



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

Public Defender of Georgia

Positive obligations on law enforcement officials to protect the equality of
vulnerable groups

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Introduction

The Law of Georgia on the Elimination of All Forms of Discrimination was adopted by the Parliament of Georgia on May 2, 2014. For both natural and legal persons, the law represents a safeguard against the violation of the right to equality by both public and private individuals. According to the law, the Public Defender of Georgia shall oversee the elimination of discrimination and the situation of equality.

Unfortunately, despite the creation of legislative safeguards and the efforts of various stakeholders, the realization of the right to equality is not substantially improving in the country. Such a critical situation is caused, on the one hand, by unawareness and unacceptability of the needs and interests of vulnerable groups by a significant part of society; on the other hand, progress in achieving equality is hampered by the lack of a unified vision of the State. In particular, state agencies have not developed a policy on the principle of equality in relation to issues that fall under their competences. Because of this, instead of a systemic fight against discriminatory practices, efforts are mostly aimed at eliminating individual violations, which is often fragmented and ineffective. Unfortunately, issues relating to equality are not on the agenda of high officials either. Decision-makers still do not make statements in support of equality, including at critical times in terms of the equality of specific groups. In contrast, officials often incite discrimination against vulnerable groups.

In order to guarantee the right to equality in the country, it is not enough for the State to refrain from developing discriminatory legislation or practices. In this regard, the biggest challenge is the fulfillment of positive obligations by the State - implementation of specific measures.

The most important role in the fulfillment of positive obligations by the State is played by the law enforcement agencies - the Prosecutor's Office of Georgia and the Ministry of Internal Affairs of Georgia. Improper implementation of preventive or reactive measures by these agencies, or inaction in this direction, may worsen situation in many ways. It is the competence of law enforcement agencies to respond appropriately to the most serious human rights violations committed against various vulnerable groups. The absence of such a response, in some cases, on the one hand, makes it impossible to restore individual rights, and on the other hand, gives a green light to future rights violations.

The first part of the present report assesses the effectiveness of investigations of alleged hate crimes, covering a period from the beginning of the monitoring of investigations carried out by investigative bodies (2015) through 2020. To this end, we review the standards developed by international institutions, and according to these standards and the relevant statistics, we identify both shortcomings and improved trends in the current and previous years' work of the law enforcement agencies.

In the second part of the report, the Public Defender reviews high-profile cases that took place from September 2018 to 2020, specifically, regarding the realization of freedom of expression and freedom of assembly of one of the most vulnerable groups - LGBT+ persons and activists. In particular, we will focus on a case when people were banned from attending a football match with LGBT+ symbols on September 9, 2018, as well as the events developed around the March of Dignity scheduled for June 18-23, 2019 and the strengthening of far-right homophobic groups against LGBT+ people. This document does not assess individual cases, but is aimed at analyzing the existing context and challenges.

In its final part, the document offers recommendations on measures to be taken to improve the current situation, the implementation of which, according to the Public Defender, will significantly help the elimination of hate crimes and realization of freedom of expression and freedom of assembly of LGBT+ persons.

Methodology

In order to identify the relevant legal standards for assessing the fulfillment of positive obligations by the law enforcement agencies in terms of the protection of the equality of vulnerable groups, this report relies on major national and international legal acts and institutions for the definition and explanation of the positive obligations imposed on the State in terms of effective investigation of hate crimes, identification of alleged discriminatory grounds/bias motives behind violent incidents, implementation of measures for the elimination of crimes and realization of freedom expression and assembly of LGBT+ persons. The above includes, on the one hand, the Constitution of Georgia, the Law of Georgia on the Elimination of All Forms of Discrimination, the International Covenant on Civil and Political Rights and other relevant norms and international treaties, and on the other hand, the judgments, recommendations, explanations and guidelines of the Constitutional Court of Georgia, the European Court of Human Rights, the European Commission against Racism and Intolerance, the UN Human Rights Committee and other authoritative actors.

In order to assess the current situation in the context of standards identified in this manner, the Public Defender reviews the relevant statistics, as well as high-profile cases and trends, and analyzes information requested from the Ministry of Internal Affairs and the Prosecutor's Office of Georgia, as well as the Public Defender's practice.

Finally, by analyzing both the basic principles and the existing context, the situation of the fulfillment of positive obligations by the law enforcement agencies will be assessed in terms of the protection of the equality of vulnerable groups and relevant recommendations will be developed.

Key findings

One of the major challenges in terms of the proper response by the law enforcement agencies is effective investigation of alleged hate crimes. It is true that an improved trend can be noticed in terms of unmasking bias motives, but there are still frequent cases, especially in crimes against Jehovah's Witnesses and members of the LGBT+ community, when the bias motive is not considered at all or a case is classified under an article, that does not consider such a motive. This is caused by the lack of knowledge and readiness of the law enforcement agencies.

Members of various vulnerable groups also point to alleged verbal and physical abuse by representatives of the law enforcement agencies, which, in most cases, are not properly responded and negatively affect citizens' trust in these agencies. Protracted investigative processes further reduce the effectiveness and credibility of investigations.

The absence of a special structural unit that would be responsible for investigating hate crimes and would be equipped with investigative functions remains a challenge. In addition, although a unified statistics system

was developed in 2020, no risk factors for hate crimes or circumstances hindering their detection have been analyzed within the framework of this system.

Another important problem is that the current administrative legislation does not see discriminatory motives as one of the aggravating circumstances for administrative liability, which increases the possibility of ignoring hate-motivated illegal acts.

In addition to the above, individual incidents that may jeopardize the exercise of fundamental rights and freedoms by various groups in public space also require the active involvement of the State. For example, from September 2018 to 2020, including as a result of improper preventive and reactive actions by the law enforcement agencies, members of the LGBT+ community faced significant obstacles in terms of realization of their freedom of expression and freedom of assembly.

I. Hate crimes

1. Standards established by international institutions

In the OSCE Practical Guide on Prosecuting Hate Crimes, hate crime is defined as a *criminal act where the victim is targeted because of her or his group identity, such as race, national origin, religion, sexual orientation/gender identity, ethnicity, disability, or another group characteristic*. Hate crime consists of two main elements:

- Any act prohibited under criminal law (“the base offence”);
- Any act motivated by prejudice based on a specific characteristic of the victim (“the bias motivation”).¹

Under commitments undertaken on the basis of international law,² the States have an obligation to protect the fundamental rights and freedoms of all persons under their jurisdiction, including by adopting legislations necessary for the exercise of fundamental rights. This obligation also applies to acts committed by private persons that may give rise to violations of fundamental human rights, as a result of States Parties’ permitting or failing to take appropriate measures to respond to such acts.³

Article 1 of the European Convention on Human Rights, taken in conjunction with Articles 2 (Right to life) and 3 (Prohibition of torture and other ill-treatment), imposes positive obligations on States to ensure the protection of the rights of individuals within their jurisdiction, including where violations are committed by private individuals.⁴ This primarily implies an obligation to take reasonable measures to prevent criminal acts

¹ Prosecuting Hate Crimes: A Practical Guide, OSCE/ODIHR, Warsaw, 19, available at: < <https://rb.gy/qx9hwh> > [05.04.2021].

² International Covenant on Civil and Political Rights, Article 2; European Convention on Human Rights, Articles 2 and 3.

³ General comment no. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 8, available at: < <https://bit.ly/2PP7ZE1> > [05.04.2021].

⁴ Judgment of the European Court of Human Rights of 12 May 2015 in the case of Identoba and Others v. Georgia, §66; See also the judgment of the European Court of Human Rights of 23 September 1998 in the case of A. v. the United Kingdom, §22, reports on judgments and rulings 1998 - VI.

that were known or should have been known to the authorities.⁵ In addition, according to the positive obligations under Articles 2 and 3 of the Convention, the authorities have a procedural obligation to investigate an alleged crime effectively, even if it is committed by a private person.⁶

The investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and the identification and punishment of those responsible. The authorities must take the reasonable steps available to them to secure all the evidence concerning the incident. The investigation's conclusions must be based on thorough, objective and impartial analysis of all the relevant elements.⁷

Thus, for the investigation to be regarded as *effective*, it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. In this connection, the European Court has often assessed whether the authorities reacted promptly to the incidents reported at the relevant time. Consideration has been given to the opening of investigations, delays in taking statements and to the length of time taken for the initial investigation.⁸

In addition, the obligation to identify alleged discriminatory grounds behind violent incidents is implied in the liability provided for in Article 14 of the European Convention (Prohibition of discrimination).⁹ When there is a reasonable suspicion that a crime was committed on the discriminatory grounds, Article 14 of the European Convention imposes an additional obligation on States - in order for an investigation to be regarded as effective, investigative bodies shall take all necessary investigative activities to unmask an alleged bias motive and shall not leave such a motive without legal response.

The State's obligation to investigate possible discriminatory motives for a violent act is an obligation to use best endeavours, and is not absolute. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence based on racial or religious intolerance, or gender-based discrimination.¹⁰

For example, as the European Court of Human Rights noted in the case of *Nachova and others v. Bulgaria*, in cases of deprivation of life, Articles 2 and 14 of the Convention combined imposed a duty on State authorities

⁵ Judgment of the European Court of Human Rights of 28 January 2014 in the case of T.M. and C.M. v. the Republic of Moldova, §38.

⁶ Judgment of the European Court of Human Rights of 4 December 2003 in the case of M.C. v. Bulgaria, §151.

⁷ Judgment of the European Court of Human Rights of 26 April 2011 in the case of Ehlukidze and Girgvliani v. Georgia, 2011, §242.

⁸ Judgment of the European Court of Human Rights of 4 March 2008 in the case of Stoica v. Romania, §67.

⁹ Judgment of the European Court of Human Rights of 7 October 2014 in the case of Begheluri and Others v. Georgia, §173.

¹⁰ Judgment of the European Court of Human Rights of 12 May 2015 in the case of Identoba and Others v. Georgia, §67. See also the judgment of the European Court of Human Rights of 6 July 2005 in *Nachova and Others v. Bulgaria* [GC], §160; Judgment of the European Court of Human Rights of 3 May 2007 in the case of *Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, §138-142; Judgment of the European Court of Human Rights of 16 July 2013 in the case of *Mudric v. the Republic of Moldova*, §60-64.

to take all reasonable steps to unmask any racist motive, in order to effectively investigate all the circumstances related to the crime, while the verbal abuse of the victim should have alerted the authorities to the need to investigate possible racist motives.¹¹

The authorities' duty to prevent hate-motivated violence and to investigate the existence of a possible link between discriminatory attitudes and an act of violence is an aspect of their procedural obligations arising under Articles 2 and 3 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention to secure respect without discrimination for the fundamental value enshrined in these Articles.¹² In addition, according to the European Court, even though, admittedly, proving racial motivation will often be extremely difficult in practice, all reasonable measures should be taken to identify whether there were racist motives and to establish whether or not ethnic hatred or prejudice may have played a role in the events.¹³

In addition, States should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator.¹⁴ "The authorities must, in particular, take active steps to identify any homophobic or transphobic motivation on the basis of which a crime is perpetrated. Any alleged homophobic and transphobic motive should always be registered by law enforcement agents and be the object of effective, thorough and impartial investigation and also duly taken into account in the prosecution phase."¹⁵

As the UN Human Rights Committee notes in its General Comment No. 31, administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies [...]. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. When dealing with individual cases, the Human Rights Committee often requires States to conduct a thorough and prompt investigation to bring those responsible to justice. A number of resolutions and declarations of the UN General Assembly, which establish standards for crime prevention and criminal justice, indicate an obligation to conduct a prompt, effective and impartial investigation.¹⁶

The European Commission against Racism and Intolerance (ECRI) also points out that statistical data on discriminatory acts are vital for the identification of problems and formulation of policies,¹⁷ as well as for

¹¹ Judgment of the European Court of Human Rights of 6 July 2005 in *Nachova and Others v. Bulgaria* [GC], §126-127.

¹² Judgment of the European Court of Human Rights of 24 July 2012 in the case of *B.S. v. Spain*, §59-63.

¹³ *Ibid.* §58.

¹⁴ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. "Hate crimes" and other hate-motivated incidents, available at: < <https://bit.ly/3vFH3WD> > [05.04.2021].

¹⁵ Amnesty International' public statement, 16 May 2013, Italy: The new government must be vocal in addressing double standards on hate motivated violence, 3–4.

¹⁶ General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 8., available at: < <https://bit.ly/3h0XTep> > [05.04.2021].

¹⁷ Council of Europe, European Commission against Racism and Intolerance (ECRI), General Policy Recommendation (GPR) No. 4 On the National Surveys on the Experience and Perception of Discrimination and Racism from the point of View of Potential Victims, 06/03/1998, 3.

recognizing the need for and planning of positive action measures¹⁸ and assessing the effectiveness of present anti-discrimination laws in the country.¹⁹

In 2009, the Council of Europe Ministerial, the topic of which was the elimination of hate crimes, clearly defined the specific steps to be taken by States in this direction:

- Collect and make public statistics on hate crimes;
- Take appropriate measures to encourage victims or witnesses to report hate crimes;
- Introduce or further develop professional training and capacity-building activities for law-enforcement, prosecution and judicial officials;
- Ensure prompt and effective investigation of hate crimes.²⁰

2. Brief overview of the situation in previous years

On August 15, 2018, the Public Defender of Georgia, in order to effectively combat hate crimes, addressed the Chief Prosecutor of Georgia and the Minister of Internal Affairs of Georgia with a general proposal²¹ relating to the training of staff and the production of unified statistics on hate crimes.

The Public Defender's general proposal concerned more than 50 alleged hate crimes examined in 2015-2018 on the basis of individual applications or on her own initiative. These cases covered a wide range of alleged hate motives - flaws in the investigations of alleged discriminatory crimes committed on the grounds of religion, ethnicity, sexual orientation or gender identity, and alleged physical and verbal hate-motivated abuse by law enforcement officials. In the document, the Public Defender reviewed the standard of investigation of alleged hate crimes. In addition, she noted that unmasking an alleged bias motive was essential not only for the administration of justice in a particular criminal case, but also for the prevention of similar crimes in the future.

In the general proposal, the Public Defender noted that it is necessary to establish a structural unit in the existing investigative system, responsible for investigating hate crimes and staffed with professionals trained in the prevention and timely and effective investigation of bias crimes against vulnerable groups. In addition, it was pointed out that in order to clearly identify the existing problems, it is necessary to develop a proper statistics system, which would also analyze the risk factors for hate crimes and the circumstances hampering their detection.

As part of the UN Universal Periodic Review 2015, Georgia was recommended to establish a special structural unit to investigate hate crimes.²² The European Commission against Racism and Intolerance also addressed this issue in its 2016 report on Georgia,²³ however, the recommendation has not yet been implemented.

¹⁸ European Commission, Measuring Discrimination – Data Collection and EU Equality Law, 2006, 5.

¹⁹ Ibid. p. 6.

²⁰ Hate Crimes in the Region – Incidents and Responses, 85, available at: < <https://bit.ly/2QU9YaH>> [05.04.2021].

²¹ Available at: < <https://bit.ly/3b1rl0i>> [05.04.2021].

²² Available at: < <https://bit.ly/3vUDv35>> [05.04.2021].

²³ ECRI Report on Georgia, Fifth Cycle, adopted on December 8, 2015; published on March 1, 2016.

It is noteworthy that in 2018, a Human Rights Department was established in the Ministry of Internal Affairs, which, inter alia, oversees the investigation of crimes committed on discriminatory grounds, however, the Department is not equipped with an investigative function. In addition, a unified statistics system was created in 2020, however, it does not allow to analyze the risk factors for crimes and the circumstances hindering their detection.²⁴

It should be positively assessed that in 2016-2019, trainings on the specifics of investigating discriminatory crimes were conducted for the staff of the Prosecutor's Office and the Ministry of Internal Affairs, including with the participation of representatives of the Public Defender. It is important that trainings be systematic and continuous, as this will help to raise awareness and sensitivity of the staff in the process of investigating alleged hate crimes.

In addition, the Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2018 reflects recommendations made to the Ministry of Internal Affairs of Georgia and the Prosecutor's Office of Georgia. In particular, *the Prosecutor's Office was recommended to provide information on the investigation of hate crimes in its activity report to be submitted to the Parliament of Georgia, in accordance with Article 172 of the Rules of Procedure of the Parliament of Georgia, as well as, in case of detection of new circumstances, to inform the public about the investigation ongoing into alleged violations of Muslims' rights by the law enforcement officials in the Kobuleti municipality and the investigative activities carried out in 2018-2019, and to make final decisions; in addition, in case of detection of new circumstances, the Prosecutor's Office and the Ministry of Internal Affairs were instructed to provide detailed information on the measures taken in response to the alleged violations committed against Jehovah's Witnesses and members of other religious communities.*

The Parliament of Georgia endorsed the recommendations of the Public Defender in 2019 as well and instructed the Prosecutor's Office of Georgia to reflect information on the investigations of hate crimes in its report to be submitted to the Parliament and to analyze and publish statistics on crimes motivated by religious hatred, while the Ministry of Internal Affairs was instructed to improve the analysis of statistics on hate crimes, to identify and make public the existing trends.²⁵

It should be noted that both the 2019 activity report submitted to the Parliament and the report on the data of the last three months of 2020 provide only general statistics, without relevant analysis or assessment of the trends identified.²⁶ In addition, no final decision has yet been made on the alleged violations of the rights of Muslims in the Kobuleti municipality.²⁷

²⁴ For more information on the unified system, see chapter 4 of this report.

²⁵ Subparagraphs 3 (f), 3 (i) and 4 (p) of the Resolution of the Parliament of Georgia on the report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia in 2019.

²⁶ 2019 activity report of the Prosecutor's Office of Georgia, pp. 43-46; available at: < <https://bit.ly/3h015XR> > [05.04.2021].

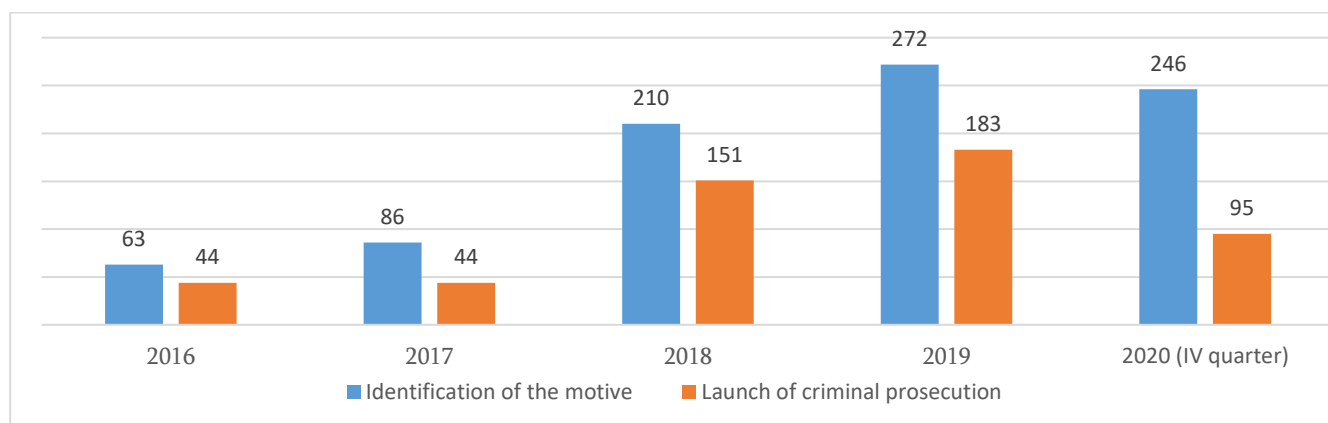
²⁷ Letter №13/13120 of March 10, 2021 of the Prosecutor General's Office of Georgia.

3. Overview of the current situation

3.1. Statistical data on alleged hate crimes

For the purpose of drawing up this document, the Public Defender of Georgia requested information from the Prosecutor's Office of Georgia regarding the investigation of hate crimes *from January 1, 2019 to December 31, 2020*. In addition, in order to compare the data with the data of previous years, the Public Defender's Office also processed statistical information of 2016-2018.

Table No. 1: Indicators of the identification of bias motives in criminal cases and the launch of criminal prosecution in 2016-2020²⁸



As the data in the Table (No. 1) show, the rates of identification of hate motives in criminal cases and the launch of criminal prosecution are increasing from year to year. For example, in 2019, the growth trend in both directions was about 4 times as much as in 2016. And in just 3 months of 2020, the number of identification of bias motives during investigations almost equals the respective indicator of the 12 months of 2019.

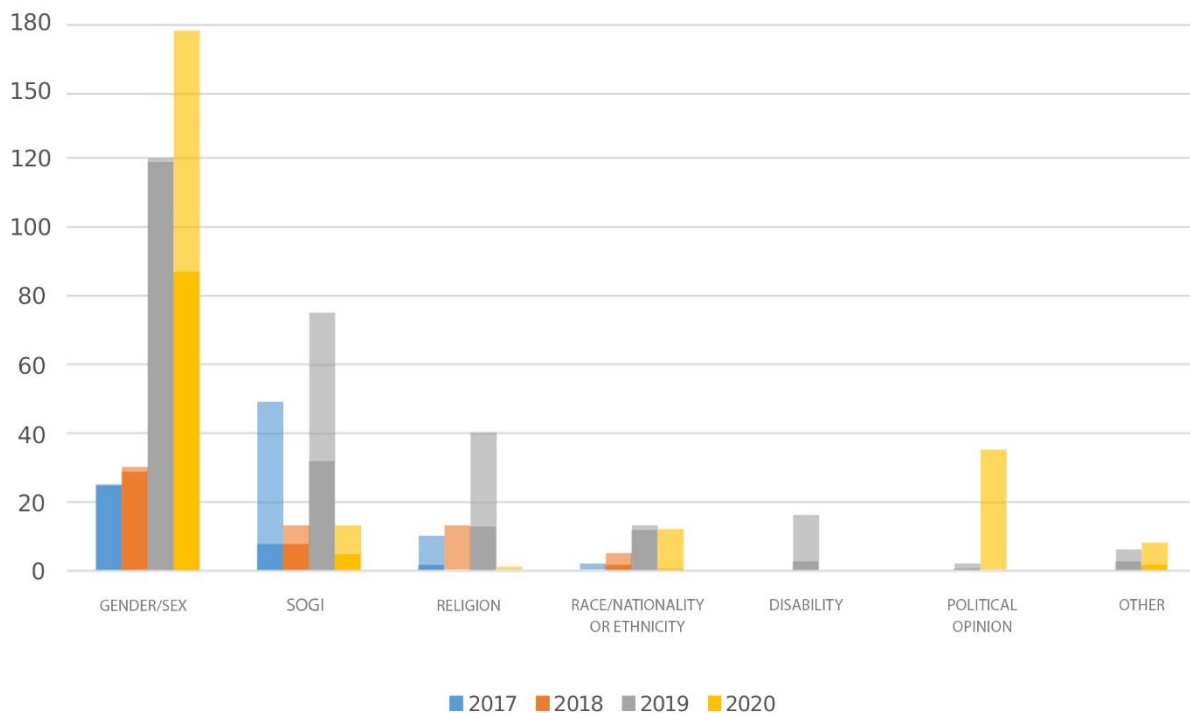
According to the information received, criminal prosecution is mainly launched under articles of the Criminal Code of Georgia, which provide for a liability for the violation of human equality (Article 142), racial discrimination (Article 142¹), restriction of the rights of persons with disabilities (Article 142²), unlawful obstruction of religious rituals (Article 155), persecution (Article 156) and public call for violence (Article 239¹). In addition, under Article 53¹ of the Code, the discriminatory intolerance motive is regarded as an aggravating circumstance of a liability for the relevant offences. For example, the 2019 data includes qualification of alleged hate crimes as: attempted premeditated murder committed under aggravating circumstances on the ground of gender; pushing a person to suicide on the ground of gender; intentional infliction of less serious damage on health, including on the grounds of racial, religious, national or ethnic intolerance or on the ground of gender. Interestingly, in 2020, the situation changed significantly. In

²⁸ The 2020 data covers only 3 months (October-December).

particular, from October to December 2020, investigations and prosecutions were mainly launched under Articles 126¹ (domestic violence) and 151 (threatening) of the Criminal Code of Georgia.²⁹

The Public Defender of Georgia processed the obtained data according to the protected grounds, as a result of which, it was found out that the bias motive is most common in cases committed on the grounds of gender/sex and sexual orientation and gender identity. It is followed by crimes motivated by hatred on the grounds of religion, race, nationality or ethnicity. In addition, in 2019, unlike other years, the rate of launching investigations into crimes motivated by hatred on the grounds of disability was high, while among investigations launched in the last three months of 2020, there was a significant increase in the identification of the grounds of political or other opinion.

Table 2: Identification of bias motives in criminal cases and launch of criminal prosecution in 2017-2020 according to the grounds of discrimination³⁰



²⁹ Information available at: < <https://bit.ly/33f02er> > [05.04.2021].

³⁰ The full columns indicate the rate of the launch of the investigation, the lighter part of which refers to cases that were not followed by criminal prosecution, while the darker part refers to the number of persons charged. In addition, the 2018 data covers 5 months, while the 2020 data covers only 3 months (October-December).

3.2. Practice of the Public Defender of Georgia

For the purposes of this document, the Public Defender's practice includes analysis of alleged hate crimes examined on the basis of applications or on her own initiative in 2019-2020.

The cases examined by the Public Defender, on the one hand, concern alleged discriminatory crimes, in which no bias motives were unmasked during the investigation and then the investigation was resumed or terminated, as well as cases in which no investigation was launched due to the lack of elements of crime. On the other hand, the Public Defender examines cases of physical and verbal abuse committed by law enforcement officials on alleged discriminatory motives.

During the same period, the Public Defender requested information about 69 cases of alleged hate crimes committed on various grounds. According to the information received from the Prosecutor's Office of Georgia, investigative activities were carried in most of the cases, however, no specific person has been identified as a victim and/or an accused. Thus, the Public Defender's practice mainly includes cases where investigations are pending for a long time, while affected persons face difficulties in getting victim status.

3.2.1. LGBT+ community

The highest number of applications has been received with regard to alleged hate crimes committed against LGBT+ persons (25 cases, including 5 cases of verbal abuse by police officers).

As for the investigation, there are cases when, according to the investigative body, no discriminatory motive could be identified during the investigation of alleged hate crimes against members of the LGBT+ community, despite efforts, or no investigation was launched due to the lack of elements of crime, but it remains unclear exactly what investigative activities were carried out to unmask such a motive.

Part of the alleged hate crimes committed against LGBT+ people were related to physical and verbal abuse, beatings and death threats, as well as cases of assault on the office of an organization working on the LGBT+ rights. Applicants also allege that in a number of cases, individuals continued to verbally abuse them even after police officers arrived, to which the law enforcement officers did not respond. At the same time, despite the fact that a reasonable period of time has already passed, persons involved in specific incidents have not been recognized as victims in a number of cases, which restricts their access to criminal case materials. The cases examined by the Public Defender's Office also include incidents of violence against minor members of the LGBT+ community, who were verbally abused or threatened with death, as well as physical and verbal abuse of LGBT+ persons' family members. Criminal acts were committed by different persons and under different circumstances, including: by restaurant service staff and security guard, neighbors, relatives, family members, apartment renter, police department officers and police chief, patrol police officers, for participating in a show, for wearing an earring, in the club queue, in the subway, etc.

3.2.2. Jehovah's Witnesses

Allegations of hate crimes have been steadily high among Jehovah's Witnesses (16), including cases involving incidents that occurred back in the early months of 2018, in which no accused person has been identified, no prosecution has been launched, and applicants complain about the protracted investigation.

Most of the alleged crimes against Jehovah's Witnesses, in which, according to the investigative body, no discriminatory motive could be identified during the investigation, and in which later the investigation was resumed, terminated or was not launched due to the lack of elements of crime, concern both violence and other actions. According to similar cases examined by the Public Defender, victims of physical violence are usually Jehovah's Witnesses standing on the street or going door to door. Jehovah's Witnesses also report incidents when fire was set to their stands or when their religious literature was destroyed.

It is also noteworthy that several applications referred to incidents when the workspace or vehicle of Jehovah's Witnesses were damaged. One of the applications referred to damages inflicted on the real estate belonging to Jehovah's Witnesses in Khoni and Khashuri municipalities on one and the same day - April 29, 2019. In addition, several other applications referred to five different cases of infliction of damage on administrative buildings and vehicles of Jehovah's Witnesses on May 11-26, 2019.

3.2.3. Muslim community

The Public Defender was also applied with regard to crimes committed against the Muslim community. In one of the cases, which did not occur during the reporting period, but the results of the investigation are still unknown, no specific person has been identified as a victim or an accused so far.³¹ In particular, the case concerned the launch of criminal proceedings and conduct of prompt and effective investigation into the actions/inaction of police officers towards the staff of a boarding house located on 13 Lermontov Street in Kobuleti on September 15, 2014.

The Public Defender has repeatedly requested information about the investigation of the case, however, she was not given access to the case materials. At the initial stage, the Prosecutor's Office of Georgia clarified that the investigative unit of the Prosecutor's Office of the Autonomous Republic of Adjara had examined the alleged violation of the law by police officers and as a result, no elements of crime were identified, therefore no investigation was launched.

The ambiguity of the position of the Prosecutor's Office of Georgia in this case is worth noting, as by the letter of February 14, 2019, the Public Defender was informed that the analysis of full materials of the case did not reveal the commission of an offence by police officers, therefore, no investigation was launched. However, after requesting full materials of the same case, the Public Defender was told that the investigation was ongoing and she was denied access to witness testimonies and case materials.

³¹ Letter №13/13120 of March 10, 2021 of the Prosecutor General's Office of Georgia.

3.2.4. Amicus curiae (friend of the court) brief on the case of Vitaly Safarov

In 2019, the Public Defender had the opportunity to access the materials of an alleged racially motivated murder and to respond critically to the judgment of the court of first instance through an amicus curiae brief.

On October 4, 2019, the Public Defender of Georgia, as a mechanism combating discrimination, used her authority to file an amicus curiae brief in relation to the criminal case of the murder of Vitaly Safarov,³² as the case showed signs of bias motive. In the document, the Public Defender reviewed the signs of the bias motive and the importance of unmasking such a motive based on the standards set by international institutions.

According to the amicus curiae brief, hate crime is an act motivated by prejudice based on a specific characteristic of the victim, which is prohibited by criminal law. The Public Defender also referred to the obligation of the State to take all measures to identify whether there were a racist motive and to establish whether or not ethnicity of the victim may have played a role in the incident.

It should be noted that according to the Tbilisi City Court, the murder of Vitaly Safarov was not a hate crime committed on the grounds of national intolerance, but an argument that escalated into a physical confrontation, which resulted in the murder of an ethnically non-Georgian person. The Public Defender considered the issue of mixed motives based on the practice of the European Court of Human Rights, according to which, hate crimes may not be based solely on the characteristics of the victim. The perpetrators may have mixed motives, namely, they may be under the influence of a particular situation, as well as acting on the basis of prejudice towards a group to which the victim belongs.³³

The Public Defender explained that according to the judgment of the Grand Chamber of the European Court of Human Rights, when force is used against ethnic minorities and when racist remarks are made, these factors should be taken into account when unmasking alleged bias motive and that the European Court of Human Rights found the violation of Article 14 (Prohibition of discrimination) of the Convention in conjunction with Article 2 (Right to life),³⁴ because the State did not pay due attention to the words uttered during the commission of the crime.

The Tbilisi City Court also clarified that the defendants' antipathy towards other nations did not constitute a circumstance proving a murder committed on the grounds of national intolerance, and that their religious beliefs and views were not subject to judicial review. In this regard, the Public Defender noted in the amicus curiae brief that according to the standards of international law, when unmasking a bias motive, great importance should be attached to the statements and personal characteristics of the accused. When unmasking

³² Available at: < <https://bit.ly/33hfZRw> > [05.04.2021].

³³ Judgment of the European Court of Human Rights of 28 March 2017 in the case of Skorjanec v. Croatia, §55; Judgment of the European Court of Human Rights of 20 October 2015 in the case of Balazs v. Hungary, §70.

³⁴ Judgment of the European Court of Human Rights of 6 July 2005 in Nachova and others v. Bulgaria [GC], §168.

a bias motive, the European Court of Human Rights always takes into account racist expressions and whether attackers are members of a far-right organization, which, in its essence, is an extreme ideology.³⁵

In order to establish a uniform practice, the Public Defender called on the Court of Appeal to assess whether the indicators of a bias motive were obvious under international law, in particular, how correctly the importance of symbolism used by the accused and their ideology were assessed, as well as how significant were the words uttered during the commission of a crime in unmasking a bias motive.

4. Practice of the European Court of Human Rights in relation to judgments delivered against Georgia

It should be noted that the European Court of Human Rights has found a violation of prohibition of discrimination against Georgia in three cases, due to ineffective investigation of hate crimes. Two of them concern the persecution of Jehovah's Witnesses³⁶ and one concerns shortcomings in the investigation of discriminatory crimes committed during a rally held in connection with the International Day Against Homophobia and Transphobia on May 17, 2012.³⁷ It should be noted that no person has been held legally responsible for committing hate-motivated violence during the events that took place on May 17, 2012. The European Court also accepted for consideration two complaints relating to the events of 2012.³⁸

In its judgments against Georgia, the European Court of Justice emphasized the importance of thorough investigation of violence committed against vulnerable groups and indicated that inefficient conduct of this process might incite violence.³⁹

Regarding the violations committed against Jehovah's Witnesses, the European Court noted that the issue of religiously motivated violence was widely known in Georgia, but the Government did very little to prevent it. In the *Gldani Congregation* case, the Court found that negligent attitude by the police and other public authorities towards extremely serious unlawful acts on account of the applicants' faith enabled extremist Orthodox groups to advocate hatred and to pursue acts of religious violence. This led civil society to doubt the criminals' complicity with state representatives. Even when there was sufficient evidence of the involvement of state agents in the violence, no steps were taken to identify and question them. In many cases the supervising prosecutors and the domestic courts were well aware of the investigations' defects, but did little about it; most of the cases at hand were the subject of several decisions to terminate the investigation on

³⁵ Judgment of the European Court of Human Rights of 14 December 2010 in the case of *Milanovic v. Serbia*, §98.

³⁶ Judgment of the European Court of Human Rights of 3 May 2007 in the case of *Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*; Judgment of the European Court of Human Rights of 7 October 2014 in the case of *Begheluri and others v. Georgia*.

³⁷ Judgment of the European Court of Human Rights of 12 May 2015 in the case of *Identoba and others v. Georgia*.

³⁸ Communication from an NGO (the Human Rights Education and Monitoring Center, the Women's Initiatives Support Group, Identoba and ILGA-Europe) (11/05/2018) in the case of *Identoba and Others v. Georgia* (Applications No. 73235/12, 71156/01, 28490/02). In response, the government referred to the activity report submitted on 16 April 2018 (see DH DD(2018)425), available at: < <https://rb.gy/sbg0uk> > [05.04.2021].

³⁹ Judgment of the European Court of Human Rights of 7 October 2014 in the case of *Begheluri and others v. Georgia*, §145.

the ground of the absence of elements of crime. Against this background, the Court found it particularly striking that the relevant authorities at domestic level and the Government in their pleadings before the Court continued to assert that it had been impossible to conduct several of the investigations because of the inability to identify the alleged perpetrators, despite the fact that at least some of them had been explicitly named in the applicants' statements and were also clearly recognizable from the available video recordings and photographs.⁴⁰

The European Court of Human Rights observed in the case of *Identoba* that the criminal complaints into the ill-treatment of the participants of the march on May 17, 2012 by counter-demonstrators as well as the purported inaction of the police in the face of the violence, were filed the day after the incident. However, the relevant domestic authorities, instead of launching a comprehensive and meaningful inquiry into the circumstances surrounding the incident with respect to all of the applicants, inexplicably narrowed the scope of the investigation and opened two separate and detached cases concerning the physical injuries inflicted on two individual applicants only. Even in those separate criminal cases, no significant progress has been made for more than two years. The investigations are still pending at the early stages and the applicants have not even been granted victim status. The only tangible result was the administrative sanctioning of two counter-demonstrators, who were punished for minor breach of public order by a fine. However, given the level of the unwarranted violence and aggression against the applicants, the Court did not consider that such a light administrative sanction was sufficient to discharge the State of its procedural obligation under Article 3 of the Convention.⁴¹

According to the European Court, the mere fact of launching an investigation cannot satisfy the requirements of the Convention, unless it is followed by prompt and effective investigative activities.⁴² While the obligation to investigate relates only to the means to be employed and there is no absolute right to obtain a prosecution or conviction, any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness.⁴³ In addition, the fact that the applicants were not sufficiently involved in the criminal proceedings, most of the applicants were refused formal victim status and those who were granted victim status tried unsuccessfully to obtain access to their case file and were not kept informed of the progress of the proceedings, cannot be considered an effective investigation.⁴⁴

5. Trends identified in the investigation process

The Public Defender considers it an improved trend that alleged hate crimes, especially those against Jehovah's Witnesses, in contrast to the practices of previous years, are being investigated under an article of the Criminal Code which pertains to the commission of a hate-motivated crime, although its legal

⁴⁰ Ibid. §178; Judgment of the European Court of Human Rights of 3 May 2007 in the case of Gldani Congregation of Jehovah's Witnesses and Others v. Georgia, §130-142.

⁴¹ Judgment of the European Court of Human Rights of 12 May 2015 in the case of *Identoba and others v. Georgia*, §75.

⁴² Judgment of the European Court of Human Rights of 27 July 2006 in the case of *Davtyan v. Georgia*, §46.

⁴³ Judgment of the European Court of Human Rights of 7 October 2014 in the case of *Begheluri and others v. Georgia*, §139.

⁴⁴ Ibid. §140.

effectiveness is prevented by the protracted process. The protracted practice of investigating cases raises a sense of injustice and insecurity among victims, which significantly reduces trust in the law enforcement agencies. In most cases, investigative activities are conducted to unmask alleged bias motives and investigations continue, however, the rates of granting victim status to certain individuals and charging perpetrators are drastically low.

In addition, there are cases when after termination of an investigation, a case is classified as an administrative offence, however, even if an offence is found, the relevant decision does not indicate that the victim was discriminated against, as the currently applied administrative law does not single out the discriminatory motive as one of the aggravating circumstances of administrative liability and does not allow to mention this motive. This greatly complicates the production of statistics on alleged hate cases and increases the likelihood that hate-motivated illegal acts will go unnoticed.

The systemic change in the approach of the Prosecutor's Office in relation to cases of property damage should be noted positively. In the previous period, cases were classified under Article 187 of the Criminal Code of Georgia (damage or destruction of property), if the damage did not exceed GEL 150 in total, as a result of which, investigations were terminated due to absence of elements of crime. The period examined within the framework of the present document indicates that, in most cases, investigations are conducted under articles of the Criminal Code, which do not see the insignificant damage caused by the alleged crime as an obstacle for the purposes of qualifying a case. Nevertheless, as the cases examined revealed, the property damage cases were sometimes still investigated under Article 187 of the Criminal Code and, according to the information received from the Prosecutor's Office, they were working to unmask bias motives.

The Public Defender considers it necessary to develop a unified approach of state criminal policy in the investigative system and to create a special structural unit working on hate crimes,⁴⁵ which should be staffed by professionals trained on the prevention and timely and effective investigation of prejudice-motivated crimes committed against vulnerable groups.

It is to welcome that on September 23, 2020, the Supreme Court of Georgia, the Prosecutor's Office of Georgia, the Ministry of Internal Affairs of Georgia and the National Statistics Office of Georgia (Geostat) signed a memorandum of cooperation on the production of statistics on intolerance-motivated discriminatory crimes and publication of a joint report.⁴⁶ The memorandum defines the classification of intolerance-motivated crimes and data for the production of unified statistics, as well as the procedure for data collection, processing, analysis and development and publication of a unified statistical report by the agencies, within their competences. According to the rule, the agencies shall provide Geostat once a year, no later than February

⁴⁵ In this regard, the Dutch experience relating to hate crimes is interesting. There is a special unit in the Dutch police system, which is called “Roze In Blauw”, the main task of which is to investigate hate crimes committed on the grounds of sexual orientation/gender identity. The unit is staffed with professionals specially retrained to examine/investigate this type of crimes, who have close ties to the society, are in constant contact with the LGBT+ community and explore their needs. The unit is equipped with a special hotline, which allows victims of alleged crimes to have direct contact with the unit, if necessary. Information is available: < <https://bit.ly/3toa2wp> > [05.04.2021].

⁴⁶ The memorandum is available: < <https://rb.gy/qvyj6m> > [05.04.2021].

20, the data necessary for the publication of a joint report on crimes committed on the grounds of intolerance from January 1 to December 31 of the previous year. For its part, Geostat is obliged to prepare and publish, no later than March 1, a unified statistical report on crimes committed on the grounds of intolerance in the previous year.

In addition to the classification of crimes committed on the grounds of intolerance, the quantitative data to be processed include: territorial distribution of crimes, discriminatory grounds, launch of investigations and launch/non-launch of criminal prosecution, cases sent to and considered by courts, age and gender of the accused, convicted and affected persons, as well as social relationships between them.

Based on the memorandum, the first unified report has already been published, which includes data covering a period from October to December 2020.⁴⁷

Of course, the introduction of a proper statistics system is clearly a step forward. However, in order to highlight the existing problems, within the same system, it is necessary to analyze the risk factors for hate crimes and the circumstances that prevent their detection.

II. Deficiencies in the fulfillment of positive obligations by the State relating to the realization of freedom of expression and assembly of LGBT+ persons

6. Restrictions on freedom of expression and assembly of the LGBT+ community and the strengthening of far-right groups

On November 4, 2019, the Public Defender of Georgia addressed the Prime Minister and the Minister of Internal Affairs of Georgia with a general proposal⁴⁸ and called on them to ensure that individual cases of restrictions of freedom of expression and freedom of assembly of LGBT+ people in recent years were addressed at the state policy level and to plan joint preventive and reactive measures in this direction.

In this chapter, the Public Defender of Georgia reviews the current situation in the country in terms of the realization of freedom of expression of LGBT+ people in the light of the incidents that took place from September 2018 to 2020. In particular, we will focus on an incident when football fans were banned to use LGBT+ symbols during a football match on September 9, 2018, the events surrounding the March of Dignity scheduled for June 18-23, 2019 and the strengthening of homophobic far-right groups.

6.1. Individual cases

6.1.1. Incident of September 9, 2018 - LGBT+ symbols

The Public Defender of Georgia considered the application of LGBT+ persons regarding the alleged discriminatory treatment by the police on the grounds of sexual orientation and gender identity.⁴⁹ In particular, on September 9, 2018, a football match was held between the Georgian and Latvian national teams

⁴⁷ Available at: < <https://bit.ly/3nN4Ocq> > [05.04.2021].

⁴⁸ Available at: < <https://bit.ly/3xMBLus> > [05.04.2021].

⁴⁹ Application №13414/18 filed with the Public Defender's Office.

at the Dinamo-Arena Stadium in Tbilisi. Prior to the match, Georgian national football team captain Guram Kashia received Equal Game Award from UEFA for his support for the idea of equality, as he wore a captain's armband in the rainbow colors in support of LGBT+ people while playing for Dutch Vitesse. Part of the fans came to the Dinamo-Arena Stadium with items containing LGBT+ symbols in support of Guram Kashia.

Gathering at the stadium was announced by other groups as well - Sandro Bregadze, leader of the Georgian March⁵⁰, posted a statement on his Facebook page: *"Our only condition is that there should not be sodomy symbols and LGBT armbands at the stadium, we should show support to our players only with our state flags and our team's symbols. If the homosexuals-LGBT organizations and vice-captain of the team Guram Kashia ignore the request of the Georgian fans and bring the symbols of the sin of Sodom, we will be forced not to allow, peacefully, the demonstration of LGBT+ gang and gay parade, and we call on all Georgia to protest against the celebration of the sin of Sodom!!"*⁵¹

The application filed with the Public Defender's Office says that representatives of the Ministry of Internal Affairs did not allow LGBT+ people to attend the match with rainbow armbands and/or other LGBT+ symbols, such as banners, flags, etc. Thus they were discriminated against and their freedom of expression was restricted on the grounds of their sexual orientation and gender identity.

The Public Defender addressed the General Inspectorate of the Ministry of Internal Affairs regarding this issue. The Ministry's response indicated that due to the lack of elements of crime in the police actions, the Prosecutor's Office did not launch an investigation and the case was handed over to the General Inspectorate of the Ministry of Internal Affairs for further response.

According to the General Inspectorate of the Ministry of Internal Affairs, due to Guram Kashia's move to wear a rainbow armband, part of the society with negative attitude towards the issue announced a gathering at the stadium. As supporters of these groups might arrive at the stadium without any identifiable signs and as LGBT+ people and their supporters were likely to come to the stadium in support of Guram Kashia, *considering the high concentration of people and additional specific characteristic of sports events, there was a danger of escalation of the situation, which might cause the breach of public order by a large mass of people and the development of processes that would be difficult to manage.*

At the same time, the General Inspectorate explained that despite the fact that there was a concentrated number of police officers at the stadium to protect public order and safety, the active display of symbols in support of various groups could provoke unrest, which could pose a risk to the life and health rights of LGBT+ people as well as other citizens, even in case of the active use of the legitimate rights by the police. Accordingly, in order to avoid incidents, representatives of the Ministry of Internal Affairs were instructed by the officials of the Tbilisi Police Department to ban citizens from carrying various items, including LGBT+ symbols, on the territory of the stadium, and to achieve the above by confiscating the items until the end of the football match, or to ban persons carrying such symbols from entering the Dinamo-Arena Stadium.

⁵⁰ Available at: < <https://rb.gy/crpyng> > [05.04.2021].

⁵¹ Available at: < <https://rb.gy/pwzv2y> > [05.04.2021].

Regarding the preventive measures, the Human Rights Department of the Ministry of Internal Affairs of Georgia provided information that the Ministry of Internal Affairs issued a statement⁵² before the match on September 9, 2018, urging citizens to observe public order during the match so that the match could be held in a safe environment. According to the statement, *"the Ministry of Internal Affairs respects the freedom of expression of any citizen and protects their security regardless of gender, skin colour, religion, political views or other characteristics."* The Ministry of Internal Affairs clarified that any action that exceeded the limits allowed by the Law on Freedom of Expression and endangered the safety and health of citizens would be followed by the strictest response in accordance with the administrative and criminal legislations of Georgia.

6.1.2. Rally of June 14, 2019

On June 14, 2019, organizers of Tbilisi Pride planned a rally,⁵³ which was preceded by a statement issued by the Georgian Patriarchate⁵⁴ calling on the authorities not to allow the March of Dignity to be held in Tbilisi.

The rally was supposed to start at 7:00 pm in front of the building of the Governmental Administration, however, organizers of Tbilisi Pride were not allowed to hold the rally, as representatives of the Georgian March, the Union of Orthodox Parents, businessman Levan Vasadze and clergy arrived and occupied the territory in front of the Governmental Administration. As a result, LGBT+ activists were forced to voice their messages to the authorities from the stairs of the Governmental Administration.

Police cordoned off the area. According to activists, they were not allowed to approach the building of Governmental Administration. Giorgi Tabagari, one of the organizers of the March of Dignity, was removed from the territory, but he soon returned to the area. He said he was removed by the police in order to save him from the aggressive groups.⁵⁵

The two parallel rallies near the Governmental Administration lasted about seven hours. Several incidents⁵⁶ and clashes⁵⁷ took place during that period. Opponents of the LGBT+ community were particularly aggressive. They verbally abused LGBT+ activists as well as journalists and obstructed their activities.⁵⁸ They tried to break through the police cordon and approach representatives of the LGBT+ community several times.⁵⁹ In addition, they threw various items at LGBT+ activists, physically touched several of them as well as journalists⁶⁰ and damaged their equipment.⁶¹ A participant in the homophobic demonstration grabbed the phone of one of the journalists and threw it. According to the journalist, the above was witnessed by the police, but they did not respond.⁶² The participants in the counter-demonstration also verbally insulted one

⁵² Available at: < <https://bit.ly/33cxhzb> > [05.04.2021].

⁵³ Available at: < <https://bit.ly/2RrhFVS> > [05.04.2021].

⁵⁴ Available at: < <https://bit.ly/3b1y2PP> > [05.04.2021].

⁵⁵ Available at: < <https://bit.ly/2IrP9Mb> > [05.04.2021].

⁵⁶ Available at: < <https://bit.ly/33cjYyy> > [05.04.2021].

⁵⁷ Available at: < <https://bit.ly/3xMqYQR> > [05.04.2021].

⁵⁸ Available at: < <https://bit.ly/3xK2ZBL> > [05.04.2021].

⁵⁹ Available at: < <https://bit.ly/3nOTQDt> > [05.04.2021].

⁶⁰ See the full facts of obstruction of journalists' activities at: < <https://bit.ly/3eRE0nn> > [05.04.2021].

⁶¹ Available at: < <https://bit.ly/2VnWBNH> > [05.04.2021].

⁶² Available at: < <https://bit.ly/33m9Enz> > [05.04.2021].

of the journalists, while the law enforcement officers advised the journalist to leave the area.⁶³ The counter-demonstrators verbally insulted Deputy Public Defender Giorgi Burjanadze as well.⁶⁴ They said they would not leave the area until the LGBT+ community and activists remained there.

After counter-demonstrators were convinced that the activists of the LGBT+ community had left the territory, they made a decision to leave the area. Prior to that, Nata Peradze,⁶⁵ one of the founders of the non-governmental organization - Partisan Gardeners, was threatened with death “for the LGBT lifestyle propaganda”. She arrived to show support to the LGBT + community and the incident occurred when she was trying to return home through the territory where counter-demonstrators were present.

In parallel with the above events, Nino Lomjaria, Public Defender of Georgia, was threatened with death via the Internet. The threat was preceded by the statements of the Public Defender⁶⁶ calling for the protection of the right to assembly and demonstration. The Public Defender responded to the March of Dignity scheduled by the LGBT+ community for June 18-23 with a special statement and, considering the high homophobic sentiments in the country, she called on the law enforcement officials to ensure the exercise of the constitutionally guaranteed rights of the demonstrators and to protect their safety. On June 14, at the rally organized by the LGBT+ community in front of the Governmental Administration, members of radical groups tried to disrupt the activities of the Deputies of the Public Defender, Giorgi Burjanadze and Ekaterine Skhiladze, by threatening and verbally abusing them.⁶⁷

6.1.3. March of Dignity

The Tbilisi Pride movement scheduled Tbilisi Pride Week for June 18-23, 2019, which included a theatrical performance, international LGBT+ conference and March of Dignity. The Tbilisi Pride organizers launched talks on security issues with the Ministry of Internal Affairs several months earlier. On May 31, 2019, they presented an action plan at a meeting with representatives of the Ministry of Internal Affairs. The organizers were told at the meeting that due to the security risks, it was impossible to hold events in the format or at venues selected by them.⁶⁸ According to the organizers, the Ministry of Internal Affairs of Georgia offered them to hold the March of Dignity in a closed space, which was unacceptable to them.⁶⁹

Various groups, including Levan Vasadze's supporters⁷⁰ and the Union of Orthodox Parents,⁷¹ threatened Tbilisi Pride to disrupt their events and crack down on their activists.

⁶³ Available at: <https://bit.ly/3ulRzSL> > [05.04.2021].

⁶⁴ Available at: < <https://bit.ly/3vGqlX5> > [05.04.2021].

⁶⁵ Available at: < <https://bit.ly/2RpZe3I> > [05.04.2021].

⁶⁶ Available at: < <https://bit.ly/3xOFpDS> > [05.04.2021].

⁶⁷ Available at: < <https://bit.ly/2Mtaje2> > [05.04.2021].

⁶⁸ Available at: < <https://bit.ly/3xX7ysG> > [05.04.2021].

⁶⁹ Available at: < <https://bit.ly/3eX6Z9k> > [05.04.2021].

⁷⁰ Available at: < <https://bit.ly/35e0rO4> > [05.04.2021].

⁷¹ Available at: < <https://bit.ly/2noeI9L> > [05.04.2021]; note: See about the Union of Orthodox Parents at: < <https://bit.ly/3ujGx05> > [05.04.2021].

Due to the above, the March of Dignity could not be held according to the plan (with participation of hundreds of people), due to which, LGBT+ activists and supporters held a limited partisan rally in front of the Ministry of Internal Affairs on July 8, 2019.⁷²

In 2020, the opportunities of LGBT+ members to exercise their freedom of expression were further reduced due to the epidemiological situation in the country, which had a significant negative impact on the already critical situation. Against the background that activists have been struggling for secure public spaces to hold safe assemblies over the years, the International Day Against Homophobia, Transphobia and Biphobia was held online on May 17, 2020.⁷³

6.1.4. Offences committed on homophobic grounds in 2020

Although in 2020, due to the epidemiological situation, the community was deprived of the opportunity to hold public gatherings, the threat and aggression coming from specific groups, which was aimed at restricting the freedom of expression of LGBT+ people and their supporters, was still noticeable. Throughout the year, the violations committed by far-right groups against the Tbilisi Pride office were systematic. The process began on June 1, 2020, when a protest rally was held in front of the Tbilisi Pride office and participants announced they would hold daily protests until the removal of the LGBT+ flag from the building.⁷⁴ They also threw paints and eggs at the flag and building several times.⁷⁵ In addition, according to the information provided by Tbilisi Pride to the Public Defender's Office, various illegal actions were committed, including: organization's employees have been subject to homophobic shouting, swearing and use of other obscene and threatening expressions of violence; the LGBT+ flag was removed from the office balcony. The organization also pointed to the police inaction and ineffective response, leaving their employees with no sense of security.

According to the information requested from the Ministry of Internal Affairs of Georgia,⁷⁶ investigations and administrative proceedings were launched in relation to six different violations committed near the Tbilisi Pride office in the period from May 26, 2020 to September 20, 2020. These facts included the theft of a flag from the office balcony, throwing of eggs and dark paints at the office walls, throwing of eggs and paints at the flag and throwing of eggs in the direction of the entrance hall of the building. The Ministry of Internal Affairs of Georgia identified offenders in five of the cases. As a result, the court found eight persons guilty of petty hooliganism (Article 166 of the Administrative Offences Code of Georgia), four of whom were reprimanded and four were fined GEL 500-600.⁷⁷ Investigation into the theft of a flag is pending at the Ministry of Internal Affairs (May 26, 2020) and no specific person has been identified as a victim or an accused yet.

⁷² Available at: < <https://bit.ly/3tjF8FE> > [05.04.2021].

⁷³ Information is available at: < <https://rb.gy/3sxdc5> > [05.04.2021].

⁷⁴ Information is available at: < <https://rb.gy/n2jyyu> > [05.04.2021].

⁷⁵ Information is available at: < <https://rb.gy/rb1nsk> > [05.04.2021]; < <https://rb.gy/luzn3t> > [05.04.2021].

⁷⁶ Letter №MIA 6 20 02386703 of 7 October 2020 from the Ministry of Internal Affairs of Georgia.

⁷⁷ Letter №2386703 of the Ministry of Internal Affairs of Georgia of October 7, 2020 and letter №273361 of the Ministry of Internal Affairs of Georgia of February 5, 2021.

6.2. Strengthening of far-right groups

The Public Defender notes that far-right groups have been actively positioning themselves in public space in recent years. Similar groups have some supporters in some cases, exist in an organized manner and are, to some extent, characterized by consistent actions. It should be noted that individuals with far-right ideology do not limit themselves to mere verbal dissemination of their views, but are engaged in practical actions, which often include violations of law. One of the main targets of such groups' aggression is the LGBT+ community.

It is noteworthy that far-right groups are also recognized by the media as a source of formation of public opinion of a certain section of the community, as they invite them to their programmes as one of the parties to the conflict, where they are given the opportunity to express their opinions.

In this document, the Public Defender will focus on the public statements⁷⁸ made by one of the leaders of a far-right group - businessman Levan Vasadze, which, according to the Public Defender, has an impact on a certain section of the community.

- On June 14, 2019, while holding a counter-demonstration in front of the Governmental Administration building, Levan Vasadze stated that he and his supporters would not allow members of the LGBT+ community to hold a rally anywhere, including in closed space. According to Vasadze, the police would receive a symmetrical response if they resisted them instead of preventing the LGBT+ community from holding a rally.⁷⁹

"No matter where they gather - in the cinema, museum, theatre or pool, we will not allow it anywhere," Levan Vasadze said.

- On June 15, 2019, Levan Vasadze released a video calling on "only men" to gather in the Vera Park at 8:00 pm on June 16 in order to discuss how to oppose the Tbilisi Pride Week.⁸⁰

⁷⁸ The Public Defender's Office of Georgia also received application №6410642/19, according to which, the applicant asked the Prosecutor's Office of Georgia to launch an investigation into the statements of Levan Vasadze.

⁷⁹ *"They pose a direct threat to the Georgian statehood. We will not allow them to do that. I will post a video address on the internet, where I will name the venue and time [of the rally]. This [counter-demonstration] was impromptu and many people could not come. I will announce a public venue and time in Tbilisi where we will gather. I will come to that rally and announce an action plan about how we, civil society, are going to peacefully, if they allow it, resist provocation against our state everywhere: it does not matter where they gather - in the cinema, museum, or pool, we will not let them do that. We will do it peacefully, unless, of course, they oppose us, as when state structures refuse to maintain order, they are no longer law enforcement agencies. I very much hope that our guys, our officers will not allow this. If they oppose the will of the people and resist us instead of banning them from holding this event, they will get a symmetrical response. In the moments of history when the State and its structures refuse to maintain order, people are not only authorized but obliged to take care of the above themselves. We will announce the format of maintaining this order and then let's see whatever happens,"* Vasadze said.

Available at: < <https://bit.ly/3t199Vo> > [05.04.2021].

⁸⁰ *"Do not make a mistake. We will not give you the right to cordon off the area. Wherever you are, in the cinema, in the park, or in the woods, we will arrive everywhere, we will break all the cordons and sweep you away. How will we do that? We will agree on it tomorrow. When the State refuses to perform its functions, then people, who do not want*

Levan Vasadze made a statement: *"Do not make a mistake. We will not give you the right to cordon off any area. Wherever they are, in the cinema, park or woods, we will go everywhere, break through all the cordons and sweep you away."*

- At a rally held in Tbilisi on June 16, 2019, Levan Vasadze said that he was forming "self-organized groups" - "people's detachments" against Pride and its supporters, which would *"patrol"* in Tbilisi for a week.⁸¹
- After the Ministry of Internal Affairs of Georgia refused Tbilisi Pride to protect LGBT+ people and their supporters during the March of Dignity, Levan Vasadze disbanded the people's detachments.

"We are cancelling the patrolling, but we are ready to show up anytime by simply pressing a phone button, if the Ministry of Internal Affairs does not fulfill its promises and there is an attempt to celebrate perversion."

On June 17, 2019, the Ministry of Internal Affairs launched an investigation into Levan Vasadze's statement about the creation of people's detachments.⁸²

- Levan Vasadze addressed not only LGBT+ people and their supporters, but also the police. He said they were working on a strategy to break through the police cordon and that if the police resisted, they would be "armed with sticks".

*"We will have sticks in our belts and if they confront us, we will use the sticks." Levan Vasadze also said that he would not allow "perversion" in the country. According to him, during patrolling, their legion will tie up the hands of members of the LGBT+ community with belts. When breaking through the cordon, they should not beat members of Tbilisi Pride, but just pull their ears.*⁸³

Members of the Georgian March also joined the supporters of businessman Levan Vasadze against Tbilisi Pride. The leader of the Georgian March, Sandro Bregadze, said that *"... no Georgian has the right to stand aside at times like this. The gay parade will not be held and we will leave it as a surprise how we are going to*

to be slaves, should protect order themselves." "We call on you, people, to stand with us. We can not forbid anyone from coming, but this is men's business. Therefore, I ask women and children to stay at home. I call on men, Georgians, Azerbaijanis, Ossetians, Abkhazians, Russians, Ukrainians, Greeks, Kurds, Yazidis - everyone who live together in our homeland. Brothers and sisters, this is our homeland. It is based on respect for our and your cultures. They try to undermine that foundation. Let us not allow this," Levan Vasadze says in a video address. Available at: << <https://bit.ly/3xPY0Qe> [05.04.2021].

⁸¹ *"The structure will be simple, hierarchical. We will have a 1000-member legion, which will be divided into one hundred-member units led by their leaders, which will also be divided into ten-member squads led by their leaders." According to Vasadze, these people "will take care of certain parts of the city for a week, they will be patrolling." Vasadze said they would not be armed, but added that they would break through "any police cordon."* Available: < <https://bit.ly/3nLdxMv> > [05.04.2021].

⁸² Levan Vasadze: *"We are cancelling the patrolling, but we are ready to show up by simply pressing a phone button, if the Ministry of Internal Affairs does not fulfill its promises and there will be an attempt to celebrate perversion"*, available at: < <https://bit.ly/31TEW31> > [05.04.2021].

⁸³ Available at: < <https://bit.ly/2o9s36p> > [05.40.2021].

prevent it, however, we can say with certainty that it will not be held. We are all united. I, the March, Levan Vasadze and Guram Palavandishvili as well."⁸⁴

7. Assessment of the situation of freedom of expression of LGBT+ persons in the context of legal standards

Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination defines the purpose of the law, which is to eliminate all forms of discrimination and to ensure equal enjoyment of the rights enshrined in legislation of Georgia by any natural or legal person regardless of race, skin colour, sex, gender, age, citizenship, place of birth, place of residence, property or rank, religion or belief, nationality, ethnicity, social status, profession, marital status, health condition, disability, sexual orientation, gender identity and expression, political or other views or other characteristics.

The Public Defender considers it important to note that the tendency to obstruct the freedom of expression of LGBT+ people by private persons with quite high public influence has intensified in recent years. These individuals, through their actions and statements, contribute to the spread of homophobic attitudes and incite discrimination, while the Government does not take the necessary preventive measures, nor does it respond effectively to specific cases, which poses an even greater threat to the equality of LGBT+ people.

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment.⁸⁵ Freedom of expression is protected by the Constitution of Georgia and is also enshrined in all major international human rights instruments.⁸⁶

According to the Constitutional Court of Georgia, "freedom of expression is the foundation of a democratic and legal state, as without it individual's self-fulfillment is impossible - freedom of expression is a necessary foundation for the development of each person and society as a whole, it creates the prospect of sharing democratic values."⁸⁷ "The possibility of equal and full enjoyment of this right determines the degree of openness and democracy of the society. This right may be restricted in case of existence of legitimate grounds provided for in the Constitution, in order to ensure other constitutional rights and principles."⁸⁸

The grounds for restricting freedom of expression are specified in the Constitution of Georgia, according to which, this right may be restricted „only in accordance with law, insofar as is necessary in a democratic society

⁸⁴ Available at: < <https://bit.ly/3ulXbfB> > [05.04.2021].

⁸⁵ Judgment of the European Court of Human Rights of 8 July 1986 in the case of *Lingens v. Austria*, §41.

⁸⁶ Universal Declaration of Human Rights (adopted: December 10, 1948, in force for Georgia: by the 15 September 1991 Resolution of the Supreme Council of Georgia), Article 19; International Covenant on Civil and Political Rights (adopted: 1966, in force: 23 March 1976, in force for Georgia: since August 3, 1994), Article 19; European Convention on Human Rights (adopted: 4 November 1950, in force: 3 September 1953, in force for Georgia: 20 May 1999), Article 10.

⁸⁷ Judgment 301/6/561,568 of September 30, 2016 of the Constitutional Court of Georgia in the case of *Citizen of Georgia Yuri Vazagashvili v. Parliament of Georgia*, II, §39.

⁸⁸ Judgment No. 182/482,483,487,502 of 18 April 2011 of the Constitutional Court of Georgia in the case of *Citizens' Political Union - Movement for United Georgia, Citizens' Political Union - Conservative Party, Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dachi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. Parliament of Georgia*, §25.

for ensuring national security, public safety or territorial integrity, for the protection of the rights of others, for the prevention of the disclosure of information recognised as confidential, or for ensuring the independence and impartiality of the judiciary."⁸⁹

According to the Constitutional Court of Georgia, “there is a consensus on the importance of freedom of expression in a democratic society, although the exercise of this right often conflicts with the rights of others, or public interest, such as public order, security, etc.”. “... In the event of such a conflict, the State has the authority and even obligation to interfere, although such interference must be reasonable and proportionate to the purpose.”⁹⁰

Article 8 of the Law of Georgia on Freedom of Speech and Expression specifies grounds for the restriction of freedom of speech and expression, in particular, any restriction of the rights recognized and protected by this law may be imposed only if it is provided for in a clear and foreseeable law and if the benefit of the restriction outweighs the harm done by the restriction. The second paragraph of the same article clarifies that a law restricting the protected rights must be: directly aimed at the implementation of legitimate aims, critical to the existence of a democratic society and non-discriminatory.

It is true that the Public Defender does not assess individual cases in detail, however, it is obvious that the measures taken by the Ministry of Internal Affairs to protect the right to freedom of expression of LGBT+ people are vague and do not prove the existence of a systemic vision relating to the protection of rights or analysis of potential consequences. In addition, this document does not assess the freedom of expression of homophobic individuals/groups and focuses on analyzing the recent context of the realization of freedom of expression of LGBT+ persons.

It is important to note that in connection with the measures taken by the Ministry of Internal Affairs on September 9, 2018, the agency did not provide timely or complete information, which in turn is another systemic barrier to the protection of the rights of LGBT+ persons.

The Public Defender considers that, based on the information provided by the Ministry of Internal Affairs regarding the match held on September 9, 2018, it is not clear what kind of preventive measures were taken to protect the freedom of expression of LGBT+ people in the pre-match period, considering that the plans of certain groups opposing the use of LGBT+ symbols during the football match were known in advance. In particular, it is not clear whether the Ministry of Internal Affairs operatively contacted the persons/groups disseminating statements aimed at restricting the freedom of expression of LGBT+ people, or what measures were taken by the Ministry of Internal Affairs, if it saw the danger of violence at the stadium, based on the statements made by specific individuals/groups; The Public Defender also emphasizes that, according to the information provided by the Ministry of Internal Affairs, there was no attempt to communicate/cooperate

⁸⁹ Paragraph 5 of Article 17 of the Constitution of Georgia.

⁹⁰ Judgment No. 182/482,483,487,502 of 18 April 2011 of the Constitutional Court of Georgia in the case of Citizens' Political Union - Movement for United Georgia, Citizens' Political Union - Conservative Party, Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dachi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. Parliament of Georgia, §26.

with LGBT+ organizations/groups or to plan certain measures in advance to protect their freedom of expression.

In addition, the Ministry of Internal Affairs, when interfering with the freedom of expression of LGBT+ people, does not substantiate its oral decision in writing, which is a necessary tool to assess the legality of the measures taken.

On September 9, 2018, before the match, the Ministry of Internal Affairs of Georgia released information⁹¹ calling on citizens to observe public order during the match so that the match could be held in a safe environment. According to the statement, "The Ministry of Internal Affairs respects the freedom of expression of any citizen and protects their security regardless of gender, skin colour, religion, political views or other characteristics." The Ministry clarified that any action that exceeded the limits allowed by the Law on Freedom of Expression and endangered the safety and health of citizens would be followed by the strictest response by the police in accordance with administrative and criminal legislation of Georgia.

The Public Defender notes that the Ministry of Internal Affairs subjects the threats posed by specific groups aimed at restricting the freedom of expression of LGBT+ people and their supporters, as well the freedom of expression of those who protect their own rights and support the idea of equality, to one and the same legal framework. According to the Public Defender, in order to ensure the freedom of expression of every person in a democratic society, it is important for the Ministry of Internal Affairs to advocate, without any ambiguity, a tolerant, conciliatory stance.

The Public Defender reflected the response of the law enforcement agencies to the incidents related to the March of Dignity in a special report on combating and preventing discrimination and the situation of equality in 2019, as a result of which, it was revealed that the Ministry of Internal Affairs launched investigations into alleged establishment and leadership of illegal groups, alleged threats, verbal and physical abuse of various persons (including the Public Defender and the Deputy Public Defender), alleged illegal interference with the professional activities of journalists during a rally.⁹²

The Public Defender of Georgia emphasizes that holding a peaceful assembly and demonstration in compliance with the requirements of law is a constitutionally guaranteed right. The State is obliged to ensure the full realization of this right by peaceful demonstrators and to mobilize appropriate resources to properly protect them from private persons. If there is a specific ground for restricting the freedom of assembly, the Ministry of Internal Affairs of Georgia is obliged to substantiate that the restriction serves the benefits protected by the Constitution, is necessary for a democratic society, is *non-discriminatory and proportionally restrictive* and the benefit protected by it outweighs the harm caused by it. The general statement issued by the Ministry of Internal Affairs of Georgia regarding the March of Dignity cannot be considered as such a substantiated decision.

⁹¹ Available at: < <https://bit.ly/3nLVDci> > [05.04.2021].

⁹² For details see the Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and Situation of Equality 2019, pp. 24-25.

In addition, it should be noted that the LGBT+ community and their supporters have not been given the opportunity to gather in a free environment for many years, which is directly related to the strongly homophobic background in the society. With this in mind, the Public Defender believes that it is important for the State to do its best to reduce such a public sentiment.⁹³ At the same time, the Public Defender also points out that the offer of the Ministry of Internal Affairs to the organizers of the March of Dignity to gather in closed space, due to the fact that the Ministry could not protect them in open space, made the goal of LGBT+ people pointless, which was to gather in public. Consideration of this context, including by the Ministry of Internal Affairs, was important.

In order to fully realize the freedom of assembly of the LGBT+ community and their supporters, the European Court of Human Rights also refers to the obligation of taking appropriate preventive measures in its judgment on the *Identoba and Others v. Georgia* (2015), stating that given the attitudes in parts of Georgian society towards the sexual minorities, the authorities had an obligation before the 17 May 2012 peaceful march "to use any means possible, for instance by making public statements in advance of the demonstration to advocate, without any ambiguity, a tolerant, conciliatory stance, as well as to warn potential law-breakers of the nature of possible sanctions." In addition, the same ruling of the European Court of Human Rights says that it would have been only prudent if the domestic authorities, given the likelihood of street clashes, had ensured more police manpower by mobilizing, for instance, a squad of anti-riot police.⁹⁴

On September 25, 2019, the Committee of Ministers of the Council of Europe issued a report on the case of *Identoba and Others v. Georgia* as part of enhanced supervision. The document addresses the main shortcomings in the execution of the judgment of the European Court of Human Rights by the State. The Committee focused on the incidents surrounding attempts to hold an LGTBI pride march in Tbilisi in June 2019, including threats against would-be marchers, the Public Defender and her deputies, as well as the reported inability of law enforcement bodies to protect participants from violent homophobic groups. The Committee underlined the importance of pluralism and tolerance as hallmarks of a democratic society and the State's positive obligation to act as the ultimate guarantor of these principles; consequently, urged the authorities to take all measures necessary in order to fully safeguard freedom of assembly and the physical integrity of participants.⁹⁵

In the 2019 parliamentary report, the Public Defender noted that the situation in Georgia was not significantly improving in terms of the realization of the right to equality. The practice of the Public Defender shows that in many cases, discrimination is caused by stereotypes and misconceptions about vulnerable groups, although to address them, appropriate measures are not sufficiently taken by the State. The influence of homophobic and transphobic groups is still strong in the society, due to which, LGBT+ people continue to suffer oppression, discrimination and often become victims of violence. Unfortunately, the State has not yet taken effective steps in this regard, which has a serious impact on the rights situation of LGBT+ people. The measures taken by the

⁹³ Available at: < <https://bit.ly/2QWEIgL> > [05.04.2021]. p. 171.

⁹⁴ Judgment of the European Court of Human Rights of 12 May 2015 in the case of *Identoba and Others v. Georgia*, para. 99, available at: < <https://rb.gy/c0wurz> > [05.04.2021].

⁹⁵ Available at: < <https://bit.ly/3tgwYhb> > [05.04.2021].

State to protect LGBT+ people are insufficient and fail to address real challenges. Unfortunately, the State has not yet developed a systemic vision for improving the rights situation of LGBT+ people.⁹⁶

Prior to the March of Dignity, it was important for the Ministry of Internal Affairs of Georgia to carry out appropriate preparatory work in order to enable citizens to fully exercise their freedom of peaceful assembly. And, in case of restricting the right on the grounds provided for by law, the decision should have been duly substantiated.

The Public Defender notes that the State has an obligation to make efforts to protect fundamental human rights. In the case law of the European Court of Human Rights, which concerned the refusal of the Russian state institutions to hold a pride march in Moscow in 2006-2008 on the grounds of the protection of public order and safety of the pride participants, the Court described the refusal as discriminatory and found the violation of the freedom of assembly and demonstration. The Court ruled that the prohibition of the public gatherings of LGBT+ people by the national Government was not necessary in a democratic society and did not respond to social needs. As the Court pointed out, "if every probability of tension and heated exchange between opposing groups during a demonstration were to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views on any question which offends the sensitivity of the majority opinion."⁹⁷

As for the strengthening of far-right groups, the Public Defender notes that the activities of Levan Vasadze and related groups, their plans and actions are not paid due attention.

The Public Defender also emphasizes the obligation of the Ministry of Internal Affairs to protect the safety of journalists and to ensure that media representatives can perform their professional duties without hindrance. It is also important to ensure timely and adequate legal response to the unlawful interference with journalists' professional activities.

According to the Public Defender of Georgia, during the development of the above-mentioned events, the Ministry of Internal Affairs of Georgia had a neutral position, which negatively affected the rights situation of LGBT+ people and contributed to the strengthening of negative attitudes towards the LGBT+ community.

8. Preventive measures taken by the Ministry of Internal Affairs

Following the appeal of the Public Defender of Georgia on November 4, 2019,⁹⁸ the Ministry of Internal Affairs of Georgia provided information on the activities relating to hate crimes. In particular, in order to improve the quality of the investigation, recommendations are being made and implemented in practice on the detection and effective investigation of intolerance-motivated discriminatory crimes. This recommendation is used as a guide by investigators in detecting and investigating crimes committed on the

⁹⁶ 2019 Parliamentary Report of the Public Defender of Georgia, pp. 170, 177, 178; Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the Situation of Equality 2019, pp. 6, 22, 23; See also the 2018 Parliamentary Report of the Public Defender of Georgia pp. 14, 151, 160, 180.

⁹⁷ Judgment of the European Court of Human Rights of 11 April 2011 in the case of ALEKSEYEV v. RUSSIA, §77, §87.

⁹⁸ Available at: < <https://bit.ly/3vI86R2> > [05.04.2021].

grounds of discrimination. They are also periodically updated in accordance with the legislative amendments and existing challenges. In addition, the Human Rights Protection and Investigation Quality Monitoring Department has a police advisory function and represents a contact unit between the Ministry and the non-governmental sector.

In addition, on the initiative of the Ministry of Internal Affairs, the responsibility for the commission of discriminatory crimes has been tightened. In some articles of the Criminal Code, the commission of a crime on the grounds of gender discrimination has been defined as an aggravating circumstance.

To protect the interests of victims and witnesses and to prevent re-victimization of victims, the Witness and Victim Coordinator Service has been established. The coordinator prioritizes communication with victims of discriminatory crimes. In addition, in cooperation with the OSCE Office for Democratic Institutions and Human Rights, a training module has been developed and implemented relating to hate crimes, and in cooperation with the Council of Europe, a training module has been introduced on the topic: "Police measures to prevent hate crimes against LGBT persons".

In order to improve the national criminal and administrative legislations, eliminate shortcomings in legislations, properly qualify hate crimes, establish a common standard and effectively combat discrimination, in 2019, the Human Rights Protection and Investigation Quality Monitoring Department of the Ministry of Internal Affairs drafted a bill, according to which, a number of amendments should be made to the Criminal Code of Georgia and the Administrative Offences Code of Georgia in relation to hate crimes. Both local and international experts are actively involved in drafting these amendments. However, the legislative amendments to be made to the Administrative Offences Code of Georgia have not been initiated so far.

Regarding the use of hate speech, according to the Ministry of Internal Affairs, the task of the Human Rights Protection and Investigation Quality Monitoring Department is to ensure timely response to intolerance-motivated discriminatory crimes and to ensure an effective investigation. As legislation does not recognize the definition of hate speech, the Department does not conduct monitoring in this direction, unless there are elements of a criminal or administrative offence.

In addition to improving the quality of investigations and raising the qualifications of investigators, the Ministry of Internal Affairs is involved in events and campaigns aimed at raising awareness and preventing discriminatory crimes and hate speech. To this end, the staff of the Ministry participates in social campaigns, TV and radio programmes and information meetings with population.

III. Conclusion

In the first part of this report, the Public Defender reviewed the effectiveness of investigations of alleged hate crimes by the investigative bodies in a period from the start of the monitoring (2015) through 2020, shortcomings and improved trends in the work of investigative bodies in the current and previous years, and the standards of international institutions in this regard.

According to the Public Defender, despite some steps forward, the State fails to ensure the protection of the rights of vulnerable groups and effectively fulfill its positive obligations. The measures taken are insufficient, and in many cases, the vision and policies of the relevant agencies in terms of the protection of the rights of vulnerable groups are unclear.

The Public Defender once again pointed to the need for a unified approach of state criminal policy in the investigative system and the creation of a special structural unit working on hate crimes. In addition, she stressed the need to introduce a proper statistics system, which would also analyze the risk factors for hate crimes and the circumstances that prevent their detection.

In the second part of the report, the Public Defender reviewed shortcomings in the fulfilment of positive obligations by the State relating to the realization of freedom of expression and assembly of LGBT+ persons from September 2018 to 2020.

According to the Public Defender, the rights situation of LGBT+ people and the relating challenges become the subject of discussion by politicians only in certain periods of the year (for example, in the period preceding May 17). The needs of LGBT+ individuals are not a priority for political officials. In addition, the relevant agencies subject far-right groups and members of the LGBT+ community who seek to realize the freedom of peaceful assembly to one and the same legal framework. As a rule, the actions taken for the protection of the public interest - security - are carried out at the expense of restricting the rights of members of the LGBT+ community. In many cases, there is no timely or effective response to the violations committed by the leaders or members of various homophobic groups, which exacerbates the syndrome of impunity and legitimizes the violent acts committed by these individuals.

State awareness-raising initiatives, as well as communication with specific groups, are insufficient. The Public Defender noted once again that in order to prevent discriminatory offences, it is important not only to respond effectively to individual cases, but also to work systemically to improve the rights situation of vulnerable groups.

It is important to pay attention to the reasons for the strengthening of anti-democratic political movements and the political and social effects of homophobia. To strengthen the principle of equality, it is first and foremost important to change the perception of this phenomenon at the cultural level and to properly inform the public about democratic and human rights-related values. The strengthening of far-right groups and irrelevant response to their actions is a step backwards in the fight against discrimination, as the above promotes values that contradict human rights. This makes the provision of equality guarantees at the formal-legislative level and the practical efforts made by the State or civil society pointless. The Public Defender believes that it is important to prevent the use of the interests of vulnerable groups for political manipulation, while political officials should feel their special responsibility in terms of upholding the principle of equality. It is important for specific government agencies to develop a specific strategy/policy on the principle of equality in relation to the issues that fall under their competence. This will facilitate the process of proper and effective realization of fundamental human rights and freedoms. Only fragmented responses to individual cases cannot be a precondition for improving the rights situation of vulnerable groups.

Recommendations

Based on the systemic analysis of factual circumstances and the reasoning developed in this report, the Public Defender of Georgia makes the following recommendations:

To the Prosecutor General of Georgia:

- Continue retraining of the staff of the Prosecutor's Office of Georgia to improve their skills in investigating hate crimes;
- Analyze hate crime statistics, including risk factors for such crimes and the circumstances that prevent their detection.

To the Minister of Internal Affairs of Georgia:

- Establish a special structural unit in the investigative system which would have the authority to prevent and effectively investigate hate crimes;
- Continue retraining of the staff of the Ministry of Internal Affairs of Georgia to improve their skills in investigating hate crimes;
- Analyze hate crime statistics, including risk factors for such crimes and the circumstances that prevent their detection;
- Make unambiguous and clear statements in the future to protect the freedom of expression of LGBT+ persons;
- Take effective preventive and proactive measures to protect the freedom of expression of LGBT+ people;
- Effectively investigate the incidents that took place near the Governmental Administration on June 14, 2019, as well as the legality of Levan Vasadze's statements, and provide information to the public about the investigation.