrimination based on sexual orientation or gender identity, mainly face problems when receiving services. Differential treatment of representatives of LGBT community is usually preconditioned by negative perceptions and false information existing in the society.

According to the Public Defender's practice, pre-contractual and labour relations are one of the spheres in which incidents of alleged discrimination occur most frequently. First of all, vacancy notices that contain discriminatory criteria and by the dissemination of which employment websites contribute to discrimination in the labour market should be mentioned. Furthermore, the majority of the cases that are examined by the Public Defender concern incidents of alleged discrimination of persons employed in public schools and kindergartens, as well as self-government bodies, on account of political and different opinions. Investigation of alleged hate crimes remains to be a most important challenge. Victims of such crimes are mostly representatives of religious and ethnic minorities and LGBT community. Similar to the previous reporting period, the Public Defender still does not have access to the document by which investigative authorities are guided when investigating the said crimes. It remains obscure as to which investigative actions are carried out to identify alleged motives.

It was similarly problematic in the current reporting period that public officials made statements towards various vulnerable groups that encouraged discrimination. In the cases examined by the Public Defender, such statements are mainly made by members of parliament.

This report discusses the statistics of the cases received by the Department of Equality; situation of equality of various vulnerable groups in the country; the decisions adopted by the Public Defender of Georgia in his capacity as the institution supervising ensuring equality; investigation of alleged hate crimes; legislative shortcomings; and the trends in compliance with the decisions of the Public Defender of Georgia.

CHAPTER II. STATISTICAL DATA

Received Cases

In the reporting period, the Office of the Public Defender started to examine 201 new discrimination cases, whereas the number of the cases in the previous reporting period amounted to 113. In 10 cases, it was established that discrimination had taken place and an adequate recommendation was made; in 8 cases, the Public Defender found that enabling discrimination had taken place and elaborated general proposals; and in 3 cases, the Public Defender submitted *amicus curiae* briefs to the courts of general jurisdiction.

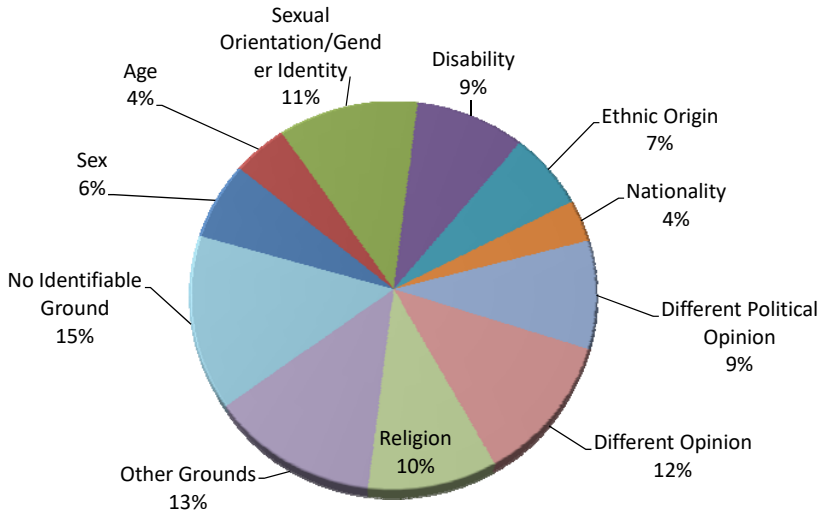
Presently, the Public Defender examines 135 discrimination cases. In the reporting period, 99 cases were discontinued. One application was not admitted for the consideration of merits and proceedings in 9 cases were suspended as the applicants applied to a court. 8 public statements were made on equality issues.¹ In the reporting period, in the process of studying the case-files, the Department of Equality dispatched 579 letters for obtaining information.

The highest percentage of the cases under the Public Defender's consideration concern incidents of alleged discrimination on account of different opinions (12%); sexual orientation and gender identity (11%); religion (10%); and political opinions (9%). The applications concerning the incidents of alleged discrimination on account of disability (9%); ethnic origin (7%); sex (6%); age (4%); and nationality (4%) are also relevant. 13% of lodged applications refers to "other grounds" and in 13% of the applications no protected grounds could be identified.

1 See: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-trans-genderi-qalis-mimart-dzaladobis-faqtan-dakavshirebit.page>; <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxodamcveli-miichnevs-rom-gadacema-kacebis-dros-promo-genderuli-stereotipebis-gamyarebas-uwyobs-xels.page>; <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-shshm-adamianebris-mimart-diskriminaciuli-stereotipebis-xelshewyobis-faqtan-dakavshirebit.page>; <http://www.ombudsman.ge/ge/news/saxalxo-damcveli-zestafonis-municipalitets-motxovnas-sqesis-nishnit-diskriminaciad-miichnevs.page>; <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-shefasebit-bordjomis-municipalitets-axaldaqor-winebulta-programa-diskriminaciulia.page>; <http://www.ombudsman.ge/ge/news/saxalxo-damcveli-sazogadoebrivi-mauwyebliidan-journalistis-gatavisuflebas-exmianeba.page>; <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-autizmis-speqtris-mqone-adamianebris-mimart-gamotqmul-sheura-cxmyofel-gamonatqvamebs-exmianeba.page>; <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvels-teatraluri-universitetis-mier-abiturientebistvis-dawesebuli-motxovna-diskriminaciulad-miachnia.page>.

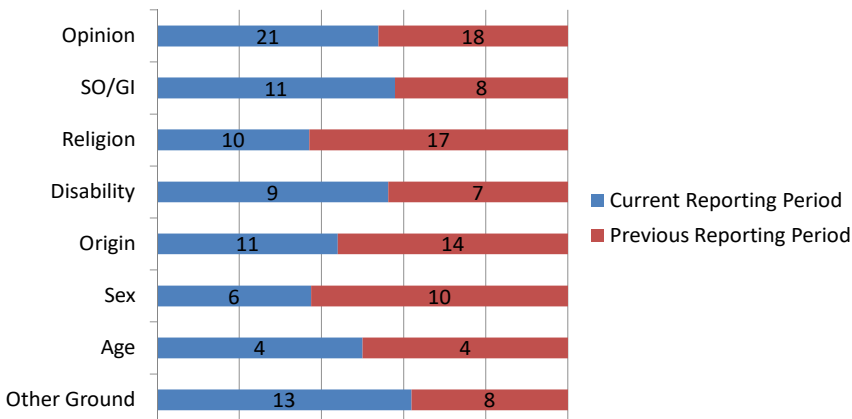
Protected Ground

In Total 201 Applications filed in the Reporting Period



It should be pointed out that, compared to the previous reporting period, the dynamics have changed. The highest percentage of the cases received by the Department of Equality concerned incidents of alleged discrimination on account of political or other opinions (18%); religion (17%); and national/ethnic origin (14%). The number of applications concerning alleged discrimination on account of sex (10%) was also substantial. Discrimination based on other grounds was alleged by 8% of the applicants. Furthermore, in the previous reporting period, compared to the current period, there were fewer applications concerning incidents of alleged discrimination on account of sexual orientation/gender identity (8%) and disability (7%).

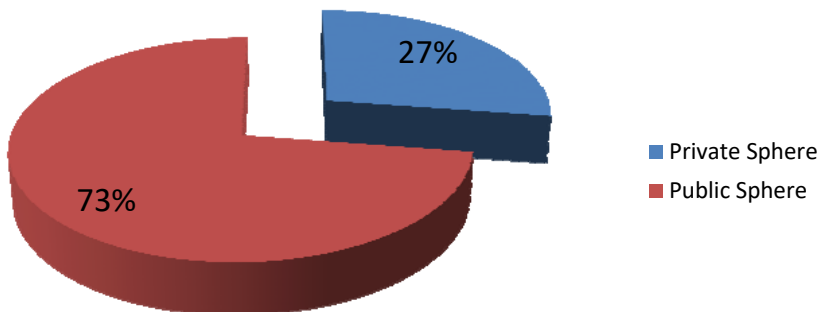
Comparison with the Previous Reporting Period



Moreover, in the previous reporting period, 55% of the perpetrators of alleged discrimination represented public sector and 45% represented private sector; these indicators

substantially changed this year. In the reporting period, in 73% of the cases, disputes were pending against public officials and 27% of the applicants disputed the actions of natural and legal persons of public law.

The Sphere of Commission of Discrimination

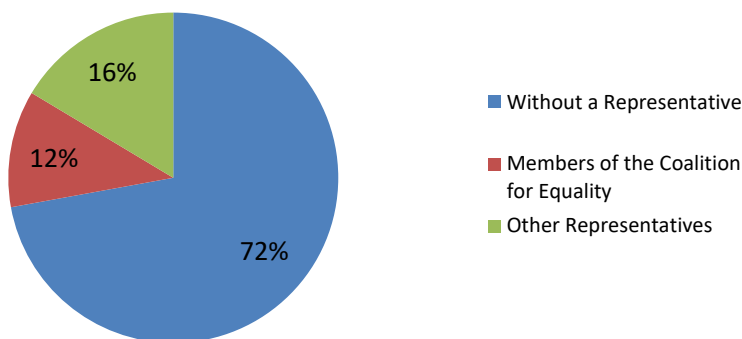


Representation in the Cases Examined by the Public Defender

When a case is processed by the Office of the Public Defender, an applicant may have a representative who, during the process of the study of the case-files by the Office, represents his/her interests. A representative may get involved in the proceedings at the stage of lodging an application with the Public Defender as well as at a later stage of the study of the case-files. The involvement of a representative in the course of the study of relevant case-files by the Public Defender does not affect either the proceedings or their outcome. A representative has an opportunity to adduce in writing his/her legal arguments and cite legal sources, which he/she considers to be relevant for the consideration of the merits.

According to the data from the current reporting period, 24% of the applicants, who claimed to be victims of discrimination before the Public Defender of Georgia, have a representative. 16% of these representatives are non-governmental organisations that are members of the Coalition for Equality.²

Representation



² The members of the Coalition for Equality are the following: Georgian Young Lawyers' Association; Human Rights Educating and Monitoring Center; Article 42 of the Constitution, *Identoba*, Partnership for Human Rights; and Women's Initiatives Supporting Group.

CHAPTER III. THE SITUATION OF EQUALITY IN GEORGIA

This chapter discusses the situation of equality in terms of various vulnerable groups in Georgia. This discussion is based on the cases processed by the Public Defender, the decisions adopted by him and the *amicus curiae* briefs submitted to the courts of general jurisdiction. Focus will be on the rights of the groups that face discrimination most frequently on account of a particular protected ground.

1. DISCRIMINATION ON ACCOUNT OF SEX

Discrimination based on sex remains one of the important challenges in Georgia. Discriminatory overtones are intensified by the lack of appropriate response from the law-enforcement authorities to incidents of violence against women. Harassment/sexual harassment, one of the forms of discrimination, remains one of the most common and, at the same time, covered up problems. Victims of harassment are usually women. Furthermore, discrimination against pregnant women at workplace remains problematic in the current reporting period as well. Dissemination of sexist advertisements that reinforce discrimination against women continues to be considered as an easy way of selling products in the reporting period.

Response of the Law-Enforcement Authorities to Violence against Women

Physical and psychological violence against women remains to be one of the largest problems. Women who fall victim to violence are often subjected to discrimination, as there are frequent cases where law-enforcement authorities failed to provide adequate response to incidents of domestic or other violence. As the cases examined by the Public Defender show, law-enforcement agencies, on some occasions, fail to interview alleged victims of violence; furthermore there are cases where these agencies delay their response to the incidents allegedly incriminating a law-enforcement official.

Sexual Harassment

Sexual harassment is one of the most common and specific forms of harassment, a hidden phenomenon in the Georgian experience.

The number of applications, lodged both with the Public Defender and the courts, concerning incidents of alleged harassment and sexual harassment was extremely low in the reporting period. The decrease in the number of these cases is preconditioned by several factors. There are persisting gender stereotypes in the country, according to which a wom-

an provokes unfavourable treatment towards herself whether at workplace or elsewhere. Therefore, victims expect that, in case of harassment from a man, they can be blamed by the society, their family or colleagues for inappropriate behaviour that clashes with the established moral principles of the society. Furthermore, in most of the cases, victims do not know whom to apply so that their words are taken seriously. Moreover, very often, victims believe that their situation might not be serious enough to tell others about it and sometimes they even think that they themselves provoked a harasser's behaviour and therefore tolerate the harassment.

Unfortunately, sexual harassment, both at workplace and in public domain, is beyond legislative regulation despite the fact that, by signing the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Georgia undertook an obligation to introduce criminal or other sanctions for sexual harassment and penalise it. The Public Defender emphasised numerous times the necessity for introducing an effective clause about sexual harassment in the Law of Georgia on the Elimination of All Forms of Discrimination and the Code of Administrative Violations.³ When discussing the aforementioned issue, the Public Defender relies on the standards developed by international institutions.

In the reporting period, with regard to incidents of sexual harassment, the Public Defender made a recommendation for the first time as well as submitted an *amicus curiae* brief. Both cases concerned sexual harassment of a woman at workplace by a man in a managerial position.

In one of the cases, an applicant alleged that she had to endure humiliation and insults in a public agency from her manager. She tolerated everything as she did not want to escalate the situation. Furthermore, the manager addressed her with familiar terms that are inappropriate for a working environment and demonstrate the advantage vis-à-vis a subordinated person. The applicant did not report the insults and humiliation for some-time but the Public Defender found that the fear of dismissal and stress were the major reasons for the applicant to tolerate such behaviour from the manager.

It should be noted that secrecy characterises incidents of harassment, therefore, making it is difficult to obtain statements from witnesses and/or material evidence. When studying the case-files, the interviews of the Equality Department's staff with various parties showed that sexual harassment is perceived as a service of a specific nature or physical contact during an act committed. The fact that sexual harassment involves verbal form of communication as well remains beyond attention. It is noteworthy that certain relationships are perceived differently in various cultural and social settings. However, in any case, the decisive significance is attached to whether an act concerned is welcomed and how it is perceived by the victim.

Thus, the perceptions related to sexual harassment and psychological condition of an alleged victim are further aggravated by the legislative gap and the absence of an effective

3 The 2016 Special Report by the Public Defender of Georgia on the Fight against Discrimination, its Prevention and the Situation on Equality, pp. 17-18, available at: <http://www.ombudsman.ge/uploads/other/3/3966.pdf>; also, The General Proposal of 28 March 2017 by the Public Defender of Georgia to the Committee of Legal Affairs of the Parliament of Georgia, available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/winadadebebi/saqartvelos-saxalxo-damcvelis-winadadeba-seqsualur-sheviwroebastan-dakavshirebit.page>.

mechanism. Therefore, a victim of harassment and/or sexual harassment is deprived of the possibility to protect herself/himself effectively from harassment at workplace or in other situations. The low level of awareness of sexual harassment is an additional problem.

As regards another case processed by the Department of Equality, the Public Defender submitted an *amicus curiae* brief to Tbilisi City Court,⁴ which discussed the specifics of finding incidents of sexual harassment and legislations and practices of other countries. The submission of the *amicus curiae* brief was preconditioned by the significance of the issue, on the one hand, and by the shortcomings of the legislation and lack of court practice, on the other hand.

Discrimination on Account of Pregnancy

As the practice of the Department of Equality shows, pregnant women form a separate group of victims suffering from discrimination on account of sex.

Unjustified differential treatment of women during pregnancy is a specific form of discrimination due to which a woman, during pregnancy, is unable to exercise her various rights. The Public Defender separated pregnancy as an independent protected ground. In the reporting period, The Public Defender made two recommendations to companies concerning direct discrimination based on pregnancy. These organisations are micro finance organisation LTD Credo⁵ and LTD New Vision.⁶ Recommendations were made about reinstating the employees who had been dismissed from office on the discriminatory ground and conducting organisational activities with due respect for the principle of equality. The employers were responsible for discrimination on account of pregnancy in both cases. After the expiry of the term of labour contracts of the pregnant employees, the employers, citing various formal pretexts, did not extend the labour contracts. Similar applications were lodged with the Public Defender in the current reporting period as well.

Advertisements and Statements Encouraging Discrimination

As the Public Defender's practice shows, advertisements that encourage discrimination, *inter alia*, against women is considered by private companies to be one of the ways to ensure successful sales of products. There are numerous such cases processed by the Department of Equality.

In the reporting period, the Public Defender issued two general proposals for the notice of private companies as he considered that their advertisements and statements reinforced the stereotypes about women. Several such statements are currently under the consideration of the Public Defender. For instance, TV Company Tabula⁷ disseminated its promo

4 See the full version at: <http://www.ombudsman.ge/uploads/other/4/4672.pdf>.

5 See the full version at: <http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/saxalxo-damcvelma-kerdzo-kompanias-orsulobis-nishnit-shromit-urtiertobebshi-diskriminacii-agmofxvris-sheaxe-b-mimarta.page>.

6 See the full version at: <http://www.ombudsman.ge/uploads/other/3/3877.pdf>.

7 See the full version at: <http://www.ombudsman.ge/uploads/other/4/4008.pdf>.

clip wherein a woman had merely a decorative presence and the clip objectified her by showing her naked body. In another case, Vake Swimming Pool posted the notice: “Dear ladies, you cannot go into the pool in your critical days.” The Public Defender considered that the notice contributed to gender stereotypes as menstrual cycle is a unique condition only characteristic to women.⁸ There also was a complaint lodged with the Public Defender which alleged that, according to a notice posted in one of the medical clinics, male patients could use services without queuing. After the Public Defender responded to the complaint, the respondent clinic removed the notice.

In the context of disseminating advertisement in public domain, respondents usually invoke their right to freedom of expression. Therefore, when studying allegedly discriminatory advertisements, the Public Defender pays due respect to the right to freedom of expression, on the one hand, and how it affects the rights of other persons, on the other hand. Legal persons engaged in commercial activities are interested in selling products and therefore they resort to commercial expression by disseminating advertisements. However, it is imperative that, in this process, certain groups were not stigmatised and/or stereotypes towards them were not formed and further reinforced. Stereotypes that are formed through advertisements are false premises to justify gender discrimination and they reinforce historically established forms of discrimination.

Absence of Court Practice

The Public Defender’s Practice showed that non-governmental organisations and independent researchers face obstacles in conducting researches on harassment of women and other forms of discrimination on account of sex as court judgments are not worded to enable identifying the sex of parties, witnesses, and third persons.

In light of the above-mentioned, the Public Defender issued a general proposal to Tbilisi City Court and the High Council of Justice to ensure that judgments adopted on the cases related to discrimination on account of sex and other discrimination cases are worded in a way that, after redaction, it was possible to identify the respective discrimination grounds (e.g. sex, religion, ethnic origin, sexual orientation, etc.) that are important for establishing discriminatory motives.

In his general proposal, the Public Defender maintained that the obstacles the researchers face in accessing diversified information on discrimination on account of sex/or other grounds limits their possibility to study the courts’ practice on discrimination cases. Independent researchers and non-governmental organisations could play important role in fighting violence against women and various forms of discrimination. It is essential to analyse court practice for assessing the situation of equality in the country and eliminating discrimination; the activities of researchers and human rights advocates are aimed in this direction. Thus, the Public Defender observed that it was imperative that researchers had actual information from competent authorities allowing comprehensive analysis of discrimination cases.

By the general proposal, the Public Defender also called upon the respondents to process statistic information on discrimination cases indicating discrimination grounds and the

8 See the full version at: <http://www.ombudsman.ge/uploads/other/4/4051.pdf>.

outcome of the consideration of merits. Furthermore, the applications and decisions related to discrimination should be registered. The Public Defender urged the High Council of Justice to extend the above-mentioned standards to all three levels of the judiciary.

2. DISABILITY

Similar to the previous reporting period, it is persons with disabilities that most frequently face discrimination in various spheres of life. It is problematic, *inter alia*, to implement the rights of children with disabilities to inclusive education and use of public transport. In the reporting period, the Public Defender submitted an *amicus curiae* brief in relation to an application, where it was claimed that a day centre discontinued providing services for a child with severe intellectual disability disorder. According to the application, the child was rejected by the day centre after the child's condition had deteriorated significantly. No social programme is tailored to the individual needs of children with similar conditions. Therefore, the child was enrolled in the home care programme. As it is claimed in the application, the aforementioned program does not help the child's development, as contact with social environment has been limited.

There are gaps also in the legislation governing the use of social packages by persons with disabilities. Furthermore, the courts of general jurisdiction and the National Forensics Bureau encourage discrimination with their practice of appointment of support persons to those with psychosocial needs.

Inclusive Education

The cases considered by the Public Defender show that there are incidents where persons with disabilities or children with special education needs face obstacles in the process of receiving school education.

Due to the imperfect legislation and lack of adequate response on the part of the Ministry of Education and Science of Georgia when studying the issue, the educational process is not fully tailored to the children's needs. Furthermore, as a rule, there is a lack of special education teachers in schools, or their role is not comprehended adequately.

The Public Defender was addressed by the parents of minor L.S., who claimed that their ten-year old child always faces problems in school due to hyperactivity. The child cannot exercise the right to education fully as teachers fail to cope with the child's behaviour. The child is not involved in lessons, as there is no safe environment created for the child and other children and lessons are frequently skipped.

The Public Defender received an application from M.K., according to whom the school of their child, who has autism spectrum disorder, constantly fails to accommodate their child's specific needs. According to the school director's instruction, whenever children are late and there is little time left until the end of a lesson, the children are not to be

admitted into the school. This case particularly highlights the problem of inadequate statutory regulation of the role of school administrations, teachers and parents.

On 23 December 2016, the Public Defender referred a general proposal⁹ to the Ministry of Education and Science of Georgia to have the improvement of the legislation governing inclusive education expedited. Namely, it is imperative to statutorily determine in detail the functions of a multidisciplinary group of inclusive education that would improve its effectiveness in terms of the management of inclusive education, its supervision as well as the functions of being an intermediary between school and parents of pupils with special educational needs. The role of a special education teacher should be determined statutorily and his/her functions should become more effective in terms of adopting decisions regarding inclusive school education of pupils with special educational needs. It is necessary to determine in detail the rights and duties of the parties to the process of inclusive education, especially with regard to the role of parents having children with special educational needs. The Public Defender considers that inconsistent approach towards the specific needs of children with autism spectrum disorder as well as imperfect legislation governing inclusive education encourages discrimination of children with disabilities.

Use of Public Transport by Persons with Disabilities

Unhindered use of public transport by persons with disabilities remained problematic in this reporting period as well. As the practice of the Public Defender show, given the management of children with autism spectrum disorder is difficult, there are cases when disabled persons and children, and parents with disabled children, are victims of aggression on public transport from drivers and other passengers.

On 5 September 2016, the Public Defender of Georgia was addressed by E.M, claiming that the applicant and their children, one of whom has autism spectrum disorder, were subjected to discrimination by a bus driver. After this incident, the employees of the Equality Department of the Public Defender's Office accompanied the applicant several times during travel by public transport. The observation showed that the child was a victim of aggression from drivers as well as passengers. The citizens' annoyance and negative attitude is caused by low awareness and stereotypical attitude. Citizens do not have information about autism disorder spectrum and are under the impression that a child's behaviour is manageable.

Regarding this issue, for raising public awareness, the Public Defender had commissioned a video clip that depicts travel on public transport by a child with disability and his/her parents. The clip will be shown on television and the Internet.

It should be noted that, on 6 November 2015, regarding a similar incident, the Public Defender of Georgia issued a general proposal¹⁰ for the notice of LTD Tbilisi Transport Com-

9 See the full version at: <http://ombudsman.ge/ge/diskriminaciis-prevenciis-meqanizmi/gadawyvetilebebi/zogadi-winadadeba/zogadi-winadadeba-inkluziuri-ganatlebis-processhi-shezuguduli-sheadzleblobis-nishnit-diskriminaciis-tavidan-acilebis-sheaxebe.page>.

10 See the full version at: <http://ombudsman.ge/ge/recommendations-Proposal/zogadi-winadadeba2/zogadi-winadadeba-shps-tbilisis-satransporto-kompanias-shezuguduli-sheadzleblobebis-mqone-pirta-specialuri-sachiroebebis-sheaxebe.page>.

pany. The Public Defender recommended conducting training sessions on special needs of persons with disabilities for those employees who are in direct contact with passengers; to elaborate a flexible schedule for transportation of passengers envisaging changes in the standard schedule when serving persons with special needs to enable affording additional time for safe and comfortable travel, if needs be.

Use of Social Allowance by Persons with Disabilities

Persons with disabilities face differential treatment even when receiving social allowance designated for them. Namely, stemming from Article 6.4 of Resolution no. 279 of 23 July 2012, adopted by the Government of Georgia on Determining Social Package, persons employed in public sector who have significant (except for those persons who have significant disability due to eyesight) and moderate disability are not eligible for social allowance. However, persons with the same disability but employed in private sector are eligible for the social benefits package.

On 31 May 2017, the Public Defender of Georgia made a recommendation¹¹ to the Government of Georgia on finding direct discrimination against persons with significant and moderate disabilities on account of employment field. The Public Defender observed that persons having similar disability and employed in public and private sectors have equal needs; accordingly, their interest to receive the social package provided under the resolution is equal. Persons with significant (except for those persons who have significant disability due to eyesight) and moderate disability, who are in essentially similar conditions, are treated differently on account of their field of employment. The government did not cite the legitimate purpose of the differential treatment.

The Practice of Appointment of Support Persons

The issues related to persons with disabilities, such as respect for their inherent dignity, individual autonomy, *inter alia*, possibility to make a choice, and independence of human being, non-discrimination, full and effective participation, social inclusion, etc., are closely related to legal capacity which is the cornerstone of the 2006 UN Convention on the Rights of Persons with Disabilities (CRPD).

The state has made certain steps towards shifting from medical model of disability to social model by introducing a support institution. However, as the analysis¹² by the Public Defender of courts' practice and applications lodged with the Public Defender's Office shows, the practical implementation of the support institution is ridden with problems. Namely, in the process of adopting a decision concerning the recognition of a person as a recipient of support, questions asked by a court to the National Forensics Bureau are of general nature; courts decisions based on an expert's finding are set out in a standard form and individual needs of a person are neglected.

11 Available at: <http://ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/saxalxo-damcvelma-saqartvelos-mtavrobas-kerdzo-da-sadjaro-seqtorshi-dasaqmebul-shshm-pirebs-shoris-diskriminacis-agmofxvrisaken-mouwoda.page>.

12 Public Defender of Georgia, *Legal Capacity – a Legislative Reform without Implementation*, study report, 2016, available at: <http://www.ombudsman.ge/uploads/other/3/3948.pdf>.

The rationale of support is to make a recipient of support more confident and contribute to developing his/her skills so that, depending on will, these persons need less support in future.¹³

Thus, the proper application of the support institution has enormous significance in terms of improving disabled persons' legal status and facilitating their social inclusion.

Experts' findings on psychosocial needs, as well as courts' decisions, should show individual approach to a potential recipient of support. Courts should provide reasoning that in case of appointing a support person they take into consideration the psychosocial needs of support recipients and reached decisions based on the best interests of support recipients. Otherwise, there can be a risk that the support model will exclude a person's will and there will be significant and unjustified interference with a person's autonomy.

Considering the relevance of the issue, the Public Defender, in his general proposal of 21 June 2017,¹⁴ observed that neglecting persons' individual needs by the courts and the National Forensics Bureau creates obstacles for any attempt at making disabled persons full members of society; encourages creation of a stigmatising environment and perceptions encouraging discrimination and significantly impairs the enjoyment of their fundamental rights. The Public Defender believes that it is imperative to establish a standard in courts of general jurisdiction based on which judges will be obliged to determine the spheres and scope of support stemming from persons' psychosocial needs and their best interests. Therefore, it is necessary that the National Forensics Bureau used an individual approach when assessing persons with psychosocial needs.

3. RELIGION

Religious minorities still face obstacles in Georgia. In the reporting period, the Public Defender mainly identified incidents of discrimination/encouragement of discrimination against the Muslim community. These incidents are related to indoctrination in public schools, obstacles created during crossing border as well as use of buildings.

Situation in Public Schools

The analysis of the cases considered by the Public Defender of Georgia in the reporting period show that in a number of public schools, when exercising the right to education, there were incidents of restricting pupils' right to expressing their religious identity, as well as incidents of religious indoctrination in educational process, proselytism or forced assimilation.

13 UN Committee on the Rights of Persons with Disabilities, General Comment no. 1, Article 12: equal recognition before the law, CRPD/C/GC/1, 2014, para. 24.

14 The Public Defender's General Proposal to the High Council of Justice of Georgia and legal entity of public law Levan Samkharauli National Forensics Bureau, adopted on 21 June 2017, available at: <http://www.ombudsman.ge/uploads/other/4/4616.pdf>.

One of the cases is related to an incident that took place in the village of Mokhe, when an acting school director requested a Muslim girl not to wear her Muslim headscarf (hijab) in the school building as a precondition for enrolment in school. This became the ground for protests from school's Muslim pupils. In parallel to this incident, there were controversies concerning construction of an Islamic place of worship in the village. The acting school director was involved in this process and actively opposed the construction of the building.

The incidents of humiliating Muslim pupils in the village of Nigvziani, Lanchkhuti municipality, also took place against the background of discussions on the construction of Islamic places of worship. The applications filed with the Public Defender mention the following main problems existing in schools:

Trends of increasing violent and aggressive attitudes among pupils, which school administrations fail to prevent; inactivity on the part of teachers and administration when Muslim pupils are addressed in a derogatory manner and called "Tatar" by other pupils; and the staff's passivity in eradicating and preventing such incidents.

Based on a relevant application, the Public Defender examined the situation in Tbilisi Public School no. 158. According to the application, religious corners, icons, crucifixes, saints' images dominated in classroom infrastructure. It has turned out that some teachers started lessons with a ritual of burning incense. The applicant claimed that these teachers were determined to indoctrinate non-orthodox pupils. According to the case-files, clergymen frequently visited the school to give blessings. There was a certain tradition of giving blessings to the pupils in the first form in a church, where Muslim pupils also participated. The school excursions were mainly organised in orthodox churches.

One of the applications concerned the incidents that took place in the beginning of June 2014, at a demonstration motivated by religious intolerance against Jehovah's Witnesses. In the process of consideration of the application, it has turned out that pupils of Terjola Public School no. 2 attended the demonstration holding banners saying "STOP ANTI-ORTHODOX CONSTRUCTION!!!" The schoolchildren actively attended demonstrations of similar content. The obtained video recording shows the use of hate speech and threats such as, "THESE SECTARIANS STARTED CONSTRUCTION", "THERE IS AN ORDER TO STOP CONSTRUCTION OF THESE RACELISTS' NEST", "PARLIAMENTARIANS ADOPTED THE SO-CALLED NON-DISCRIMINATION LAW AND DIMINISHED THEMSELVES TO BUGGERY", "WHEN AUTHORITIES LET JEVOAHS, RACELISTS BUILD A NEST", "TO BE AN ORTHODOX AND A GEORGIAN, MEANS TO SACRIFICE YOURSELF TO THESE TWO WORDS, IF NECESSARY", "BOTH GOVERNMENTS ARE SUPPORTING SODOMITES", "WHOEVER SIGNS UP FOR CONSTRUCTION OF SECTARIAN'S NEST, IS A HYPOCRITE", "THEY EITHER CONVERT, OR ESCAPE", etc.

Stemming from the above-mentioned, for establishing religious neutrality and a tolerant environment in schools, the Public Defender issued a general proposal¹⁵ for the notice of the Minister of Education and Science of Georgia. The Public Defender urged the minister to study in detail the freedom of expressing religious identity, *inter alia*, wearing traditional Muslim headscarf for women (hijab) in public schools and establish a uniform approach for all public schools; to assess the fitness of the acting director of the public school in Mokhe for the job; to ensure eradication of the practice of use of religious items

15 See the full version at: <http://www.ombudsman.ge/uploads/other/4/4746.pdf>.

for non-academic purposes in school infrastructure; to ensure training sessions on the significance of tolerance and multicultural instruction, especially giving priority to diverse regions populated by religious or ethnic minorities; and in case of finding discrimination, if needs be, to ensure that psychological assistance is provided and interviews are held with teachers, and they are retrained.

Case of Kobuleti Boarding School

In the past years, the Public Defender, within his mandate of fighting against discrimination, submitted on several occasions *amicus curiae* briefs to the courts of general jurisdiction concerning the incidents of alleged discrimination on account of religion and found discrimination on account of religion for the first time in the reporting period.¹⁶

The case concerns connecting a building owned by the Muslim community in Kobuleti to wastewater system. The building is planned to be used as a children's boarding school. Despite several attempts, LTD Kobuleti Water has been unable to conduct works to date. Kobuleti *Gamegeoba* cites the local population's resistance as a reason for the lack of progress in the issue. The Public Defender considers that the inactivity is preconditioned by the fact that the non-commercial legal entity Georgian Muslims Relations is planning to use the building for religious purposes.

This case and the failure to comply with the Public Defender's recommendation once more highlights the state's indifferent attitude towards the needs of religious minorities and the influence the dominant religious group has on the state's actions. The state refrains from getting actively involved in the relations among opposing groups and tries to accommodate the interests of one group so that not to incur the indignation of the dominant group. In the case at stake, such approach on the part of the state fails to ensure the effective enjoyment of the right to property by the Muslim community.

The Georgian legislation¹⁷ empowers the Public Defender to apply *ex officio* to a court and request adoption of an administrative act or carrying out of an action if an administrative body had failed either to respond to his recommendation or accept it, and there is sufficient evidence confirming discrimination. To ensure the implementation of the recommendation at stake, the Public Defender is planning to resort to this statutory mechanism.

Border Crossing by Muslims

In the reporting period, the Public Defender received applications claiming that Muslim individuals faced problems when crossing the state border of Georgia. Namely, they were delayed at the border, enquired about the purpose of their travel, their links with the Republic of Turkey and relations with other Muslim persons.

16 Recommendation made by the Public Defender of Georgia on 19 September 2016 concerning discrimination on account of religion, available at: <http://www.ombudsman.ge/uploads/other/3/3908.pdf>.

17 Article 14^{1.2.h}) of the Organic Law of Georgia on the Public Defender of Georgia; Article 6.2.g) of the Law of Georgia on the Elimination of All Forms of Discrimination.

With the view of ensuring comprehensive examination of the case, apart from the persons referred to in the applications, the employees of the Public Defender's Equality Department additionally interviewed Muslim individuals who faced similar problems when crossing the state border. The Public Defender requested from competent authorities video recordings from the timeline indicated in the applications and copies of documents on voluntary transfer into state ownership of items brought through the Sarpi customs checkpoint at the border.

As the result of processing information received from the Revenue Service, it has turned out that the list of the items brought through Sarpi customs checkpoint and voluntarily transferred into state ownership within the indicated period is diverse and mainly includes tobacco, alcoholic products, cartridges of firearms, household items, and clothes. Publications take up only a very little place on this list. Only seven such occasions have been registered so far. However, in all seven cases, the transferred books are about Islam; Quran is among them. The list is attached with the list of those persons who voluntarily transferred books into state ownership.

It is evident from the obtained case-files that, when crossing Sarpi customs checkpoint, the patrol police department of the Ministry of Internal Affairs and legal entity of public law Customs Department of the Revenue Service - as the authorities in charge of passport control - created obstacles for Muslim individuals. Unlike others, they were delayed and during lengthy procedures of verification they were asked personal questions about their appearance, religious beliefs, past, connections with Turkey and lifestyle. Furthermore, all preconditions were created for handing over religious publication owned by them.

Therefore, the Public Defender found that there had been an interference with the applicants' right to freedom of religion through the restriction of their freedom of movement and right to property.¹⁸

According to the Public Defender's finding, delaying the applicants and other interviewed persons when crossing the border, creating obstacles to importing religious items aim at suppressing religious proactiveness in these persons, which might have a chilling effect in future for striving towards the improvement of the rights of the Muslim community residing in Georgia. In the era of technological progress, it is easily possible to look up and disseminate electronic publications, among them, religious texts. Against this background, the prohibition imposed by the state on importing religious publications assumes the form of the opaque practice of encouraging discrimination.

4. SEXUAL ORIENTATION AND GENDER IDENTITY

Applications examined by the Equality Department show that representatives of LGBT community are one of the most vulnerable groups, the members of which face discrimination in almost every sphere of life.

18 See the full version at: <http://www.ombudsman.ge/uploads/other/4/4398.pdf>.

However, representatives of LGBT community often refrain from publicising alleged discriminatory incidents that take place against them. Unfortunately, negative attitudes towards representatives of LGBT community are still firmly rooted in the society that prevents them from exercising a number of their rights and incites intolerance and violence against this community.

The Public Defender responded to the incident that took place on 25 August 2017, in Batumi that involved alleged ill-treatment of L.B. and T.K., members of Equality Movement – a non-commercial legal entity working on LGBT rights – by a law-enforcement official. The Public Defender issued a public statement¹⁹ and observed that in the past few years, there were numerous incidents of violence and homophobia when representatives of LGBT community pointed out police inactivity and their derogatory attitude.

Furthermore, according to the practice of the Public Defender, there are frequent occasions where representatives of LGBT community face discrimination when expecting to receive services. In some cases, the applicants are subjected to discrimination whether they belong to the LGBT community or not. This is mainly preconditioned by their appearance, dressing style or behaviour, which is part of their personal autonomy and self-fulfilment.

The cases examined by the Public Defender, in which he made recommendations, included a taxi driver's refusal to provide service to a transgender woman;²⁰ an incident where the same sex couple were thrown out of a night club;²¹ and discontinuation of a rental agreement due to discrimination by perception.²² It is noteworthy that in the cases of alleged discrimination on account of sexual orientation or gender identity, the Public Defender reaches decisions taking into consideration not only evidence and established circumstances existing in case-files, but also general perceptions towards LGBT community in the society, which, as a rule, is the reason that causes discrimination.

In the reporting period, the Public Defender also responded, on numerous occasions, when advertisements encouraged discrimination, *inter alia*, on account of gender identity. One such case was a video clip circulated by LTD CCLoan mocking a transgender individual, who in order to earn money, has to resort to prostitution.²³

5. DISCRIMINATION IN LABOUR AND PRE-CONTRACTUAL RELATIONS

The majority of the cases of alleged discriminatory incidents examined by the Public Defender are about labour and pre-contractual relations. The Public Defender made numer-

19 <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-gancxadeba-tanasworobis-modzraobis-wevrita-mimart-ganxorcielebuli-savaraudo-arasatanado-mopyrobis-faqtze.page>.

20 See the full version at: <http://www.ombudsman.ge/uploads/other/4/4497.pdf>.

21 See the full version at: <http://www.ombudsman.ge/uploads/other/4/4194.pdf>.

22 The Public Defender's decision of 25 April 2017 on finding direct discrimination on account of appearance and discrimination by perception on account of sexual orientation is available at: <http://www.ombudsman.ge/uploads/other/4/4397.pdf>.

23 See the full version at: <http://www.ombudsman.ge/uploads/other/4/4000.pdf>.

ous recommendations on this issue. In some of the cases, proceedings were suspended/discontinued due to the fact that the applicants applied to a court with regard to the same factual circumstances and discriminatory treatment was not found in other cases.

Vacancy Notices

Discrimination as a social phenomenon emerges particularly acutely in labour relations as these relations involve subordination and employers might have the opportunity to take advantage of an employee's position as the weaker link in the relation. Accordingly, the Public Defender constantly pays attention to the issues of eradication of discrimination in labour and pre-contractual relations and its effective prevention. To this exact end, the Public Defender issued general proposals to the website www.jobs.ge, which hosts job vacancy notices from all over Georgia, and LTD Elite Service.

The Public Defender studied discriminatory job announcements published on various websites based on the applications as well as on his own initiative. The majority of vacancies contain sexist phrases. For example, a male is a desirable candidate for those important positions with high salary. Some employers seek an "unmarried girl with pleasant looks and aged between 18 to 25" for positions that do not require special qualifications.

Due to the fact that employment websites do not screen for vacancies containing discriminatory phrases, they facilitate employers to discriminate at the employment stage, on the one hand, and on the other hand, they circulate discriminatory practices.

In those circumstances, when unemployment is an acute problem in the country, the nefarious and discriminatory practice existing in the labour market often discourages job seekers even to respond to work advertisements when they require "pleasant appearance", "stability", a specific sex, etc. All of those criteria, except for sex, fall under subjective categories, which are impossible to define objectively.

Considering all this, in reality, on the one hand employers discriminate as they expressly indicate discriminatory terms in vacancy notices; on the other hand, job websites, by disseminating vacancies containing discriminatory criteria, contribute to the reinforcement of negative stereotypes concerning gender roles of woman and man in the field of employment, as well as encouraging discrimination on account of age. Furthermore, in such situations, private persons, except in exceptional cases, do not express their readiness to cooperate with the Public Defender. The Public Defender emphasised this problem in his 2015 Parliamentary Report²⁴ as well.

Considering the significance and large-scale nature of the issue, the Public Defender, in the reporting period, issued a general proposal for the notice of the Ministry of Labour, Health and Social Affairs of Georgia to become interested in the problem and respond appropriately in order to eradicate discrimination in pre-contractual relations. Furthermore, the Public Defender called upon the ministry in his general proposal to elaborate guidelines for raising awareness among employers. The guidelines should contain recommendations

24 2015 Report by the Public Defender of Georgia of 2015 on the Protection of Human Rights and Freedoms in Georgia, p. 766, available at: <http://www.ombudsman.ge/uploads/other/3/3512.pdf>.

on phrasing vacancy notices; explain what terminology amounts to discrimination; and how notices should fit job descriptions without referring to discriminatory restrictions.

Labour Relations in Schools, Kindergartens and Local Self-Government Bodies

In the reporting period, the Public Defender's Office received numerous applications concerning various types of discrimination in terms of exercise of labour rights in schools, kindergartens and local self-government bodies. The great majority of the applications concerned the incidents of alleged discrimination on political grounds. Some of the applications also referred to disabilities, different opinions and ethnic origin as grounds for discrimination.

Similar to the previous reporting periods, the allocation of classroom hours in schools remains problematic. Changes in classroom hours are often considered to be discriminatory by applicants. Educational process in a school is naturally dynamic and allocation of classroom hours, on the one hand, can be preconditioned by various objective circumstances such as changes in the number of teachers, changes in the number of classroom hours, and division/merging of classes. On the other hand, changes in classroom hours can be used to "punish" or "get even" with some teachers and/or for the purpose of discriminatory treatment of teachers.

According to the applications examined by the Equality Department, appointment of class teachers is problematic in schools. According to the existing practice, when the new school year starts, a class teacher of twelfth form automatically becomes a class teacher of fifth form, whereas a class teacher of fifth form automatically takes charge of the first form. It could be possible that such practice would deprive subject teachers any possibility of becoming a class teacher and therefore discourage them from trying to become class teachers. On the other hand, this approach is a kind of safeguard for acting class teachers. Accordingly, decisions by school directors to give the role of a class teacher to other teachers could be justified by the reason of giving incentives to other teachers and making them more proactive in educational process.

The Public Defender's Equality Department examined applications where the heads of pre-school educational institutions contested discriminatory dismissals. The examination of the applications showed that Tbilisi Nursery and Kindergarten Management Agency conducted audit aimed at checking expenditures and the expediency of writing off surplus food in some of the pre-school educational institutions. Minor violations were found out in some of the nurseries and kindergartens, which eventually served as the basis to dismiss directors.

The dismissed persons believed the basis for the termination of their labour contracts was their relatives' association with the opposition party and/or the fact that they were appointed to respective positions when the political organisation United National Party was in power.

In the reporting period, there are relatively fewer applications on alleged violations of labour rights on discriminatory grounds in local self-government bodies. In one case, an applicant disputed the means and channels of dissemination of vacancy notices. The ap-

plicant argued that job competition had not been held publicly and vacancy notice had not been disseminated at all.

In the reporting period, applicants addressed the Public Defender also on those occasions when they believed that there was a risk of infringement of their labour rights and demanded preventive measures to avert these risks. While the mandate of the Public Defender only allows responding to an actual violation, the Equality Department of the Public Defender's Office admitted, in order to avert violation of rights, such applications and requested other parties to submit information. Later proceeding on this type of cases discontinued as the risks of violations of rights were averted and/or concerned parties mutually agreed on the discontinuation of labour relations.

Discrimination in Labour and Pre-Contractual Relations on Account of Different Opinion

Incidents of alleged discrimination are particularly frequent in labour and pre-contractual relations and manifested in various forms. In the reporting period, the Public Defender made two recommendations concerning finding discrimination based on holding different opinions and trade union activities.

The first case concerned refusal of LTD Zaza Pachulia Basketball Academy²⁵ to employ the applicant after he criticised Levan Kobiashvili – a friend of the academy's Head, Zaza Pachulia.

Levan Kobiashvili was contesting in the 2016 parliamentary elections. The respondent cited the lack of financial resources at the academy as the ground for refusing to employ and discontinue cooperation with the applicant. This has not been cited by the academy as an impediment to filling the position before the applicant posted the critical opinion. Therefore, Public Defender did not find the lack of financial resources, which could be a legitimate reason in various cases, as a valid argument that excluded discriminatory treatment in the given case.

Another incident concerned the dismissal of journalist Lasha Meskhi from legal entity of public law Georgian Public Broadcaster.²⁶ Lasha Meskhi was actively involved in the activities of a trade union and for years harshly criticised the management and policy of the Public Broadcaster. At the end of January 2017, the Public Broadcaster concluded a one-month labour contract with Lasha Meskhi and 12 other employees. After the expiry of the contractual term, the contract was not extended only for the applicant, for which the respondent cited the end of the contract. The fact that out of 13 employees of the Public Broadcaster, with whom one-month contracts have been concluded, only the applicant was dismissed naturally gave rise to misgivings about differential treatment, especially in those circumstances, where the materials adduced by the applicant confirmed his active involvement in a trade union and his critical attitude towards those problems which remain to date in the Public Broadcaster.

25 See the full version at: <http://www.ombudsman.ge/uploads/other/4/4324.pdf>.

26 Recommendation of the Public Defender of Georgia of 31 May 2017 concerning finding discrimination on account of trade union membership, available at: <http://www.ombudsman.ge/uploads/other/4/4509.pdf>.

6. INVESTIGATION OF ALLEGED HATE CRIMES

Similar to the previous reporting period, ineffective investigation of alleged hate crimes remains a challenge. The cases examined by the Public Defender concern the hate crimes allegedly committed on account of religion, ethnic origin, sexual orientation, gender identity, or other protected ground.

The representatives of the Public Defender, similar to the previous reporting period, conducted training sessions on hate crimes for the staff of the Ministry of Internal Affairs of Georgia. This is an example of successful cooperation between the Public Defender and investigative authorities. Furthermore, within the United Nations Universal Periodic Review, Georgia was recommended²⁷ to set up a special structural unit for the investigation of hate crimes. However, despite these efforts, such a unit has not been created to date. As the cases examined by the Public Defender show, in most of the cases, hate as a motive remains beyond the attention of investigation authorities, which obstructs the prevention of crimes motivated by intolerance.

The cases examined by the Public Defender involve crimes allegedly committed by discriminatory motives, where investigation failed to establish hate as a motive and later investigation was either continued or discontinued; there are also cases where investigation was not instituted due to non-existence of elements of crime. The Public Defender also studies incidents of discriminatory physical and verbal abuse allegedly committed by law-enforcement officials.

A large portion of alleged hate crimes is committed against Jehovah's Witnesses and involves violent and other acts. Investigation of these crimes, according to information submitted by investigation authorities, could not identify any discriminatory ground. Later, investigation was either continued or discontinued or investigation was not instituted due to non-existence of elements of crime. According to one of the applications, an automobile that was driven by a person that had previously showed negative attitude towards Jehovah's Witnesses was deliberately crashed into Jehovah's Witnesses. According to another application, a Jehovah's Witness, at whose house religious activities had been carried out, was subjected to physical assault by a neighbour. There are also incidents where systematic verbal abuse is categorised as beating and not, for example persecution under Article 156 of the Criminal Code; and whenever physical abuse is not established, investigation is discontinued.

Jehovah's Witnesses also alleged incidents involving throwing stones at the windows of religious buildings, setting stands on fire and destruction of religious publications. According to them, while damage caused to religious buildings in each particular case does not amount to GEL 150, the total damage is rather substantial. Despite this, such incidents are qualified under Article 187 (damaging or destruction of an item) of the Criminal Code and investigation is discontinued due to the absence of elements of crime as the damage is less than GEL 150 in each particular case. There are cases, when after the discontinuation

27 https://www.upr-info.org/database/index.php?limit=0&f_SUR=63&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly.

of investigation an incident is qualified as an administrative violation. However, even if someone is found to be responsible for an administrative violation, there is no indication from the relevant decision that the victim suffered damage due to discrimination.²⁸

There are also cases, where during investigation of alleged hate crimes committed against representatives of LGBT community. However, according to the information submitted by investigative authorities, despite attempts, no discriminatory motives are identified or investigation was not instituted due to non-existence of elements of crime. The Public Defender is unaware as to what investigative actions were conducted in such cases for establishing hate as the motive. For instance, after lethal attack on a transgender woman in October 2016, the Public Defender was notified by the Prosecutor's Office of Georgia that hate, as a motive, was not established in the case.

There are 11 applications under the consideration by the Public Defender, where applicants allege various discriminatory motives on the part of law-enforcement officials who subjected them to physical and verbal abuse; these cases mainly concern representatives of LGBT community. In one case, police officers addressed a transgender woman with terminology inappropriate for her identity. In other cases, they addressed representatives of LGBT community with homophobic phrases. People fall victim to alleged abuse by police also on account of religion and ethnic origin. For instance, one of the applicants maintained that a police officer slapped him on the head and called him "Kurd" in a derogatory context.

In the Public Defender's opinion, it is essential that for the commission of a hate crime, the person responsible should be punished not only for the commission of the crime, but also for discriminatory attitude,²⁹ which was the motive of the crime.

7. STATEMENTS ENCOURAGING DISCRIMINATION

An important challenge in terms of protection of equality is the statements made by public officials that encourage discrimination. Due to the large-scale nature of the problem, the Public Defender studied the statements made by the Members of the Parliament of Georgia that reinforced discriminatory perceptions against women, persons with disabilities, LGBT community, and religious minorities, and issued a general proposal for the notice of the Parliament.³⁰ In his general proposal, the Public Defender addressed the general legal status and immunity of members of parliament, which widens the scope of their freedom of expression. The Public Defender maintains that immunity is a privilege of a member of parliament, as a public political figure. The reason thereof is to ensure democratic functioning of the parliament. Abuse of this privilege, first of all, is an act against the

28 The administrative legislation in force does not provide for discriminatory motive as an aggravating circumstance for administrative responsibility.

29 Under Article 53³.1 of the Criminal Code of Georgia, commission of a crime with the motive of intolerance on any discriminatory ground is an aggravating circumstance.

30 See the full version at: <http://ombudsman.ge/uploads/other/4/4192.pdf>.

parliament, as an institution. It is unacceptable to use hate speech in political discourse whether it is within the freedom of expression of a member of parliament.

In the reporting period, the Public Defender commented on the request of the Keda *Sakrebulo's* deputies to women to leave the hearing hall;³¹ and the remarks voiced by Deputy of the Supreme Council of the Autonomous Republic of Ajara, Medea Vasadze and political analyst, Gia Khukhashvili according to which the President of the Parliament was in “political autism”.³²

The Public Defender considers that public statements by public officials that encourage discrimination are an obstacle to protection of equality. Against the background, where negative attitudes towards various vulnerable groups are still firmly rooted, voicing discriminatory phrases and opinions by the persons familiar to the society is a step backwards in the process of fighting discrimination.

31 Available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcveli-qedis-sakrebulos-wevrebis-seqsis-tur-gamonatqvamebs-exmianeba.page>.

32 Available at: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-autizmis-speq-tris-mqone-adamianebis-mimart-gamotqmul-sheuracmyofel-gamonatqvamebs-exmianeba.page>.

CHAPTER IV. SHORTCOMINGS IN THE NON-DISCRIMINATION LEGISLATION OF GEORGIA

As mentioned above, the adoption of the Non-Discrimination Law as a substantive instrument, as well as establishing a legal remedy for the restoration of a violated right is a progressive step in terms of protection of human rights in Georgia, namely, the right to equality. However, as it was pointed out in 2015 and 2016 special reports on the situation of equality by the Public Defender, the legislative shortcomings creating obstacles in fighting against discrimination have not been eradicated to date. The situation concerning the legislative proposal submitted by the Public Defender to the Parliament of Georgia in February 2015 has not changed. This proposal was initiated by the parliament in October 2015.

The abovementioned legislative proposal concerns procedural amendments and implies rendering the submission of information by natural and legal persons of private law to the Public Defender obligatory, as in the case of public agencies/officials, in the process of examination of discrimination cases as well as the submission of information about the activities implemented for complying with a recommendation. Furthermore, the legislative proposal also requires extension of the three-month term of applying to a court in discrimination cases to one year, reinforcement of the standard of burden of proof and giving the power to the Public Defender to extend the study of case-files in administrative proceedings. In April 2017, the Public Defender addressed the Parliament of Georgia once again and urged to expedite the adoption of initiated amendments. The Public Defender maintained that comprehensive examination of discrimination related cases are hampered by the fact that natural and legal persons of private law do not have a statutory obligation to submit information to the Public Defender.³³

Unfortunately, procedural shortcomings are not the only obstacle rendering the process of fighting for equality ineffective. As it was mentioned in the 2016 special report by the Public Defender on the situation of equality, the Georgian legislation does not provide for forms of discrimination that would be identified with the application of a test different from the tests applicable to direct and indirect discrimination. Therefore, it needs a separate statutory regulation. Namely, the Non-Discrimination Law does not provide for the **refusal to reasonable accommodation, harassment/sexual harassment and segregation**, as separate forms of discrimination. It was pointed out in the same report that some of the concepts provided by law, such as victimisation, discrimination on account multiple grounds, and instruction to discriminate, need to be improved.

With the support of Promoting Rule of Law in Georgia (PROLoG) Activity – a programme implemented by the East-West Management Institute (EWMI), international expert Andrea Broderick prepared a report analysing the concept of reasonable accommodation and reflecting on the recommendations concerning the implementation of this principle in Georgian legislation. The Public Defender continues his work towards the incorporation

33 Available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelma-parlaments-antidiskriminaculi-meqanizmis-gadzlierebis-miznit-cvllilebebis-migebisken-mouwoda.page>.

of refusal to reasonable accommodation as a form of discrimination in Georgian legislation, based on the aforementioned recommendations.

It should be noted that, when discussing discrimination, the Public Defender fills the substantive gap of domestic legislation invoking the sources of international law. Therefore, the failure of the legislation to provide for a form of discrimination cannot serve as a ground to leave it outside the discussion. For instance, the Public Defender submitted *amicus curiae* briefs in cases concerning forms of discrimination such as sexual harassment³⁴ and refusal to reasonable accommodation.³⁵

Furthermore, another problem is how the Law of Georgia on the Elimination of All Forms of Discrimination defines the concepts of *direct* and *indirect discrimination*. These definitions do not comply with the standards established by international law for these forms of discrimination. According to the European standards, direct discrimination can be defined as *treating differently, without an objective and reasonable justification, persons in analogous, or relevantly similar, situations, where those differences are based on an identifiable, objective or personal characteristic, or status*.³⁶ *Indirect discrimination takes place, where a difference in treatment takes the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group*.³⁷

The Public Defender maintains that the fight against discrimination and attaining substantive equality is a complex and long-term process, during which various obstacles emerge in the form of absence of state policy or public awareness. Considering this, it is vitally important that there was at least legislation that would comprehensively ensure formal equality of opportunity.

34 See the full version at: <http://www.ombudsman.ge/uploads/other/4/4672.pdf>.

35 See the full version at: <http://www.ombudsman.ge/uploads/other/4/4426.pdf>.

36 *Kiyutin v. Russia*, application no. 2700/10, judgment of the European Court of Human Rights of 10 March 2011: “treating differently, without an objective and reasonable justification, persons in analogous, or relevantly similar, situations”, which is “based on an identifiable, objective or personal characteristic, or ‘status’”; Article 2.2.a) of the EU Race Equality Directive: “direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin.”

37 *D.H. and Others v. the Czech Republic*, application no. 57325/00, judgment of the Grand Chamber of the European Court of Human Rights of 13 November 2007: “a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group”; Article 2.2.b) of the EU Race Equality Directive: “indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons.”

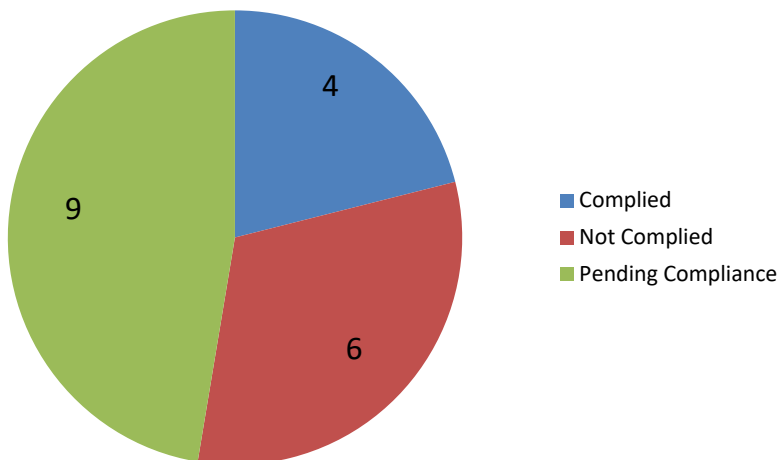
CHAPTER V. TRENDS IN COMPLYING WITH THE PUBLIC DEFENDER'S DECISIONS

Under the Law of Georgia on the Elimination of All Forms of Discrimination,³⁸ the Public Defender makes recommendations concerning the finding of discrimination, and issues general proposals on preventing and fighting discrimination.³⁹ These decisions are recommendatory in nature. However, the Organic Law of Georgia on the Public Defender of Georgia obliges public agencies to consider Public Defender's decisions and respond within 20 days about the outcomes of the consideration. The chapter below gives information about compliance by respondents with the decisions adopted by the Public Defender concerning discrimination cases.

Since the creation of the Department of Equality, until 31 August 2017, the Public Defender addressed public agencies with 19 recommendations and general proposals; 16 recommendations and general proposals were addressed to private persons.

Public agencies complied with 4 decisions of the Public Defender out of 19; 6 decisions were not accepted and 9 decisions are currently being implemented. According to the responses received from some of the public agencies, they agree with a recommendation/proposal, however, in order to comply with them, it is necessary to draft amendments to respective normative acts. Sometimes, respondents notify that for raising awareness on equality they conduct training sessions for their staff. The Public Defender deems such responses as an indication that the decisions are being implemented, and continues to monitor the compliance.

**Recommendations and General Proposals for Public Sector
19 in Total**

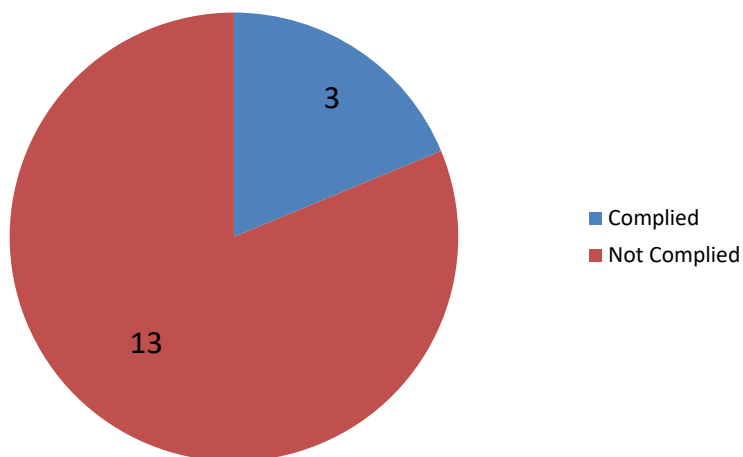


38 Article 9.3.

39 Article 6.2.c).

As regards the recommendations/general proposals issued to private persons, 3 out of 16 decisions have been complied with and in other 13 cases, respondents have failed either to accept recommendations/general proposals or reply with a letter.

Recommendations and General Proposals for Private Sector 16 in Total



Recommendations Made to Public Agencies:

- A recommendation was made to the *Sakrebulo* of the city of Batumi, concerning discrimination on account of nationality vis-à-vis differential entry prices for Georgian and foreign visitors to the Botanical Garden. **The respondent complied with the recommendation.** According to the letter received from the City Hall of Batumi Municipality, dated 5 February 2016, non-commercial legal entity Batumi Botanical Garden, in cooperation with the City Hall of Batumi Municipality elaborated and approved by Order no. 89, dated 15 December 2015, the new tariff plan on Visiting and Using Various Services on the Territory of non-commercial legal entity Batumi Botanical Garden.
- **On 29 September 2015**, the Public Defender, concerning the finding of discrimination on account of sex and sexual orientation, recommended to the Ministry of Labour, Health and Social Affairs of Georgia to amend Annex no. 1 to Order no. 241/N of the Ministry of Labour, Health and Social Affairs of Georgia, dated 5 December 2000, to the effect of enabling men who have sex with men (MSM) to act as blood donors beyond the window periods. According to the reply dated 22 October 2015, the **Ministry did not comply with the recommendation.**
- On 12 February 2016, the Public Defender recommended to the Ministry of Corrections of Georgia concerning the incident of alleged discrimination on account of sexual orientation in penitentiary establishment no. 19 that amounted to inhuman and degrading treatment. The recommendation concerned the inadequate living

conditions of the prisoners placed in the economical unit of the establishment. **The respondent complied with the recommendation.** By the letter, dated 11 April 2016, the Public Defender was notified that the Ministry agrees with the necessity of improving the living conditions of the prisoners placed in the economical unit and the infrastructure thereof and there are active works undergoing to resolve the issue. According to the Ministry, project works were completed, a company was selected and repairs and rehabilitation works started that would have been completed by the end of April. Later, it was verified from the field that the aforementioned works had been conducted.

- On 24 February 2016, the Public Defender of Georgia made a recommendation to the Government of Georgia, the Minister of Labour, Health and Social Affairs of Georgia, and the Minister of Corrections of Georgia concerning finding of discrimination on account of nationality, which amounted to degrading treatment of a prisoner of penitentiary establishment no. 17 as only those prisoners could be enrolled in the hepatitis C treatment programme that were Georgian nationals. **The Respondent complied with the recommendation.** According to the letter of the Ministry of Corrections, dated 20 May 2016, Resolution no. 169 of the Government of Georgia of 20 April 2015 on Approving the State Programme of Implementing the First Stage Activities Aimed at Managing Hepatitis C was amended to the effect of enabling the applicant as well as foreign nationals/stateless persons placed in the penitentiary system to be enrolled in hepatitis C programme.
- On 13 May 2016, the Public Defender of Georgia recommended to the Government of Georgia, concerning finding of discrimination on account of association membership, to draft amendments to the Law of Georgia on Higher Education, to bring the law in compliance with the principle of equality and ensure the right for all students, irrespective of their membership of association to participate in the management of a higher educational institution. **The respondent complied with the recommendation.** According to the letters of the Government of Georgia, dated 1 June 2016 and 30 November 2016, the Ministry of Education and Science of Georgia prepared a draft amendment addressing the issue at stake in the recommendation; the ministry will further continue consultations and discussions in the relevant parliamentary committees.
- In one incident, due to the negligence of the ministry's staff, a wheelchair-bound applicant's dignity had been diminished. In this context, on 22 August 2016, the Public Defender of Georgia recommended to the Ministry of Internal affairs of Georgia, concerning finding of discrimination on account of disability, to ensure conducting training sessions and other activities about the rights and needs of persons with disabilities for the ministry's employees. **According to the letter sent in reply to the recommendation,** the Academy of the Ministry of Internal Affairs has a training programme – Communication Standards with Disabled Persons. 31 participants successfully completed the programme in June-July of the current year. The programme is being integrated in special professional and education programmes designed for training of patrol inspectors and district inspectors.
- On 19 September 2016, the Public Defender of Georgia made a recommendation to the City of Kobuleti Municipality's *Gamgeoba* and LTD Kobuleti Water concerning

finding of discrimination on account of religion as, because of the local population, it is impossible to connect the building owned by Muslim community with wastewater system. By its letter, dated 9 September 2016, the Kobuleti *Gamgeoba* notified the Public Defender that the **municipality had accepted the recommendation**; however, it continued to face resistance from the local population.

- On 18 January 2016, the Public Defender of Georgia made a recommendation to the President of Tbilisi Municipality *Sakrebulo* and Tbilisi Mayor concerning finding of discrimination on account of place of residence in the process of accommodation of homeless persons. **The respondent complied with the recommendation.** Under Resolution no. 4-18 of Tbilisi *Sakrebulo*, dated 7 March 2017, Resolution no. 28-116 of Tbilisi *Sakrebulo*, dated 27 November 2015, was amended to the effect of deleting Article 4. In the process of accommodation of homeless persons, the impugned provision gave priority to the persons residing in the building of the former military hospital of Isani and in the apartment blocks of the so-called Tbilisi Sea district.
- On 24 April 2017, the Public Defender made a recommendation to the Ministry of Internal Affairs of Georgia and legal entity of public law Revenue Service concerning finding of discrimination on account of religion. In the recommendation, the Public Defender found interference with the applicants' right to freedom of religion through the restriction of their right to freedom of movement and the right to property. **It can be said that the respondents complied with the recommendation**, although, the Public Defender is not aware of the present situation. On 10 July 2017, the Public Defender was notified by the letter from the Ministry of Internal Affairs of Georgia that, for raising awareness about religious neutrality and principle of equality, legal entity of public law Academy of the Ministry of Internal Affairs of Georgia permanently trains and re-trains the ministry's personnel. Presently, the special professional educational programme for training border control officials is underway. The ministry's 24 future employees will be trained on the subject at stake within the framework of the programme. Since July 2017, in cooperation with the State Agency for Religious Issues, training sessions have been conducted on secularism and religious neutrality. The employees of the Border Police, as well as Criminal Police, participate in the training sessions. At the first stage, 139 employees will be trained. This activity will continue until the end of 2017. On 14 July 2017, through the letter received from legal entity of public law Revenue Service, the Public Defender was notified that the Customs Department had informed the staff about the issues raised in the recommendation.
- On 31 May 2017, the Public Defender of Georgia made a recommendation to the Government of Georgia concerning finding of direct discrimination of persons with significant and moderate disabilities on account of the field of employment. The Public Defender recommended to the government to provide a social package, similar to private sector, to persons with severe and moderate disabilities, who are employed in public sector, in accordance with Resolution no. 279 of the Government of Georgia, dated 23 July 2012, on Determining Social Package. **According to the information submitted by the respondent, the recommendation has not been complied with.**
- On 31 May 2017, the Public Defender made a recommendation to legal entity of public law Public Broadcaster concerning finding direct discrimination in labour relations

of an applicant on account of membership of a trade union. According to the letter of 30 June 2017, **the respondent failed to accept the recommendation.**

Recommendations Made to Private Persons

- On 17 July 2015, the Public Defender of Georgia recommended to LTD Art Palace to elaborate an internal document (regulations/rules/guidelines) which would envisage the principles of promoting the participation of disabled persons in various activities with due respect to their inherent dignity. **The respondent failed to respond to the recommendation made by the Public Defender.**
- On 17 September 2015, the Public Defender of Georgia made a recommendation to Tbilisi's Children's Hospital for Infections concerning finding discrimination on account of sex. The clinical hospital's policy allowed only women to stay with children. According to the information received from the respondent, **the respondent accepted the recommendation**, namely, the manager of the respective unit was verbally advised that there are no restrictions about staying with a child on account of a parent's sex.
- On 7 December 2015, the Public Defender of Georgia made a recommendation to L.G. concerning finding discrimination on account of disability and urged the respondent to refrain from discriminatory treatment based on disability in contractual relations stemming from a rental agreement. **The respondent failed to respond to the recommendation.**
- On 2 March 2016, the Public Defender of Georgia made a recommendation to LTD Elite Service concerning finding of discrimination on account of sex, age and marital status by referring to the said criteria in a vacancy note. **The respondent failed to respond to the recommendation.**
- On 13 May 2016, the Public Defender of Georgia recommended to the non-commercial legal entity the Union of Kindergartens of Khulo Municipality to eradicate discrimination on account of property in pre-contractual labour relations. **The respondent complied with the recommendation** and employed the applicant in the relevant position.
- On 18 May 2016, the Public Defender of Georgia recommended to the microfinance organisation LTD Credo to eradicate discrimination on account of pregnancy in labour relations. The Public Defender found that the labour relation was not extended on a discriminatory ground. **The respondent complied with the recommendation.** According to the letter from Credo, dated 20 June 2016, the applicant was reinstated to office and a permanent labour contract was concluded; the applicant was fully reimbursed for treatment expenditure and any outstanding salary was paid in full. Furthermore, based on the order of LTD Credo's director, the written reprimand given to the applicant was annulled.
- On 31 August 2016, the Public Defender of Georgia made a recommendation to LTD New Vision concerning finding of discrimination on account of pregnancy as the Pub-

lic Defender found that the labour relation with the applicant had not been extended on account of the discriminatory ground. **The respondent notified the Public Defender that it did not accept the recommendation.**

- On 1 February 2017, the Public Defender made a recommendation to the club Sector-26 concerning finding of discrimination on account of sexual orientation as an LGBT couple had been thrown out of the club. **The respondent failed to respond to the recommendation.**
- On 22 March 2017, the Public Defender made a recommendation to LTD Zaza Pachelia Basketball Academy concerning finding of direct discrimination in pre-contractual relations on account of a different opinion. **The respondent failed to respond to the recommendation.**
- On 25 April 2017, the Public Defender of Georgia issued a recommendation concerning finding of direct discrimination of the staff of vegan café Kiwi on account of appearance and discrimination by perception on account of sexual orientation. This recommendation is addressed to an individual. The Public Defender recommended the private owner to refrain in future from discriminatory treatment on account of any protected ground in the contractual relations stemming from a rental agreement or other relations. **The respondent has failed to respond to the recommendation.**
- On 31 May 2017, the Public Defender of Georgia made a recommendation to a taxi driver and taxi company Maxim (LTD Technocom) concerning finding of direct discrimination on account of gender identity as the applicant was denied taxi service based on the discriminatory ground. According to the respondent's letter, dated 5 June 2017, the internal normative acts elaborated by the company for internal use are based on the principles of equality and protection of human rights. The company's managers interview drivers individually and urge them to respect the equality principle when dealing with clients. One of the main requirements of the company is appropriate treatment of passengers.

The General Proposals Issued for the Notice of Public Agencies

- On 6 November 2015, the Public Defender issued a general proposal to LTD Tbilisi Transport Company concerning conducting educational training sessions on special needs for disabled persons for those employers who are in direct contact with passengers; **the respondent accepted the general proposal** and expressed its readiness to conduct training sessions.
- On 30 April 2016, the Public Defender issued a general proposal to the Ministry of Education and Science of Georgia concerning removal of certain phrases and discussions featuring in approved school textbooks on biology for the eighth form. These phrases and discussions contained stereotypes about persons with substance abuse, HIV infection and AIDS and stigmatised them. **The respondent accepted the majority of recommendations** and notified the Office that the procedure for the approval of textbooks would be overhauled and new criteria would be introduced in the shortest period of time.

- On 9 December 2016, the Public Defender issued a general proposal to the High Council of Justice of Georgia and Tbilisi City Court concerning the necessity of maintaining statistics on the cases involving gender harassment, sexual harassment as well as other discrimination cases. According to the letter, dated 20 January 2017, **the respondent accepted the general proposal**, and relevant works were underway.
- On 23 December 2016, the Public Defender issued a general proposal to the Ministry of Education and Science of Georgia and urged it to expedite the improvement of legislation governing inclusive education. According to the letter sent in reply, **the respondent accepted the general proposal** and stated that the works on drafting amendments to the Law of Georgia on General Education were underway.
- On 6 February 2017, the Public Defender issued a general proposal to the Parliament of Georgia concerning the use of hate speech or making other offensive statements by its members towards vulnerable groups. **The Public Defender has not received a reply to his general proposal to date.**
- On 5 May 2017, the Public Defender issued a general proposal to the Ministry of Labour, Health and Social Affairs of Georgia to respond adequately to the vacancy notices posted in public domain. **The respondent accepted the general proposal.** On 24 May 2017, the ministry notified the Public Defender that it had drafted legislative amendments that aimed at bringing the Georgian legislation in compliance with the requirements set forth in Council Directive 2000/43/EC of 29 June 2000 and Council Directive 2000/78/EC of 27 November 2000.
- On 21 June 2017, the Public Defender issued a general proposal to the High Council of Justice of Georgia and Levan Samkharauli National Forensics Bureau concerning the practice of appointment of a support person. **The respondent accepted the general proposal.** According to the reply of 14 July 2017, the High Council of Justice expressed its readiness to cooperate with the Public Defender concerning the issues raised in the general proposal and to introduce judges to international experience in this regard to ensure that support recipient individuals have more safeguards for the protection of their rights.

General Proposals Issued for the Notice of Private Persons

- On 9 December 2014, the Public Defender of Georgia issued a general proposal to the JSC Bank of Georgia to remove its sexist advertisement. **The respondent failed to notify about the outcomes of consideration of the general proposal**, whereas the advertisement is still featuring on the bank's Facebook page.
- On 8 April 2015, the Public Defender of Georgia issued a general proposal to LTD Jobs.ge to elaborate regulations that would put an end to publication of discriminatory vacancies on its website. **The respondent failed to submit information in response to the general proposal.**
- On 9 November 2016, the Public Defender of Georgia issued a general proposal to micro finance organisation LTD CCLoan to remove its advertisements facilitating

discrimination of indigent and transgender individuals circulated on television and Internet. **The respondent failed to submit information in response to the general proposal**, whereas advertisements are still posted on the Internet.

- On 10 November 2016, the Public Defender of Georgia issued a general proposal to TV Company Tabula concerning its promotional clip with sexist content. According to the letter, dated 5 September 2016, **the respondent does not accept the general proposal**.
- On 21 November 2016, the Public Defender of Georgia issued a general proposal to Vake Swimming Pool on account of a sexist inscription. **The respondent has failed to notify the Public Defender about the outcome of the notification of the general proposal**.

Thus, as it turns out, public agencies, almost in each case, notify the Public Defender about the outcomes of the consideration of recommendations and general proposals. In most cases, they accept the Public Defender's decisions, comply with them or express their readiness to comply with them. As regards the decisions adopted concerning natural and legal persons of private law, compared to public agencies, there are more cases, where they do not respond to the Public Defender or notify him that his recommendations/general proposals are not accepted. Furthermore, there are numerous cases, where private persons complied with the Public Defender's decision.

CHAPTER V. CONCLUSION

The Public Defender observes that progress towards fighting discrimination was made in the last years. The adoption of the Law of Georgia on the Elimination of All Forms of Discrimination was itself a significant development. The law is a substantive ground for protecting the right to equality, on the one hand, and, on the other hand, it determines the courts and the Public Defender as legal remedies for restoring infringed rights. The positive trends in accepting and complying with the Public Defender's decisions are also noteworthy. These trends are particularly noticeable on the part of public officials.

However, unfortunately, both the Georgian authorities and the society face challenges in terms of fighting discrimination in the country. On the one hand, it is imperative to become aware of the importance of ensuring equality and, on the other hand, to comprehend the interests of each vulnerable group. Despite the fact that presently the legislation of Georgia formally prohibits discrimination in any sphere on any protected ground, substantive equality is still not guaranteed in the country. Various groups, – women, persons with disabilities (among them children), and representatives of religious minorities, or LGBT community, remain unable to benefit from the environment tailored to their interests. Shortcomings remain at the legislative level as well. The state policy is not aimed at ensuring equality of vulnerable groups. Unfortunately, the efforts of the Public Defender or non-governmental sector in this important process will not bring about tangible results without proactive participation of the authorities.